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I. INTRODUCTION

This Supplemental Opening Brief of Appellant comes after a ruling signed by Commissioner Skerlec dated May 11, 2009. See Appendix 1 affixed hereto. This ruling granted Appellant KEVIN MITCHELL ("Mitchell") an opportunity to contest the trial court's order entered April 16, 2009.

The trial court vacated the April 16, 2009 order on May 15, 2009 and entered a substantially similar order. See Appendix 2 (May 15, 2009 order).

Appellant's opening brief filed April 13, 2009 is hereby incorporated herein with reference thereto. This brief shall supplement Appellant's opening brief and addresses only those issues pertaining to the May 15, 2009 order.

The trial court's May 15, 2009 order alludes to include 21 'findings of fact and conclusions of law' which Mitchell will show that a majority of which are either unsupported by substantial evidence or are contrary to law. Mitchell also urges this court to conduct a de novo review of the documentary evidence in order to see-through the alleged findings made by the trial court.

II. ASSIGNMENTS OF ERROR

The following assigned errors begin with number four (4), as they are intended to supplement Appellant's Opening Brief.

4) Error is assigned to the trial court's alleged Finding of Fact No. 6.

5) Error is assigned to the trial court's alleged Finding of Fact No. 7.

6) Error is assigned to the trial court's alleged Finding of Fact No. 9.

7) Error is assigned to the trial court's alleged Finding of Fact No. 12.

8) Error is assigned to the trial court's alleged Finding of Fact No. 14.

9) Error is assigned to the trial court's alleged Finding of Fact No. 16.

10) Error is assigned to the trial court's alleged Finding of Fact No. 17.

11) Error is assigned to the trial court's alleged Finding of Fact No. 18.

12) Error is assigned to the trial court's alleged Finding of Fact No. 19.

13) Error is assigned to the trial court's alleged Finding of Fact No. 20.

14) Error is assigned to the trial court's alleged Finding of Fact No. 21.

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III. ISSUES RELATED TO ASSIGNED ERRORS

The following issues begin with number eleven (11), as they are intended to supplement Appellant's Opening Brief.

11) Whether alleged Finding No. 6 is supported by substantial evidence? (Error 4).

12) Whether alleged Finding No. 7 is contrary to law? (Error 5).

13) Whether alleged Finding No. 9 is supported by substantial evidence? (Error 6).

14) Whether alleged Finding No. 12 is supported by substantial evidence? (Error 7).

15) Whether alleged Finding No. 14 is supported by substantial evidence? (Error 8).

16) Whether alleged Finding No. 16 is supported by substantial evidence? (Error 9).

17) Whether alleged Finding No. 17 is supported by substantial evidence? (Error 10).

18) Whether alleged Finding No. 18 is contrary to law? (Error 11).

19) Whether alleged Finding No. 19 is supported by substantial evidence? (Error 12).

20) Whether alleged Finding No. 20 is supported by substantial evidence? (Error 13).

21) Whether alleged Finding No. 21 is supported by substantial evidence? (Error 14).

IV. DISCUSSION

A. STANDARD OF REVIEW - SUBSTANTIAL EVIDENCE

The following issues presented in this supplemental brief challenge the sufficiency of the evidence produced and relied upon to support the trial court's alleged findings of fact.

"[F]indings of fact supported by substantial evidence will not be disturbed on appeal. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise."

Behring v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), cert. dis. 479 US 1050 (internal citations omitted).

"On appeal, the court reviews solely whether the trial court's findings of fact are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law. The party challenging a finding of fact bears the burden of demonstrating the finding is not supported by substantial evidence."

Nordstrom Credit v. Dep't of Revenue, 120 Wn.2d 935, 939-40, 845 P.2d 1331 (1993).

B. FINDING NO. 6 IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

The alleged Finding No. 6 (Appendix 1, page 3) provides:

"According to the records of King County's Records and Services Division, Plaintiff [Mitchell] is registered as a process server in King County under the license number 0741428-13414."

