



ORIGINAL

FILED

06/06/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 23-0293

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0293

FILED

JUN 06 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

RICHARD E. SHREVES,

Petitioner,

v.

ORDER

FIRST JUDICIAL DISTRICT COURT,  
HONORABLE MIKE MENAHAN, Presiding,

Respondent.

Richard E. Shreves petitions this Court for a writ of supervisory control, mandate, or other extraordinary writ over the First Judicial District Court, Lewis and Clark County, and the District Court Judge Mike Menahan.

Raising four issues, Shreves contends that his petition for judicial review was not filed upon receipt in the District Court but only after his father visited the Clerk's office. He argues that the Judge abused his discretion when he denied his motion to proceed without paying the filing fee in the civil case. Shreves attaches copies of the affidavit, Montana State Prison Resident Statement, and the proposed order that has a handwritten note, stating: "Denied[.] Documentation of income & assets needed." Shreves alleges further that the Judge abused his discretion when he failed to rule on a motion for substitution of judge. Lastly, Shreves asks whether the prison has a duty to provide for electronic filing for state proceedings.

Supervisory control may be appropriate on a case-by-case basis. "This extraordinary remedy can be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate." *State v. Spady*, 2015 MT 218, ¶ 11, 380 Mont. 179, 354 P.3d 590 (citations omitted). The case must meet one of three additional criteria. *Spady*, ¶ 11; M. R. App. P. 14(3)(a)-(c). To state a claim for writ of mandamus, a party must show entitlement to the performance of a clear legal

duty by the party against whom the writ is directed and the absence of a plain, speedy, and adequate remedy at law. Section 27-26-102, MCA; *Smith v. Missoula Co.*, 1999 MT 330, ¶ 28, 297 Mont. 368, 992 P.2d 834.

At the outset, Shreves's claims are not appropriate for supervisory control or mandate because Shreves has not advanced purely legal questions. His claims involve questions of fact, reviewed for abuse of discretion. This Court secured a copy of the register of actions, showing that the Clerk of District Court filed Shreves's petition on April 27, 2023. Though Shreves attaches a motion for substitution of judge, no such motion is listed in the register of actions. We decline to address his claim concerning the prison and electronic filing because the issue is not appropriate for this original proceeding, and the prison is not a party. M. R. App. P. 14(2).

The record does confirm that Shreves was denied leave to proceed without payment of filing fees on May 15, 2023. Pursuant to § 25-10-404(1), MCA, "a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense." The statute provides:

A prisoner in the legal custody of the department of corrections who files a complaint or appeals a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any filing.

Section 25-10-404(5), MCA. Shreves is in the legal custody of the Department of Corrections and is incarcerated in the Montana State Prison. He provided with his Petition an affidavit and his resident statement, certified as of April 25, 2023. It is not clear from the attachments to Shreves's Petition whether the District Court had Shreves's prison account information at the time it denied his request. If not, the court should have those documents now, as Shreves certifies that he served his petition and exhibits on Judge Menahan. The record is adequate for the District Court to consider Shreves's motion to proceed without paying the filing fee. *See Smith*, ¶ 28.

IT IS THEREFORE ORDERED that:

1. Shreves's Petition for Writ of Supervisory Control, Mandate, or Other Extraordinary Relief is GRANTED in part. The District Court's May 15, 2023, denial is VACATED and the underlying matter is REMANDED to the District Court either to grant Shreves's request for a fee waiver or to issue findings of fact and conclusions of law supporting a denial;
2. Shreves's other claims are DENIED;
3. Shreves's Motion for Chief Justice McGrath to Recuse Himself from Considering the Petition for Supervisory Control, etc. is DENIED, because Chief Justice McGrath is not on the Panel considering this Petition;
4. Shreves's Motion for Rule 29 Waiver of Copy Requirements and Any Other Fees is DENIED as moot; and
5. the Clerk of the Supreme Court is directed to CLOSE this matter as of this Order's date.

The Clerk also is directed to provide a copy of this Order to: the Honorable Mike Menahan, First Judicial District Court; Angie Sparks, Clerk of Court, Lewis and Clark County, under Cause No. ADV-2023-286; Quinlan L. O'Connor, Counsel for Department of Labor and Industry; and Richard Shreves, along with a copy of the District Court's Register of Actions. *ms*

DATED this 6 day of June, 2023.

*Peter Folmer*

*Janice Adams*

*James John*

*John M. Sullivan*

---

*John Rice*

---

Justices