

No. 97-108

IN THE SUPREME COURT OF THE STATE OF MONTANA

1997

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JOE R. LEE and FLOIE N. LEE,

Plaintiffs and Appellants,

v.

TETON COUNTY,

Defendant and Respondent.

**FILED**

OCT 21 1997

*E. Smith*  
CLERK OF SUPREME COURT  
STATE OF MONTANA

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APPEAL FROM: District Court of the Ninth Judicial District,  
In and for the County of Teton,  
Honorable Marc G. Buyske, Judge Presiding.

COUNSEL OF RECORD:

For Appellants:

Joe R. Lee (pro se), Choteau, Montana

For Respondent:

Russell R. Andrews, County Attorney, Choteau, Montana

Kenneth Olson, Great Falls, Montana

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Submitted on Briefs: October 9, 1997

Decided: October 21, 1997

Filed:

  
Clerk

Chief Justice J. A. Turnage delivered the Opinion of the Court.

Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Operating Rules, the following 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 State Reporter Publishing Company and West Group.

Joe and Floie Lee appeal from the order of the Ninth Judicial District Court, Teton County, dismissing their complaint. We affirm.

The only issue raised on appeal is whether the court abused its discretion when it dismissed the Lees' complaint.

#### BACKGROUND

In 1989, the Lees filed a complaint, Teton County Cause No. 89-DV-005, to restrain Teton County from maintaining a road abutting land in which they held a leasehold interest. On October 4, 1993, the Lees moved the District Court to stay Cause No. 89-DV-005 "until the Montana Supreme Court decides whether a certain option on the property in question is enforceable."

In *Matter of Estate of Pelzman* (1993), 261 Mont. 461, 863 P.2d 1019, we ruled that Joe Lee, plaintiff and appellant herein, did not have any claim to purchase the property which abuts the road at issue in this case. On November 19, 1996, the District Court dismissed the Lees' complaint in the present action with prejudice because of the motion to stay and a

stipulation. The Lees moved the court to reconsider. The motion was denied on December 17, 1996. The Lees appeal from that order.

## DISCUSSION

Our standard of review in discretionary trial court rulings is whether the court abused its discretion. *Steer, Inc. v. Department of Revenue* (1990), 245 Mont. 470, 475, 803 P.2d 601, 604.

The Lees argue on appeal that the dismissal of their complaint is improper because of an alleged interest in the property at issue held by third party, Fred Pelzman, Jr. The Lees have no standing to maintain their complaint in Fred Pelzman's name.

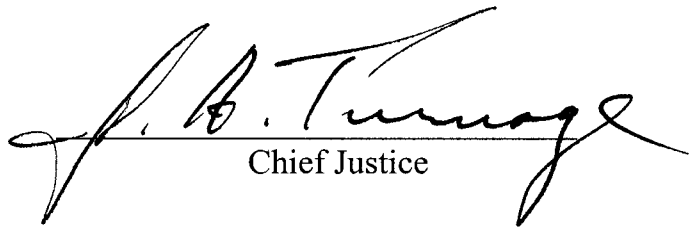
We conclude the District Court did not abuse its discretion when it dismissed the Lees' complaint.

Rule 32 of the Montana Rules of Appellate Procedure provides:

If the supreme court is satisfied from the record and the presentation of the appeal in a civil case that the same was taken without substantial or reasonable grounds, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

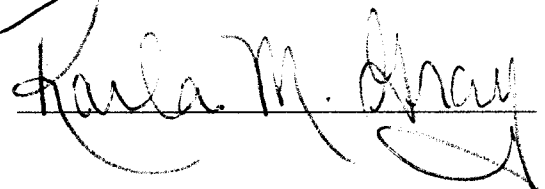
Because the Lees appealed this case without substantial or reasonable grounds and because their *pro se* brief does not set forth legal authority in support of their position as required by Rule 23(4), M.R.App.P., we award Teton County its attorney fees and costs of this appeal. The courts of this state should not be burdened with a frivolous appeal nor should the public officials and taxpayers of Teton County have to fund it.

Affirmed and remanded for a determination by the District Court of attorney fees and costs.

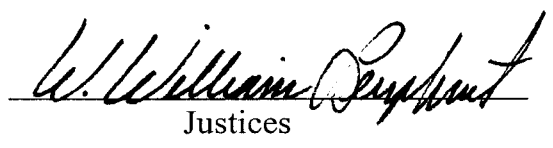
  
Chief Justice

We concur:







  
Justices