

FILED
JUNE 29, 2015
Court of Appeals
Division III
State of Washington

NO. 323366

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

ANTHONY GRABICKI, ET REL,

Respondent,

V.

LINDA BAYS, ET AL,

Appellant.

APPELLANT'S BRIEF

Linda Bays
1698 Nickels Road
Kettle Falls, WA 99141

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

32366
NO 32336-6-III

IN DEPARTMENT III OF THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

LINDA BAYS, APPELLANT

VS

ANTHONY GRABICKI, RESPONDENT

APPEAL BRIEF OF LINDA BAYS, APPELLANT

I.

IDENTITY OF APPELLANT

The Appellant is Linda Bays, who objected pre-hearing to any and all judgments and/or decisions to be made in the Stevens County Court (one of the Tri-county -- i.e. Stevens/Ferry/Pend Orielle -- courts) by Hon David Frazier, Superior Court Judge from Whitman County. He had been assigned by the Court Administrator of Spokane County to hear a case in that Stevens county state court against her brought by Anthony Grabicki, successor to Jose Esposito as Bankruptcy Trustee. The Appellant's main objection is to the jurisdiction of Judge Frazier to make any determinations whatever in Stevens County unless properly acting as a judge pro tempore. He would not even ask for written consent of the Stevens County judges to act in that manner and claimed to be a "visiting" rather than a "pro-tempore" judge in their county. "Visiting Judges" are still judges "Pro Tempore" when they are NOT elected by the citizens of that county.

II.

ISSUE OF THE CASE

If a “Visiting Judge” who is never going to have to face the voters of a county anything more than a judge “Pro-Tempore” in that county if proper Constitutional procedure is not followed, and is the manner of his designation as a “Visiting Judge” for that other county merely an “administrative act” that can be delegated when the Constitution makes such designation the judicial duty of the Chief Justice?

III.

STATEMENT OF CASE

Unlike judges appointed for Federal Court, judges in the State of Washington are to be elected and responsible to those they serve. The Washington State Constitution is clear about that in its provisions for the election of judges of the various counties by the citizens in those very same counties in which they preside. The reasoning was that judges who would need re-election by persons for whom they made decisions would be careful how those decisions were made.

But certain counties in the far northwest corner of the state – Ferry, Stevens and Pend Orielle – seemed at the time of adoption of the Constitution to have too few people to justify the cost of a judge for each county. Instead, the Constitution set up the way two judges were to serve the three counties. This insufficiency of judges, over time, would require the assistance of additional judges to handle cases in the Tri-County area when the two were unable to do so. The Constitution set up a manner for the judges of a

county (or the governor) to obtain “pro-tempore” judges for service on a time to time basis.

In this case Judge Frazier actually took over from Hon. John F. Shrohmaier, Superior Court Judge of Lincoln County, who also had been originally assigned wrongly and contrary to Constitution and Statute. Both, therefore, lacked jurisdiction to proceed on a Tri-County Case. Because Judge Shrohmaier stepped down, this appeal is only as to all decisions of Judge Frazier who continued to act without request or consent of the local judges or without taking the required oath of judge pro tempore and without answering Appellant’s challenge to jurisdiction or giving any authority where he had the right to act in Stevens County on the basis of a so called “order of pre-assignment” made by the Spokane Court Administrator. In the face of specific objection by Appellant as to his manner of appointment without proper Constitutional or statutory procedure Judge Frazier was completely lacking in legal jurisdiction which would make any rulings by him **VOID** (not merely voidable).

The court administrator can carry out administrative functions but not duties given to particular judges by the Constitutional. Court administrators cannot constitutionally carry out specific designated juridical functions. The local rules of Pend Oreille County, Stevens County and the State Court Rules, the Constitution of the State of Washington and the Statutes all hold that assignment of a visiting judge is a judicial "duty."

In prior cases involving the Appellant, this same Court of Appeals ducked the specific issue of lack of jurisdiction as to third parties who actually owned the real estate, and this court also ducked the fact that the court administrator did not have any authority

to make a Pre-assignment of the specific judge without request from the judges of the Tri-county court. Where does the court administrator for Spokane County claim to get any juridical authority to assign “visiting” judges on some rotation basis for service in the Tri-county area? Improper delegation of such “visiting” judges that does not follow the law does not give such “visiting” judges jurisdiction in another county where they were never elected and never will have to be re-elected.

IV.

DISCUSSION OF THE LAW

The Washington Constitution provides that the Presiding Judge can assign a “visiting judge” to help in another county upon the request of the judges in that county. **Article IV, Sections 5 and 7 of the Constitution of the State of Washington**. State Court Administrator may perhaps make recommendations to the Chief Justice who the Constitution says is entitled to assign a visiting judge, but not actually make those assignments. That assignment is not a merely administrative act but an official judicial duty assigned to the judge by the Constitution.

In the Tri-County area “visiting” judges have neither been assigned by the Chief Justice nor requested by the governor or the local judges. They have routinely been sent there on a rotation schedule from Spokane superior court, under "local rules" for Spokane County courts only. These judges claim they are not judges pro-tempore, but rather "visiting judges". This is contrary to the Constitutional mandate since Section 7 states that judges elected in other counties are judge pro tempore when acting in another county. **AR 6(e)**. They certainly are not assigned pursuant to the **Constitution** or the pertinent statutes **RCW 2.08.140** and **RCW 2.08.150**. **Article IV, Sections 5 and 7 of**

the Constitution of the State of Washington Such a judge (whatever called – “visiting” or “pro-tempore”) should only be there after the jurisdictional and statutory requirements are met because they will never have to face the voters in the county elections for bad judgments.

