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Court of Appeals
Division II
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Court of Appeals No. 52485-6-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

HEATHER J.E.L. BENEDICT,
Appellant,

v.

JAMES A. MICKELSON.
Respondent.

RESPONDENT'S BRIEF

By:

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III. ASSIGNMENT OF ERRORS

Respondent James Mickelson does not allege any trial court errors.

IV. ISSUE PERTAINING TO ASSIGNMENT OF ERRORS ALLEGED BY APPELLANT

Did the trial court have sufficient personal jurisdiction over Appellant Heather Benedict, nee Mickelson, to issue CR 11 sanctions and a judgment summary against Benedict?

V. STATEMENT OF THE CASE

Underlying Case - In the underlying Pierce County Superior Court case, James A. Mickelson, (“James”), and Gayle McArthur, (“Gayle”), were the only named parties. CP 1-17, 23-24, 25, and 271.

The case was filed by James on May 17, 2017 to collect on a promissory note. CP 1-17. Appellant Heather J.E.L. Benedict, fka Heather Mickelson, (“Heather”), was not served with summons by James or Gayle in the underlying lawsuit.

On September 18, 2018, James and Gayle entered a notice of settlement concerning the claims between them. CP 271. Therefore, no appeal has been filed by either of them, just Heather.

Trial Court Pleadings - On September 15, 2017, approximately four months after James filed his lawsuit against Gayle, Heather filed a “Notice of Pro-Se Appearance as an Interested Party” in the lawsuit. CP 18-19.

Heather then filed the same document, again, on September 18, 2017. CP 20-22.

On February 20, 2018, Heather filed a declaration in the lawsuit even though neither James nor Gayle had filed any motions or implead Heather. CP 26-46.

The February 20, 2018 declaration of Heather contained an assertion by Heather that she had an interest in the lawsuit “because the property at issue in the dispute has a great likelihood to be the separate property of my late mother [Leeanna Mickelson] whose estate is an open probate and ... [therefore, I] am entitled to [a] 12.5% interest in the estate’s separate property,” CP 27.

That declaration contained other assertions by Heather, including that she was named executor of the estate of Leanna Mickelson, (deceased wife of James), on May 17, 2017 when James’s lawsuit against Gayle was filed and that, on November 14, 2016, King County Superior Court entered an Order of Adjudication of Intestacy and Heirship and found that Leeanna Mickelson’s property was “subject to probate ... and the persons entitled including (sic) myself” and that the Order of Adjudication of Intestacy and Heirship had been recorded with the Pierce County Auditor’s office. CP 26-27.

The King County Order of Adjudication of Intestacy that Heather

attached to her February 20, 2018 declaration was vacated approximately eighteen months before Heather filed her February 20, 2018 declaration. CP 121-22.¹ The vacation was then reconsidered and affirmed on July 11, 2016, CP 92-93, and again on January 3, 2017. CP 89-90. Terms against Heather in that King County case in the amount of \$7,630.00 were also affirmed, CP 89-90 and 92-93 and a judgment summary for the terms was entered on May 12, 2017. CP 128-29.

The letters of administration that Heather attached to her February 20, 2018 declaration from a different King County case were revoked on May 31, 2017, approximately eight months before she filed her February 20, 2018 declaration. CP 128-29.²

The February 20, 2018 declaration was also filed despite the fact that Division II, on October 24, 2017, ruled in a different appeal that:

... [Heather's] petition should be dismissed because the community property agreement controlled the disposition of Leeanna's estate. There is no indication that James's claim lacked factual or legal basis ... In fact, the superior court agreed with James's argument that the community property agreement controlled when [it] granted James's motion to dismiss [Heather's] petition on June 17, 2016 ... We affirm the superior court's order of dismissal. CP 87, (Division II Case No. 49056-1).

¹ King County Superior Court Case No. 16-4-00861-8

² King County Superior Court Case No. 17-4-02196-0

On February 21, 2018, a day after Heather filed her declaration, she filed a new pleading entitled “Necessary Joinder of Persons Needed for Just Adjudication.” CP 47-51.

On June 25, 2018, Heather filed a withdrawal of her agreement to join in James’s lawsuit, CP 52-53, but the trial court record does not contain any agreement for Heather to join the lawsuit before June 25, 2018.

On June 27, 2018, Heather filed the same document. CP 54-55.

On June 29, 2019, Heather filed a Notice of Intent to Withdraw. CP 56-57.

