Court of Appeal Cause No. 52485-6-II

98750-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

James A. Mickelson, Respondent,

v.

Gale E. McArthur, Defendant,

Heather J.E.L. Benedict, Appellant.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Heather J.E.L. Benedict asks this court to accept review of the Court of Appeals decision termination review designated in Part II of this petition.

II. COURT OF APPEALS DECISION

A copy of the decision is in the Appendix, page 8.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court should be reversed when its findings of fact are not substantiated by any evidence in the record?
2. Whether the lack of ability to be heard makes the findings against a non-party pro-se citizen are void ab initio?
3. Whether the personal attacks on a pro-se citizen are bar bullying that should be stopped as causing a lack of integrity or confidence in the judiciary?

IV. STATEMENT OF THE CASE

The underlying case is a case related to the Estate of Leanna Ruth Mickelson in that it related to a transaction with one of the heirs that resulted in proceeds to the Estate. Although the husband, James Mickelson, maintains theories where he gets all of the Estate notwithstanding the eventual finding that Leanna died intestate, since the proceeds went to an open estate which has not been distributed, for which no accounting has ever been done, for which an accounting was requested, the decedent died with four children and a husband.

The Court entered findings for which there was never any hearing where the non-party pro se citizen was allowed to even file any pleadings. There was no actual evidence

that a Kitsap Bank subpoena had ever been created and filed or executed in any way. The Court relied solely on the false statement of one of the attorneys. There was no actual evidence that the non-party pro se citizen had the type of knowledge that is claimed to have had or that the heir was ever with any ill intention to assert her rights without counsel. The Court relied solely on the aggressive smear campaign and personal attack on the non-party pro se citizen with mischaracterizations which had no subjective evidence to support the same.

The Court entered findings of fact at the behest of an attorney which are not supported by reality or any evidence whatsoever then turning around and claiming that the pro se party did not do their research when the community property agreement ("CPA") agreement auto-revoked and has other issues causing it to be void which the Court refuses to address because it is being lead around by the attorneys who rather than simply address the issues are on a personal attack litigation strategy campaign which the Court is now participating in by allowing findings which are not reality but which benefit the attorney.

The trial court granted each of Mickelson's motions and issued an order removing Benedict from this lawsuit, prohibiting her from filing future pleadings in this lawsuit, and imposing $5,053.00 in sanctions against her under CR 11. The court found that Benedict's filings "were knowing attempts to, without a factual or legal basis, increase litigation costs for James Mickelson. This finding is based, in part, on a history of [Benedict] filing, and being sanctioned for filing, baseless pleadings in other actions where James Mickelson is, or was, a named party." CP at 160. The trial

court found that Benedict's actions were "part of a pattern of frivolous litigation activities" and that she "failed to perform an objectively reasonable prefiling inquiry into the factual and legal basis for her pleadings." CP at 160, 162. The court also found that Benedict improperly issued subpoenas to Kitsap Bank. The court ordered Benedict to pay sanctions in the amount of Mickelson's attorney fees.

V. AUTHORITY

A judgment entered without notice or **opportunity to be heard** is void ab initio, *Columbia Valley Credit Exchange, Inc. v. Byron Lampton*, 12 Wn.App. 952 (1975). The Court cannot recognize an order which is so blatantly in violation of due process in which a pro se citizen is not allowed to be a party and then severe findings are entered where there is no evidence of the same in the record. Such a blatantly violation of due process results in a judgment which is *void ab initio*. Therefore the findings that were entered were void because the Court specifically precluded the sanctioned person from having any say in the proceedings. This is a serious breach in the integrity of the Court. Washington State Constitution Article 1, Section 3, states, that no person shall be deprived of life, liberty, or property, without due process of law.