Mitchell acknowledges that his name appears on the face of the Process Server License, CP 83, however both the license as well as King County's records, are contrary to law, as the license was acquired in the corporate name of MCS GLOBAL INC., and not for any specified individual.

A glance at the laws governing the issuance of a process server license clears this discrepancy. Under chapter 18.180 RCW, a person who serves legal process for a fee shall register as a process server in the county where the principal place of business is operated. The requirement to register does not apply to "an employee of a person who is registered..." RCW 18.180.010(2)(d). Further, at RCW 18.180.030(1) clearly states that "employees of a process server" "shall indicate the employer's registration number" on any proof of service the registrant's employee signs."

Here, the license states conspicuously on its face: MCS GLOBAL INC.; clearly denoting this license was issued to the corporation named. King County simply erred when adding Mitchell's name to said license, as under the statute, an employee need not obtain a separate license. See RCW 18.180.010(2)(d). This alleged finding fails to take into account of the erroneous license and records retained by King County, and as such, lacks substantial evidence.

C. FINDING NO. 7 HAS NO BASIS IN LAW.

"Plaintiff's cost bill did not disclose that he was an owner of MCS Global Legal Services."

Finding No. 7. While Mitchell acknowledges this statement, it appears to impose such a disclosure requirement upon Mitchell. Both WSIPP and the trial court fail to refer to this mandatory disclosure requirement. As this pseudo obligation is not a legal duty imposed upon Mitchell, it is contrary to law.

D. FINDING NO. 9 IS UNSUPPORTED BY EVIDENCE.

"On November 14, 2008, SCCC [Stafford Creek Corrections Center] intercepted a letter addressed to [Mitchell]. It purported to be from the law firm of Brian M. King & Assoc. of Lakewood Washington. The word "LEGAL" was stamped on the front of the envelope."

Finding No. 9. Contained at CP 25-27 are the documents referred to. Mr. Brian Matthews ("Matthews") acknowledges the use of a pseudonym (Brian M. King) and the use of a "Legal" stamp. CP 107-08 ¶ 21; CP 119-20. In both of these affidavits, which to date have been unrebutted, Matthews clarifies his purpose and reasons for his actions. The name is a religious practice and the legal stamp simply denotes the time-sensitive legal materials contained therein. As Mitchell was under a deadline to file his cost bill, time was the essence and by stamping legal, presumably the contents would be delivered faster.

This alleged finding is contested due to the statement "It purported to be from the law firm of Brian M. King & Associates." Matthews has clarified he never intended to deceive anyone; He was only exercising his religious practices. This alleged findings is misleading and requested to be stricken.

E. FINDING NO. 12 IS UNSUPPORTED BY EVIDENCE.

"The envelope and letter were a forgery. There is no law office of Brian M. King & Assoc. in Lakewood, Washington."

Finding No. 12. This alleged finding also concerns the same letter and envelope as above, and again, Matthews' purpose was clarified in his affidavits. Other than a bare assertion

of 'forgery' by WSIPP, each of the elements of such, most notably, intent, have not been satisfied. The evidence plainly shows Matthews was simply exercising his religious practice without any intent to commit forgery. This alleged finding is unsupported by substantial evidence.

F. FINDING NO. 14 IS UNSUPPORTED BY EVIDENCE.

"Brian David Matthews falsified the envelope and cover letter in order to deliver the invoice to Plaintiff through DOC's [Department of Corrections] legal mail system."

Finding No. 14. As above, Matthews has clarified his sole intention in delivering the invoice to Mitchell in a timely fashion. As provided in Mitchell's Opening Brief, the Department of Corrections is neither a party nor an interested party in this action; Instead, Mitchell is presently incarcerated and DOC is charged with inspecting incoming mail. As the envelope was not falsified as detailed above, this finding lacks substantial evidence.

