

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

REGINALD BELL, SR.,

Petitioner,

vs.

king county superior court,
JUVENILE DEPARTMENT,

Respondent,

MOTION FOR DISCRETIONARY REVIEW
No. 76493-4-I

Respectfully submitted by

REGINALD BELL, SR.,

COYOTE RIDGE CORRECTION CENTER
P.O. BOX 769
CONNELL, WA. 99326

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2017 AUG 28 AM 11:44

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A. IDENTITY OF PETITIONER

Pursuant to RAP 13.5(b)(2) and RAP 17.4(a), Reginald Bell, Sr. asks this Court to accept review of the decision designated in Part B of this motion.

B. DECISION

On April 11, 2017, A Court of Appeals Commissioner, without notice to Mr. Bell, entered a ruling dismissing Mr. Bell's appeal as frivolous under RAP 18.9(b). On August 4, 2017, a panel of the Court denied Mr. Bell's motion to modify.

A copy of the Commissioner's ruling, the Court panel decision, (and the trial court memorandum opinion) is in the appendix.

Findings of fact are required in connection with final decisions in child custody proceedings and a judgment entered in complete absence of finding of fact having been made is subject to motion to vacate and a trial courts failure to vacate is appealable as a matter of right. The Commissioners ruling deprives Mr. Bell of that right and restrains him from obtaining review of the trial courts error.

C. ISSUES PRESENTED FOR REVIEW

1. When a trial court enters a final judgment in a child custody proceeding in complete absence of finding of facts being made as required by CR 52(a)(2)(B) and fails to vacate that judgment as required by CR 52(d) is an appeal from the denial of a motion to vacate judgment and enter required finding of fact frivolous within the meaning of RAP 18.9?

D. STATEMENT OF THE CASE

After Mr. Bell's parental rights were unlawfully terminated, In April 2016, Mr. Bell filed a petition for writ of habeas corpus under RCW 7.36 under King County Superior Court Cause 16-2-14427-6. The writ was dismissed with prejudice on August 17, 2016 and Mr. Bell appealed. Court of Appeals No. 94433-4. While the appeal was pending, after numerous correspondences between Mr. Bell and Judge Halbert, on October 31, 2016, judge Halbert finally forwarded Mr. Bell a copy of her August 17 Dismissal order.

Upon receiving the order Mr. Bell noticed that judge Halbert had failed to enter findings of fact. Therefore, pursuant to RAP 7.2(e) Mr. Bell invoked the trial court authority and moved it to vacate its August 17 order and enter required finding of fact under CR 52(d). Judge Halbert refused to vacate it order and enter required finding of fact. Judge Halbert concluded that because the court of appeals had dismissed the appeal this matter was closed.

Mr. Bell timely appealed. Commissioner Kanasawa raised the question of whether the order was appealable and on April 14, 2017 dismissed the appeal as frivolous under RAP 18.9. No 76493-4-I. The ruling was entered without the required 10 days notice under RAP 18.9(b) and without affording Mr. Bell an opportunity to present his side.

Mr. Bell moved to modify the court commissioner ruling. He argued that, procedurally, his appeal should have not been dismissed as frivolous because in his notice of appeal he cites a court rule and a case which supports his position. On August 4, 2017, the motion to modify was denied. The court panel provided no reasoning for it's decision.

The facts set out in Part C of the original motion to the court panel are incorporated herein as reference.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Pursuant to RAP 13.5(b) this court will accept review of an interlocutory decision of the court of appeals only,

(1) if the Court of Appeals has committed an obvious error which would render further proceedings useless, or (2) if the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of the party to act, or (3) if the Court of Appeals has so far departed from the accepted and usual course of judicial

proceeding, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

RAP 13.5(b)(1)(2)(3)

1. Mr. Bell's Appeal Is Not Frivolous
Within The Meaning Of RAP 18.9

This case involves the proper interpretation of RAP 18.9. Interpretation of Court Rules are issues of law subject to de novo review. State v. Osman, 168 Wn.2d 632, 229 P.3d 729 (2010) ("this court reviews the interpretation of court rules de novo")

RAP 18.9(b) authorizes an appellate court clerk or commissioner, on ten days notice to the parties to (1) dismiss a review proceedings as provided in RAP 18.9(a) and (2) except as provided in rule 18.8(b) to dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

An Appellate Court Commissioner acts within his authority when he, on ten days notice to the parties, dismiss an appeal as frivolous or for failure to timely file a notice of appeal, etc.

