

COURT OF APPEALS NO. 37980-5-II

(PIERCE COURT NO. 08-2-07537-6)

COURT OF APPEALS, DIVISION TWO, OF THE STATE OF WASHINGTON

**ANTHONY MEREDITH,
Plaintiff/Appellant,**

vs.

**DAVID STARKS and
JUSTIN SEDELL**

Defendants/Appellees.

OPENING BRIEF OF APPELLANT

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IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

ANTHONY MEREDITH, Plaintiff/Appellant, vs. DAVID STARKS and JUSTIN SEDELL Defendants/Appellees.	COURT OF APPEALS NO. 37980-5-II PIERCE COURT NO. 08-2-07537-6 APPELLANT'S OPENING BRIEF
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APPELLANT'S OPENING BRIEF

Pursuant to RAP 10.1(b), Plaintiff/Appellant Anthony Meredith ("Anthony Meredith") files Plaintiff/Appellant's Opening Brief.

ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR No. 1: Judge Beverly Grant abused her discretion by awarding sanctions against Anthony Meredith and by improperly dismissing the case.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR No. 1

Issue No. 1: Judge Grant violated the controlling case law of *Jeckle v. Crotty*, 120 Wn. App. 374 (2004) by awarding sanctions against Anthony Meredith.

Issue No. 2: The Defendants committed defamation against Anthony Meredith. Meredith's defamation lawsuit was brought in good faith and was not frivolous.

Issue No. 3: Collateral Estoppel did not bar Anthony Meredith's defamation lawsuit.

Issue No. 4: Summary Judgment was not appropriate. Moreover, Judge Grant improperly denied Anthony Meredith any discovery in this case. Therefore, the summary judgment dismissal was an improper preliminary dismissal.

STATEMENT OF THE CASE

Pierce Superior Court Judge Beverly Grant summarily dismissed Anthony Meredith's defamation lawsuit against the Defendants David Starks and Justin Sedell (June 6, 2008 Order – CP 128 - 131), and awarded CR 11 sanctions against Anthony Meredith for \$5478.00 (June 25, 2008 Order – CP 134 - 135). Meredith asks the Court of Appeals to overturn both of these orders.

Defendants falsely publicized to the Federal Government (Meredith's employer), false allegations that Meredith committed domestic violence against Meredith's former spouse Jazmin Muriel. CP 5 – 127. These false allegations were part of an out-of-court petition to fraudulently achieve immigration citizenship status for Muriel, an immigrant without citizenship status, by falsely alleging that Meredith committed domestic violence against Muriel, to improperly achieve said citizenship status through the Violence Against Women's Act, when, in fact, Meredith never committed domestic violence against Muriel. CP 5 – 127. The Defendants' false publications were made both to the Pierce County Superior Court during Meredith's divorce/custody case and to the Federal Government (Meredith's employer) outside of said trial. CP 5 – 127.

The Defendants published said false allegations of domestic violence, knowing that: 1) the *Guardian ad Litem* report, 2) the sworn eyewitnesses to the marriage, 3) a previous Federal Government investigatory report, 4) the lie detector test results, and 5) Judge Chuschoff's previous rulings, all proved that their allegations were completely false. CP 5 – 127. Therefore, the Defendants' were at fault, because they had knowledge of the falsity of their publications.

As shown below in this brief, the Defendants enjoyed no legal protection for their out-of-court defamation, and do not meet the requirements to enjoy legal privilege for their in-court defamation.

Meredith respectfully moves the Court of Appeals to overturn Judge Grant's aforementioned two orders, including the award of sanctions (CP 128 – 131; CP 134 – 135; CP 136 – 142).

ARGUMENT

I. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR No. 1: Judge Grant abused her discretion by awarding sanctions against Anthony Meredith.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR No. 1

Issue No. 1: Judge Grant violated the controlling case law of *Jeckle v. Crotty*, 120 Wn. App. 374 (2004).