G. FINDING NO. 16 IS UNSUPPORTED BY EVIDENCE.

"The Court finds that [Mitchell] knowingly requested [Matthews] to transmit the NRGETX invoice to Plaintiff through DOC's legal mail system."

Finding No. 16. This alleged finding is entirely unfounded and contrary to the evidence. Matthews verified in his affidavit that he acted of his own accord and without direction or suggestion by Mitchell to convey the invoice via legal mail. Matthews swears that Mitchell "had no knowledge whatsoever" that the items were transmitted as they were. CP 109-10 ¶ 29.

WSIPP relies upon the November 11, 2008 letter, CP 25, which provides: "As per your request we maintained your accounts receivable open to accommodate your filing and work schedule." The portion which reads "As per your request..." is taken out of context by WSIPP to mean that Mitchell requested the invoice to be sent via legal mail, which is incorrect and stated plainly in the evidence. This alleged finding is wholly unsupported by any evidence.

H. FINDING NO. 17 IS CONTRARY TO THE EVIDENCE.

"[Mitchell] never received a copy of the NRGETX invoice."

Finding No. 17. This alleged finding is contrary to the evidence, as Mitchell has received multiple copies of the NRGETX Invoice, CP 12. One copy was received with WSIPP's motion to vacate costs, CP 58-71; Another copy was received with Matthews' affidavit, CP 118; And further, the entire contents of this invoice was known to Mitchell prior to the completion of the invoice. Conversations between NRGETX agents and Mitchell were conducted on numerous occasions to clarify the scope of services and the amounts being charged to Mitchell's account. This alleged finding is completely false.

I. FINDING NO. 18 IS CONTRARY TO LAW.

"[Mitchell] did not disclose in his cost bill that he had personal and professional relationships with NRGETX, Inc."

Finding No. 18. This alleged finding is similar to Finding No. 7 in that both attempt to impose affirmative duties upon

Mitchell where none are required at law. While it is uncontested that Mitchell does in-fact possess such professional ties with NRGETX, no duty to disclose such is imposed upon Mitchell at law. As this alleged finding attempts to impose pseudo duties upon Mitchell, this is contrary to law and cannot be allowed to stand.

J. FINDING NO. 19 IS UNSUPPORTED BY EVIDENCE.

"[Mitchell] filed a signed and dated cost bill with the Court that knowingly contained false and/or misleading information regarding the process server fee."

Finding No. 19. The filed cost bill appears at CP 10 and at Item #2 states in whole: "Process Server Fees...\$60.00" This reasonable fee was claimed in accordance with RCW 4.84.010 (2)(b) (reasonable amount recoverable for service of process). As detailed in Mitchell's Opening Brief at 18-19, the fees claimed for the service of process are recoverable as an exempt employee of MCS Global Inc., served process under the corporate process server license. See also page 4-5 herein.

Further, this alleged finding fails to mention exactly what is 'false and/or misleading' about such fee, and is further ambiguous by including the alternative 'and/or.' This finding is wholly unsupported by substantial evidence.

K. FINDING NO. 20 IS UNSUPPORTED BY EVIDENCE.

"Plaintiff knowingly sought to improperly use DOC's legal mail system to obtain false documentation supporting his cost bill."

Finding No. 20. This outrageous finding is most likely

a conclusion drawn based upon the alleged 'findings.' However, since each of the above findings lack sufficient evidence and as detailed in page 7-8 above, Mitchell never requested the invoice to be sent via legal mail; As such, this finding is not based upon substantial evidence.

L. FINDING NO. 21 IS UNSUPPORTED BY EVIDENCE.

"Plaintiff filed his cost bill with the improper purpose of inflating the costs that he would be awarded under the judgment."

Finding No. 21. As the preceding alleged finding is likely a 'conclusion,' this alleged finding is also without merit nor supporting evidence. Each and every contested item of costs claimed by Mitchell has been exhaustively detailed and explained in trial court documents, and discussed in detail in Appellant's Opening Brief at Pages 17-19. Again, as each of the 'findings' which form the basis for this 'finding' have been shown to lack supporting evidence, so too is the fate of this supposed finding.

