FILED
12/06/2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 16-0502

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0502

FRANK R. WALL, PRO SE,

Plaintiff and Appellant,

v.

Patent Lode Mining Claims HR-133 AND HR-134, the Johnstone Placer Claim AND Old Judge Lode, Ceader Lode, AND Upper Cut Lode MINERAL PATENT MINING CLAIMS in Lincoln AND Sanders County, MINES MANAGEMENT, INC., NEWHI, INC., MONTANORE MINERALS CORPORATION, AND All Other Persons, Unknown, Claiming Or Who Might Claim Any Right, Title, Estate Or Interest In Or Lien or Encumbrance the Montanore Project and Patented Placer and Lode Mining Claims Described Above Or Any Cloud Upon Title Thereto, Whether Such Claim or Possible Claim be Present Or Contingent, Including "Siting Areas,"

Defendants and Appellees.

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ORDER

On November 7, 2016, Appellant Frank R. Wall, appearing as a self-represented litigant, filed two motions: a Motion for transcripts and case files deemed necessary to supplement the record, and a Motion for subpoena of the transcripts and case files deemed necessary to supplement the record.

Wall filed his notice of appeal in this matter on August 26, 2016, and this Court received the District Court record on October 6, 2016. Therefore, Wall's opening brief on appeal was due to be filed on November 7, 2016, unless an extension of time was requested

and granted. Wall has not filed his opening brief on appeal, nor has he requested an extension of time to do so.

Wall represents in his motion that all of the transcripts and case files which he requests, and which he asks us to subpoena, are necessary for a fair and just appeal. Among the files he seeks are Federal District Court files and Ninth Circuit files as well as files from multiple closed Montana cases. Appellees, by counsel, have filed a response in opposition to Wall's motions.

Wall's motions are not well taken. The Montana Rules of Appellate Procedure delineate the composition of the record for an appeal. Under Rule 8, the record generally includes "the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court . . . ." M. R. App. P. 8(1). Parties are bound by the record, and we do not depart from the record before us. *See Wallace v. Hayes*, 2008 MT 248, ¶ 15, 344 Mont. 523, 191 P.3d 365. There is no legal basis for Wall's motion for an exhaustive supplementation of the District Court record. Accordingly,

IT IS ORDERED that Appellant's Motion For Transcripts and Case Files Deemed Necessary For Proper Appeal and Appellant's Motion for Subpoena of the Transcripts and Case Files Deemed Necessary For Proper Appeal are both DENIED.

IT IS FURTHER ORDERED that Appellant Wall has thirty (30) days from the date of this Order within which to prepare, file and serve his opening brief on appeal. Failure to do so will result in this appeal's dismissal without further notice.

The Clerk is directed to provide a copy of this Order to all counsel of record, and to Frank R. Wall personally.

DATED this 6th day of December, 2016.

Chief Justice

Patricia Cotter

Michael E. Wheat

[illegible]

Jim Rice

Justices