

89574-1

No. 68602-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

ALEXANDER HANUSKA PhD, Appellant

v.

DEPARTMENT OF LABOR & INDUSTRIES

and

BOARD OF INDUSTRIAL INSURANCE APPEALS

and

NORDSTROMS, Defendants.

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PETITION FOR REVIEW

ALEXANDER HANUSKA PhD

Pro Se Appellant

C/o Joseph Russell Haynes
3104 East Broadway Road # 2
Mesa, AZ 85204-1736

FILED
NOV 21 2013
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
E [Signature]

I. INTRODUCTION

This Appellant's Petition for Review is typed by his domestic partner Joseph R. Haynes as prepared by JUDr. Dagmar Hanuskova (Appellant's mother and retired Attorney General of his native country) to the ruling dated October 9, 2013; delivered on October 14, 2013, because Appellant underwent as planned a very complicated surgery on his leg connected to his original injury of August 28, 2008. Appellant repeatedly correctly notified this Court in advance in May and June 2013, that this situation was to occur very shortly.

II. DISPUTED FACTUAL ISSUES

His medical team verified to this Court in writing that Appellant is declared medically and legally incapable to represent himself effective June 19, 2013 through November 30, 2013:

Warren H. Tripp MD (a Arizona licensed primary care physician and Appellant's medical representative of this Courts record) wrote on June

20, 2013 : *"To whom It May Concern: This patient has a medical condition that requires that the patient will very shortly undergo a complicated surgical procedure, which will require at least twenty weeks of recovery. His cardiologist, neurologist and orthopedic surgeon are not allowing him to participate in any legal work for this period of time. If any unforeseen complication will arise, I will notify this Court in writing latest by November 30, 2013. My patient will be under influence of controlled substances for a longer period of time. Excuse him from all Court proceedings until further notice, when his cardiologist, neurologist and orthopedic surgeon will allow him again such activities. Please accommodate these new disability needs of my patient. If you have any questions do not hesitate to contact my office."*

This medical statement and order is supported by the above mentioned Arizona licensed specialists, cardiologist Ryk W. Linden MD FAAC who wrote on June 19, 2013: *“Alexander Hanuska PhD. is currently a patient under my medical care. The patient has a medical condition and pending surgery. Please excuse him from all Court proceedings until further notice. If you require additional information please do not hesitate to contact my office.”*

Appellant’s Arizona licensed orthopedic surgeon Nathan Jeppesen DPM also supported his need for continuance on June 19, 2013: *“To Whom it May Concern: I am writing this letter to inform you that I will be performing a surgical procedure on Dr. Alexander Hanuska on 7/16/13 on his left ankle. This procedure will have a prolonged healing time and will require a period of significant rest, strict observance of non-weight bearing and rehabilitation. I expect him to not be fully recovered for approximately 20 weeks but could take longer if any unforeseen complications arise. Please accommodate Dr. Alexander Hanuska in this healing time period”*

This Court required that Appellant files his Opening Trial Brief no later Than May 13, 2013. Appellant had indeed complied by mailing his Opening Trial Brief through US certified mail delivered to this Court on May 9, 2013 (US certified mail label proof 70122210000094299079). The Court objected to the form it was filed on May 9, 2013 and asked Appellant to have it reformatted and re-filed by May 30, 2013. Appellant Again complied and delivered the new reformatted opening trial brief on May 30, 2013 (US certified mail proof label 70113500000160791580) in which his trial brief under RULE 10.4:

“(a) Typing or Printing Brief. Briefs shall conform to the following requirements: (1) An original and one legible, clean, and reproducible copy of the brief must be filed with the appellate Court. The original brief

should be printed or typed in black on 20-pound substance 8-1/2 by 11-inch white paper. Margins should be at least 2 inches on the left side and 1-1/2 inches on the right side and on the top and bottom of each page. The brief shall not contain any tabs, colored pages, or binding and should be stapled in the left-hand upper corner. (2) The text of any brief typed or printed must appear double spaced and in print as 12 point or larger type in the following fonts or their equivalent: Times New Roman, Courier, CG Times, Arial, or in typewriter fonts, pica or elite. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single spaced. Quotations may be the equivalent of single spaced. Except for material in an appendix, the typewritten or printed material in the brief shall not be reduced or condensed by photographic or other means.”

