

FILED
COURT OF APPEALS
DIVISION II
2015 SEP -8 AM 9:36
STATE OF WASHINGTON
BY  DEPUTY

NO. 47285-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

DAVID A. DARBY, Sovereign State Citizen, pursuant to Article 2,
Section 3, of 1878 Constitution of the State of Washington,

Appellant,

v.

CLARK COUNTY, a political subdivision of the State of Washington,
including the following Officials acting for the County: Greg Kimsey,
Clark County Auditor; Doug Lasher, Clark County Treasurer; Peter Van
Nortwick, Clark County Assessor; David Madore, Clark County
Commissioner; Edward L. Barnes, Clark County Commissioner; Anthony
Golik, Clark County Prosecutor; Taylor R. Hallvik, Clark County Deputy
Prosecuting Attorney; and Garry Lucas, Sheriff Clark County,

Respondents.

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO. 14-2-02637-8

BRIEF OF RESPONDENT CLARK COUNTY, WASHINGTON

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A. INTRODUCTION

Plaintiff David Darby (“Mr. Darby”) appeals the trial court’s entry of an order and judgment of dismissal without prejudice pursuant to CR 12(b)(6), as well, as the trial court’s imposition of a \$500 sanction on the basis that Plaintiff’s cause of action is frivolous.

This case arises from Mr. Darby’s most recent attempt to claim that he is a “sovereign citizen” that is not required to pay real property taxes, and is not subject to the laws of the State of Washington. More specifically, this action arises from Mr. Darby’s refusal to pay more than \$22,000 in delinquent real property taxes in connection with the property that he formerly owned in Clark County. Following this non-payment of real property taxes, the Clark County Treasurer initiated foreclosure proceedings in Clark County Superior Court, under cause number 12-2-03432-3 (“Underlying Tax Foreclosure Proceeding”), and was granted summary judgment of foreclosure authorizing the tax foreclosure sale of Mr. Darby’s property. In the present case, Mr. Darby appears to seek an order vacating the Superior Court’s order and judgment authorizing the foreclosure sale, on the basis that it is void for lack of subject matter jurisdiction, and/or that he is not subject to the real property taxation laws of the State of Washington. (CP 1-9, Plaintiff’s Complaint)

Notwithstanding Plaintiff's extraordinary claim for relief, Plaintiff does not set forth a legal cause of action that is recognized under Washington law and does not cite any relevant legal authority or facts to support the relief he has requested, as required by CR 12 (b)(6). *Id.* For this reason, the trial court properly dismissed Plaintiff's Complaint without prejudice, and imposed \$200 statutory prevailing party attorney fees pursuant to RCW 4.84.080 and a \$500 sanction pursuant to CR 11 and RCW 4.84.185 based upon the frivolous nature of the action. (CP 76-78; 84-86, Trial Court's Order and Judgment of Dismissal)

B. RESPONSE TO ASSIGNMENT OF ERRORS

The County rejects Plaintiff's statement of the issues and presents the following in lieu thereof:

1. Whether the trial court properly dismissed Plaintiff's Complaint without prejudice when it did not contain a recognized cause of action in the State of Washington?
2. Whether the trial court acted within its discretion in imposing a \$200 statutory prevailing party attorney fee and \$500 sanction based upon its finding that Plaintiff's Complaint was frivolous.

C. STATEMENT OF THE CASE

1. **Plaintiff commenced this action to vacate a judgment of tax foreclosure.**

On September 11, 2014, Plaintiff filed the present action seeking an order vacating Clark County Superior Court's order and judgment of foreclosure and sale in the Underlying Tax Foreclosure Case on the basis that it was void for lack of subject matter jurisdiction. (CP 1-9). Plaintiff also seeks restoration of his property rights to tax parcel 264614000 and removal of this tax parcel from Clark County's tax rolls. *Id.* In seeking this relief, Plaintiff claims that he is exempt from real property taxation laws of the State of Washington by virtue of his status as a "sovereign citizen" that does not recognize the Washington State Constitution. *Id.* Plaintiff's Complaint cites CR60 as a mechanism for setting aside a void judgment in a civil case, but it does not set forth any legal or factual basis to support an independent cause of action, and does not provide any factual basis to support the claim that the Superior Court's order in the Underlying Tax Foreclosure Case was void for lack of subject matter jurisdiction. *Id.*