On July 30, 2018, James filed motions to drop Heather from the underlying lawsuit, assess CR 11 terms against her for the false assertions in her February 20, 2018 declaration, and prevent her from filing future pleadings in the lawsuit. CP 66-129.

James’ July 30, 2018 motions argued for the above-mentioned relief based on the fact that Heather:

1. was never a named party in the underlying lawsuit, CP 66, 70-71,
2. never filed or served a motion for leave to intervene in the above-captioned case prior to filing her pleadings, *Id.*
3. never had an interest in any property at stake in the litigation, CP 71,
4. knew that she could not have any interest in the property at stake

because three superior courts had already rejected her efforts to establish an intestate estate and Division II had previously ruled that her mother's separate property passed to James, via a community property agreement, CP 68-69 and 71,

5. attached allegedly supportive court orders to her February 20, 2018 declaration of her intestate estate claims without disclosing that the allegedly supportive orders were all subsequently vacated or revoked with terms assessed against Heather. CP 67, 89-90, 92-93, 121-22, and 128-29, and
6. served improper subpoenas to Kitsap Bank. CP 68.

On August 9, 2018, Heather filed a non-confirmation of joinder which stated that it was being filed because Heather was going to challenge the validity of the community property agreement. CP 141.

The August 9, 2018 non-confirmation of joinder filed by Heather was not executed by anyone except Heather. CP 141.

On August 10, 2018, a declaration of non-service was filed by Heather concerning the motions previously filed by James. CP 144-56.

Orders and Judgments Against Heather - On August 10, 2018, orders dropping Heather from the lawsuit, prohibiting her from filing future pleadings, and imposing \$5,053.00 in CR 11 sanctions against her were entered because Heather's February 20, 2018 declaration contained intentionally false statements, she had repeatedly used the court's digital calendaring system to strike motions noted by James's counsel, she was never named as a party, and she was never granted permission to intervene

as a party. CP 159-63. A judgment summary based on the August 10, 2018 orders was entered on September 7, 2018. CP 248-49.

The trial court found that Heather's actions in the lawsuit were part of a pattern of frivolous litigation activities by Heather despite previous punitive orders designed to deter such activity in King County Superior Court Case No. 16-4-06644-2 SEA,³ King County Superior Court Case No. 17-4-02196-0 SEA,⁴ Pierce County Superior Court Case No. 16-4-00861-8, and Division II Case No. 49056-1.⁵ CP 160-62, esp CP 160.⁶ The trial court also found that the above-mentioned Pierce County and Division II cases had previously determined that Heather had no interest in the property of her late mother. CP 160-161. Finally, the trial court found that Heather had no interest in any matter at issue in the lawsuit. CP 159.

The trial court's order stated it was granting James' motion for an

³ CP 92-93.

⁴ CP 128-29,

⁵ CP 76-87, esp 87, 89-90, and 121-22.

⁶ The trial court found that a previous King County Superior Court Case, (16-4-06644-2), had, more than a year prior to the filing of James's lawsuit against Gayle, vacated the order of intestacy for Leeanna Mickelson that Heather attached to her February 20, 2018 declaration and sanctions had been entered against Heather in that matter in the amount of \$7,630.00. CP 161. Finally, the trial court found that another previous King County Superior Court Case, (17-4-02196-0), revoked the letters of administration Heather cited to in her February 20, 2018 declaration. CP 161-62. This revocation of letters of administration occurred about two weeks after James filed his lawsuit against Gayle and about eight months before Heather filed her declaration. *Id.*

order prohibiting Heather from filing future pleadings and for an award of costs and fees as CR 11 sanctions against Heather, in part, because it found Heather's actions in filing her pleadings were knowing attempts to, without a factual or legal basis, increase litigation costs for James and its finding was, in part, based on Heather's history of filing, and being sanctioned for filing, baseless pleadings in other lawsuits where James is, or was, a named party, including the lawsuits named in Heather's February 20, 2018 declaration. CP 160-62. The August 10, 2018 sanctions order was also based, in part, on Heather's issuance of subpoenas to Kitsap Bank under cover of the lawsuit. CP 160.

The trial court based its sanctions against Heather on its findings that Heather failed to perform an objectively reasonable pre-filing inquiry into the factual and legal basis of her pleadings and on the actions she took to strike, on her own, the hearing dates noted by James for his motions. CP 162. The trial court stated that it found the August 10, 2018 orders necessary in order to enforce the court rules and deter future abuse by Heather. CP 163.

