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Supreme Court No. 89507-4

Court of Appeals Cause No. 68979-7-I

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IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

JOHN WORTHINGTON,

Plaintiff/Appellant,

vs.

STATE OF WASHINGTON, et al.

Defendants/Appellees

DEFENDANTS' ***AMENDED*** OPPOSITION TO WAIVER OF FILING FEE

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I. INTRODUCTION

Two federal courts have already revoked Plaintiff John Worthington's in forma pauperis ("IFP") status because his claims are frivolous and brought in bad faith. *See*, Addendum A (*Worthington v. Washington State Attorney Gen.'s Office*, C10-0118JLR, (W.D. Wash. Sept. 3, 2013)) and B (*Worthington v. Washington State Attorney Gen.'s Office,* 13-35801 (9th Cir Nov. 19, 2013). The discretion to waive fees serves an important judicial function: to ensure indigent individuals have their good faith claims heard on the merits without undue financial burden. Here, Plaintiff John Worthington is abusing the judicial process to harass the government Defendants. Plaintiff should have to put his own money at stake for his meritless claims heard. His abuse should not be subsidized with public funds, particularly where public funds are being diverted to defend Plaintiff's untimely lawsuit. Therefore, the Defendants respectfully request the Court deny Plaintiff's fee waiver.

II. STATEMENT OF FACTS

On January 17, 2012, the King County Superior Court ordered a waiver of civil filing fees and surcharges for Plaintiff. The trial court determined Plaintiff qualified for waiver because Plaintiff had "household income at or below the 125% of the federal poverty guideline..." The trial court made no findings with respect to whether Plaintiff's claims were

brought in good faith or with probable merit.[1] As two other courts have already determined, Plaintiff's allegations are meritless and brought to needlessly extend this already protracted and expensive litigation. If Plaintiff is permitted to go forward with this lawsuit, it should be at his own expense.

1. Plaintiff's Claims are Baseless

Plaintiff filed this lawsuit in 2012 for a drug search of Plaintiff's residence that occurred in 2007. As such, his claim was roughly two years past the statute of limitations expiration date. *See,* RCW 4.16.080. The lower courts properly held Plaintiff's suit was time-barred. Plaintiff seeks a third level of judicial scrutiny. Such scrutiny is unwarranted and should not be conducted at public expense.

Plaintiff has spent the past four years arguing Defendants conspired to take his six marijuana plants. For the past year, he has told state and federal courts Defendants tricked him into believing he could not file a lawsuit in state court (never mind the fact Plaintiff *did* file a nearly identical lawsuit in state court in late-2009 about the same search). The gist of Plaintiff's current claims is that he filed his lawsuit too late because Defendants conspired to make it look like his plants were seized by the

[1] Defendants did not ask for such a determination at the point of indigence findings, nor was the court required to make such a determination for the purpose of waiving filing fees at that early stage.

federal government. This claim is: (a) frivolous – because who participated in the search has nothing whatsoever to do with whether a state court of general jurisdiction could hear the case; (b) baseless – because who physically took the plants has no bearing on whether the search and seizure were lawful; and (c) objectively, demonstrably false – because Plaintiff's own briefing and supporting declarations show he was present at the time of the search, knew the officers by name, and personally observed the actions each officer took.

The federal courts have already considered these claims and have revoked Plaintiff's IFP status. Defendants respectfully request this Court reach a similar conclusion.

2. The Federal Courts Have Determined Plaintiff's Claims are Frivolous

Two other courts have determined Plaintiff's claims were not brought in good faith. The federal district court (Honorable Judge James L. Robart) stated, "The court finds that Mr. Worthington's appeal is frivolous and therefore revokes his IFP status on appeal." Addendum A, at 2:2-3. The Ninth Circuit (Honorable Judges Barry G. Silverman and Morgan Christen) ordered, "We deny appellant's motion to proceed in forma pauperis because we also find the appeal frivolous." Addendum B, at 1. The Ninth Circuit went on to order Plaintiff to pay $455 to the

district court for docketing and filing fees, "[i]f appellant wishes to pursue this appeal despite the court's finding that it is frivolous..." The implication of these courts' rulings is clear: if Plaintiff wants to pursue his baseless, harassing claims, he must do so at his own expense—results not guaranteed.