Mr. Haynes, who is not an attorney, but an optician, used as required

Times New Roman 12 point double space for the text and Times New Roman 12 Italic single space for quotations as required above. The Brief’s text from the first word “I. Introduction. This Appellant’s Brief...” to his signature and date “Dated this 28 day of May, 2013” has exactly 50 pages as required by this rule. This Court Rule does not limit any quotations as long as they fit the 50 pages. It may be Mr. Haynes small mistake by not separating the first three pages including only the front page and appendix and the last single page of Certificate of Service with Roman numbers instead, but in the previous trial Brief’s Judge Shaffer accepted a 26 page brief, where the front page was also not separated and had not notified Mr. Haynes that it was longer as required by the same Court rule, which does not specify if appendix and certificate of mailing are also the pages to be counted. Some of Washington Court rules cite if Appendix should be counted (as this Petition’s rule 13.4 (f); “(f) Length. The petition for

review, answer, or reply should not exceed 20 pages double spaced, excluding appendices.” and other rules don’t.

III. CHALLENGE OF THE ACTING CHIEF JUDGE’S RULING

The Acting Chief Judge denied the over length Opening Trial Brief and directed the filing of a brief in compliance with the Rules of Appellate Procedure by July 1, 2013. This ruling deliberately ignores the legal fact, that the same Acting Chief Judge had at the same time in his hands the medical statements from Dr. Tripp, Dr. Linden and Dr. Jeppesen informing him correctly that Appellant is not medically allowed to participate in any legal work starting June 19, 2013 through November 30, 2013. The same Acting Chief Judge did not make any legal ruling that at no point during any phase of these proceeding did the Chief Acting Judge conclude that the medical orders presented by Appellant evidencing his medical conditions were false, or that Dr’s. Tripp, Linden, Jeppesen representations were fraudulent or false. At no time did the Chief Acting Judge assert that Appellant was lying about his condition, or the conditions themselves, were false or in any way intended to defraud this Court. Therefore the Chief Acting Judge should considered the constitutionality of forcing Appellant to choose between preserving his health and preserving his legal rights.

IV. LEGAL ARGUMENT

This appeal is intended to elicit a ruling that is consistent with the Washington Supreme Court findings in In Disciplinary Proceeding of

Sanai (2009), Washington Supreme Court Docket No. 200,578-1. In Sanai, an attorney appearing for a disbarment hearing faxed a note to the disciplinary hearing officer on a Friday, before a scheduled Monday hearing, but the hearing officer decided that there was not a sufficient basis to grant the continuance, and held the hearing, reaching a conclusion that was unfavorable to Mr. Sanai. Mr. Sanai supplemented his note with a letter from his doctor, stating that, "On April 13, 2007 Mr. Sanai returned for an appointment with me, with continuing symptoms of severe hypertension. I took his blood pressure which was dangerously high. I enquired of Mr. Sanai if he was under any stress. He stated that he had a trial beginning on Monday, April 16. I instructed him that under no circumstances could he participate in such trial or other highly stressful activity without incurring a severe risk to his health." Also noteworthy is the fact that Mr. Sanai's sole medical problem was hypertension, which elevated his blood pressure and placed him at risk for circulatory problems. As will be shown later, Plaintiff had and has many more difficult problems than those experienced by Mr. Sanai. "At Fredric [Sanai]'s show cause hearing in this case, WSBA affirmatively stated it was not arguing that the letter, or Fredric's symptoms, were faked. Nor did it assert that Fredric was lying about his condition." There, the State Bar admits that it is not disputing the legitimacy of Mr. Sanai's sole physician. Mr. Sanai argued that the State Bar put him in the untenable position of choosing between defending his legal rights and taking the