There is no "absolute privilege" in legal proceedings. Statements are only privileged "if they are pertinent or material to the redress or relief sought", *Kauzlarich v. Yarbrough*, 105 Wash.App. 632, 20 P.3d 946 (Div.II 2001). That privilege is "generally limited to cases in which the public service and administration of justice require complete immunity; thus a court will not extend complete immunity to a position absent compelling public policy justification. *Wood v. Battleground School District,* 107 Wash.App. 550, 27 P.3d 1208 (Div.II 2001). The fact that statements made in pleadings

are privileged does not mean that attorney may abuse privileges with impunity, since attorney is subject to supervision and discipline of the Court. *McNeal v. Allen*, 95 Wash.2d 265, 621 P.2d 1285 (1980). The gist of abuse of process is the misuse or misapplication of the process, after it has been once issued, "for an end other than that which it was designated to accomplish", *Batten v. Abrams,* 28 Wn.App. 737, 626 P.2d 984 (1981). If anyone is abusing the legal system, it is the attorney represented party who has caused such a train wreck of the justice system that things become fact for the benefit of them without any evidence whatsoever. For instance, the alleged subpoena for Kitsap Bank does not exist because it was never done. Therefore, for the Court to claim that it does exist without any physical evidence suggests a system that has become so mangled due to the prejudice effected against pro se citizens attempting to assert their rights.

There is no evidence of res judicata or that the heir who is self-represented has any ill intent. It is not her fault if the attorneys refuse to settle because they will no longer be able to bill hours. Pursuant to Evidence Rule 103(a), pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein. Evidence Rule 103(a) allows one party to (2) demand proof of a statement, in which Benedict was never given this opportunity to object or demand proof.

A trial court's findings of fact are not to be disturbed on appeal if they are supported by substantial evidence. *Sylvester v. Imhoff,* 81 Wn.2d 637, 503 P,2d 734 (1972). Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true.

Penick v. Employment Security Department, 82 Wash.App. 30, 917 P.2d 136 (1996). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the record is left with the definite firm conviction that a mistake has been made. *Norway v. King County Counsel,* 87 Wash.2d 267, 552 P.2d 674 (1976). In this case there is no subpoena to Kitsap Bank because that did not occur. There are only the venomous false statements of counsel aimed to prejudice the Court against the citizen herself. With no evidence in the record that there ever was a subpoena to Kitsap Bank, and with no evidence of any actual judgment that would be res judicata, with no evidence that the person who was not allowed to even file pleadings in the matter actually had the malevolent intentions declared by opposing counsel. With no evidence, the trial court's findings do not have the minimum requirements to pass muster and they should be reversed.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The integrity of the Court is at stake if an attorney represented citizen can have the Court enter findings that are simply not true or for which there is no actual evidence. Is this merely an attempt to prevail in proceedings, albeit prejudiced, or is this a scheme to completely dissuade any citizen from self representation? Since there was never any subpoena of Kitsap Bank there is no physical evidence that such a subpoena was ever made. Therefore, for the Court to enter a finding that the same occurred is error and should be corrected. The tendency for judges to side with attorney represented citizens while derailing all due process and essentially fabricating facts that assist or protect attorneys is a serious derailment of the justice system and this Court should make the corrections to prevent this culture of bar bullying pro se citizens and accept this petition

and correct this problem. Similarly, running a smear campaign on an heir of a decedent claiming that an auto-revoked CPA has any effect on property, or refusing to review the many issues with the CPA which make it void is not proper use of the judiciary and this should be corrected.

VII. CONCLUSION

WHEREFORE, the Court should not continue the bar bullying culture and should make the corrections necessary to stop that behavior and reverse findings of fact that are not supported by any evidence whatsoever.

July 9, 2020

Respectfully submitted,

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VIII. APPENDIX

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Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES A. MICKELSON, Respondent, v. GALE ELIZABETH McARTHUR, Defendant, HEATHER JEAN ELSIE LINCOLN BENEDICT, Appellant.	NO. 52485-6-II UNPUBLISHED OPINION

GLASGOW, J.—Heather Jean Elsie Lincoln Benedict has been involved in multiple lawsuits where she claimed entitlement to a portion of her deceased mother's estate, all without success. In at least one prior instance, she was sanctioned under CR 11.