M. THIS COURT IS NOT BOUND BY THESE 'FINDINGS.'

This court is authorized, and requested to, independently review the evidence and trial court records to determine whether the findings support an alleged violation of CR 11. As the evidence consists solely of documentary evidence, this court may review such evidence to reach separate findings. See Physicians Ins. Exch. v. Fisons Corp., 122 Wn.2d 299, 345, 858 P.2d 1054 (1993); Bryant v. Joseph Tree, Inc., 119

Wn.2d 210, 222-23, 829 P.2d 1099 (1992); Behring, 106 Wn.2d at 220.

V. CONCLUSION

Mitchell hereby seeks the relief requested in Appellant's Opening Brief at Page 23.

Dated May 28, 2009.

~~UNDER PROTEST~~
~~WA 1-207/308 APP~~
MITCHELL, KEVIN (1-207/308)
Appellant Pro Per, WITHOUT PREJUDICE.
[SCCC 880933 TDC
c/o 191 Constantine Way
Aberdeen, Washington (98520)]
(360) 537-1800.

DECLARATION OF SERVICE

The undersigned affirms that on May 28, 2009, a copy of the foregoing was sent via first-class institutional legal mail, postage pre-paid, addressed to the following:

WA Court of Appeals, Div. 2
David Ponzoha, Clerk
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Dierk Meierbachtol, AAG
1125 Washington Street SE
Po Box 40100
Olympia, WA 98504-0100

The undersigned affirms under penalty of perjury that the foregoing is true and correct, to the best of available knowledge and belief, without prejudice.

Dated May 28, 2009.

~~UNDER PROTEST~~
~~WA 1-207/308 APP~~
MITCHELL, KEVIN (1-207/308)
WITHOUT PREJUDICE.

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ORIGINAL
May 28, 2009
KM

STATE OF WASHINGTON
BY [Signature]
09 JUN -1 AM 5:37
COURT OF APPEALS
DIVISION 2

Appendix A-1



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

May 11, 2009

Kevin M. Mitchell
#880933
Stafford Creek Corr Cntr
191 Constantine Way
Aberdeen, WA 98520

Dierk Jon Meierbachtol
Attorney General's Office
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RECEIVED
MAY 12 2009
OFFICE OF THE ATTORNEY GENERAL
EDUCATION DIV. DLY.

CASE #: 38777-8-II/Kevin M. Mitchell v WA State Institute for Public Policy

Counsel:

On the above date, this court entered the following notation ruling:

A RULING SIGNED BY COMMISSIONER SKERLEC:

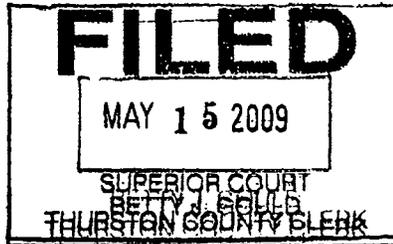
Appellant's motion to amend opening brief is granted. Appellant is granted an extension of 20 days from the date of this ruling to file a supplementary brief addressing the 04/16/09 order.

Very truly yours,

David C. Ponzoha
Court Clerk

EXHIBIT 1

Appendix A-2



1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date: 5/15/2009
5 Time: 9:00 a.m.

6 The Honorable Christine A. Pomeroy

*Received
May 15, 2009
@ 1500 ~ no.
via CCD sent
via e-mail
(stipulated)
- KM*

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 Kevin Michael Mitchell,
10 Plaintiff,

NO.08-2-01341-1

11 vs.

