

VOLUME NO. 37

OPINION NO. 24

JUSTICE OF THE PEACE - Judgments, abstracts of judgments, filing in another county; JUDGMENTS - Justice of the Peace, abstracts of judgments, filing in another county; LIENS - Judgments of a Justice of the Peace, real property in another county; REVISED CODES OF MONTANA, 1947 - Sections 93-5712, 93-7312, 93-7313, 93-7314.

HELD: Sections 93-7312, 93-7313 and 93-7314, R.C.M. 1947, allow an abstract of a justice court judgment to be filed in the office of the clerk of any district court. Alternatively, the abstract may be filed and docketed under section 93-7312, R.C.M. 1947, in the county in which the judgment was rendered, and may then be issued and filed with the district court clerk of another county pursuant to section 93-5712, R.C.M. 1947. Under either procedure, the justice court judgment then becomes a lien on any real property owned by the judgment debtor in the county in which the abstract is filed.

12 May 1977

Harold F. Hanser, Esq.  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

May a transcript of an abstract of judgment from the Justice of the Peace Court filed and docketed with the District Court in that county, under section 93-7312, R.C.M. 1947, be issued by that District Court Clerk and filed by the District Court Clerk of another county under section 93-5712?

The practical problem presented is determining whether there is any method by which a justice court judgment in county "A" can be filed in county "B." Unless it can be filed in county "B" it will not result in a lien on the debtor's real property located in that county.

Justice courts are courts of "peculiar and limited jurisdiction," and therefore the only code provisions applicable to justice courts are those which are "in their nature" applicable to justice courts, or those "made applicable by special provisions" in the statutes. Section 93-7707, R.C.M. 1947. There is a presumption that a statute of general applicability to courts is inapplicable to justice courts unless there is a specific reason to conclude to the contrary.

Section 93-7311 specifies the form of an "abstract of judgment" which may be demanded by a successful litigant in justice court. Under section 93-7312, this abstract may be filed with the clerk of the district court of the county "in which the judgment was rendered," and the judgment is then entered into the regular judgment docket of that district. The district court judgment docket is a book kept by the clerk and records the pertinent facts of each district court judgment, (section 93-5709) and of each justice court judgment rendered in that county which is filed therein pursuant to section 93-7312. The clerk is not required to enter the name of the court from which the judgment was taken (section 93-5709).

The clerk may certify a "transcript" of this docket, which may then be filed with the district court clerk of another county, and from the time of such a filing the judgment becomes a lien on the debtor's real property in that county (section 93-5712). Since this transfer section makes no distinction between different types of judgments which might be recorded in the docket, then prima facie justice court judgments recorded therein under the specific authority of section 93-7312 are included under section 93-5712 and may be certified to another county. The Legislature, however, has provided another method applicable specifically to justice courts to accomplish the same result.

It is specifically provided that upon docketing of a justice court judgment with the clerk of the district court, as provided by section 93-7312, execution may be issued by the district court clerk to the sheriff in any county "in the same manner and with like effect as if issued on a judgment of the district court." (Section 93-7313.) This section does not convert a justice court judgment into district court judgment, but merely authorizes execution to be issued "as an execution issued from the district court." Pierson v. Daly, 49 Mont. 478, 481-82 (1914). The following code section, 93-7314, however, makes it clear that a justice court judgment will not create a lien on real property

unless the abstract "is filed as aforesaid" with the clerk of the district court in the county in which the land is situated.

Section 93-7312 on its face applies only to docketing justice court judgments in the county in which they are rendered. It appears, however, that the legislature intended section 93-7314 to be an expansion of section 93-7312 to allow docketing of justice court judgments in any district court clerk's office in the state. Section 93-7314 refers to 93-7312, since the former section appears only two sections above in the code. This conclusion is bolstered by Pierson v. Daly, supra, wherein the court stated (49 Mont. at 482):

The provisions of section (93-7312, 93-7313 and 93-7314), therefore, must be construed as providing a means for securing a lien on the lands of the defendant through the judgment of the justice, and as merely authorizing the execution to be issued as an execution issued from the district court. But for these provisions there would be no lien, nor could the execution run to any other county than that in which a judgment is rendered, the limits of jurisdiction of the process of a justice's court being coextensive with those of the county only... . Hence, though the clerk may issue the execution, he issues it upon the judgment of the justice, as such, and not upon it as a judgment of the district court, made such transformation of the justice's judgment. (Emphasis added.)

The Court recognized that sections 93-7312 through 93-7314, construed together, allow a justice court judgment to result in a lien on real property in some "other county than that in which a judgment is rendered... ."

THEREFORE, IT IS MY OPINION:

Sections 93-7312, 93-7313 and 93-7314, R.C.M. 1947, allow an abstract of a justice court judgment to be filed in the office of the clerk of any district court. Alternatively, the abstract may be filed and docketed under section 93-7312, R.C.M. 1947, in the county in which the judgment was rendered, and may then be issued and filed with the district court clerk of another county pursuant to section 93-5712, R.C.M. 1947. Under either procedure, the justice court judgment then

becomes a lien on any real property owned by the judgment debtor in the county in which the abstract is filed.

Very truly yours,

MIKE GREELY  
Attorney General