2. **Court dismisses Plaintiff's Complaint without prejudice for failure to state a claim and imposes sanction and prevailing party fee.**

On November 6, 2014, Clark County filed a motion to dismiss Plaintiff's Complaint without prejudice pursuant to CR 12(b)(6) and a motion for sanctions pursuant to CR 11 and RCW 4.84.185. (CP 61-77).

Plaintiff did not file a response to Clark County's motion to dismiss and for sanctions.

On January 30, 2015, the trial court heard Clark County's motion to dismiss Plaintiff's Complaint without prejudice and impose sanctions. (CP 76-78, Court's Order of Dismissal). After hearing oral argument, the trial court granted Clark County's motions, and entered an order to dismiss Plaintiff's Complaint without prejudice. Additionally, the trial court found that Mr. Darby's action was frivolous and ordered the imposition of a \$500 sanction, as well as the award of a \$200 statutory prevailing party fee. *Id.* On, February 13, 2015, pursuant to its earlier order, the trial court entered a General Judgment of Dismissal and Money Judgment. (CP 84-86, General Judgment of Dismissal and Money Judgment)

D. ARGUMENT

1. Standard of review.

CR12(b)(6) Dismissal:

Whether a dismissal was appropriate under CR 12(b)(6) is a question of law that an appellate court reviews de novo. *Tenore v. AT & T Wireless Servs.*, 136 Wash.2d 322, 329–30, 962 P.2d 104 (1998). A dismissal is appropriate under CR 12(b)(6), if “it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify

recovery.” *Id.* at 330, 962 P.2d 104. In undertaking such an analysis, “a plaintiff’s allegations are presumed to be true, and a court may consider hypothetical facts not included in the record.” *Id.*

Imposition of CR 11 and RCW 4.85.185 Sanctions

The standard of appellate review for the imposition of CR 11 and RCW 4.85.185 sanctions is the abuse of discretion standard. *Biggs v. Vail*, 124 Wash.2d 193, 196, 876 P.2d 448, 451 (1994) (citing *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 338-39, 858 P.2d 1054 (1993)); *Highland School District No. 203 v. Racy*, 149 Wash.App. 307, 312, 202 P.3d 1024, 1027 (2009). In deciding whether the trial court abused its discretion, the Court must consider that “[t]he purpose behind CR 11, is to deter *baseless* filings and to curb abuses of the judicial system.” *Bryant v. Joseph Tree, Inc.*, 119 Wash.2d 210, 218-19, 829 P.2d 1099 (1992). In deciding upon a sanction, the trial court should impose the least severe sanction necessary to carry out the purpose of the rule. *Bryant*, at 225, 829 P.2d 1099.

2. **The trial court’s Order and Judgment of Dismissal should be affirmed because Plaintiff’s Complaint fails to set forth a valid cause of action and/or claim for relief under Washington law.**

As noted above, a court may dismiss an action pursuant to CR 12(b)(6), if “it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery.” *Id.* at 330, 962 P.2d 104. In

undertaking such an analysis, “a plaintiff’s allegations are presumed to be true, and a court may consider hypothetical facts not included in the record.” *Id.*

In the present case, the trial court properly dismissed Plaintiff’s Complaint pursuant to CR 12(b)(6) because it did not set forth a cause of action that is recognized in Washington or any legal or factual allegations that could give rise to such an action.

Plaintiff’s Complaint appears to seek relief from a Judgment of Foreclosure entered by Clark County Superior Court in the Underlying Tax Foreclosure Proceeding on the basis that it is “void.” (CP 1-9, Plaintiff’s Complaint). Additionally, Plaintiff apparently seeks the removal of the property that was the subject of the tax foreclosure proceeding from the tax rolls and an order “sealing this case.” *Id.* Even when plaintiff’s factual allegations are presumed to be true, which they are not, and any hypothetical facts are considered, they do not give rise to a cause of action. Dismissal pursuant to CR 12 (b)(6) is required because these alleged facts do not constitute an independent cause of action and do not support the requested relief of “voiding” judgment in a prior case.