CORRECTED

12 Washington State Institute for
13 Public Policy
14 Defendant.

ORDER GRANTING IN PART
MOTION TO VACATE,
GRANTING MOTION FOR
RULE 11 SANCTIONS,
DENYING CROSS-MOTION
FOR SANCTIONS, AND
MODIFYING ORDER OF
JUDGMENT

~~PROPOSED~~

*The corrected order modifying order of judgment
dated 4/16/09 is hereby vacated*

17 THIS MATTER has come regularly before the Court on the motion of
18 the defendant Washington State Institute for Public Policy. The Court, having
19 heard the arguments of the parties and considered the records and files herein,
20 including Defendant's Motion to Vacate Costs Award and For Sanctions
21 Pursuant To CR 11, the accompanying Declaration of Dierk Meierbachtol, the
22 accompanying Declaration of Sheri Izatt, the accompanying Declaration of

1 Jamie Gerken, the plaintiff's Brief in Response to Defendant's Motion to
2 Vacate Costs and For Sanction, and Defendant's Reply, does hereby find,
3 conclude, and adjudge the following:

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. Plaintiff is an inmate in the custody of the Washington State
6 Department of Corrections ("DOC") and is currently incarcerated at Stafford
7 Creek Corrections Center ("SCCC") in Aberdeen, Washington.

8 2. On November 14, 2008, the Court entered judgment in this matter,
9 ordering Defendant to pay \$2,225.00 in statutory penalties pursuant to
10 RCW 42.56.550(4) for violating certain provisions of the Public Records Act,
11 chapter 42.56 RCW. The Court further ruled that Plaintiff is entitled to an
12 award of costs and directed him to submit a cost bill to the Clerk of the Court.

13 3. On November 25, 2008, Plaintiff timely filed his cost bill with the
14 Court. The cost bill was signed by Plaintiff, who certified therein that certain
15 costs were incurred as a result of this action. These costs included process server
16 fees in the amount of \$60.00 and "common law publication/legal typeservice
17 fees" in the amount of \$898.43.

18 4. Plaintiff supported the claimed costs in the cost bill by filing
19 therewith, among other things, a "Statement of Service Fees" made by Jeffrey
20 McKee of MCS Global Legal Services, King County process server license
21 number 0741428-13414.

22 5. MCS Global Legal Services is a regular corporation incorporated
and licensed to do business in the State of Washington. The corporation's
registered agent is Plaintiff's father. Its governing officials include Plaintiff's
father and Plaintiff himself.

1 6. According to the records of King County's Records and Services
2 Division, Plaintiff is registered as a process server in King County under the
3 license number 0741428-13414.

4 7. Plaintiff's cost bill did not disclose that he was an owner of MCS
Global Legal Services.

5 ~~8. In filing his cost bill, Plaintiff did not include documentation
6 supporting his claimed costs related to the alleged "common law publication/legal
7 typeservice fees."~~

8 9. On November 14, 2008, SCCC intercepted a letter addressed to
9 Plaintiff. It purported to be from the law firm of Brian M. King & Assoc. of
10 Lakewood Washington. The word "LEGAL" was stamped on the front of the
11 envelope.

12 10. Inside the envelope was a cover letter that read in part, "Please find
13 enclosed invoice # 082013411kmm for cause no:08-2-01341-1. As per your
14 request we maintained your accounts receivable open to accommodate your filing
and work schedule."

15 11. The envelope also included an invoice for "typeservice" and
16 "common law publishing" services from a company called NRGETX in the
amount of \$898.43.

17 12. The envelope and letter were a forgery. There is no law office of
18 Brian M. King & Assoc. in Lakewood, Washington.

19 13. The letter was in fact sent by an associate of the Plaintiff named
20 Brian David Matthews.

21 14. Brian David Matthews falsified the envelope and cover letter in
22 order to deliver the invoice to Plaintiff through DOC's legal mail system.

5/15/09
CWA

1 15. NRGETX, Inc., is a regular corporation incorporated and licensed to
2 do business in the State of Washington. The corporation's registered agent is
3 Plaintiff's father. Its governing officials include Plaintiff's father and Brian David
4 Matthews.

