

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)

IN CIRCUIT COURT

SEVENTH JUDICIAL CIRCUIT

IN RE FINAL DECISION OF BOARD)
OF MINERALS AND)
ENVIRONMENT OF SOUTH)
DAKOTA DEPARTMENT OF)
ENVIRONMENT AND NATURAL)
RESOURCES TRANSFERRING)
EXPLORATION NOTICE OF INTENT)
EXNI-427 FROM MINERAL)
MOUNTAIN RESOURCES LTD. TO)
MINERAL MOUNTAIN RESOURCES)
(SD) INC.)

51CIV18-000304

ORDER DISMISSING APPEAL

A. GAY KINGMAN, STEVEN C.)
EMERY, AND ROBIN L. ZEPHIER,)
Appellants,)

-vs-)

MINERAL MOUNTAIN RESOURCES)
LTD., and MINERAL MOUNTAIN)
RESOURCES (SD), INC.,)

and)

SOUTH DAKOTA DEPARTMENT OF)
ENVIRONMENT AND NATURAL)
RESOURCES,)
Appellees.)

On February 20, 2018, Appellants filed a Notice of Administrative Appeal in the above captioned matter. On March 22, 2018, Appellee South Dakota Department of Environment & Natural Resources filed a Motion to be Joined as an Indispensable Party, and a Motion to Dismiss the administrative appeal. Appellee Mineral Mountain Resources (SD), Inc. filed a separate Motion to Dismiss the

appeal on March 23, 2018. On May 4, 2018, the parties stipulated to joinder of the Department as an indispensable party, and the Court's Order joining the Department was filed on May 7, 2018.

On June 12, 2018, oral arguments regarding the pending motions to dismiss were heard in this matter by the Hon. Robert Mandel, Circuit Court Judge, Seventh Judicial Circuit, in Pennington County, South Dakota. Appellants were represented at the hearing by counsel Steven J. Gunn and Mark C. Van Norman. Mineral Mountain Resources (SD), Inc., was represented by counsel Dwight A. Gubbrud and Max Main. The Department of Environment & Natural Resources was represented by Assistant Attorney General Steven R. Blair.

The Court has reviewed the entire file of this matter, including all pre- or post-hearing pleadings and briefs, and has considered the arguments presented by the parties both orally and in writing. After consideration of the same, and being fully apprised as to all pertinent matters thereto, the Court hereby enters the following order.

The Court FINDS there is “[n]o right to appeal an administrative decision to circuit court unless the South Dakota Legislature enacts a statute creating that right.” *Daily v. City of Sioux Falls*, 2011 S.D. 48, ¶ 24, 802 N.W.2d 905, 915. Further, “[t]he circuit court’s appellate jurisdiction to review agency decisions is governed by SDCL 1-26-30.” *In re Petition for Declaratory Ruling re SDCL 62-1-1(6)*, 2016 S.D. 21, ¶ 13, 877 N.W.2d 340, 343. The Court further

FINDS that SDCL 1-26-30 states in pertinent part that “[a] person who has exhausted all administrative remedies available within any agency or a party who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.” The Court further

FINDS that the proceeding before the Board of Minerals and Environment was not a contested case proceeding as that term is defined by SDCL 1-26-1(2). The Court further

FINDS that the action before the Board of Minerals and Environment below was administrative in nature and not quasi-judicial in nature. The Court further

FINDS that Appellants are not aggrieved parties as required by SDCL 1-26-30 to appeal from a contested case proceeding under the Administrative Procedures Act. The Court further

FINDS that Appellants should not be deemed to have exhausted their administrative remedies available before the Board and thereby be entitled to judicial review of the Board’s decision. To do so would be to reach an unreasonable interpretation of SDCL 1-26-30. The Court further

FINDS that after consideration of the foregoing, the Court determines that it does not have jurisdiction to hear this matter as a direct administrative appeal under SDCL ch. 1-26 and the action must be dismissed.

NOW THEREFORE,

The Motions to Dismiss filed by the Department of Environment & Natural Resources as well as Mineral Mountain Resources (SD), Inc., are hereby GRANTED. It is further

ORDERED that the appeal of this matter is hereby DISMISSED in its entirety and with PREJUDICE.

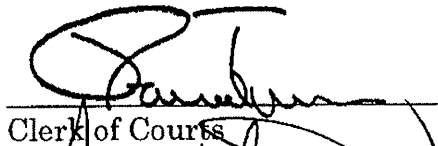
Dated this 19 day of July 2018.

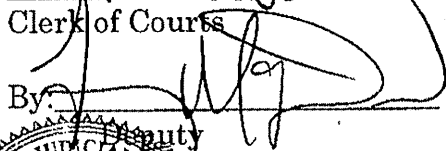
BY THE COURT

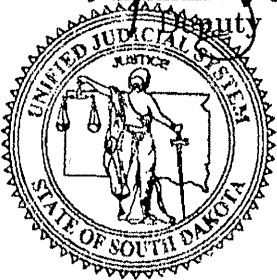


Hon. Robert Mandel
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:

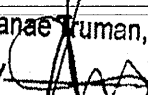

Clerk of Courts

By: 
Deputy



Pennington County, SD
FILED
IN CIRCUIT COURT

JUL 19 2018

Ranee Truman, Clerk of Courts
By:  Deputy