

No. 02-327

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 293N

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STATE OF MONTANA,

Plaintiff and Respondent,

v.

HELEN T. HOWELLS, NORMAN VINE, et al.,

Defendants and Appellant.

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APPEAL FROM: District Court of the Nineteenth Judicial District,  
In and for the County of Lincoln, Cause No. DV 94-165  
The Honorable Michael C. Prezeau, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Erik Rocksund, Attorney at Law, Libby, Montana

For Respondent:

Scott Spencer, Attorney at Law, Libby, Montana,

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Submitted on Briefs: February 20, 2003

Decided: October 28, 2003

Filed:

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Clerk

Justice Patricia O. Cotter 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. It 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 Norman R. Vine appeals from the Order Denying Defendant Vine's Claim for Attorney Fees entered by the Nineteenth Judicial District Court, Lincoln County. We affirm.

¶3 Vine claims the District Court abused its discretion by denying his motion for attorney's fees after it resolved a dispute over whether a road was public. Vine contends he is entitled to attorney's fees pursuant to § 25-10-711, MCA, since he allegedly prevailed and Lincoln County's claim was allegedly frivolous and pursued in bad faith. The District Court refused his request for fees, concluding that the county had not acted in bad faith, and that Rule 37 sanctions were not appropriate.

¶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. On the face of the briefs and the record before us on appeal, it is manifest that the appeal is without merit because the issues are ones of judicial discretion and there clearly was not an abuse of discretion.

¶5 We affirm the judgment of the District Court.

/S/ PATRICIA COTTER

We Concur:

/S/ KARLA M. GRAY

/S/ JAMES C. NELSON

/S/ JIM REGNIER

/S/ W. WILLIAM LEAPHART