

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 15-0469

JACK and BONNIE MARTINELL, husband and wife;)
 THOMAS and HAZEL MCDOWELL, husband and)
 wife; THOMAS SHAFFREY; and BARRETT and)
 KARI KAISER, husband and wife,)

Plaintiffs and Appellants,)

v.)

BOARD OF COUNTY COMMISSIONERS OF)
 CARBON COUNTY, the governing body of the County)
 of Carbon, acting by and through JOHN GREWELL,)
 JOHN PRINKKI, and DOUG TUCKER; ENERGY)
 CORPORATION OF AMERICA; DOUG and DENISE)
 AISENBREY, husband and wife; WILLIS and)
 THERESE HERDEN, husband and wife; DUANE and)
 DENA HERGENRIDER, husband and wife; KAREN)
 HERGENRIDER; RUDOLPH HERGENRIDER;)
 SHELLEY BAKICH LECHNER, as personal)
 representative of the Milovan Bakich estate; and STEVEN)
 and MONICA THUESEN, husband and wife,)

Defendants and Appellees.)

FILED

SEP 08 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

Defendants and Appellees have moved to dismiss this appeal on grounds that it is an appeal from a non-appealable order. Plaintiffs and Appellants object to the motion to dismiss.

Plaintiffs and Appellants are proponents of a citizen-initiated zoning district in Carbon County. The Carbon County Commissioners denied their zoning petition after receiving protests by other landowners. Plaintiffs and Appellants then filed a complaint for declaratory relief in the Twenty-Second Judicial District Court, alleging that the Carbon County Commissioners' denial of their zoning petition relied on an unconstitutional protest provision in § 76-2-101(5), MCA; was arbitrary and capricious and an abuse of discretion; and violated their rights to a clean and healthful environment.

In the order from which this appeal is taken, the District Court dismissed the complaint without prejudice, on grounds that the zoning petition undisputedly did not meet all Carbon County requirements for citizen-initiated zoning petitions. The District Court observed that Plaintiffs and Appellants “retain the option to file another petition with the Carbon County Commissioners for consideration of the [zoning district].”

In *Farmers Union Mut. Ins. v. Bodell*, 2008 MT 363, ¶ 18, 346 Mont. 414, 197 P.3d 913, we adopted the rule that an order dismissing a complaint without prejudice is not a final judgment and cannot be appealed absent special circumstances. We stated “[s]pecial circumstances may include the running of a statute of limitations, language in the order of dismissal indicating that the complaint will not be permitted to re-plead, or where the practical effect of the order of dismissal terminates the litigation in the complainant’s chosen forum.” *Farmers Union*, ¶ 18.


Plaintiffs and Appellants argue that special circumstances are present here because, if this appeal is dismissed, they will be required to create a new petition, initiate a new administrative process, and request a new decision by the Carbon County Commissioners. We agree. The operative effect of dismissal would be to terminate litigation on the issues presented in this appeal.

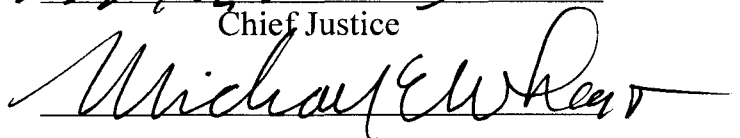
Therefore,

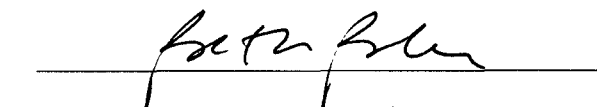
IT IS ORDERED that the motion to dismiss this appeal is DENIED.

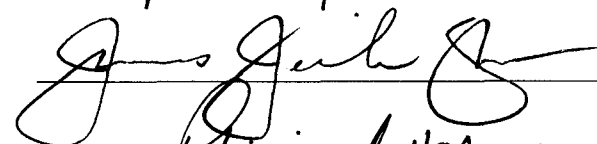
The Clerk is directed to provide copies of this order to all counsel of record.


DATED this 26 day of September, 2015.


Chief Justice








Justices