CR 60 authorizes litigants in a case to seek relief from a judgment by motion, but does not authorize an independent cause of action to set

aside a judgment in a prior case. Specifically, this rule provides in relevant part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On *motion* and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

[...]

(5) The judgment is void;”

CR 60(b)(5)(emphasis added)

By its own unambiguous terms, CR 60 requires the filing of a motion in the original action and does not authorize an independent cause of action to void a judgment. *Id.*

Even if CR 60 did somehow authorize cause of action, which it does not, the Washington Court of Appeals has held in *State Ex. Rel v. Turner v. Briggs*, 94 Wn. App. 299, 971 P.2d 581 (1999), that limited the definition of a “void” judgment to “a judgment, decree or order entered by a court which lacks jurisdiction of the parties, or of the subject matter, or which lacks the inherent power to make or enter the particular order involved” (quoting *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968)) (emphasis added).

In the present case, setting aside that CR 60 does not authorize an independent cause of action, Plaintiff’s Complaint does not contain any

alleged facts, or any relevant legal authority to support a claim that the Clark County Superior Court somehow lacked jurisdiction over him or the subject matter of the Underlying Tax Foreclosure Proceeding. (CP 1-9, Plaintiff's Complaint). Additionally, Plaintiff's Complaint does not contain any legal basis for the removal of a tax parcel from the county tax rolls, or sealing the subject case.

Instead, Plaintiff offers only an immaterial and inaccurate account of the evidence relied upon by the Superior Court in the Underlying Tax Foreclosure Proceeding, apparently claiming that the court made errors of law. (CP 1-9, Plaintiff's Complaint). In addition to being false, these allegations represent claims of legal error on the part of the Superior Court in the Underlying Tax Foreclosure Proceeding and are therefore issues that should have been raised on appeal, not in a subsequent cause of action to vacate a judgment under CR 60(b). *See* CR 60(b); *see also* *Port of Port Angeles v. CMC Reals Estate Corp.*, 114 Wn.2d 670, 790 P.2d 145 (1990)("This court has long recognized the principle that an error of law will not support vacation of a judgment."); *Burlingame v. Consolidated Mines & Smelting Co.*, 106 Wash.2d 328, 336, 722 P.2d 67 (1986)("Errors of law are not correctable through CR 60(b), rather, direct appeal is the proper means of remedying legal errors"); *State ex rel. Green v. Superior Court*, 58 Wash.2d 162, 164, 165, 361 P.2d 643 (1961)("If ... the court

decided the issue wrongly, the error, if any, may be corrected by that court itself ... or by this court on appeal, but the motion to vacate the judgment is not a substitute”). As repeatedly articulated by Washington appellate courts, CR 60(b) does not provide a substitute for an appeal, and does not provide any basis to set aside a judgment based upon a claim of legal error on the part of the court. *Id.*

On appeal, Plaintiff does not identify any alleged facts within his Complaint or, even allude to hypothetical facts, to support his claim that the trial court erred in dismissing his action pursuant to CR 12(b)(6). Accordingly, this Court should affirm the trial court’s entry of a dismissal of Plaintiff’s Complaint without prejudice.

3. The trial court did not abuse its discretion in finding Plaintiff’s Complaint to be frivolous and imposing a \$500 sanction pursuant to CR 11 and RCW 4.85.185.

Washington law provides courts with clear statutory authority and discretion to impose sanctions for the filing of frivolous litigation, *See* RCW 4.84.185; *See* CR 11. In particular, CR 11 provides, in relevant part, that a party signing a pleading must certify that “[. . .] it is warranted by existing law, or a good faith argument for the extension modification, or reversal of existing law or the establishment of new law [. . .].” Moreover, CR 11 prohibits the filing of pleadings for any improper purpose, such as to harass or to cause unnecessary delay or needless

increase in the cost of litigation. *Id.* In the event of a violation of this rule,

CR 11 provides that:

If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, **may impose upon the person who signed it, a represented party, or both, an appropriate sanction,** which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.”

