FILED

JAN - 8 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

Case # 316190

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Catherine Allen,
Respondent,

v.

Jeffrey Allen,
Appellant.

BRIEF OF APPELLANT

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I. STATUTES & COURT RULES

RCW 2.28.030 (4)

RCW 26.09.175 (2)(A)

RCW 3.34.110

CODE OF JUDICIAL CONDUCT CANNON 2

RULE 2.6

RULE 2.11(A), 6(A)

CR RULE 60 (B)(1)

RCW 26.09.140

II. INTRODUCTION

This case deals with matters involving ethics violations that occurred by Judge Pro Tem Harry Ries, in the Superior Court of Grant County, which created a situation where every legal proceeding thereafter resulted in conflict of interest and multiple court rule violations in an effort to seek a change of venue, as the parties directly involved, no longer reside in Grant County but have lived for over 2 years in Snohomish and Pierce County's.

Secondly, as the case for Modification of Child Support moved forward, the Motion for Venue Change was not allowed to be heard and subsequently Commissioner Melissa Chlarson ultimately gag ordered with threat of Jail towards Respondent, Jeffery Allen, acting as Pro Se, from further communicating towards his defense, cross examine, ask questions and unable to provide any additional fact or limited paperwork in the hearing. This barred Jeff from his constitutional rights for a fair hearing, access to counsel and undue financial and travel hardship.

Jeffery Allen, also contends that the State DSHS Prosecuting Attorney, Jerry Hamley and Catherine Allen, did not provide the proper documentation or discovery for argument for Change of Venue nor did they provide the necessary documents pertaining to the Modification of Child Support, stemming it was mailed but was never received by Jeffery Allen. In matters before Superior Court Commissioner it was address that Jeffery did not receive any documentation prior to the hearing and requested proof of service. Additional attempts by Jeffery had multiple calls to the prosecuting attorney's office but failed to provide a copy in time for review or before the hearing. Requested mailing proof was dismissed in court and proceedings continued all the while unable to defend or speak by order of the court.

Mr. Allen is asking for a reversal of the courts decision and asks for a new hearing to be heard in Snohomish County where legal representation can be acquired, having no undue hardship and costs and the ability to provide witnesses without long distance restrictions.

III. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The trial court erred in assigning Judge Pro Tem Harry Ries to the motion for Modification of Support and Motion for Change of Venue. Mr. Ries was Jeffrey Allen's former lawyer to his defense in a previous suit against his ex-wife while going through his divorce.

Issues Pertaining to Assignment of Error No 1

Upon receiving notice to appear in Grant County Superior Court, a last minute change to substitute the presiding judge for Judge Pro Tem Harry Ries due to illness. The Judge Pro Tem in this case was a previous lawyer for Jeffrey Allen. When the hearing concluded and subsequent paperwork filed it was then when the Mr. Allen noticed the conflict and informed the court of an ethics violation had occurred. Mr. Hamley was also notified but failed to respond or as a court officer take measures to clear up the matter. Additional efforts were made to notify the Superior Court Clerk and were summarily dismissed because they stated there is no procedure to follow through.

Assignment of Error No. 2

A review was ordered by Judge Pro Tem Harry Ries towards Change of Venue, which was denied based on a single letter response by a third party, (DSHS) Prosecuting Attorney, Jerry Hamley. No statute or declaration was ever provided by either Jerry Hamley or Catherine Allen while it was in review. Previous court declaration, noted by the judge, indicated Catherine wanted a change of venue in prior filings.

Issues Pertaining to Assignment of Error No 2

Because the review was still ongoing for several weeks with Judge Pro tem Harry Ries, and subsequently ordered that the change of venue would be denied, Jeffery Allen asked the court again for a new hearing for motion and review based on the conflict of interests. The request for Change of Venue was then rescheduled by Superior Court Commissioner, Melissa Chlarson (outside of court venue). No review or communication was scheduled in open court to resolve

the matter and a date was set without prior approval of litigants, which then set in motion additional conflicts towards a hearing date for Change of Venue. It was ordered through the commissioner's office and relayed through a clerk that the Motion for Change of Venue was to be rescheduled a day prior for Modification of Support hearing in Grant County Superior Court. This created a conflict with Jeffery's scheduled court ordered time to pick up his children, whom reside in Snohomish County, thus creating undue hardship and travel costs. Jeffery had no other choice and was forced to cancel the motion and date of the hearing for Change of Venue so as to not conflict with standing court order for scheduled pick of his children and or be in contempt of court. Motion for Modification went forward the next day.

Assignment of Error No. 3

In Jeff's motion for Change of Venue a declaration and motion was provided prior to the hearing noting that Catherine Allen and DSHS Prosecuting Attorney, Jerry Hamley, did not provide the appropriate response in accordance to rules and regulations on submittal of paperwork. They failed to provide Jeffery with a proper summons for review of Catherine's income, assets, and other information showing her additional income from other sources. Catherine is a licensed financial representative who ran her own business for over 10 years yet was not provided to review as its is requested that all income resources should be provided. In open court Jeffery requested for proof of service as the prosecutor informed the court that it was only mailed to Jeffrey with no certified mailing. Soon after this statement Jeffery was ordered to refrain from responding or defending in oral argument. Jeffery, prior to the hearing, did make numerous calls to the prosecuting attorney's office and directly spoke with an office assistant for copies of Catherine's financial statement and was provided an excuse that it would not be able to received prior to the hearing in a timely manner.