Pleadings Filed After August 10, 2018 - On September 7, 2018, the trial court recorded a minute entry concerning a judgment summary based on the August 10, 2018 sanctions order. CP 248-49.

Clerk's Papers Missing from Heather's Appeal – Heather filed Notices of Appeal for the August 10, 2018 and September 7, 2018 orders/judgments, but only her notice of appeal regarding the August 10, 2018 order is part of her Clerk's Papers. CP 219-25.

VI. ARGUMENT

Appellate courts review the imposition of sanctions for abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) and *Madden v. Foley*, 83 Wn.App. 385, 389, 922 P.2d 1364 (1996). In deciding whether the trial court abused its discretion, appellate courts must keep in mind that the purpose of the rules is to deter baseless filings and curb abuses of the judicial system. *Biggs*, 124 Wn.2d at 197. The abuse of discretion standard recognizes that deference is owed to the trial judge. *Washington State Physicians Ins. Exch. & Ass'n., v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

The sanctions assessed against Appellant Heather Benedict, (“Heather”), on August 10, 2018 were appropriate, in part, because CR 11 sanctions can be imposed when the signer of any pleading fails to perform an objectively reasonable pre-filing inquiry into the factual and legal basis for the claims therein. *Wilson v Henkle*, 45 WnApp 162, 174-75 (1986), (superseded on other grounds by statute), *West v Washington Assoc of County Officials*, 162 WnApp 120, 135-36, 252 P3d 406 (2011), *McNeil v.*

Powers 123 Wn.App. 577, 590-91, 97 P.3d 760, as amended (2004), and *In re. Cooke*, 93 Wn.App 526, 529, 969 P2d 127 (1999).⁷ In addition: "... The sanction must not be so minimal ... that it undermines the purpose of [the rules]" and the sanction should insure that the wrongdoer does not profit from the wrong." *Fisons Corp.*, 122 Wn2d at 356.⁸

In Heather's case, she violated the most basic tenet of CR 11, i.e., that a pleading submitted under signature be, to the best of the signer's knowledge, information, and belief after reasonable inquiry, well-grounded in fact and not interposed for purposes of harassment, delay, or increasing costs. She violated CR 11 by knowingly filing a false declaration on February 20, 2018 and by unilaterally striking Respondent James Mickelson's, ("James's"), motion hearings. She then compounded the CR 11 violation with a straightforward violation of CR 24(c).

Under CR 24(c), a person desiring to intervene in a matter is required to first serve a motion for leave to intervene. A superficial reading of CR 11 and CR 24(c) would have told Heather that she needed the court's permission to begin filing documents in the lawsuit and these rules, or

⁷ See also *Fisons Corp.*, *infra*, at 345 and 354-55.

⁸ In *Fisons Corp.*, the Washington Supreme Court ruled that a defendant drug company could not justify its failure to produce requested information about a drug when the claimed justification was that the discovery request was not specific enough because the requested information was in another product's file. *Fisons Corp.* at 353-54, and that "[l]ike CR 11. CR 26(g) makes the imposition of sanctions mandatory if a violation of the rule is found." *Id.* at 355.

common sense, should have revealed to Heather that she had no place in the lawsuit, let alone a right to strike James's motion hearings from the trial court's digital calendar. Therefore, the trial court's orders and judgments were properly entered because Heather attempted to mislead the court and filed pleadings in a case where she was never named as a party and did not have permission to intervene.

Heather knowingly misled the trial court because her claims that she had an interest in the property of her mother, decedent Leanna Mickelson, were previously decided by Division II in the negative. Therefore, she would have known, beyond a doubt, that she did not have any interest in the promissory note at issue in the lawsuit between Gayle and James.

The sanctions and judgments issued against Heather were, therefore, proper and appropriate and within the jurisdiction of the trial court because trial courts are allowed to sanction non-parties⁹ and no causes of action can be excluded from the jurisdiction of superior courts unless jurisdiction is, by law, vested "exclusively" in some other court. *Krieschel v. Bd. of Snohomish County Comm'rs*, 12 Wash. 428, 439, 41 P. 186 (1895), citing Article IV, section 6 of the Washington Constitution,¹⁰ ("it is manifest that

⁹ *Splash Design, Inc. v Lee*, 104 WnApp 38, 44, 14 P3d 879 (Div. 1, 2000)

¹⁰ Article IV, section 6 states that: "[t]he superior court shall ... have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court."

it was not the intention of the framers of [Washington Constitution] § 6 to exclude any sort or manner of causes from the jurisdiction of the superior court.”). *Krieschel* at 439.

