

No. 89-565

IN THE SUPREME COURT OF THE STATE OF MONTANA

1990

MIKE MIGHT,
Appellant,
-vs-

ERMINDO ZAVARELLI and AMVETS POST NO. 4,
Petitioner and Respondents,
-vs-

DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,
LIQUOR DIVISION and LEO MIGHT,
Respondents and Respondents.

FILED
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MONTANA SUPREME COURT

APPEAL FROM: District Court of the Fourth Judicial District,
In and for the County of Missoula,
The Honorable Douglas G. Harkin, Judge presiding.

COUNSEL OF RECORD:

For Appellant(s):

Timothy D. Geiszler; Geiszler & Newcomer, Missoula,
Montana

For Respondent(s):

John C. Schulte, Missoula, Montana
Eric Fehlig, Tax Counsel, Dept. of Revenue, Helena,
Montana
Leo Might, Pro Se, Missoula, Montana

Submitted on Briefs: Jan. 25, 1990

Decided: March 9, 1990

Filed:



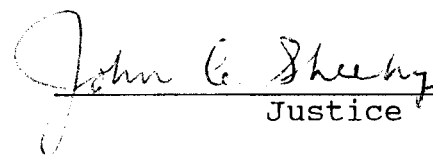
Clerk

Justice John C. Sheehy delivered the Opinion of the Court.

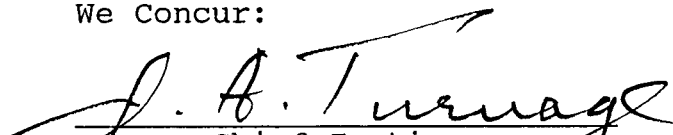
Mike Might appeals the partial summary judgment granted by the District Court, Fourth Judicial District, Missoula County to petitioners/respondents Ermino Zavarelli and Amvets Post No. 4, allowing the status of the premises located at 411 N. California, Missoula, Montana, to continue as a legal nonconforming use. This Court finds substantial evidence in the record which supports the District Court's judgment. Further, we accept the District Court's determination that, an earlier declaratory judgment of the District Court controlled, the lapse of time was beyond the control of petitioners, and there is no evidence of abandonment to trigger the 90-day lapse provision of the zoning ordinance. Petitioners are not barred from applying for a new beverage license.

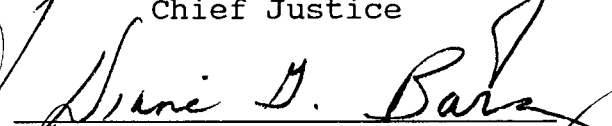
Affirmed. Let remittitur issue forthwith. See Rules 34 and 35, M.R.App.P.


Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of the Supreme Court and by a report of its result to Montana Law Week, State Reporter and West Publishing Company.

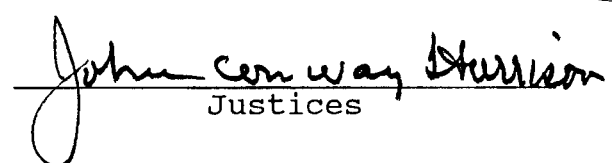

Justice

We Concur:


Chief Justice


Justice


Justice


Justices