The first issue is whether Judge Grant abused her discretion by awarding CR 11 sanctions against Anthony Meredith. The rule is found in *Jeckle v. Crotty*, 120 Wn. App. 374 (2004). In *Jeckle*, the Court of Appeals held that:

Under RCW 4.84.185, a court cannot pick and choose among those aspects of an action that are frivolous and those that are not. *Biggs v. Vail*, 119 Wn.2d 129, 136, 830 P.2d 350 (1992). The action must be viewed in its entirety and only if it is frivolous as a whole will an award of fees be appropriate. *Id.* at 133-37. An action is frivolous if it "cannot be supported by any rational argument on the law or facts." *Clarke*, 56 Wn. App. at 132.

Even though the Court of Appeals denied Dr. Jeckle the right to maintain a cause of action against his adversary's attorney for a violation of the CPA, the Court reversed the superior court's finding that Dr. Jeckle's action was frivolous and vacated its sanction award, "even for

the other frivolous causes of action”. *Id.* at 388; citing to *Biggs v. Vail*, 119 Wn.2d 129 at 133-37 (1992). The Court of Appeals affirmed the holding in *Collinson v. John L. Scott, Inc.*, 55 Wn. App. 481, 488, 778 P.2d 534 (1989), which held that the superior court did not err when it refused to award attorney fees against the plaintiffs, even though it dismissed their action on summary judgment, because the case presented an issue of first impression. *Jeckle* at 387.

Similarly, this Court should reverse the Pierce County Superior Court Judge Grant finding that awarded CR 11 sanctions against Anthony Meredith, because, as in *Jeckle v. Crotty*, Anthony Meredith was making a good faith argument of first impression, unaddressed by controlling Washington law, that Defendants had published false statements to the Federal Government, outside of a judicial proceeding, falsely accusing Meredith of committing domestic violence. CP 5 – 127. Meredith’s argument was not frivolous because it could be supported by a “rational argument on the law or facts”. *Jeckle* at 387; citing to *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132 (1989). Accordingly, the Superior Court erred in awarding sanctions against Meredith, and that order should be overturned.

Issue No. 2: The Defendants committed defamation against Anthony Meredith. Meredith’s defamation lawsuit was brought in good faith and was not frivolous.

Defamation by implication occurs when a speaker (1) juxtaposes a series of facts so as to imply a defamatory connection between them or (2) creates a defamatory implication by omitting facts. *Mohr v. Grant*, 153 Wn.2d 812, (2005). Defendants’ defamatory publications to the Federal Government omit materials like Judge Chuschoff’s rulings exonerating Anthony Meredith from the false charges of domestic violence, the GAL report exonerating Anthony Meredith from the false charges of domestic violence, the eyewitness sworn declarations

exonerating Anthony Meredith from the false charges of domestic violence, and the lie detector test results exonerating Anthony Meredith from the false charges of domestic violence, all of which completely exonerated Anthony Meredith from all false charges of domestic violence. CP 5 – 127. Such omissions from the Defendants constitute defamation by implication. As such, Pierce Judge Grant improperly dismissed the instant case, and improperly awarded sanctions against Anthony Meredith in the instant case. Accordingly, this Court should overturn Judge Grant’s rulings.

The Guardian ad Litem found no evidence of domestic violence by Anthony Meredith

As shown in CP 40 – 127, the Defendants filed a fraudulent “abuse petition” that Jazmin Muriel filed with the Federal Government to try and fraudulently gain immigration status for Muriel by falsely accusing Anthony Meredith of domestic violence. Also, as shown by CP 8 – 127, following a thorough one-year investigation, interviewing all the eyewitnesses from both sides, the *Guardian ad Litem* formally concluded that Anthony Meredith did not commit domestic violence of any type. His report specifically states “I have found no evidence of physical abuse of Mother [Jazmin Muriel] by Father [Anthony Meredith]. GAL Report, Custody trial Ex. 29, p. 6 (CP 8 – 127). The GAL further reports that “There is no medical report or statement by any health care provider attending [Muriel] during the course of her pregnancy check-ups that relate to any bruising or other injuries alleged to be caused by Father during that time. A doctor or nurse should have made note of any such apparent abuse, even if [Muriel] would not have mentioned it.” GAL Report, Custody trial Ex. 29, p. 6 (CP 8 – 127).