advice of his doctor. The Supreme Court agreed, and ordered that the matter be remanded to the Disciplinary Committee for another hearing. This issue is not venue-specific and has a constitutional impact. Sanai relies upon *Trummel v. Mitchell*, 156 Wn.2d 653; 131 P.3d 305 (2006), which is a civil matter. As the Sanai Court further stated: “[We] do not believe that the respondent has been given that full opportunity to be heard in his own defense which the spirit of the law in such cases contemplates. It is true that, in the early stages of the case, the trial committee was quite lenient with the respondent in the matter of postponements and in fact granted two of the three continuances upon grounds which it was not compelled to recognize as being conclusive, but which, in the desire to be eminently fair, it did recognize and accept as being satisfactory. That fact, however, will not afford sufficient reason for refusing a further continuance when good cause is shown therefor.” (emphasis added) *Id.* at 80. The conditions of the abuse of the discretion are delineated in one of Sanai’s supporting cases. “A hearing officer abuses her discretion when her decision is ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). As in the Sanai case, it was unreasonable for the Acting Chief judge to continue the legal proceedings in Appellant’s medical absence and medical inability to represent himself, forcing him to choose between taking the advice of his medical team and protecting his constitutional rights to a fair Appeal. The Sanai Court also observed that:

“WSBA does not discuss the potential constitutional impact of disbaring Fredric through a trial held in his absence. Instead, WSBA argues that applying the Trummel factors mentioned above, the hearing officer did not abuse his discretion in denying the continuance. Answering Br. of WSBA at 37 (quoting Trummel, 156 Wn.2d at 670-71). Unlike here, Trummel involved a request for continuance of a harassment suit so that Trummel could better prepare a new attorney and possibly cross-examine witnesses though he had previously declined to present any testimony.” Similarly, in the instant matter, the three unnamed judges who issued the Order Denying Motion to Modify dated October 9, 2013; failed to consider the constitutional impact of proceeding, when such a decision put Appellant in the position of choosing between his legal rights and protecting his fragile health. Even though the Sanai Court concluded that the basis for a continuance in Trummel was not consistent with the basis for the continuance requested in the Sanai case, it did consider the WSBA’s presentation of that case, which proves the universality of the venue pertaining to constitutional issues. The facts of the instant case are virtually identical, and therefore the Sanai decision is the correct legal precedent for this Court to use in determining whether or not the Active Chief Judge’s decision to deny Appellant a continuance despite extensive medical evidence was correctly presented to him prior to his order of July 16, 2013; that Appellant was not able to represent himself for a short period of time, between June 19 and November 30, 2013 without risking greater medical harm to his health, than was presented in the Sanai Court. The Active Chief Judge seems to forget that this Court deliberately ignored the Appellant’s and his medical team’s please in summer of 2012

not forcing him to participate directly. This Court's and the opposing counsel's deliberate ignorance to Appellant's fragile health and ongoing treatment caused his heart attack on September 28, 2012 and constitutes infliction of a deliberate severe injury, pain and suffering under Arizona's jurisdiction, based on Appellant's place of injury, residence and relevant medical licensing of Dr. Tripp, Linden, Anderson who repeatedly warned this Court of the legal liabilities for possible injuries and this Court and the opposing counsels decided to simply ignore Appellant's new medical disability status and medical limitations affecting his ability to participate. As repeatedly shown, Mr. Sanai's medical problems are dwarfed by the multiple medical difficulties endured by Appellant. This is significantly more egregious than the conditions which formed the basis for the Supreme Court's decision in Sanai: the Active Chief Judge was aware that virtually all representation of Appellant legally ceased after three of his doctors ascertained and communicated in writing to this Court on multiple occasions throughout the proceedings, that Appellant's medical condition would not allow him to participate in legal proceedings starting June 19, 2013. The Active Chief Judge knew of the gravity of Appellant's medical condition and inexplicably intentionally ignored the advice of Appellant's medical team. Appellant has several physicians which are under the auspices of his primary care physician, Dr. Warren Tripp. There are three orthopedic surgeons, one neurologist, one gastrointestinal specialist, two cardiologists, one psychologist, and entire team of