5 16. The Court finds that Plaintiff knowingly requested Brian David
6 Matthews to transmit the NRGETX invoice to Plaintiff through DOC's legal mail
7 system.

8 17. Plaintiff never received a copy of the NRGETX invoice.

9 18. Plaintiff did not disclose in his cost bill that he had personal and
10 professional relationships with NRGETX, Inc.

11 19. Plaintiff filed a signed and dated cost bill with the Court that
12 knowingly contained false and ^{or} misleading information regarding the process
13 server fee.

14 20. Plaintiff knowingly sought to improperly use DOC's legal mail
15 system to obtain false documentation supporting his cost bill.

16 21. Plaintiff filed his cost bill with the improper purpose of inflating the
17 costs that he would be awarded under the judgment.

ORDER

18 Defendant's motion for relief from judgment pursuant to CR 60 is
19 GRANTED IN PART;

20 Defendant's motion for sanctions pursuant to CR 11 is GRANTED; and
21 Plaintiff's cross-motion for sanctions pursuant to CR 11 is DENIED.

22 Pursuant to the authority set forth in RCW 4.72.010, the Court's
November 7, 2008, Order of Judgment ("the Order of Judgment") is hereby
modified as follows:

1 1. In accordance with paragraph 12 of the Order of Judgment and
2 RCW 42.56.550(4), Plaintiff is awarded, and Defendant is directed to pay, an
3 amount of \$2,225.00 as a penalty for denying Plaintiff the right to inspect or
4 copy the requested RMI worksheet.

5 2. Pursuant to RCW 42.56.550(4), Plaintiff shall be awarded, and
6 Defendant is directed to pay, the following costs incurred in connection with
7 this action: (1) \$200.00 for the Clerk's filing fee pursuant to
8 RCW 36.18.020(2)(a); and (2) \$16.23 for postage costs.

9 3. Plaintiff shall not be entitled to the award of any additional costs
10 incurred in this action.

11 4. Accordingly, the total sum of the statutory penalty and costs
12 awarded to Plaintiff under RCW 42.56.550(4) is \$2,441.23.

13 5. Monetary sanctions shall be imposed against Plaintiff pursuant to
14 CR 11 in the amount of \$2,316.86.

15 6. The amount of the monetary sanction shall be deducted from the
16 total sum of the statutory penalty and costs awarded herein. The remaining
17 amount is \$124.37.

18 7. Plaintiff shall therefore be awarded, and Defendant is accordingly
19 directed to pay, an amount of \$124.37 as final judgment in this action.

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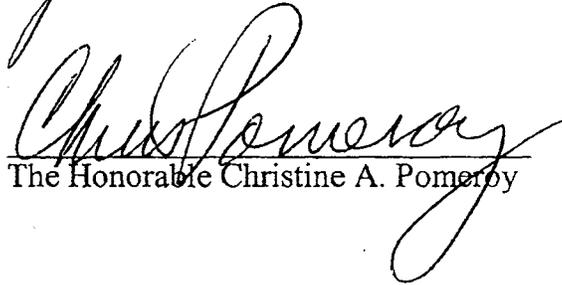
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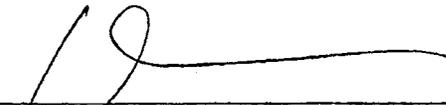
1 8. The final judgment shall be payable solely to Plaintiff at the
2 following address: P.O. Box 1915, Auburn, Washington, 98071.

3 **IT IS SO ORDERED.**

4 DATED THIS 15 day of May, 2009.

5
6
7 
8 The Honorable Christine A. Pomeroy

9 Presented by:

10 
11 _____
12 Dieck Meierbachtol, WSBA #31010
13 Assistant Attorney General
14 Attorneys for State of Washington

15 Approved as to form:

16 _____
17 Kevin Mitchell
18 Plaintiff Pro Per
19
20
21
22