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No. 71896-7-1

Island County Superior Court No. 14-2-00144-9

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

DANIEL M. HARDING, an individual,
Appellant,

v.

ARNE O. DENNY, an individual,
Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR ISLAND COUNTY
HONORABLE ALAN R. HANCOCK

REPLY BRIEF OF APPELLANT

2014 JUN 29 PM 1:59
DIVISION OF APPEALS & DIV.
STATE OF WASHINGTON

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TABLE OF CONTENTS

A. REPLY ARGUMENT-----1

1. **The Superior Court lacked jurisdiction when it issued
the order of dismissal-----1**

2. **The matter of fraud vs. perjury-----2**

3. **Compliance with RCW Chapter 4.96-----3**

4. **Sanctions and Attorney’s fees again-----5**

B. CONCLUSION-----6

TABLE OF AUTHORITIES

Washington Cases

Kleyer v. Harborview Med. Center

887 P. 2d 468, 76 Wash. App. 542 - Wash: Court of Appeals, 1st Div., 1995 -
76 Wn. App. 542 (1995). 887 P.2d 468. **GERALD KLEYER**, Appellant, v.
HARBORVIEW MEDICAL CENTER OF THE UNIVERSITY OF WASHINGTON,
Respondent. No.33276-7-I. The Court of Appeals of Washington, Division One.
January 17, 1995-----4

Statutes

RCW 4.96.010-----3,4,6

RCW 4.96.020-----3,4,6

Washington State Superior Court Civil Rules

CR 11-----1

A. REPLY ARGUMENT

1. The Superior Court lacked jurisdiction when it issued the order of dismissal.

Some confusion exists in this case regarding who Mr. Denny is representing and when. It is elementary that as a member of the bar Mr. Denny can wear two legal hats. He can represent himself, pro se, or he can represent others under his bar association membership number. Superior Court Civil Rule 11 spells out how an attorney must sign papers depending on whether he represents himself or another party.

Rule 11 in part:

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address.

The Respondent makes note that Mr. Denny signed various documents, ignoring however that some of these signatures were improper

under rule 11. When Skagit County decided to “hire” Mr. Denny to act in his own defense Mr. Denny became confused as to who the defendant was and reverted back to his usual position of attorney representing Skagit County. Somehow in his view Skagit County had become the Defendant. The trial Court didn’t notice this and in spite of the Motion to Dismiss being explicitly worded “COMES NOW Skagit County “.....”and moves the Court”.....CP 115. The Movant or Pleader is specified as Skagit County. Mr. Denny goes on to sign this motion in a manner consistent with him representing Skagit County as their attorney. CP 130. Attached to the Motion to Dismiss is the proposed order which is to be signed as, “A.O. Denny, WSBA #14021, Attorney for Skagit County”. CP 135. Mr. Denny is clearly acting as Skagit Counties Attorney. The Motion to Dismiss was clearly brought by Skagit County as the movant. Since there is no debate that Skagit County is not a party to this case, the Court lacks Jurisdiction over the non-party. The lower Court erred in accepting and being moved by a motion from a non-party it had no jurisdiction over. The resulting order must be void ab initio.

2. THE MATTER OF FRAUD VS PERJURY

The Respondent would have you believe that there is no case here

and that remanding this matter back to the lower Court would be futile regardless of the validity of the Appeal. They appear willing to concede to the crime of perjury to escape the civil consequences of the fraud Mr. Denny stands accused of in the complaint. Their assertion is that perjury is not a tort that a court can give relief from in a civil matter. They serve up this defense in spite of the notable and legal differences between fraud and perjury. In fact fraud has more to do with the degree of freedom to control the implications of a falsehood, where perjury focuses on the false statement under oath itself. In this case Mr. Denny had 100 % control over the bill he prepared and submitted to the court and controlled the implications in an exceptional manner using his trusted position as a member of the court. It was not simply a matter of being asked a question under oath and telling a lie. Mr. Denny committed a fraud and Mr. Harding should be given the opportunity to prove it.

3. COMPLIANCE WITH RCW CHAPTER 4.96

Mr. Harding, not realizing that he had not complied with the “tort claims act”, filed his lawsuit against Mr. Denny. RP 5, lines 1-18. The

current interpretation of the statutes is to include individuals. RP 11, lines 22-25. RP 12, lines 1-7. The Appellant has used the time since the dismissal of this case to rectify this error. Mr. Harding has filed the requisite claim with the County of Skagit and it has been denied. It would be argued that while this was not the order in which the claims statute might be complied with, this method did not deprive the County of the benefits intended to be bestowed upon it by the legislature. Similar reasoning was used in the case:

Kleyer v. Harborview Med. Center

887 P. 2d 468, 76 Wash. App. 542 - Wash: Court of Appeals, 1st Div., 1995 - 76 Wn. App. 542 (1995). 887 P.2d 468. **GERALD KLEYER**, Appellant, v. **HARBORVIEW MEDICAL CENTER OF THE UNIVERSITY OF WASHINGTON**, Respondent. No.33276-7-I. The Court of Appeals of Washington, Division One. January 17, 1995

[3] When Kleyer learned of the University's affirmative defense on September 15, 1992, he could have voluntarily dismissed his suit and filed a claim in Olympia, in compliance with RCW 4.92.110 and .210(1). Kleyer would have been statutorily required to wait 60 days before renewing his suit. The statute of limitations would have been tolled during the 60-day waiting period. *See* RCW 4.92.110.

Mr. Harding, now having complied with the statute, is prepared to move forward with this case.

4. SANCTIONS AND ATTORNEYS FEES AGAIN

This case would not be here if Mr. Denny had accepted winning and not gone after Mr. Harding in a personal attack to damage him financially for asking questions of his government. It is not in the public's interest to have a government whose servants take it upon themselves to punish those that anger them. Mr. Harding has simply defended himself from an onslaught of legal attacks and many personal ones. The Respondent, currently Rosemary Kaholokula in that Mr. Denny has been removed from the case, alleges that Mr. Harding is continuing an "unreasoned vendetta" against Mr. Denny. This is in support of the Respondents request for sanctions in the appeal. The Appellant would point out Mr. Denny's allegation, "[Harding] acted in a fit of pique rather than out of reason". CP 128. This, among others not in the current record, indicate Mr. Denny has something less than a professional attitude toward the Appellant. Indeed if there is a vendetta being carried out here evidence would point toward Mr. Denny as the perpetrator.

As has been noted herein, the case at hand has merit and should be

allowed to continue to trial. The issue of compliance with RCW Chapter 4.96 has been rectified. This appeal is quite sound and also has merit so sanctions are not appropriate here and should be denied. The issue of fraud vs. perjury can and should be decided by a Jury.

B. CONCLUSION

For the reasons addressed above the Court should deny Sanctions. Additionally for the reasons addressed above the Court is asked to find the order to dismiss the Appellant's case to be void ab initio and the case returned to the Superior Court for trial.

RESPECTFULLY SUBMITTED this 28th day of August, 2014.

By: 

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