The dismissal order provides in part as follows.

" even assuming that the January 5 order is appealable, I conclude that this appeal should be dismissed as frivolous. This Court may, on its own initiative, dismiss a frivolous appeal. See RAP 18.9(a),(b). The basis of Bell's motion to set aside the August 17 order (the basis of this appeal) is that the order did not contain findings of fact required by CR 52(d). A judgment entered in a case tried to the court where findings of fact are required, without findings having been made, is subject to motion to vacate within the time for taking of an appeal. CR 52(d). Even if findings are required for a denial of habeas corpus relief, Bell did not timely appeal the August 17 order, and his late appeal was dismissed in No. 75914-1-I. Bell's motion to set aside the August 17 order was untimely. His appeal from the January 5 order denying his motion to set aside the August 17 order on the basis of CR 52(d) is frivolous and should be dismissed under RAP 18.9. This case is dismissed."

Thus, although Commissioner Kanasawa concluded that Mr. Bell's motion to set aside the August 17 order was untimely, he dismissed Mr. Bell appeal because he believed it was frivolous. Ruling at 3 of 3.

The Legislature and this court defines a frivolous appeal as one that present no debatable issue and is so devoid of merit there is not a reasonable possibility of reversal. Harrington v. Faithrop, 67 Wn.App 901, 847 P.2d 1258 (1992). However, an appeal is not - frivolous if the appellate cites a case supporting his position. See Van Diter v. City of Kennewick, 64 Wn.App 930, 827 P.2d 329 (citing to comment to RAP 18.9 which states an appeal is not frivolous if the appellant cites a case supporting his position")

As noted, Commissioner Kanasawa dismissed the appeal solely on the basis that is without merit on his own initiative and without ten days notice to Mr. Bell. Therefore, his finding of frivolity is based on Mr. Bell's notice of appeal which argues as follows.

" judgment was entered in complete absence of finding of fact pursuant to CR 52(d) the order should have been vacated and findings of fact and conclusion of law entered. Bowman v. Webster, 42 Wn.2d 136, 253 P.2d 939"

Notice of Appeal at 1.

This Court have previously determined that an appeals is not frivolous if the appellant cites a case supporting his position. Van Dinter, 121 Wn.2d at 48. It is a well established rule that findings and conclusion are required in connection with all final decision in child custody proceedings, including habeas proceedings, whether heard ex parte or not. CR 52(a)(2)(B). see Schreifel v. Schreifel, 47 Wn.2d 409, 287 P.2d 1001.

It would appear as though Commissioner Kanasawa is using these rules for the purpose of interfering with and/or obstructing justice. Mr. Bell, the King County Superior Court, and the Department of Social and Health Services have been at odds over the issues surrounding the illegal termination of Mr. Bell and Ms. Powell's parental rights to our children

for over 10 years.

Mr. Bell has been before the Juvenile Court, the Court of Appeals, and this Court numerous of times over what amounts to "child abduction." In each of those proceedings the process provided was not meaningful and fair because of judicial misconduct by the appellate court commissioner's and the presiding judge in the juvenile court attempts to coverup what occurred in the King County Superior Court, Juvenile Department.

Such an obdurate course of behavior is directly at odds with the administration of justice, decisions on the merits, the best interest of children, and the public. In the course of this long lived and forever squabble, until justice is served, Mr. Bell has advanced a meritious argument on the issue presented on this review, it therefore, cannot be said that it is not a debatable issue upon which reasonable minds might differ. But rather, it can be said that this is another attempt by a corrupt and unjust Court Commissioner and assistant attorney general to coverup the kidnaping of three minor children.

For these reasons Commissioner Kanasawa has committed probable error and his decision substantially alters the status quo or substantially limits the

freedom of Mr. Bell to act.

F. CONCLUSION

This court should accept review of this case and grant the relief requested in Part B of the original motion to modify.

Dated this 22 day of August 2017.


RGINALD BELL, SR

CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT ON THE DATE BELOW I CAUSED A TRUE AND CORRECT COPY OF THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED TO BE MAILED TO RESPONDENT ATTORNEY OF RECORD AND THE COURT OF APPEALS CLERK AT DIVISION ONE.