In the November 2001 elections the people of the State of Washington ratified a constitutional amendment to these provisions, but it did not change much. It does make it clear that a “visiting” judge is a “pro tempore” judge when he is temporarily acting as judge in some other county where he was not elected.

Even after the constitutional amendment in 2001, the Washington State Courts have been ignoring the fact our state constitution calls a visiting judge a judge “pro tempore”. The following provisions were not abrogated:

“The judge of any superior court may hold a Superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved of by the court and sworn to try the case; or without the agreement of the parties if the judge pro-tempore is a sitting judge and is acting as a judge pro tempore pursuant to supreme court rule. The Supreme Court rule must require assignments of judge pro tempore based on the judges experience and must provide for the right, exercisable once during a case, to a change of judge pro tempore. Such right shall be in addition to any other right provided by law, However, if a previously elected judge of the superior court retires leaving appending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement”
Article IV, Section 7, Washington Constitution (emphasis added)

There is still the ordinary provision that would require the written consent or request of the local judges to a pro-tempore judge. Additionally, **RCW 2.08.180**, also consistent to the Constitution, requires special oath for a judge pro tempore, and the written request from the local judges assigning an elected Superior Court Judge to act as

a judge pro tempore in a specific case. State ex Rel Carpenter vs. Lewis County for the State of Washington, 131 Wash. 448, 23 Pac. 144 ()

The only previous requirement omitted by passage of the amended Article 7 of the Constitution in 2002 allowing a judge elected in another county coming to preside as a “visiting” judge (although still a judge “pro tempore”) is that he no longer had to get the signed consent of all the parties. However, each party still has the right, in addition to any other right, to ask once for a change to a different “visiting” judge.

In ¹⁸⁸³~~1903~~ the Washington Legislature passed a new law which specifically “to provide for the holding of sessions of the superior court in any county in this state by a judge of the superior court of any other county, or counties, therein, and declaring an emergency.” Wash Session Laws ¹⁸⁹³~~1903~~, Chapter XLIII

That provision is still valid today, but nowhere is provision for the Spokane Court Administrator, without authority under the Washington State Constitution or the Washington Revised Code of Washington (merely based on a local Spokane rule for Spokane Superior Court) to enter an order of Preassignment (whatever that might be) giving any judge the right to jurisdiction in any of the Tri-county courts.

The part of Wash Sess Laws ¹⁸⁹³~~1903~~, **Chapter XLIII**, that applies state in pertinent part:

“Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and during the period during which he is to hold such session (Section I)

and

“Whenever “a like request” shall be addressed by the judge or by a majority of judges (if there be more than one) of the superior court or

any county to the superior judge of any other county he is hereby empowered." (Section 2)

Those parts of Sections 1& 2, are presently, almost word for word for **RCW 2.08.140 & RCW 2.08.150**. The word "And" between the two sections has been inserted by the Appellant so the court must recognize the fact that **RCW 2.08.150** is a continuance of **RCW 2.08.140** because both are codification of the same Sessions Law Chapter. The appellant told Judge Frazier she would agree to his jurisdiction only if he took the special oath, and if he first got the required written request from the local judges. He said he wouldn't and he didn't.

The judges of Tri-County may request the assignment of a "visiting" judge, but that appointment is to be done by the Chief Justice at the suggestion of the State Court Administrator when needed. There is no authority in the Constitution of the State of Washington or in the Statutes for anyone in the State "or" County Court Administrators office's to be granting jurisdiction to a judge from one county to serve in another county without the written request and consent of the local judge or majority of judges.

CONCLUSION

A "visiting" judge does not get his authority to take over a Stevens County case from the Spokane Court Administrator, because Tri-County judges have no authority to assign their judicial duty to a Spokane County Court Administrator, and there would not be any authority to allow them to assign that duty to an elected Spokane County Judge. In this case Whitman County Judge Frazier was assigned to Stevens County by the Spokane Superior Court Administrator. The appellant objected to that. .

When "visiting" judges are not properly assigned according to the Constitution and the Statutes they have no jurisdiction and their orders are **VOID**, not merely

voidable. This ruling might apply only on cases in which there has been a timely objection made. The appellant has each time since her 2001 divorce case, **DAVID BAYS v. LINDA BAYS**, in Pend Orielle County made this objection as to lack of jurisdiction. Her objections have thus far been ignored. They are genuine and valid.

All the citizens of this state and of the United States are guaranteed due process of law and equal protection of the laws. We are a Country of laws, and those laws must be followed. "When any court violates the clean and unambiguous language of the Constitution, a fraud is perpetrated and no one is bound to obey it." **State v. Sutton**, 63 Minn. 147, 65 NW 262, 30 L.R.A. 630 Am. St. 459,

"Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon." **Boyd v. U.S.**, 116, U.S., 635

"Decency, security, and liberty alike demand that government officials all be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the law, the end justifies the means....would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face." Justice Brandeis in **Olmstead v. Untied States**, 277 U.S. 438, 485,

Dated this 24th day of June, 2014



JAY NUXOLL, WSBA 3506
Attorney for Appellant

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DECLARATION OF SERVICE

STEVENS COUNTY
WASHINGTON STATE

Linda Bays, being duly sworn upon oath, deposes and states as follows:
Today, June 25, 2015, I e-mailed a copy of the enclosed brief to Mr. Chris Kerley
At ckerley@ecl-law.com, attorney for Respondent. I make this statement under
penalty of perjury.

June 15, 2015

Linda Bays

