

No. 89-599

IN THE SUPREME COURT OF THE STATE OF MONTANA

1990

JOSEPH H. JOHNSON, d/b/a HAYES RANCHES, INC.,
and DOUBLE H. BOX COMPANY,

Petitioner and Appellant,

-vs-

TRACY PFAU, ANCIEL A. GRIFFETH, GREGORY S. BAYLES,
AND MONTANA DEPARTMENT OF LABOR AND INDUSTRY,

Respondent and Appellees.

FILED
1990 MAR 27 AM 11 20
MONTANA SUPREME COURT

APPEAL FROM: District Court of the Fourth Judicial District,
In and for the County of Ravalli,
The Honorable Jack L. Green, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Bruce L. Hussey, Missoula, Montana

For Respondent:

Charles K. Hail, Dept. of Labor, Helena, Montana

Submitted on Briefs: March 8, 1990

Decided: March 27, 1990

Filed:


Clerk

Justice Fred J. Weber delivered the Opinion of the Court.

Joseph H. Johnson, d/b/a Hayes Ranches, Inc., and Double H. Box Co. appeals from an order by the District Court, Fourth Judicial District, Missoula County, dismissing his petition for review of an agency decision for lack of service of process and lack of jurisdiction. We affirm.

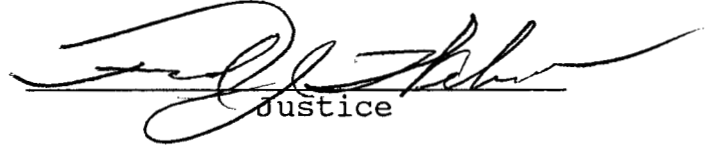
Plaintiff petitioned the District Court for review of an order by the Department of Labor and Industry which found in favor of defendants on certain wage claims.

We have reviewed the record and conclude that plaintiff's petition for review of this order was filed with the District Court within thirty days as required by § 2-4-702(2)(a), MCA. However, the record fails to establish that plaintiff served copies of this petition upon the agency and all parties of record as required by § 2-4-702(2)(a), MCA. Plaintiff's failure to serve the Department and individual defendants with copies of the petition results in lack of jurisdiction. Rule 4B(2), M.R.Civ.P., *Rierson v. State* (1980), 188 Mont. 522, 614 P.2d 1020. We conclude that the District Court properly granted defendants' motion to dismiss for lack of service of process and lack of jurisdiction. We affirm the order of the District Court. Let remittitur issue forthwith.

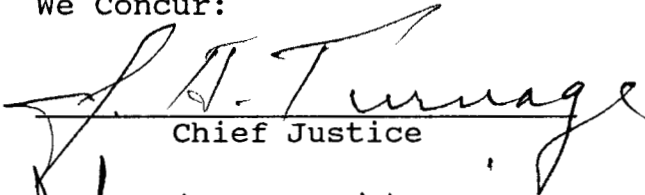
Affirmed.

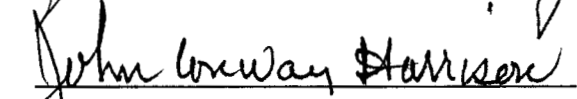
Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document

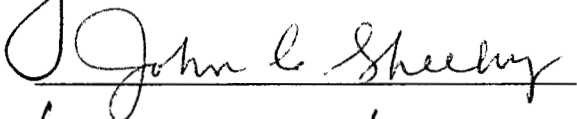
with the Clerk of the Supreme Court and by a report of its result to Montana Law Week, State Reporter and West Publishing Company.


Justice

We Concur:


Chief Justice


Justice


Justice


Justice