The fact that these claims are frivolous has not eased the burden on Defendants in responding to Plaintiff's serial motions and petitions. Defendants, all governmental entities, have expended countless hours and financial resources in defending this frivolous case. This fee waiver issue presents an opportunity for this Court to force Plaintiff to back up his litigation with a personal financial stake in its outcome. Defendants respectfully request the Court exercise its discretion in denying Plaintiff's fee waiver.

III. LEGAL AUTHORITY

"[W]aiver of fees is a discretionary act within the inherent power of the court." *Neal v. Wallace,* 15 Wn.App. 506, 510, 550 P.2d 539 (1976). To allow waiver of fees in a civil action, at a minimum, the moving party must show "(1) ... actual, not theoretical, indigency; (2) that but for such waiver a litigant would be unable to maintain the action; (3) that there are no alternative means available for procuring the fees; and (4) that plaintiff's claim is 'brought in good faith and with probable

merit.'" *Neal,* 15 Wn.App. at 508–09 (quoting *Bowman v. Waldt,* 9 Wn.App. 562, 571, 513 P.2d 559 (1973)); *see also Housing Auth. of King County v. Saylors,* 87 Wn.2d 732, 742–43, 557 P.2d 321 (1977) (waiver of civil appeal fees).

Rule of Appellate Procedure 15.2 codifies these standards for cases like Plaintiff's: "The party must demonstrate...the issues the party wants reviewed have probable merit and that the party has a constitutional or statutory right to review partially or wholly at public expense." Waiving Plaintiff's fees is inappropriate because his claim lacks probable merit and there is no statutory or constitutional right to bring a lawsuit for a harassing purpose, and thus Plaintiff can supply no facts supporting his request that this frivolous appeal be financed by the public.

1. Plaintiff's Lawsuit is Brought in Bad Faith

The Honorable Judge James L. Robart accurately described Plaintiff's allegations as "baseless, frivolous, and bordering on harassing." CP 31. Plaintiff claims Defendants engaged in a multi-jurisdictional conspiracy against him to deprive him of his day in court. This is a serious charge, and yet Plaintiff offers not a shred evidence to support it. Plaintiff maintains this action in spite of numerous courts informing him of its frivolity. The only possible explanation for Plaintiff's insistence on

drawing out this litigation is to harass the Defendants. This Court should not endorse Plaintiff's conduct by granting him a fee waiver.

2. Plaintiff's Lawsuit is Meritless

The search underlying this lawsuit occurred in 2007. This lawsuit was filed in 2012. Therefore, the lawsuit is untimely under the Legislature's timing statutes. *See,* RCW 4.16.080 (setting statute of limitations for Plaintiff's claims at three years). Plaintiff argues his case fits within the very limited "discovery rule" exception to RCW 4.16.080. The discovery exception tolls the date of accrual until the plaintiff knows or, through the exercise of due diligence, should have known the facts necessary to establish a legal claim. *Allen v. State*, 118 Wash.2d 753, 758, 826 P.2d 200 (1992).

Plaintiff's theory is that he qualifies under the fraud subset of the discovery rule because he has a new "understanding" of the roles various state and federal law enforcement agencies undertook during the search and seizure of his marijuana plants. But a glance at Plaintiff's earlier pleadings reveals that not only was he physically present during the 2007 search, CP 339, he saw what happened and who did what. CP 339-40. Those observations triggered his obligation to use due diligence in investigating his claim and filing a lawsuit within three years. *See*, *Green v. A.P.C.*, 136 Wn.2d 87, 960 P.2d 912 (1998) (citing *Hawkes v. Hoffman*,

56 Wash. 120, 126, 105 P. 156 (1909) (plaintiff is placed on notice by "some appreciable harm" and has duty to conduct diligent inquiry to ascertain the scope of the harm). As such, Plaintiff's discovery rule arguments lack "probable merit."

