

No. DA 06-0093

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 350N

GREG NESSELRODE,

Plaintiff and Appellant,

v.

PROVIDENT FINANCIAL, INC.,

Defendant and Respondent.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-04-854
Honorable Katherine R. Curtis, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Greg Nesselrode, *Pro Se*, Whitefish, Montana

For Respondent:

Daniel R. Wilson; Measure, Robbin & Wilson, Kalispell,
Montana

Submitted on Briefs: November 7, 2006

Decided: December 27, 2006

Filed:

Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The Eleventh Judicial District Court, Flathead County, granted the motion of Provident Financial, Inc., for summary judgment on Greg Nesselrode's complaint for breach of contract, negligent misrepresentation, and wrongful foreclosure. The court then dismissed Nesselrode's complaint with prejudice. Nesselrode appeals, setting forth nine issues on appeal. We affirm.

¶3 We have determined to decide this case pursuant to Section 1, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. The appeal is without merit because the issues are clearly controlled by settled Montana law.

¶4 Nesselrode's first argument on appeal is that he properly submitted this case to the District Court. Next, he makes an argument regarding a justice court case which is not a part of this appeal. Another issue Nesselrode raises relates to the amount of the damages he claimed in his District Court action, which issue the District Court never reached. Because

none of those matters was a basis for the District Court's judgment, we will not address them in this appeal. *See* M. R. App. P. 2(a).

¶5 Nesselrode lists three issues on appeal in which he alleges false statements and fraud by Provident and its appraiser. These legal theories were not raised in the complaint; Nesselrode first raised them in response to Provident's motion for summary judgment. To the extent Nesselrode's false statement and fraud claims represent arguments that material issues of fact preclude summary judgment, however, we address them along with three other issues which are cognizable in this appeal. We combine and restate all of these issues as whether the District Court erred in granting summary judgment to Provident.

¶6 We review a summary judgment to determine whether the district court was correct in concluding no genuine issues of material fact exist and one party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c); *Wurl v. Polson School Dist. No. 23*, 2006 MT 8, ¶ 10, 330 Mont. 282, ¶ 10, 127 P.3d 436, ¶ 10 (citation omitted). Here, our review of the pleadings and the documents filed in the District Court convinces us there are no genuine issues of material fact and the District Court was correct in granting summary judgment for Provident.

¶7 Affirmed.

/S/ KARLA M. GRAY

We concur:

/S/ BRIAN MORRIS
/S/ JOHN WARNER
/S/ JIM RICE
/S/ W. WILLIAM LEAPHART