In particular, the Court of Appeals has rejected the assertion that a person cannot be held liable on a judgment for CR 11 sanctions where he or she was not an actual named party because following such a process would “achieve no benefit except additional expense and delay in concluding [the] matter” and “exalt form over substance.” *Splash Design Inc. v Lee*, 104 WnApp 38, 44, fn 11, 14 P3d 879 (Div. 1, 2000). The Court of Appeals, therefore, rejected the argument that the party to whom sanctions were awarded was “required to file another summons and complaint in order to enforce them.” *Splash Design Inc. v Lee*, 104 WnApp 38, 44, fn 11, 14 P3d 879 (Div. 1, 2000).

In making its ruling, the *Splash Design* court dismissed the sanctioned person’s argument that he was exempt from supplemental proceedings because the trial court did not have personal jurisdiction over a non-party.¹¹ Instead, the *Splash Design* court affirmed the trial court’s decision to enter judgment against him and ordered the sanctioned person’s participation in supplemental proceedings. *Id.* at 43-44. The rationale for

¹¹ *Splash Design* at 43-44.

such a ruling is that, under RAP 3.1, the sanctioned party qualifies as an aggrieved party for appeal purposes and, therefore, is capable of seeking appellate review of the sanctions decision. *Splash Design* at 44. As such, the imposition of sanctions upon a nonparty works no injustice and the trial court is allowed to memorialize sanctions awards against a nonparty, notwithstanding that imposition of sanctions is not a judgment on the merits of the underlying action. *Id.*

VII. CONCLUSION

The trial court had personal jurisdiction over Appellant Heather Benedict, nee Mickelson, (“Heather”), for purposes of assessing sanctions against her because *Splash Design Inc. v Lee* clearly holds nonparties to be subject to sanctions and Heather clearly volunteered to participate in the lawsuit when she entered a notice of appearance and then, subsequently and with malice aforethought, began filing knowingly misleading pleadings and unilaterally striking the motion hearings of Respondent James Mickelson. For the foregoing reasons, the Court of Appeals must affirm the trial court order finding Heather liable for \$5,053 in CR 11 sanctions on August 10, 2018 and the trial court’s entry of the September 7, 2018 judgment summary in the amount of \$5,053.

Respectfully submitted this 25th day of February 2019.

/s/ F. Hunter MacDonald
F. Hunter MacDonald, WSBA #22857
of Attorneys for Respondent James A.
Mickelson

VIII. CERTIFICATE OF SERVICE

The undersigned does hereby declare that on February 25, 2019, the undersigned delivered a copy of RESPONDENT’S BRIEF filed in the above-entitled case to the following persons:

VIA WASHINGTON APPELLATE COURTS FILING PORTAL

Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427

DATED this ___ day of _____, 2019.

By: /s/ Sharon Rheinschild
Printed Name: Sharon Rheinschild

VIII. CERTIFICATE OF SERVICE

The undersigned does hereby declare that on February 25, 2019,
the undersigned delivered a copy of RESPONDENT'S BRIEF filed in the
above-entitled case to the following persons:

VIA WASHINGTON APPELLATE COURTS FILING PORTAL

Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427

DATED this 25th day of February, 2019.

By: /s/ Sharon Rheinschild
Printed Name: Sharon Rheinschild

LUCE & ASSOCIATES, PS

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WASHINGTON COURT OF APPEALS
DIVISION II

HEATHER J.E.L. BENEDICT,

Appellant

vs

JAMES A. MICKELSON,

Respondent.

No. 52485-6-II

DECLARATION OF SERVICE

I hereby certify and declare, under penalty of perjury, that on this 25th day of February 2019, I served HEATHER J.E.L. BENEDICT with notice by placing a copy of the following documents:

1. Motion for Stay of Appeal Based on Appellant's Bankruptcy filing
2. Respondent's Brief

with postage pre-paid in the United States mail, which was addressed to the following:

Heather J.E.L. Benedict
PMB 7865
P.O. Box 257
Olympia, WA 98507

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DATED this 25th day of FEBRUARY, 2019.

/s/ Sharon Rheinschild
Sharon Rheinschild
Legal Secretary to Attorney F. Hunter
MacDonald

LUCE & ASSOCIATES, PS

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