Furthermore, even assuming this Court disagreed with the lower courts about Plaintiff's failure to observe the statute of limitations, the underlying claims are wholly unsupported. Plaintiff's allegations run on a spectrum from indecipherable and untrue to profoundly misguided. For instance, Plaintiff asked for $237,600 in medical costs in his Complaint, apparently caused by "falling out of a tree and many car accidents." But Plaintiff fails to explain how either of these injuries were caused or lit up by Defendants. In his Petition for Review to this Court, Plaintiff cites Initiative 502, which legalized possession, production, and distribution of recreational marijuana. While this might have been a notable event for marijuana activists generally, it has no bearing whatsoever on Plaintiff's lawsuit, nor does it explain why he filed too late under RCW 4.16.080. These arguments are not the sort consistent with a finding of "probable merit" and thus should not be promoted through use of this Court's inherent power to waive fees.

IV. CONCLUSION

For the reasons stated above, Defendants respectfully request the Court decline Plaintiff's fee waiver.

Respectfully submitted this 3rd day of December, 2013.

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DECLARATION OF SERVICE

I declare that on December 3, 2013, a true and correct copy of the foregoing document was sent to the following parties as indicated:

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DATED this 3rd day of December, 2013.

Cathy Hendrickson, Legal Assistant

ADDENDUM A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN WORTHINGTON,

Plaintiff,

v.

WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, et al.,

Defendants.

CASE NO. C10-0118JLR

ORDER DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Before the court is Plaintiff John Worthington's motion for leave to proceed in forma pauperis ("IFP") on appeal. (Mot. (Dkt. # 118).) Mr. Worthington is attempting to appeal two orders, one denying his request that the court recuse from this case and another denying him leave to file a Federal Rule of Civil Procedure 60(d)(3) motion. (*Id.* at 1.) Under 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith." An appeal is not taken in good faith if it is frivolous. *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (holding

that revocation of IFP status is appropriate where the district court finds the appeal to be frivolous). The court finds that Mr. Worthington's appeal is frivolous and therefore revokes his IFP status on appeal.

Dated this 3rd day of September, 2013.

JAMES L. ROBART
United States District Judge

ADDENDUM B

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN WORTHINGTON, Plaintiff - Appellant, v. WASHINGTON STATE ATTORNEY GENERAL'S OFFICE; et al., Defendants - Appellees.	No. 13-35801 D.C. No. 2:10-cv-00118-JLR Western District of Washington, Seattle ORDER

Before: SILVERMAN and CHRISTEN, Circuit Judges.

The district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. We deny appellant's motion to proceed in forma pauperis because we also find the appeal is frivolous. *See* 28 U.S.C. § 1915(a).

If appellant wishes to pursue this appeal despite the court's finding that it is frivolous then, within 21 days after the date of this order, appellant shall pay $455.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Otherwise, the appeal will be dismissed by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

LSC/MOATT

No motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained.

Because the court has found that this appeal is frivolous, the district court orders may be summarily affirmed even if appellant pays the fees. If appellant pays the fees and files proof of such payment in this court, appellant therefore shall simultaneously show cause why the orders challenged in this appeal should not be summarily affirmed. *See* 9th Cir. R. 3-6. If appellant elects to show cause, a response may be filed within 10 days after service of appellant's filing. If appellant pays the fees but fails to file a response to this order, the court will determine whether to summarily affirm the orders in this appeal based on the opening brief submitted on November 4, 2013.

If the appeal is dismissed for failure to comply with this order, the court will not entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees.

Briefing is suspended pending further order of this court.

LSC/MOATT

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Subject: John Worthington v. State of Washington, et al.

Attached for filing in *John Worthington v. State of Washington, et al.*, Washington State Supreme Court No. 89507-4, is *Defendants' Amended Opposition to Waiver of Filing Fee*, submitted by:

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Defendants' Amended Opposition to Waiver of Filing Fee corrects the Judge's name shown in the last paragraph of page 5 as follows: substituting "The Honorable Judge James L. Robart" for "The Honorable Judge Robert J. Bryan."

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