At the custody trial, the GAL testified that he had more than 5 years experience as a GAL in Pierce County, which includes work on approximately 35 custody cases, and that he has successfully completed all the requisite GAL training, which includes domestic violence training. (CP 8 – 127). The GAL authenticated his report, which includes his investigatory findings of this case. CP 8 – 127. He met with and/or interviewed with all of the presented witnesses from both sides of the case, in two states: Virginia and Washington. CP 8 – 127. The GAL reviewed all the filings from both sides and the entire court file. CP 8 – 127. The GAL spent approximately 60 hours investigating the case over the time period of one year. CP 8 – 127. At the trial, the GAL testified that not a single person had witnessed Anthony Meredith commit an injury against Jazmin Muriel, nor commit domestic violence against Jazmin Muriel. CP 8 – 127. The GAL testified that he found no evidence that Anthony Meredith had instigated any physical fights against Jazmin Muriel. CP 8 – 127.

Pierce Superior Court Judge Bryan Chuschoff exonerated Anthony Meredith of the exact same domestic violence allegations, saying that Jazmin Muriel’s domestic violence allegations were “a lot of smoke” and have “not been founded”. CP 5 – 127. [October 27, 2006 RP, pp. 21-22 [Case No. 06-2-02300-1]]. Following a thorough pre-trial investigation, the Federal Government also found no evidence that Meredith committed any domestic violence. CP 5 – 127. Lie detector test results and seven sworn declarations from all the eyewitnesses to the marriage all substantiated that Meredith never committed domestic violence. CP 5 – 127. There was not a single eyewitness to the marriage, medical report, police report, or any other piece of evidence that could substantiate Muriel’s false claims of domestic violence. CP 5 – 127. The

reason for this is because Meredith never committed domestic violence of any kind against Muriel.

Notwithstanding all the aforementioned unanimous evidence to the contrary, Judge van Doorninck made a false domestic violence finding in the divorce case. However, in violation of Judicial Canons 1 through 5, Judge van Doorninck failed to disqualify herself from the custody proceeding, and failed to disclose on the record, her involvement with, and financial support of, illegal immigrant rights groups, including the NWIRP and Centro Latino, among others. (CP 5 - 127). On May 1st, 2006, NWIRP turned out and organized more than 30,000 people to march for illegal immigrant rights — the largest illegal immigrant rights march in Washington State history. NWIRP boasts of its “critical responsibility to serve the ever-increasing number of immigrants and refugees in our community.” In Fiscal Year 2006, NWIRP managed 1,162 applications for immigration benefits and raised \$150,000.00 for immigrant rights at their annual gala. See <http://www.nwirp.org/Documents/NWIRP2006AnnualReport.pdf>

These divorce/custody findings are currently before this Court on appeal.

In the instant case, the Defendants created a defamatory implication by omitting the aforementioned exculpatory facts, evidence and investigative findings. *Mohr v. Grant*, 153 Wn.2d 812, (2005). Defendants’ defamatory publications to the Federal Government improperly omitted Judge Chuschoff’s rulings exonerating Anthony Meredith from the false charges of domestic violence, the GAL report exonerating Anthony Meredith from the false charges of domestic violence, the seven eyewitness sworn declarations exonerating Anthony Meredith from the false charges of domestic violence, and the lie detector test results exonerating Anthony Meredith from the false charges of domestic violence, all of which completely exonerated

Anthony Meredith from all false charges of domestic violence. CP 5 – 127. Such omissions from the defendants constitute defamation by implication pursuant to the standard articulated in *Mohr v. Grant*, 153 Wn.2d 812, (2005) because the omissions show that the Defendants’ “communication left a false impression that would be contradicted by the inclusion of [the aforementioned] omitted facts”. *Mohr* at 829-830. Accordingly, Judge Grant’s dismissal orders in the instant case were improper and should be overturned.