Issues Pertaining to Assignment of Error No 3

Upon attending the hearing for Modification of Support, Jeffery immediately asked the commissioner to remove herself from the case due to ongoing conflicts of interests and her handling of the scheduling of the Motion for Change of Venue that was initially implemented from her office. Immediately upon that statement Jeffery was then gag ordered and threatened with jail and not able to defend/refute statements in his defense. Additionally, Jeffery's motion for Change of Venue was stated not be to argued at that time or declarations entered previously

as part of the original motion that was attached to the Modification of Support.

Assignment of Error No. 4

In request for Motion for Change of Venue, respondent's declaration indicated that the case would cause undue hardship, expense and conflict with witnesses traveling. In addition Jeffery was not able to secure a legal representative from a great distance to be able to meet and review his case, again causing additional hardship for expenses and travel to and from the attorneys office.

Note: (To get an idea of travel involved, Jeff resides in Tacoma, WA and the court is located in Ephrata, WA, a 3 hour drive one way over the pass in winter conditions.)

Issues Pertaining to Assignment of Error No 4

Respondent was ultimately put into undue hardship and stress because of long distance travel expenses and related pass conditions. Respondent was unable to receive legal advice and secure an attorney from long distance and would have equated more undue costs and travel to meet and review his case if one was to be found. Witnesses could not make the long distance travel and/or were restricted due to health concerns. The distance also made it difficult to send and receive court documents in a timely manner and place additional hardship due to court restrictions in procedures in filing and receipt of motions, discovery's and declarations.

IV. STATEMENT OF THE CASE

This case arises out of a dispute between appellant, Jeffery Allen and respondent, Catherine Allen and Grant County Superior Court and Prosecutor, Jerry Hamley. Jeffrey Allen contends that the motions and proceedings in Grant County Superior Court included ethics violations by a Superior court Judge Pro Tem Harry Ries, improper procedures involving providing documentation and paperwork for Modification of Child Support to respondent, enduring undue hardship on travel costs, restrictions in receiving proper legal representation from long distance

or being able to provide witnesses to a venue that would have incurred additional stress, costs and restrictions.

In addition, Jeffery, having no access to legal representation in Eastern WA was forced to present himself as a pro se and subsequently gag ordered preventing him from making any comments, remarks, defense or providing paperwork in his defense during the Motion for Modification of Child Support. Mr. Allen indicated improper procedures and conflict of ethic violations involving the previous matter of Change of Venue and asked the court commissioner to step down due to that conflict in which she handled the previous scheduling and handling of the conflict of interest. Commissioner Melissa Chlarson was angered at the request and verbally in anger issued a gag order and threat of Jail. She also indicated the prior motion will not be heard and Jeffery was immediately gag ordered preventing his right to a fair hearing and right to speak in his defense.

From the very beginning Jeffery filed for Motion for Change of Venue, which was added to the same hearing date for the Motion for Modification of Child Support. The Motion for Change of Venue was first argued in which Jeffery provided the necessary discovery, declaration, and RCW codes and judicial rules in support for the change of venue. Jeffery contends that the Petitioner, Catherine Allen and their shared custody of their children reside in Everett, WA in Snohomish County for nearly two years. Jeffery requested that the hearing for the Modification be heard in Snohomish County where the children and petitioner reside and to allow Jeffery the ability to seek legal aid closer to where all parties involved are located. Arguing and defending a case on the other side of Washington Sate would have incurred undue hardship and stress, financial hardship, difficulty in getting legal representation and travel of witnesses. Catherine Allen was represented by DSHS Prosecuting Attorney, Jerry Hamley and thus had no undue hardship to contend with.

Upon the judge's findings, the Motion for Change of Venue was set for review and the modification for child support on hold till a decision was made. In the review, Judge Pro Tem Harry Ries, already in ethics violation had subsequently asked a third party, Prosecuting Attorney, Jerry Hamley on his opinion for a Change of Venue. Catherine Allen had already indicated for a change of venue in previous declaration noted by the Judge. At no time did

Catherine ever provide to the court, at the time of the hearing, with any written declaration against the motion for change of venue. The only response the court received was from the prosecuting attorney, Jerry Hamley, on his opinion for no change in venue. State prosecutor provided no legal declaration in defense of his decision or provide any RCW or legal notation in defense of the State's decision. Mr. Hamley simply wrote a letter to the Judge Pro Tem on his opinion against it. This motion was originally between the Petitioner, Catherine Allen and the Respondent, Jeffrey Allen for change of venue. Jeffery contends that because DCS covers the entire State of Washington, moving our casework to the county where both the CP and children reside would not prevent or cause undue hardship.

