DA 18-0049

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 224N

ROBERT L. ROSE,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Third Judicial District,
In and For the County of Powell, Cause No. DV-17-106
Honorable Ray Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert L. Rose, Self-Represented, Deer Lodge, Montana

For Appellee:

Montana Department of Corrections, Robert Lishman, Special Assistant Attorney General, Helena, Montana

Submitted on Briefs: July 11, 2018

Decided: September 11, 2018

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited, and does not serve as precedent. Its case title, 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 Robert L. Rose appeals the Orders of the Third Judicial District Court, Powell County, denying his Application for Preliminary Injunction and denying his Motion to Alter or Amend Judgment. We affirm.

¶3 On November 21, 2017, Rose, an inmate at Montana State Prison (MSP), filed an ex parte Application for a Preliminary Injunction or Temporary Restraining Order (TRO) requesting the District Court to (1) enjoin and/or temporarily restrain MSP and the Department of Corrections (DOC) from violating building codes at MSP by placing more than fifteen inmates in a housing unit already at maximum capacity; (2) hold a hearing where evidence may be presented; (3) issue a TRO protecting Rose and other inmates from potential retaliation; and (4) award any costs associated with this cause. On December 1, 2017, the District Court denied Rose's Application for injunctive relief, reasoning that the Application failed to satisfy the requirements of § 27-19-201(2), MCA, and that Rose had additional remedies at his disposal, including serving the DOC with an action to enjoin it from placing more than fifteen inmates in each living area, thus allowing both parties to brief their arguments and to be heard on the matter. On December 14, 2017, Rose filed an ex parte Motion to Alter or Amend Judgment pursuant to M. R. Civ. P. 59(e). On December 22, 2017, the District Court denied Rose's Motion, reasoning that a M. R. Civ. P.

59(e) motion is proper only after a trial is completed or a judgment entered, and in this case, no trial was held and no judgment was entered. Rose appeals.

¶4 We will not disturb a district court's decision to grant or deny a preliminary injunction absent a manifest abuse of discretion. *Yockey v. Kearns Props., LLC*, 2005 MT 27, ¶ 12, 326 Mont. 28, 106 P.3d 1185. A manifest abuse of discretion is one that is "obvious, evident, or unmistakable." *State v. BNSF Ry. Co.*, 2011 MT 108, ¶ 16, 360 Mont. 361, 254 P.3d 561 (internal citations omitted). We review for correctness a district court's conclusions of law. *Yockey*, ¶ 12. A district court's refusal to grant an injunction is an appealable order. *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 13, 334 Mont. 86, 146 P.3d 714 (citing M. R. App. 1(b)(2), now M. R. App. 6(3)(e)).

¶5 Section 27-19-201, MCA, provides in pertinent part:

> A[ ] [preliminary] injunction order may be granted in the following cases:
>
> (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of . . .
>
> (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant . . . .

A district court should review the record and should consider all applicable subsections of § 27-19-201, MCA, when determining whether to grant or deny a preliminary injunction. *See Sweet Grass Farms, Ltd. v. Bd. of Cnty. Comm'rs*, 2000 MT 147, ¶¶ 27, 29, 35, 300 Mont. 66, 2 P.3d 825. A district court's grant or denial of a preliminary injunction must be accompanied by findings of fact and conclusions of law, as required by

M. R. Civ. P. 52(a). *Snavely v. St. John*, 2006 MT 175, ¶ 10, 333 Mont. 16, 140 P.3d 492. However, if a district court's "findings and conclusions are clear to this Court, failure to state them in the recommended form is not substantial error." *Snavely*, ¶ 11. An injunction will not restrain an act already done. *BNSF Ry. Co.*, ¶ 19 ("[w]here the entire injury is in the past, an injunction cannot issue. . . ."); *see also Povsha v. City of Billings*, 2007 MT 353, ¶¶ 19–20, 340 Mont. 346, 174 P.2d 515 ("[m]ootness is a threshold issue," and where this Court can "no longer grant effective relief" in a case, the appeal is moot).

¶6 On appeal, Rose argues that the District Court manifestly abused its discretion in refusing to grant his Application for Preliminary Injunction or to set the matter for a hearing and in denying Rose's Motion to Alter or Amend Judgment pursuant to M. R. Civ. P. 59(e). Rose further argues the District Court abused its discretion by inadequately setting forth its findings of fact and conclusions of law, and he simultaneously argues the findings of fact and conclusions of law were clearly erroneous.

¶7 Although the District Court's Order denying Rose's ex parte Application for a Preliminary Injunction was sparse, it nevertheless set forth sufficient reasoning to allow for informed appellate review. *See Snavely*, ¶ 11. Rose admitted in his initial Application for Preliminary Injunction that the DOC had undertaken the action he objected to: placing more than fifteen inmates in a particular housing unit. Thus, the relief Rose requested is no longer available. Rose cannot seek to prevent an already completed act via injunction. *See BNSF Ry. Co.*, ¶ 19; *Povsha*, ¶¶ 19–20. Although the District Court did not deny Rose's Application for Preliminary Injunction or TRO or deny Rose's Motion to Alter or Amend Judgment on that basis, the record supports the District Court's ultimate conclusion

that Rose was not entitled to injunctive relief. *See Yockey*, ¶ 12; *Sweet Grass Farms, Ltd.*, ¶¶ 27, 29, 35.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ JIM RICE
/S/ BETH BAKER
/S/ INGRID GUSTAFSON