Issue No. 3: Collateral Estoppel did not bar Anthony Meredith’s defamation lawsuit

Collateral estoppel bars relitigation of an issue in a subsequent proceeding involving the same parties. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299 (2004) [emphasis supplied]. The defendants in the instant case — David Starks and Justin Sedell — were not parties to the custody litigation that produced the finding of domestic violence. Therefore, collateral estoppel is not a defense that can be raised by the defendants in the instant case.

Moreover, the doctrine of collateral estoppel bars the relitigation of an issue if (1) the issue is identical to one adjudicated in a prior proceeding, (2) the prior adjudication resulted in a final judgment on the merits, (3) the party against whom the doctrine is asserted was a party or in privity with a party to the prior adjudication, and (4) application of the doctrine will not work an injustice on the party against whom it is asserted. *Id.*

In the instant case, Prong #1 is not met. The issue of whether the defendants committed slander and/or libel against Anthony Meredith was never adjudicated in the prior divorce proceeding.

Prong #2 is not met. The prior adjudication is currently before the Washington State Court of Appeals Division II on multiple errors of law. The Court of Appeals has not yet ruled, and therefore, there is no final judgment on the merits. See *Hanson v. Snohomish*, 121 Wn.2d 553, 561, 852 P.2d 295 (1993) (Application of the doctrine of collateral estoppel to bar relitigation of an issue does not work an injustice if the party against whom the doctrine is asserted had an opportunity to present evidence and argument on the issue to a trial court and an appellate court).

Prong #4 is not met. In *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 790, 982 P.2d 601 (1999), the Supreme Court addressed the meaning of the injustice prong of the collateral estoppel doctrine. 138 Wn.2d at 795. The injustice element is 'most firmly rooted in procedural unfairness. 'Washington courts look to whether the parties to the earlier proceeding received a full and fair hearing on the issue in question." *Id.* at 795-96 (quoting *In re Marriage of Murphy*, 90 Wn. App. 488, 498, 952 P.2d 624 (1998)). A court may reject collateral estoppel when its application would contravene public policy. *State v. Dupard*, 93 Wn.2d 268, 275-76, 609 P.2d 961 (1980). As shown above, Meredith did not receive a fair custody trial by an impartial judge as he is entitled to under Washington law. Judge van Dorninck's findings were false and had zero evidentiary substantiation. Judge van Dorninck's biases and failure to disclose were discovered post-trial, showing that she improperly refused to disclose conflicts in violation of Judicial Canons 1 through 5. CP 8 – 127.

Issue No. 4: Summary Judgment was not appropriate. Moreover, Judge Grant improperly denied Anthony Meredith any discovery in this case. Therefore, the summary judgment dismissal was an improper preliminary dismissal.

To survive a summary judgment motion in a defamation action, a plaintiff must raise a genuine issue of material fact as to all four elements of the claim: falsity, an unprivileged communication, fault, and damage. *Herron v. King Broadcasting Co.*, 112 Wn.2d 762, 768, 776 P.2d 98 (1989). Although the elements of defamation must be shown with convincing clarity, the normal standard for deciding summary judgment motions still applies. *Id.* "While the issue turns on what the jury could find, and while the court must keep in mind that the jury must base its decision on clear and convincing evidence, the evidence is still construed in the light most favorable to the nonmoving party and the motion is denied if the jury could find in favor of the nonmoving party." *Id.* [emphasis supplied].