8-21-17
DATE


SIGNATURE

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
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(206) 464-7750
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April 11, 2017

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CASE #: 76493-4-I
Reginald Bell, Sr., App. v. King Co. Sup. Ct. Juvenile Div. and DSHS, Res.
King County No. 16-2-14427-6 SEA

Counsel:

The following ruling by Commissioner Masako Kanazawa of the Court was entered on April 11, 2017, regarding court's motion to determine appealability:

RULING TERMINATING REVIEW

Bell v. King County Superior Court, No. 76493-4-I

April 11, 2017

On January 18, 2017, Reginald Bell, pro se, filed a notice of appeal from a January 5, 2017 order that denied his motion to set aside an August 17, 2016 order, which dismissed his petition for a writ of habeas corpus. Bell's habeas corpus petition sought to undo the termination of his parental rights to three children, which became final years ago. Previously, this Court dismissed Bell's untimely appeal from the August 17, 2016 order in No. 75914-1-I. Currently, this Court's motion to determine the appealability of the January 5 order is set for a hearing on April 14, 2017. Bell filed a letter arguing that the January 5 order is appealable as an order denying a motion to vacate a judgment in RAP 2.2(a)(10). Bell's notice of appeal argues that the August 17 order should have been vacated because it was entered without findings of fact under CR 52(d). Even if the January 5 order that denied Bell's motion to set aside the August 17 order is appealable, Bell's appeal is frivolous and is dismissed pursuant to RAP 18.9.

Background

This case stems from the termination of Bell's parental rights to three children. On March 3, 2008, the trial court entered orders terminating his parental rights. King County Superior Court Nos. 07-7-02144-1 SEA; 07-7-02145-9 SEA; 07-7-04376-2 SEA (consolidated). On Bell's appeal, this Court affirmed the termination orders. No. 61292-1-I (consolidated). Our Supreme Court denied further review. No. 82846-6 (consolidated). The United States Supreme Court denied Bell's petition for a writ of certiorari. Mandate was issued in October 2010.

When his appeal from the termination orders was still pending, Bell filed a CR 60(b) motion in the trial court to vacate the termination orders. On March 3, 2009, the trial court denied his motion. Bell appealed the denial to this Court. Bell also filed a petition for a writ of habeas corpus. On August 13, 2009, the trial court denied habeas corpus relief, and Bell appealed that denial as well. On his appeals from the CR 60(b) and habeas corpus denials, Bell challenged the juvenile court proceedings leading up to the termination as defective. This Court affirmed the denials of CR 60(b) and habeas corpus relief. No. 63190-0-I. Our Supreme Court denied further review. No. 84687-1. Mandate in these CR 60(b) and habeas corpus proceedings was issued in December 2010.

Then, in June 2016, under a new cause number, King County Superior Court No. 16-2-14427-6 SEA, Bell filed another petition for a writ of habeas corpus, challenging the orders issued in the dependency proceedings. On August 17, 2016, the trial court denied his petition. Bell did not file a notice of appeal until October 6, 2016. By ruling of December 6, 2016, I denied Bell's motion to enlarge the time to file a notice of appeal and dismissed his appeal as untimely. No. 75914-1-I. By order of April 10, 2017, a panel of this Court denied Bell's motion to modify that ruling.

Meanwhile, on November 22, 2016, Bell filed in the trial court a motion to set aside the August 17, 2016 order. On January 5, 2017, the trial court denied the motion. Bell filed a notice of appeal to this Court.

Decision

Bell argues that the January 5 order is appealable under RAP 2.2(a)(10) ("An order granting or denying a motion to vacate a judgment"). It is unclear whether the January 5 order that denied Bell's motion to set aside the August 17 order qualifies as an order denying "a motion to vacate a judgment" under RAP 2.2(a)(10) when Bell essentially seeks to vacate the termination orders and has exhausted appeals from the termination orders and post-termination orders denying his motions seeking CR 60(b) and habeas corpus relief.

Page 3 of 3

76493-4-1, Reginald Bell, Sr. v. King Co. Sup. Ct. Juvenile Div. and DSHS
April 11, 2017

Even assuming that the January 5 order is appealable, I conclude that this appeal should be dismissed as frivolous. This Court may, on its own initiative, dismiss a frivolous appeal. See RAP 18.9(a), (b). The basis of Bell's motion to set aside the August 17 order (and the basis of this appeal) is that the order did not contain findings of fact required by CR 52(d). A judgment "entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal." CR 52(d) (emphasis added). Even if findings are required for a denial of habeas corpus relief, Bell did not timely appeal the August 17 order, and his late appeal was dismissed in No. 75914-1-1. Bell's motion to set aside the August 17 order was untimely. His appeal from the January 5 order denying his motion to set aside the August 17 order on the basis of CR 52(d) is frivolous and should be dismissed under RAP 18.9.