Id. (emphasis added)

In addition to CR 11, the Washington legislature has recognized the harm presented to the judicial system by frivolous litigation, and enacted RCW 4.84.185. This statute provides that:

In any civil action, **the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the non-prevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense.**

This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the non-prevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

[. . .]

Id. (emphasis added)

Washington courts have repeatedly held that the purpose of these rules “is to deter baseless filings and curb abuses of the judicial system.” *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707, 711 (2004) (citing *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994)).

In the present case, the trial court properly concluded that Plaintiff’s cause of action was frivolous because it was not grounded in law or fact, as required by CR 11, and was not supported by any rational argument on the law or the facts as required by RCW 4.84.185. (CP 1-9, Plaintiff’s Complaint.) The frivolous nature of Plaintiff’s Complaint was exacerbated by the fact that Clark County had notified Plaintiff, via letter on October 2, 2014, that it would be moving to dismiss this case and seeking sanctions. (CP 54-60, Exhibit B of Dec. of Hallvik ISO Motion to Dismiss) This letter warned that:

“[. . .] Unless these claims are dismissed by **October 10, 2014**, I will file a motion to dismiss and seek sanctions and attorney fees pursuant to CR 11, RCW 4.84.185, and any other applicable authority[. . .].”

Id.

Unfortunately, Plaintiff refused to voluntarily dismiss his frivolous action and forced Clark County to file a motion to dismiss on November 6, 2014 (CP 61-77).

The trial court's discretionary imposition of sanctions in the amount of \$500 was further supported by the fact that Plaintiff had filed the action with the intention of delaying lawful foreclosure proceedings. (CP 54-60, Exhibit A of Dec. of Hallvik ISO Motion to Dismiss). This intention was evidenced by Plaintiff's statements to The Columbian Newspaper on or about October 19, 2014, where he was quoted as saying: "As long as I'm appealing it, they [Clark County] can't do anything." *Id.*¹

Based upon the frivolous nature of Plaintiff's Complaint and the improper purpose of delay that was publically expressed by Plaintiff, the trial court properly exercised its discretion, pursuant to CR 11 and RCW 4.84.185, to impose a reasonable \$500 monetary sanction to discourage the filing of baseless actions as mechanism for delay and harassment.

E. CONCLUSION

Based upon the record in this case, and the lack of any recognized cause of action or cognizable legal theory in Plaintiff's Complaint, this Court should affirm the trial court's order dismissing Plaintiff's Complaint without prejudice pursuant to CR 12(b)(6). In addition, based upon the

¹ Mr. Darby's statement to The Columbian Newspaper is not hearsay pursuant to ER 801(c), because Defendants do not offer the statement for the truth of the matter asserted ("As long as I'm appealing it, they can't do anything.") Indeed, Mr. Darby's statement is **categorically untrue** as it is undisputed that he has not actually "appealed" this Court's August 15, 2014 Judgment. Defendants offer Mr. Darby's statement merely to demonstrate his true intention in filing and perpetuating this frivolous litigation.

contents of Plaintiff's Complaint, and the statements of Plaintiff regarding his intent to delay another legal proceeding, this Court should find that the trial court did not abuse its discretion by imposing a \$500 sanction pursuant to CR 11 and RCW 4.85.185.

Respectfully submitted this 2nd day of September, 2015.

RESPECTFULLY SUBMITTED:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington


Taylor Hallvik, WSBA #44963
Deputy Prosecuting Attorney
Of Attorneys for Respondent Clark County

CERTIFICATE OF SERVICE

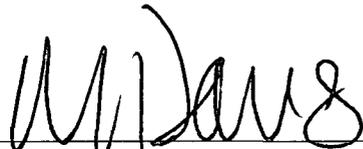
I, Nicole Davis, hereby certify that on this 2nd day of August, 2015,

I served by mail and email a copy of the foregoing *Brief of Respondent*

Clark County, Washington, to Plaintiff, Pro Se, as follows:

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Nicole Davis

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