A. Falsity

The above referenced Federal Government investigatory findings (prior to Judge van Doorninck's November 9, 2007 Orders), the *Guardian ad Litem's* investigatory findings, Pierce Superior Judge Bryan Chuschoff's previous rulings, the eyewitness declarations, and the lie detector results — all of which, ruling on the exact same evidence, established that Anthony Meredith did not commit domestic violence or physical abuse of any kind against Jazmin Muriel — prove the falsity of named Defendants' out-of-court and in-court libel and slander. In fact, even in Stark's and Sedell's entire court filings, they cannot produce a single witness to one act of domestic violence by Anthony Meredith, nor evidence of one injury — of *any* kind — to Jazmin Muriel. Because the evidence Meredith presents establishes a prima facie case of defamation, summary judgment is inappropriate.

B. Unprivileged communication

Defendants claim their defamation was privileged, citing to *McNeal v. Allen*, 95 Wn.2d 265, 621 P.2d 1285 (1980). However, *McNeal* is inapposite for several reasons. The *McNeil* court held that “Allegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are pertinent or material to the redress or relief sought, whether or not the statements are legally sufficient to obtain that relief. As stated in Anthony Meredith’s complaint, “Both Defendants’ published untrue statements were part of a transparent, but false, initiative to secure a finding of “domestic violence” against me to assist my former wife to fraudulently gain citizenship status through a fraudulent citizenship petition seeking a form of citizenship status that is only issued to immigrant women who allege (falsely in this case) that they have been abused by their spouse.” This false filing with the Federal Government, however, was **separate and distinct** from the divorce/custody judicial proceeding and defamed Anthony Meredith to the Federal government (Meredith’s employer) and damaged Meredith’s reputation, to attempt to achieve an “abused spouse” citizenship petition for Jazmin Muriel. This false filing was libelous and constituted immigration fraud, because it involved making false statements to the Federal Government about events of domestic violence which never transpired. This out-of-court publication was a Federal petition seeking Federally granted immigration status, was not a judicial filing, and, therefore, enjoys zero legal protection from *McNeal* and its progeny.

The Defendants complained that Anthony Meredith’s complaint confuses the Defendants about what defamation is alleged. Meredith’s complaint is not confusing and fully complies with RCW 4.36.120 (Libel or slander, how pleaded), which states: “In an action for

libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff, of the defamatory matter out of which the cause arose, but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken.”

Second, the in-court privilege in *McNeal* is predicated on the protections of an impartial judge pressing over the proceedings. As shown above, this was lacking in the custody case. *McNeal* holds that: “The fact that statements made in pleadings are absolutely privileged does not mean that an attorney may abuse the privilege with impunity. As we pointed out in *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 564 P.2d 1131 (1977), the attorney is subject to the supervision and discipline of the court.” In the instant case, as shown above, Judge van Doorninck proved incapable of meting out the required discipline against the Defendants, as she, herself, was impermissibly conflicted and biased; predisposed to ignore the evidence of the case, and slavishly adhered to the false presentation by the Defendants in that proceeding. As shown, Judge van Doorninck did not disclose to Anthony Meredith, prior to the trial, her impermissible conflicts regarding her financial investments in groups which fight to secure immigration rights for illegal immigrants — like Jazmin Muriel — in the instant case. Judge van Doorninck was improperly predisposed to close her eyes to the evidence of the case and rule against Anthony Meredith, and evasively did not disclose her conflicts, even when asked, in defiance of the mandatory governing Judicial Canons (noted above) which mandate such disclosure. CP 8 – 107. Judge van Doorninck’s failure to disclose conflicts also violated RCW 4.12.040, and this Court’s recent ruling in *Kauzlarich v. Yarbrough*, 105 Wn. App. 632, 653 (Feb. 2001) that:

The Code of Judicial Conduct provides that "[j]udges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned." CJC Canon 3(D)(1).... the "CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." Graham, 91 Wn. App. at 669 (quoting Sherman v. State, 128 Wn.2d 164, 205, 905 P.2d 355 (1995)). "The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that "a reasonable person knows and understands all the relevant facts."" Graham, 91 Wn. App. at 669 (quoting Sherman, 128 Wn.2d at 206). We noted that judges should be encouraged "to view the Canons of Judicial Conduct in a broad fashion and to err, if at all, on the side of caution." Graham, 91 Wn. App. at 670.

