Assiniboine and Gros Ventre Tribes, et al. v. Department of Environmental Quality

Plaintiffs allege that the department's EIS on the last proposed expansion of the Zortman and Landusky Mines did not adequately evaluate impacts and did not evaluate an adequate range of alternatives, including the complete pit backfill alternative.

ASSINIBOINE AND GROSS VENTRE TRIBES AND FORT BELKNAP COMMUNITY COUNCIL; NATIONAL WILDLIFE FEDERATION; MONTANA ENVIRONMENTAL INFORMATION CENTER, Plaintiffs, v. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, Defendant.

Cause No. BDV 97-34

FIRST JUDICIAL DISTRICT COURT OF MONTANA, LEWIS AND CLARK COUNTY

1997 Mont. Dist. LEXIS 102

July 11, 1997, Decided

JUDGES: [*1] JEFFREY M. SHERLOCK, District Court Judge.

OPINION BY: JEFFREY M. SHERLOCK

OPINION

ORDER ON MOTION TO DISMISS

BACKGROUND

In this action, the Assiniboine and Gros Ventre Tribes, Fort Belknap Community Council and several environmental groups are challenging the decision of the Department of Environmental Quality (DEQ) to approve permits for the expansion of the Zortman-Landusky (ZMI) gold mines. These expansions will triple the size of ZMI's operations. The complaint alleges violations of MEPA, MMRA, MAPA and the Montana Constitution, in that (1) DEQ failed to adequately evaluate environmental damage in its EIS; (2) DEQ failed to consider a reasonable range of alternatives in the EIS; (3) the reclamation plan does not meet the requirements of MMRA; (4) the MMRA as it applies to this case is unconstitutional; and, (5) DEQ violated MAPA.

Plaintiffs seek a declaratory judgment that the approval of the expansion violates the abovementioned statutes and the Montana Constitution and ask that the matter be remanded to DEQ for reconsideration. Plaintiffs also ask that the permits for expansion be voided and an injunction be issued prohibiting the expansion until DEQ has adequately assessed the impacts.

[*2] DEQ has moved to dismiss the complaint on grounds that Plaintiffs have failed to join a necessary party, ZMI, pursuant to Rule 19, M.R.Civ.P.; the Uniform Declaratory Judgment Act found at *section 27-8-301 , MCA* and also under Title 27, chapter 19, part 2,MCA.

STANDARD OF REVIEW

The Montana Supreme Court has summarized the rules to be applied in deciding a motion to dismiss. *Wheeler v. Moe, 163 Mont.154, 161 , 515 P.2d 679* , 683 (1973). A trial court rarely grants amotion to dismiss for failure to state a claim upon which relief can be granted. "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 161, 515 P.2d at 683(citations omitted).

Motions to dismiss should only be granted if it appears clearly on the face of the complaint that there is an insuperable bar to relief. "In other words, dismissal is justified only when the allegations of the complaint itself clearly demonstrate that plaintiff does not have a claim." Id. See also *Buttrell v. McBride Land & Livestock Co., 170 Mont. 296, 1298* [*3] , 553 P.2d407 , 408 (1976).

DISCUSSION

Rule 19 of the Montana Rules of Civil Procedure provides:

> Rule 19(a). Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff . . .

DEQ asserts that complete relief cannot be afforded in the absence of ZMI, because DEQ does not have the power to prevent the expansion now that the permit has been issued. This [*4] Courtdisagrees. If the permit has been issued in violation of Montanalaws, then DEQ can and in fact may be ordered to reconsider its decision.

DEQ also asserts that ZMI has an interest in the litigation and that ZMI's ability to protect that interest is impaired by Plaintiff's failure to join ZMI. ZMI does have an obvious financial interest in the outcome of the permit decision. However, that economic interest is shared by many individuals and entities that Plaintiffs could not be expected to name as parties to the suit and is not sufficient to make ZMI an indispensable party. Thecomplaint is seeking review of an agency decision. It alleges no wrongdoing on ZMI's part. No element of the complaint requires the Court to have jurisdiction over ZMI. If ZMI wishes to participate in this case, it may move the Court to allow it to intervene.

DEQ cites to dissenting opinions in two Montana cases for its contention that ZMI is an indispensable party. *Young v. City of Great Falls, 194 Mont. 513 , 632 P.2d 1111* (981); *F.W. Woolworth Co. v. Employment Sec. Div., 192 Mont. 189, 627 P.2d. 851 (1981)*. Inboth of these cases, the Montana Supreme Court found that failure [*5] to join a party did not require dismissal of the complaint and emphasized that justice is best served by allowing parties their day in court. The dissenting opinions, thought-provoking though they may or may not be, do not change the result.

In addition, the Montana Supreme Court and the federal courts have recognized a "public rights" exception to Rule 19 analysis. This exception provides that "when litigation seeks the vindication of a public right, third persons who may be adversely affected by a decision favorable to plaintiffs do not thereby become indispensable parties." *Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 54 , 682 P.2d 163* , 171 (1984), quoting *NRDC v. Berklund, 458 F. Supp. 925, 933 (D.D.C. 1978)*. Plaintiffs in this case seek vindication of public procedural and environmental rights. The existence of the public rights exception to Rule 19bolsters the fact that failure to join ZMI does not demand dismissal of this case.

As a final note, the parties have agreed that Plaintiffs' claims relating to violations of MAPA should be dismissed.

Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's motion [*6] to dismiss is GRANTED as to Plaintiffs' claims relating to MAPA and DENIED as to all other claims.

DATED this 11th day of July 1997.

JEFFREY M. SHERLOCK

District Court Judge