This case is dismissed. The hearing scheduled for April 14, 2017 is stricken.

Masako Kanazawa
Commissioner

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

The Hon. Helen L. Halpert

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

REGINALD BELL, Sr.

No. 16-2-14427-6 SEA

Plaintiff,

ORDER DENYING MOTION TO SET
ASIDE ORDER

v.

KING COUNTY SUPERIOR COURT,
JUVENILE DIVISION AND DEPARTMENT
OF SOCIAL AND HEALTH SERVICES

On August 17, 2016, this court entered an order denying petitioner's writ of habeas corpus. On November 22, 2016, the petitioner filed a motion to set aside this court's order dismissing the writ of habeas corpus. Thereafter, on December 6, the Court of Appeals issued an order terminating review in this matter and dismissing the petition. This matter is now resolved. Petitioner's motion to set aside the August 17 order is denied.

A copy of this order will be provided to the Department of Social and Health Services, through counsel, and to the petitioner by court staff.

Dated this 5 day of January, 2017,

Signed electronically

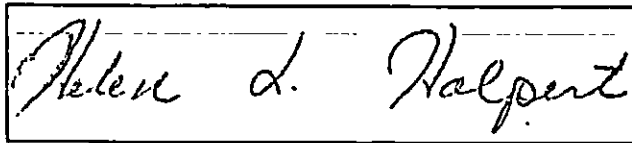
Helen L. Halpert, Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 16-2-14427-6
Case Title: BELL VS KING COUNTY SUPERIOR COURT JUVENILE

Document Title: ORDER DENYING MOTION TO SET ASIDE

Signed by: Helen Halpert
Date: 1/5/2017 10:04:55 AM



Judge/Commissioner: Helen Halpert

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 802772A59F78160EA408BDE000D37A07916208CC

Certificate effective date: 7/29/2013 12:21:03 PM

Certificate expiry date: 7/29/2018 12:21:03 PM

Certificate Issued by: C=US, E=kcsefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Helen
Halpert:NG36B3r44hG2yOw3YYhwmw=="

FILED
KING COUNTY, WASHINGTON

AUG 17 2016

SUPERIOR COURT CLERK
BY Joseph Mansor
DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

REGINALD BELL, SR.

No. 16-2-14427-6 SEA

Plaintiff-

vs.

ORDER DISMISSING PLAINTIFF'S
APPLICATION FOR WRIT OF
HABEAS CORPUS

KING COUNTY SUPERIOR COURT,
JUVENILE DIVISION AND DEPARTMENT
OF SOCIAL AND HEALTH SERVICES

THIS MATTER, having come on before the court on Plaintiff's Application for
Writ of Habeas Corpus, and the court having reviewed the foregoing Motion, ^{Reviewed} heard ~~the~~
~~the response of the Department & Plaintiff's Reply~~
argument of the parties, if any, and being familiar with the records and files herein, it is
hereby:

ORDERED, ADJUDGED and DECREED that Plaintiff's Application for Writ
of Habeas Corpus served on The Attorney General's Office on May 6, 2016 be dismissed
with prejudice.

DATED this 17 day of Aug, 2016.

Theresa D. Halpern
JUDGE/COMMISSIONER
Lead Dependency Judge

Presented by:

ROBERT W. FERGUSON
Attorney General

By *MAC*
MARY ANN COMISKEY WSBA #15249
Assistant Attorney General

ORIGINAL

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REGINALD BELL, SR.,

Appellant,

v.

KING COUNTY SUPERIOR COURT,
JUVENILE DIVISION AND
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent.

No. 76493-4-1

ORDER DENYING
MOTION TO MODIFY

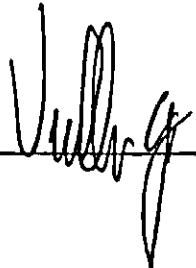
Reginald Bell, Sr. has moved to modify the commissioner's April 11, 2017 ruling dismissing this appeal as frivolous. The respondent State of Washington has not filed an answer. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 4th day of August, 2017.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2017 AUG-4 PM 2:21



Trickey, J
COX, J.