RCW 4.12.040 states, in pertinent part:

(1) No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court.

C. Fault

Defendants published false allegations of domestic violence even after they had knowledge of the Judge Chuschoff's rulings, the eyewitness evidence, the GAL's investigation, and the lie detector results, which all exonerated Anthony Meredith and which all proved that there was never domestic violence committed by Anthony Meredith. CP 8 – 107.

D. Damages

Due to the Defendant's actions, Anthony Meredith has suffered loss of custody and visitation time with his child, harm to reputation, and severe financial damages as shown by affidavit. CP 40 – 127.

Finally, Judge Grant refused to allow Anthony Meredith any requested discovery (CP 8 –

39). On May 5, 2008, Anthony Meredith propounded interrogatories and requests for production of documents, and notified both Defendants of Meredith's intent to depose them. To date, both Defendants have produced nothing in discovery, despite the fact that their respective deadlines passed. Meredith is legally entitled to the requested discovery and to develop his case.

Accordingly, Meredith moved for a CR 56 (f) continuance, until Meredith has received the discovery which is due to him. Judge Grant improperly denied that motion in her final order.

Under CR 26(b)(1), parties to a lawsuit may discover any relevant matter. An item of evidence sought to be discovered is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

As shown above, defamation by implication occurs when a speaker (1) juxtaposes a series of facts so as to imply a defamatory connection between them or (2) creates a defamatory implication by omitting facts. *Mohr v. Grant*, 153 Wn.2d 812, (2005). Anthony Meredith needed his requested discovery to ascertain whether Defendants' defamatory publications to the Federal Government contained any exonerating material or were comprised solely of false allegations of domestic violence. Such omissions from the defendants constitute defamation by implication. Meredith has a right to the requested discovery. CP 8 – 39. A judge cannot properly summarily dismiss a case when, as in the instant case, there has been no discovery granted to the plaintiff.

CONCLUSION

In sum, Defendants Starks and Sedell published false allegations to Meredith's employer, the Federal Government, in filings outside of the custody litigation, falsely

accusing Meredith of domestic violence, and damaging Meredith's reputation.

Defendants did not simultaneously publish the aforementioned substantial exonerating materials establishing that Meredith did not commit said domestic violence.

Meredith's lawsuit was brought in good faith to seek recovery for Defendants' false publications both to the Federal Government (Meredith's employer), and to the Pierce County Superior Court during the divorce/custody case, that Meredith committed domestic violence against Muriel. Judge Chuschoff's rulings, the *Guardian ad Litem's* report, the Federal Government's previous investigation results, the eyewitness testimony, and the lie detector results, all prove that Meredith never committed domestic violence against Muriel. CP 5 – 127.

Meredith respectfully asks the Court of Appeals to overturn Judge Grant's aforementioned two orders (CP 128-131; CP 134-135), including the award of sanctions (CP 136 – 142).

Respectfully Submitted this 24nd day of November, 2008,

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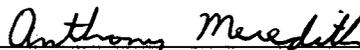
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CERTIFICATE OF SERVICE

I certify that I sent, via e-mail and first-class mail, on November 24, 2008, a true copy of the foregoing, to Justin Sedell, Esq., and David Starks, Esq. Defendants/Appellees, at McKinley

Irvin, PLLC, 425 Pike St., Suite 500, Seattle, WA 98101. Phone: 206-625-9600. I certify that I sent a true copy of the entire Report of Proceedings by first-class mail, on November 24, 2008, to Justin Sedell, Esq., and David Starks, Esq. Defendants/Appellees, at McKinley Irvin, PLLC, 425 Pike St., Suite 500, Seattle, WA 98101. Phone: 206-625-9600.



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