Most recently, she attempted to join in this case between her father, James A. Mickelson, and her sister, Gale Elizabeth McArthur. This lawsuit is about money that McArthur borrowed from and allegedly owed Mickelson. Because Benedict had no cognizable interest in the property at issue, Mickelson moved to remove her from the lawsuit, prevent her from filing further pleadings, and impose CR 11 sanctions.

The trial court granted Mickelson's motions, finding that Benedict had intentionally made false statements to the court and had abused the judicial process. The court imposed over $5,000 in CR 11 sanctions.

Benedict appeals the sanctions order, arguing primarily that the trial court was not authorized to impose sanctions on her as a nonparty.

We affirm the trial court's imposition of sanctions under CR 11.

FACTS

Leanna Mickelson passed away in 2012. She was survived by her husband, James Mickelson, and her four adult children. Both Benedict and McArthur were Leanna's daughters.

Benedict claimed an interest in Leanna's estate. Benedict sued Mickelson, and the trial court in that case concluded that Leanna's estate passed to Mickelson via a prior community property agreement. *In re Estate of Mickelson*, No. 49056-1-II, slip op. at 12 (Wash. Court App. Oct. 24, 2017) (unpublished) http://www.courts.wa.gov/opinions/pdf/D2%2049056-1I%20Unpublished% 20Opinion.pdf. We affirmed. *Id.*

Benedict filed two other lawsuits in King County. The King County Superior Court initially issued an order adjudicating intestacy in one case. But the trial court vacated that order and both cases were ultimately dismissed. In one King County action, the trial court imposed CR 11 sanctions against Benedict.

In the present case, Mickelson loaned McArthur money and later sued McArthur to collect on the promissory note. Soon thereafter, Benedict twice filed a "Notice of Pro-Se Appearance as an Interested Party" in this case. Clerk's Papers (CP) at 18-19, 20-22. Benedict then filed a declaration claiming that she had an interest in the lawsuit because the money at issue should have been classified as the separate property of her late mother, allowing her to inherit a portion. Benedict then filed another pleading attempting to join the lawsuit as a necessary party.

Mickelson filed motions to remove Benedict from the lawsuit, impose CR 11 sanctions against her, and prevent her from participating in the lawsuit moving forward. Mickelson claimed that Benedict was never made a party to the suit, she never properly moved to intervene, and she had no cognizable interest in the relevant property. He asserted she knew that she had no such interest based on previous court proceedings, she filed misleading court documents from those prior proceedings, and she served improper subpoenas on Kitsap Bank.

The trial court granted each of Mickelson's motions and issued an order removing Benedict from this lawsuit, prohibiting her from filing future pleadings in this lawsuit, and imposing $5,053 in sanctions against her under CR 11. The court found that Benedict's filings "were knowing attempts to, without a factual or legal basis, increase litigation costs for James Mickelson. This finding is based, in part, on a history of [Benedict] filing, and being sanctioned for filing, baseless pleadings in other actions where James Mickelson is, or was, a named party." CP at 160. The trial court found that Benedict's actions were "part of a pattern of frivolous litigation activities" and that she "failed to perform an objectively reasonable prefiling inquiry into the factual and legal basis for her pleadings." CP at 160, 162. The court also found that Benedict improperly issued subpoenas to Kitsap Bank. The court ordered Benedict to pay sanctions in the amount of Mickelson's attorney fees.

Benedict appeals, arguing that the trial court did not have the authority under CR 11 to impose sanctions on her. She does not appear to challenge the trial court's underlying findings of fact.

ANALYSIS

A. CR 11

Benedict argues that it was improper for the trial court to impose sanctions on her under CR 11 because she was not a party to the underlying lawsuit, and the court lacked personal jurisdiction over her. We disagree, and conclude that Benedict's assertion of herself as a party was sufficient to trigger the obligations and sanctions contemplated in CR 11.

CR 11 outlines the requirements for pleadings, motions, and legal memoranda filed with the court. The rule specifies that the "signature of a party or of an attorney" on such a filing signifies that, "to the best of the party's or attorney's knowledge," the filing is (1) well-grounded in fact; (2) warranted by law; (3) "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;" and (4) contains only those denials of factual contentions that are warranted on the evidence or reasonably based on a lack of information or belief. CR 11(a). CR 11(a)(4) further provides in relevant part: "If a pleading, motion, or legal memorandum is signed in violation of this rule, the court . . . may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay [reasonable attorney fees and costs]."