In response to the verdict, Mr. Allen asked for a new Motion for Change of Venue and notified the court again of the ethics violation that occurred and reiterated in the declaration that continued efforts for the Motion for Modification would have serious conflicts and undue hardship. In an effort to alleviate, the commissioner stated to both Catherine and Jeff that the current motion was in the wrong venue for review and returned to her office to set a date and time for a new hearing. A clerk came out in the hallway and set a new date for the Motion for Change of Venue without consulting or going through any legal procedure towards an agreement to set a date. It was simply set with no regard to the parties involved. Jeffery and Catherine have shared custody of two young boys and a parenting plan was entered in Grant County Superior Court in Nov. 2009. Because the order is set with dates and times for parenting time, the schedule the clerk came out with conflicted with Jeffery's date and time to pick up his children located in Snohomish County. The new date set would not have allowed for Jeffery to exercise and abide by the court order for parent-time to pick up of his children and still be present at the hearing for Change of Venue. This created a conflict and undue hardship and stress where it meant either be sentenced for contempt of court or attend the hearing. Subsequently Jeffery had to cancel the hearing date in order to not be in contempt but it opened another conflict in which the hearing for modification for child support was still moving forward the very next day. Jeffery was still without legal counsel, under extreme duress and financial burden, and unable to provide for witnesses as declared in previous hearing.

The court's actions led to changes in modification of support and additional restrictions and calculations without having to be able to defend due to restrictions noted above. Jeffery is asking

for a reversal of the courts decision and requests a new hearing in Snohomish County.

V. ARGUMENT

A. This appeal presents a series of questions of law regarding requirements and procedures under RCW 3. 34.110 and references to RCW 2.28.030 (4) in which a judicial officer did not remove himself from a case involving interested parties in which he was an officer of the court for the defense of Jeffery Allen. It is the responsibility of the court official to alert himself/herself of possible conflicts of interests and should liberally disclose on the record to litigants appearing before them of any extrajudicial role even if there is no apparent reason to withdraw as stated in the CJC application.

1. Findings of fact based on RCW 4.12.030 also clears way for grounds authorizing Change of Venue was appropriate as the State (DSHS) failed to provide any discovery or legal requirements to base its decision before the court.
2. Court was notified of the conflict and chose to not respond or take action, which further presented an impartial venue. The Superior Court Commissioner, Melissa Chlarson was aware based on declarations and statements in the hearing and instead chose to gag order Jeffery Allen to make way for the Modification to begin without counsel.
3. Upon discovery and notification to the clerks office regarding the problem. Jeffery was told there is no provision to handle the situation and the Superior Court Office Clerk chose to ignore and provide no further resolution. Rules 2.6, Rule 2.11(a), 6(a) and CR Rule 60 B(1) are also pertinent in finding of fact.

B. A request for Change of Venue was first submitted and heard prior to the Modification of Support Hearing and subsequently denied without proper procedure providing any basis of fact or evidence to uphold the decision. If the court had held an adversarial hearing and made specific findings of fact based on admissible evidence, the court would review those findings under the substantial evidence test. However, no admissible evidence was introduced in a hearing, and no

proper findings were made. Therefore, this review of the errors in the trial court is *de novo*.

1. RCW 26.09.280 was provided in declaration response with no equal valid response from the Prosecutor or Catherine Allen.
2. It should be noted that Catherine Allen provided the court with a request for Change of Venue, noted in Allen vs Allen 08-3-00472-4 and reference again in open court under Judge Pro Tem Harry Ries.

VI. CONCLUSION/REQUEST FOR FEES

(1) Error: Conflicts of interests with Judges in this case and no supporting position by the state prosecutor Jerry Hamley and Ms. Allen who failed to site any case law or statute in support of their position.

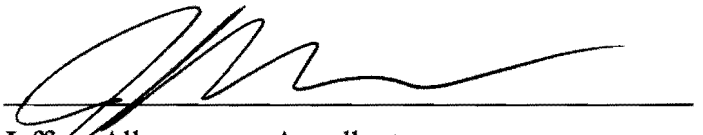
(2) Error: Courts gag order to prevent Jeffery's right for a fair hearing without undue hardship and the availability to provide witnesses and defense.

(3) Error: State DCS and Ms. Allen in not providing proper summons and court motions, including paperwork and calculations without having proof such as certificate of mailing or personal service as stated in RCW statutes.

(4) Error: Consistent communication and judicial mismanagement helped protect one its own highly respected legal representatives in this small community. Grant County Superior Court knew there was a conflict of interest and erred in judicial procedure allowing additional errors to continue without resolution.

Jeffery respectively moves for reversal of decision and awarded costs and fees associated with this appeal per RCW 26.09.140.

Respectfully submitted this 6th day of January, 2014



Jeffery Allen, pro se Appellant

Case # 31690

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Jeff Allen vs Catherine Allen

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January 2014, I caused to be served by faxed true and correct copies of the foregoing Brief of Appellant on the court.

Clerk of the Court
Court of Appeals, Division III
500 N Cedar St, Spokane, WA 99201

Copies of Appellant's Brief was placed in U.S Mail for delivery to Catherine Allen below on January 6. 2014:

Catherine Allen
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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of January, 2014

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