

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-98-89
JRA - KEN - 9/27/2001

CHARLES S. McINTYRE, SR.,

Appellant

v.

DECISION AND ORDER

KENNEBEC COUNTY COMMISSIONERS,

Appellees

In this matter, the appellant, Charles S. McIntyre, Sr., seeks to appeal the decision of the Kennebec County Commissioners who, apparently, refused to abate the appellant's real property taxes on the basis of his impoverishment.

As best as may be determined from the documents filed in this case, the appellant's grievance is with the Town of Clinton which, he says, denied his abatement without explanation and, further, that the town improperly purports to operate with a governing body of selectmen when in fact it has a town manager form of government.

While it is unclear how the appellant's grievance with Clinton's form of self-governance affects the merits of his claim that he was improperly denied an abatement, the court can act favorably on neither complaint. This is because the court has been provided no record from the town or the appellee on the appellant's abatement requests. This is the appellant's responsibility, M.R. Civ. P. 80B(e), and his failure to provide a record invites dismissal of the appeal. This is the appropriate sanction in this case as the court has no factual or procedural history on which to rely in consideration of the appellant's complaints.

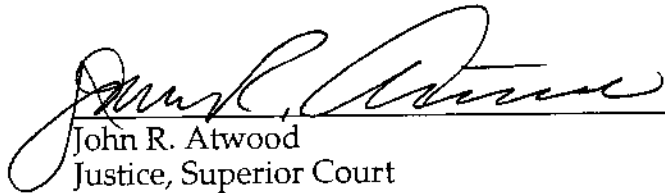
Next, the proper party in an action seeking review of a local property tax abatement decision is the town itself, not the intermediary tribunal of the board of

county commissioners. *Town of Vienna v. Kokernak*, 612 A.2d 870, 873 (Me. 1992). Thus, the proper means to have challenged Clinton's decision, if indeed there were one, would have been to serve it with a summons and complaint. M.R. Civ. P. 80B(a), 4(d)(5). This was not done here. Instead, the appellant served a notice of appeal on Kennebec County, but never did so as to the town of Clinton. That he talked with attorney Jeffrey Towne, who has done legal work for the town, about this appeal does not satisfy the demands of the cited rules. The town of Clinton as the proper party to this action was entitled by these rules to receive service of a summons and complaint; that it was not so served renders this appeal vulnerable to dismissal.

Accordingly, for the reasons cited herein, this appeal is DISMISSED.

So ordered.

Dated: September 27, 2001



John R. Atwood
Justice, Superior Court

Date Filed 11/3/98

Kennebec
County

Docket No. AP98-89

Action 80B appeal

J. MARDEN

Charles McIntyre

vs. Kenn County Commissioners

Plaintiff's Attorney

Charles McIntyre, Pro Se
PO BOX 273
Clinton Me 04927

Defendant's Attorney

Charles Moreshead, Esq.
PO Box 2305
Augusta Maine 04338

Date of
Entry

11/3/98

Notice of appeal filed. s/McIntyre, Pro Se
Return of service on Kennebec County on 11/3/98 filed.

12/6/00

Motion to Recuse Judg Studstrup and Grievance and to Supplement Original
Motion, filed. s/Charles McIntyre, Pro Se

12/22/00

Statement of Charles McIntyre, filed.

Hearing had on request to retain on docket, Mills, J.
Charles McIntyre present.

Court orders briefing schedule to issue.

Notice of briefing schedule mailed to Pltf. and County Commissioners.

1/24/01

Enlargement of Time , filed. s/Charles McIntyre, ProSe

2/1/01

Letter from attorney Moreshead entering appearance for Kennebec County
Commissioners, filed.

2/14/01

Certificate of Service, filed. s/McIntyre.

2/14/01

MOTION FOR ENLARGMENT, Marden, J.
GRANTED: brief due March 12, 2001.
Copies mailed to atty and Pltf.

3/14/01

Brief of Appellant, filed. s/Charles McIntyre, Pro Se

4/5/01

Defendant s Brief filed. s/Moreshead. Esq.

4/9/01

Reply Brief, filed. s/McIntyre.

4/18/01

Motion to Subpoena a Witness, filed. s/McIntyre, Pro Se

4/24/01

MOTION TO SUBPOENA A WITNESS, Marden, J. (dated 4/20/01)
DENIED; not a testimonial hearing to be scheduled.
Copies mailed to Pltf. and atty.

Date of Entry	Docket No.
5/17/01	Motion for Continuance, filed. s/Moreshead, Esq.
5/23/01	Letter from Pro Se McIntyre indicating no objection to the motion for continuance.
5/25/01	MOTION TO CONTINUE, Marden, J. (signed 5/24/01) Without objection, motion GRANTED; Clerk to reschedule. Copies mailed to attys. and Pro Se Plaintiff.
5/29/01	Notice of setting of hearing on oral arguments on 6/27/01 at 8:30 a.m. sent to atty and Pro Se Pltf.
6/18/01	Motion to Recuse, filed. s/McIntyre.
6/27/01	Hearing had on oral arguments with Hon. Justice John Atwood, presiding. Tape #567 Index 2372-3133 Charles McIntyre, Pro Se Plt. Charles Moreshead, Esq. for Kennebec County Comm. Oral arguments made to the court. Court to take matter <u>under advisement.</u>
9/27/01	DECISION AND ORDER, Atwood, J. Accordingly, for the reasons cited herein, this appeal is DISMISSED. So order. Copies mailed to attys. of record. Copies mailed to Donald Goss, Garbrecht Law Library, and Deborah Fire- stone.