

No. 02-743

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 94N

JAMES W. SIEVERS,

Plaintiff and Appellant,

v.

KENNETH GEORGE, SHIRLEY BRAGG, and
DOUBLE AA CORPORATION, a Delaware
corporation,

Defendants and Respondents.

APPEAL FROM: District Court of the Sixth Judicial District,
In and for the County of Park, Cause No. DV 2000-30
The Honorable Wm. Nels Swandal, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Renee Coppock, Kristin Omgig, Crowley, Haughey, Hanson, Toole &
Dietrich, Billings, Montana

For Respondents:

Terry F. Schaplow, Bozeman, Montana (George and Bragg); Joseph T.
Swindlehurst, Huppert & Swindlehurst, Livingston, Montana (Double AA
Corp.)

Submitted on Briefs: April 10, 2003

Decided: April 22, 2003

Filed:

Clerk

Justice James C. Nelson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 James W. Sievers, appeals from the District Court's Judgment and Partition Order entered on September 25, 2002, and from the court's Findings of Fact and Conclusions of Law entered on September 4, 2002. The District Court rejected the referees' report in this partition action and, instead, entered a judgment and partition order in a manner different from that suggested in the referees' report.

¶3 While Sievers raises four issues on appeal, the dispositive issues are whether the trial court's findings of fact are supported by substantial evidence and are, therefore, not clearly erroneous and whether the trial court's conclusions of law are correct. *Ray v. Nansel*, 2002 MT 191, ¶¶ 19-20, 311 Mont. 135, ¶¶ 19-20, 53 P.3d 870, ¶¶ 19-20 (citations omitted).

¶4 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section I.3 of our 1996 Internal Operating Rules and providing for memorandum opinions.

¶5 On the face of the briefs and the record on appeal before us it is manifest that the appeal is without merit because the issues are clearly controlled by settled Montana law

which the District Court has correctly interpreted and because there is clearly sufficient evidence to support the trial court's findings of fact. Therefore,

¶6 We affirm the judgment and partition order of the District Court.

/S/ JAMES C. NELSON

We Concur:

/S/ KARLA M. GRAY

/S/ W. WILLIAM LEAPHART

/S/ JIM REGNIER

/S/ PATRICIA COTTER