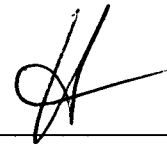
renowned surgeons at an orthopedic institute in Arizona. To comport with the standards established in Sanai, Appellant's requests that all proceedings subsequent to June 19, 2013 the date that Appellant's medical team issued this order informing this Court, including the Chief Acting Judge of the degree of difficulty of Appellant's medical condition, be regarded as null and void, and that the matter be remanded and retried. The requirements of Sanai have been far exceeded in this action in every regard. Indeed, the Chief Acting Judge's actions beyond June 19, 2013 are so egregious as to justify a discrimination action, but first it is necessary to see to it that Appellant's rights per Sanai are protected in the instant action. This Court of Appeals, it's Court Administrator Richard D. Johnson, the "unnamed" Chief Acting Judge abused their judicial discretion in failing to continue the legal proceedings, trying to force Appellant to participate in their unreasonable time frame in this matter, despite the presentation of communications, on multiple occasions, from multiple medical professionals, and Appellant's domestic partner, Joseph R. Haynes, to the legal effect, that Appellant was medically prohibited from participating in any legal matters for several documented medical reasons from June 19, 2013 through November 30, 2013.

V. CONCLUSIONS

The legal fact on which the dismissal of his case dated July 16, 2013, claiming that Appellant did not comply with the Chief Acting Judge's order by July 1, 2013 is in violation of the standards as established per

Sanai because this Court, including the Chief Acting Judge, this Court's Administrator, Richard D. Johnson had detailed medical knowledge from Appellant's medical team (Dr. Warren Tripp, Dr. Ryk Linden, Dr. Nathan Jeppesen) that Appellant's any participation in this case seized from June 19, 2013 to November 30, 2013 due to his urgent and extremely complicated surgery and pending recovery in connection to his original injury of August 28, 2008. Dismissal of his case by the Chief Acting Judge on July 16, 2013 based on Appellant's medical condition and inability to comply (with the Acting Chief Judge's full legal knowledge when making this ruling on July 16, 2013) should be voided and null, because this Chief Acting Judge's ruling is in violations of the standards as established with the Washington Supreme Court findings In Re Disciplinary Proceeding of Sanai (2009), Washington Supreme Court Docket No. 200,578-1 and allows the Appellant to file a separate legal case in the Arizona State Courts (as supported by AZ Disability offices and Human Rights), for disability discrimination and repeated, deliberate infliction of severe injuries, pain, suffering and medical costs by ignoring Appellant's current medical disability status as correctly and truthfully described to this Court in numerous warnings and medical statements from his entire medical team, based and state licensed professionals in Arizona State, over whose this Court lacks any jurisdiction.

Dated this 5 day of November, 2013



Alexander Hanuska PhD.

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CERTIFICATE OF SERVICE BY MAIL

I certify that on this day I served the attached Notice to the parties of this proceeding and their attorneys or authorized representatives, as listed below. A true copy thereof was delivered to the United States Postal Service, postage prepaid.

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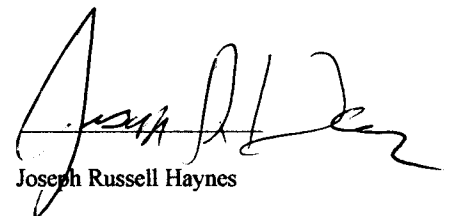
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DATED: November 5, 2013



Joseph Russell Haynes