

 ORIGINAL

FILED

01/30/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0031

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0031

BOBBY FRANCIS LOWRY,

Petitioner,

v.

MONTANA FIRST JUDICIAL DISTRICT
COURT, HON. JUDGE MCMAHON,
PRESIDING,

Respondent.

FILED

JAN 30 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Bobby Francis Lowry petitions this Court for a writ of supervisory control, requesting access to the First Judicial District Court. Lowry explains that he has “mailed no less than nine Notice[s] of Appeal[], and nine motions for Out-of-Time Appeal.” He states that these actions were “[p]er this Court’s recent direction for the Petition to file the Petitioner’s appeal in the First Judicial District Court.”

Lowry is referring to an Order where this Court dismissed his appeal because it was improperly before this Court. In a November 7, 2023 Order, this Court dismissed Lowry’s appeal concerning a discovery order. *Lowry v. Dep’t of Labor and Industry*, No. DA 23-0577, Order (Mont. Nov. 7, 2023). We stated:

We conclude that dismissal is appropriate. Lowry does not appeal a final judgment or other order from a District Court that is subject to appeal under the Montana Rules of Appellate Procedure. The Department’s Hearing Officer determined that Lowry failed to identify any applicable Fifth Amendment privilege concerning his potential answers to interrogatories related to his pending criminal cases in the Lewis and Clark County District Court. His reference to an original proceeding in this Court does not support his claim about being precluded from filing in the District Court. This Court denied his writ of supervisory control last year because Lowry could not demonstrate that he had perfected service upon the opposing parties in his complaints when he submitted them for filing in the District Court, and

nothing more was filed in the respective proceedings. *Lowry v. First Judicial Dist. Ct.*, No. OP 22-0617, Order, at 2 (Mont. Nov. 15, 2022). If the Department issues a final decision adverse to Lowry, he may seek judicial review in the appropriate District Court.

Lowry, at 2. (Emphasis added).

Lowry is mistaken about seeking an appeal in the District Court. Lowry may seek review in the District Court only after he has received a final decision from the Department. It does not appear that has happened; and discovery was occurring just last fall.

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 (citing M. R. App. P. 14(3); *Redding v. McCarter*, 2012 MT 144, ¶ 17, 365 Mont. 316, 281 P.3d 189).

Lowry does not have a proceeding in the District Court over which to take supervisory control. His proceeding before the Department must be completed with the issuance of a final order for him to seek further review in the District Court.


IT IS THEREFORE ORDERED that Lowry’s Writ of Supervisory Control is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to: the Honorable Michael F. McMahon, District Court Judge; counsel of record; and Bobby Francis Lowry personally.

DATED this 30th day of January, 2024.



Chief Justice





James G. ...
...

Justices