

DA 07-0407

IN THE SUPREME COURT OF THE STATE OF MONTANA

2008 MT 292N

LINDA METZGER, individually and on behalf
of the West McIver Road Neighbors, an
Association of Concerned Citizens,

Plaintiffs and Appellees,

v.

PAM POLEJEWSKI and MICHAEL HANSON,

Defendants and Appellants.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDV 2005-1147
Honorable Julie Macek, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Michael Lee Hanson, Pam Polejewski (Pro Se), Libby, Montana

For Appellee:

Patrick F. Flaherty, Attorney at Law, Great Falls, Montana

Submitted on Briefs: July 23, 2008

Decided: August 19, 2008

Filed:

Clerk

Justice James C. Nelson 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, the 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 This is an appeal by Pam Polejewski and Michael Hanson (collectively, "Appellants") from the District Court's order granting summary judgment in favor of Linda Metzger. We affirm.

¶3 Beginning in 1998, Polejewski and, eventually, Hanson, began to acquire a variety of animals at their residence at 77 Wexford Lane in Cascade County. They eventually accumulated nearly two hundred animals on the property. In 1999 and 2000, Appellants' neighbors complained about persistent barking. The Cascade County Sheriff's Office eventually investigated a complaint that there were unwatered horses on the property. Veterinarians subsequently examined the animals on the property (including one hundred and thirty-eight dogs, eighteen horses, and seventeen cats) and determined that the animals were being kept in an unsatisfactory condition. The dogs had not previously received adequate veterinary care. The property was littered with carcasses, and horses were being fed moldy hay.

¶4 Metzger eventually filed suit against Appellants to abate a public nuisance. After reviewing the record, including a DVD of the premises filmed by the Cascade County

Sherriff's Office, and listening to oral argument from both parties, the court granted summary judgment in favor of Metzger. It ordered that "neither Ms. Polejewski nor Mr. Hanson shall own, possess, or care for any animal, including mammals, fish, birds and reptiles, nor have any animal, including mammals, fish, birds and reptiles at 77 Wexford Lane."

¶5 Appellants present the following issues for review by this Court:

1. Did the District Court abuse its discretion when it granted summary judgment in favor of Metzger?

2. Did the District Court abuse its discretion and err when it admitted evidence obtained from an illegal search and seizure?

¶6 The thrust of Appellants' arguments under Issue 1 appears to be that the District Court judge was biased and should have recused herself; yet, they never made such a motion in the District Court. While Appellants also appear to dispute that their animals constituted a nuisance, they do not contest on appeal that there were approximately two hundred animals living on their property. With respect to Issue 2, Appellants maintain that the DVD filmed by the Cascade County Sheriff's Office was the product of an illegal search and seizure. The DVD, however, was voluntarily produced by Appellants during discovery.

¶7 We are willing to make accommodations for pro se litigants by relaxing the technical requirements which do not impact fundamental bases for appeal. Appellants, however, still have the burden of establishing error by a district court. *See State v. Bailey*, 2004 MT 87, ¶ 26, 320 Mont. 501, ¶ 26, 87 P.3d 1032, ¶ 26. Appellants' brief is

replete with various factual statements and contentions which are appropriately resolved in a trial court and not by this Court within the context of an appeal. Moreover, contrary to M. R. App. P. 12(1)f., Appellants cite no legal authority in support of their position and instead rely on bare, unsubstantiated allegations of due process violations. Accordingly, we conclude that Appellants have failed to meet their burden of demonstrating error by the District Court.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. Having reviewed the record in this case, we determine that the District Court did not err in granting Metzger's motion for summary judgment, as no genuine issues of material fact existed, and because Metzger was entitled to judgment as a matter of law. It is manifest on the face of the briefs and the record before us that this appeal is without merit because the legal issues are clearly controlled by settled Montana law which the District Court correctly interpreted.

¶9 Affirmed.

/S/ JAMES C. NELSON

We Concur:

/S/ KARLA M. GRAY
/S/ PATRICIA COTTER
/S/ JOHN WARNER
/S/ JIM RICE