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NO. 50205-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

FRED H. CANTRELL, JR., and KATHLEEN M. CANTRELL,

Respondents/Plaintiffs,

v.

SAMUEL F. VALDEZ,

Appellant/Defendant.

NO. 50850-8-II

BRIEF OF RESPONDENTS

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I. INTRODUCTION

This was a trial conducted in Wahkiakum County Superior Court where the defendant, Samuel Valdez, was in a state penitentiary serving a lengthy sentence for, among other things, arson of the plaintiff Cantrells' home. The Cantrells were seeking compensation for the loss of their lifetime accumulations, their near-death experience, and the death of their dog. Neither Mr. Valdez nor his attorney made any effort to arrange transport to Wahkiakum County, nor attendance at trial either electronically or otherwise.

II. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court did not deny the participation of Mr. Valdez in the civil trial.
2. The trial court did not err by allowing Mr. Valdez to attempt telephonic communication at trial.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court was obligated to halt and continue the scheduled trial when the Defendant had made no effort to attend prior to the day of trial.
2. Whether the court or Plaintiffs had a duty to procure the presence of Mr. Valdez at this civil trial.

IV. STATEMENT OF THE CASE

Defendant Valdez at the time of trial was serving a prison sentence

for the arson of the Cantrell residence. (See Plaintiffs' Complaint, CP 1) Mr. Valdez had been found guilty, beyond a reasonable doubt, by a unanimous Wahkiakum County jury, Wahkiakum County Superior Court Cause No. 15 1 00020 4. Mr. Cantrell was and is blind; both Mr. and Mrs. Cantrell are elderly people who escaped the blaze in their pajamas. Mr. Valdez had been represented by his attorney until 19 days before the second trial date. (Decl. of Plaintiffs' Attorney, CP 79) When Defendants' attorney sought to withdraw, Plaintiffs unsuccessfully objected. (CP 97) Neither Mr. Valdez nor his attorney had made any attempt to secure Mr. Valdez's presence at trial either physically or electronically. The original trial date of November 8, 2016 had been set on September 1, 2016 but later moved to February 27, 2017. (CP 82) Preceding the first trial date and during the intervening period, again, no effort to attend was made by Mr. Valdez or his attorney.

The trial judge made every attempt to accommodate Mr. Valdez's presence by telephone. (RP 5-24)

The Respondent Cantrells can find no instance in the Report of Proceedings nor Clerk's Papers where any judge denied Mr. Valdez access to the court or denied any request by Mr. Valdez to be present at any proceeding other than Mr. Valdez's request, on the morning of trial, that the case be continued until after Mr. Valdez's appeal of the criminal charges had

been heard. (RP 19)

V. ARGUMENT

A. The trial court's denial of a continuance was not an abuse of discretion.

While Mr. Valdez frames his first assignment of error in terms of the trial court denying Mr. Valdez “participation in any part of the trial” (Brief of Appellant, p. 1), he failed to identify any part of the record wherein the trial court denied Mr. Valdez access to the trial. Mr. Valdez simply failed to make any arrangements to attend, telephonically or otherwise. Between the prison phone system payment requirements and prisoner access, Mr. Valdez was unable to attend through no affirmative act of the court. Mr. Valdez’s first issue pertaining to the above assignment of error is the allegation that the trial court “allowed the trial to go forward...” (Brief of Appellant, p. 1) which the Cantrells assume means that Mr. Valdez’s request for a continuance should have been granted and it was error to deny his request.

A trial court’s grant or denial of a motion to continue is reviewed for an abuse of discretion. *St. v. Castillo-Lopez*, 192 Wash.App. 741, 749 (2016). A pro se litigant is held to the same standard as those of an attorney. *Batten v. Abrams*, 28 Wash.App. 737, 739 (1981), and *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 308 (2002). Mr. Valdez, on the morning of trial, told the judge he wanted to be present at trial (RP 15) but admitted he had done

nothing to request transportation (RP 17). The court had 60 prospective jurors waiting for an hour and a half (RP 19) and Plaintiffs had a number of subpoenaed witnesses attending. (RP 19) The trial court did not abuse its discretion because the denial of the continuance was based on tenable grounds. A trial court's decision to deny a motion to continue will be affirmed "...unless no reasonable judge would have reached the same conclusion". *Stantford v. Sherwood*, 199 Wash.App. 1058 (2017) citing *In re Marriage of Landry*, 103 Wn2d 807, 809-10 (1985).

B. Appellant confuses his criminal rights with civil rights.

Mr. Valdez claims that not only the 14th Amendment but Article 1, Sections 3, 21 (juries) and 22 (criminal prosecutions) guarantee his "right to be present during all critical stages of a civil trial". (Brief of Appellant, p. 5) Mr. Valdez confuses criminal actions with civil actions and the State's responsibilities with those of civil litigants.