We review an award of CR 11 sanctions for abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). "In deciding whether the trial court abused its discretion, we must keep in mind that '[t]he purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.'" *Id*. (emphasis omitted) (alteration in original) (quoting *Bryant v. Joseph Tree, Inc*., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992)).

Benedict does not challenge the trial court's conclusion that her actions constituted a pattern of frivolous litigation activities designed to interfere with the proceeding between Mickelson and McArthur, but rather challenges the court's authority to impose sanctions on her under CR 11 at all because she was not an attorney or a party.

Although the trial court ultimately held that Benedict was not formally a party, nor was she an attorney, it is undisputed on appeal that she interposed herself into the litigation between her father and sister asserting herself as a party. She attempted to inject herself into the litigation as a necessary party, and that was enough to trigger the duties and sanctions contemplated by CR 11. The actions for which she was sanctioned occurred before the trial court determined that she could not be a party to this litigation.

The trial court's findings, which Benedict does not appear to challenge, establish that she filed papers in this case for an improper purpose. Recognizing that the purpose of CR 11 is to deter baseless filings and curb abuses of the judicial system, we conclude that the trial court properly applied the CR 11 sanctions provision here. The trial court did not abuse its discretion in imposing CR 11 sanctions on Benedict for her repeated attempts to insert herself as a party and interfere with the proceeding between Mickelson and McArthur.

B. Benedict's Other Arguments

Benedict also raises several other reasons why the trial court's order was improper. We reject them all.

First, Benedict suggests that the trial court violated RCW 4.68.010 by imposing sanctions against her when it had already ordered her not to file any further pleadings. But RCW 4.68.010 merely provides that when a judgment is recorded against one or more of several persons jointly

indebted by court order, those defendants who were not originally served with a summons *may* be summoned to show why they should not be bound by the judgment. Benedict is not one of several persons indebted in the judgment because she was the only person sanctioned in this proceeding. RCW 4.68.010 therefore does not apply here. And even if it did apply, it is clearly permissive and did not obligate the trial court to summon or otherwise formally add Benedict to the proceeding in order to impose sanctions against her.

Second, Benedict argues that the trial court lacked personal jurisdiction over her because she was not a party. But a nonparty may still be within the superior court's jurisdiction. *See State v. Breazeale*, 99 Wn. App. 400, 405, 994 P.2d 254 (2000), *aff'd in part, rev'd in part*, 144 Wn.2d 829, 31 P.3d 1155 (2001). Moreover, a person waives any claim of lack of personal jurisdiction if "she asks the court to grant affirmative relief, or otherwise consents, expressly or impliedly, to the court's exercising jurisdiction." *In re Marriage of Steele*, 90 Wn. App. 992, 997-98, 957 P.2d 247 (1998). Benedict waived any claim of lack of personal jurisdiction by moving to join the lawsuit as an interested party and claiming an interest in the property at issue.

Finally, Benedict argues that the trial court erred in entering any findings of fact against her because she is not a party to the lawsuit. She seems to suggest that this warrants vacating the judgment against her under CR 60(b)(4). CR 60(b)(4) provides that, on motion of a party, the court may relieve that party from judgment based on fraud, misrepresentation, or other misconduct of an adverse party. Benedict claims the trial court's findings related to Kitsap Bank were based on a misrepresentation from Mickelson that Benedict subpoenaed Kitsap Bank. But there is no evidence in the record that Benedict filed a motion as required under CR 60, nor does she point to anything

in the record to support her bare allegation that Mickelson's claims regarding her actions with Kitsap Bank were false or misleading. We reject this argument.

We affirm the trial court's imposition of sanctions under CR 11 against Benedict.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Maxa, P.J.

Cruser, J.

HEATHER BENEDICT - FILING PRO SE

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Transmittal Information

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