

No. 90-224

IN THE SUPREME COURT OF THE STATE OF MONTANA

1990

DAVID C. MOGAN,
Plaintiff and Appellant,
-vs-
ALLSTATE MOTOR CLUB, INC.,
Defendant and Respondent.

FILED
'90 SEP 5 AM 10 29
ED SMITH, CLERK
MONTANA SUPREME COURT

APPEAL FROM: District Court of the Tenth Judicial District,
In and for the County of Fergus,
The Honorable Peter L. Rapkoch, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

David C. Mogan, Hinsdale, Montana, (Pro Se)

For Respondent:

William E. Berger, Wilkins and Berger, Lewistown,
Montana

Submitted on Briefs: August 9, 1990

Decided: [SEP 5 1990]

Filed:



Clerk

Justice Diane G. Barz delivered the Opinion of the Court.

David C. Mogan appeals the judgment of the District Court, Tenth Judicial District, Fergus County, granting defendant/respondent, Allstate Motor Club, Inc., summary judgment, dismissing Mogan's first amended complaint, and imposing sanctions against Mogan pursuant to Rule 11, M.R.Civ.P. This Court finds substantial evidence in the record which supports the District Court's determination that the matter should be dismissed and that Rule 11 sanctions were appropriate.

On October 16, 1989, Mogan filed suit against Allstate claiming non-payment of a \$41.20 claim. Allstate had paid the claim in full on September 11, 1989, and on September 27, 1989, Mogan had signed a release stating that all claims against Allstate had been satisfied. Mogan's claim was not "well grounded in fact" or "warranted by existing law" as required by Rule 11, M.R.Civ.P. In addition, we find the District Court's award to Allstate of costs and attorney's fees totalling \$1,793.75 is a sanction specifically authorized by Rule 11, M.R.Civ.P.

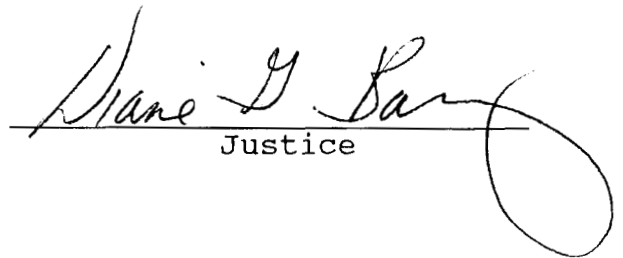
We reject Mogan's argument that the ruling is invalid because he had insufficient notice of an earlier hearing where default judgment was entered against him for two reasons: 1) notice was proper; and 2) Mogan was present at the second hearing when the District Court reheard the matter.

We also note that appellant Mogan has failed to pay this Court's filing fee for appeal of this action. Until such fee is

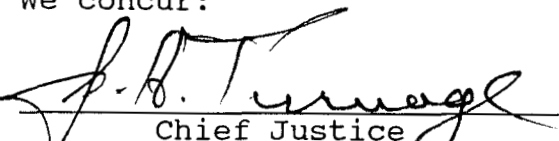
received, David C. Mogan is barred from bringing any further actions in this Court.

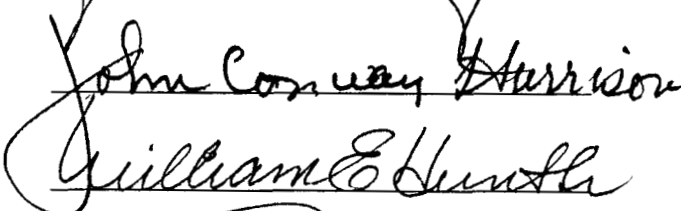
Affirmed. Let remittitur issue forthwith. See Rules 34 and 35, M.R.App.P.


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


Justice