Mr. Valdez raises constitutional or at least quasi constitutional issues regarding his "right" to be present in court during this civil case. Courts reject such arguments consistently distinguishing between the right of access to the court from the right to be present in the courtroom. This is often seen in the context of prisoners' claims under 42 USC, sec. 1983, where courts have held that "[a] prisoner's right of access to the courts does not necessarily guarantee him the right to be present at the time of trial of his

civil suit.” *Dorsey v. Edge*, 819 F.2d 1066, 1067 (11th Cir. 1987). An inmate has no constitutional right to attend proceedings relating to a civil lawsuit. *Fruit v. Norris*, 905 F.2d 1147 (8th Cir. 1990); *American Inmate Paralegal Assoc. v. Cline*, 859 F.2d 59, 62 (8th Cir.) *cert. denied*, 488 U.S. 996 (1988) citing *Pollard v. White*, 738 F.2d 1124, 1125 (11th Cir. 1984) *cert. denied*, 469 U.S. 1111 (1985). Indeed, Mr. Valdez was never denied the right to appear by any lower court. Mr. Valdez or his lawyer were free to seek orders regarding transportation, housing or, alternatively, electronic presence in the courtroom.

In termination of parental rights proceedings with heightened 14th Amendment due process safeguards, wherein a parent can be deprived of parental rights, due process protections include notice, and opportunity to defend, and even right to assistance of counsel. As explained in *In Interest of Darron*, 32 Wash.App. 803, 80 (1982), the right to appear personally and defend is not guaranteed by due process so long as the prisoner was afforded an opportunity to defend through counsel and by a deposition or similar evidentiary techniques.

To further distinguish between civil and criminal cases, the Washington Supreme Court explained that there is no constitutional right to appeal at public expense in civil cases in which only property or financial interests are threatened. *In re Grove*, 127 Wn.2d 221, 237-38 (1995). This

would include public funds for civil appeals and attorneys. Where a convicted murderer died in jail, his estate was not entitled to counsel/appeal at public expense; the estate was not at risk for “loss of liberty”. *St. v. Devlin*, 164 Wash.App. 516, 526 (2011).

In re Marriage of King, 162 Wn.2d 378, 387 (2007) the state Supreme Court distinguished between circumstances where the State of Washington could marshal all its resources against individuals, as in termination proceedings, and mere disputes between individuals such as in dissolution custody disputes. “In general, the provisions of the State Constitution govern the relationship between the people and their government and do not control the rights of the people to one another”, citing *Southcenter Joint Venture v. Nat’l Democratic Party*, 113 Wn.2d 413, 422 (1989).

The record is silent as to attempts by Mr. Valdez’s attorney to procure Mr. Valdez’s attendance at trial. The record is silent as to what steps, if any, Mr. Valdez took, once his attorney withdrew, to arrange for telephonic or other electronic access to the Wahkiakum County courtroom, nor what efforts, if any, he made to seek transportation from prison. It could be inferred that once Mr. Valdez relied on inaccurate advice from fellow inmates, he sat back, did nothing, and gambled on the Court’s sympathy that would somehow translate into a denial of the Cantrells’ day in court and a

continuance until Mr. Valdez's criminal appeal was decided or he served his sentence and could attend trial. If such were Mr. Valdez's thoughts, they were unreasonable and misplaced.

The Cantrells can find no authority declaring a duty obligating Plaintiffs to procure the presence of a civil defendant in court for a damages trial.

VI. ATTORNEY FEES, RAP 18

Pursuant to RAP 18.1(b) and RCW 4.84.080, the Cantrells respectfully request their attorney fees and costs in this matter should they prevail. Mr. Valdez's appeal is frivolous. His brief is littered with citations to criminal cases which he insists are applicable to civil cases. He provides no authority for the trial court's supposed *duty* to spontaneously have him transported and housed, presumably at taxpayers' expense. He provides no explanation as to why neither he nor his attorney brought motions, well in advance of the trial dates, so the Court could make considered rulings. Now the elderly Cantrells have necessarily incurred additional legal fees defending against Mr. Valdez's pro se appeal.

VII. CONCLUSION

Appellant has miscited criminal cases for the proposition that they apply to civil cases thereby invoking constitutional protections inapplicable to these circumstances. He fails to address why he is in prison and therefore

unavailable at the civil successor to his criminal trial and he fails to address why he made no attempt to attend at trial. Mr. Valdez accepts no responsibility for his predicament and continues to cost the elderly Cantrells fees and expenses with no apparent thought to the potential consequences to himself.

DATED and respectfully submitted this 11th day of April, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be filed with Division II of the court of Appeals of the State of Washington, and arranged for service of true and correct copies of the foregoing Brief of Respondents upon the following:

By U.S. Mail

Petitioner

Samuel Valdez
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1830 Eagle Crest Way
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DATED at Longview, Washington this 11th day of April, 2018.

s/Sylvia Archibald _____

Sylvia Archibald
Legal Assistant

CRANDALL O'NEILL IMBODEN & STYVE PS

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