

71896-7

71896-7

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2014 JUL 29 PM 1:20

No. 71896-7-1

Island County Superior Court No. 14-2-00144-9

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

DANIEL M. HARDING, an individual,
Appellant,

v.

ARNE O. DENNY, an individual,
Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR ISLAND COUNTY
HONORABLE ALAN R. HANCOCK

APPELLANT DANIEL M. HARDING
APPELLATE BRIEF

By: Daniel M. Harding
Pro Se
2108 Pennsylvania Court
Anacortes, WA 98221
(360) 707-8724

TABLE OF CONTENTS

A.	DECISION BELOW AND RELIEF REQUESTED-----	1
B.	ASSIGNMENTS OF ERROR-----	1
C.	STATEMENT OF THE CASE-----	2
D.	ARGUMENT WHY THE RULING MUST BE VOIDED--	3
	1. Lack of jurisdiction over parties voids ruling.-----	4
E.	CONCLUSION-----	6

TABLE OF AUTHORITIES

Washington Cases

State ex re. Turner v. Briggs, 971 P .2d 581 (Wash.App.Div. 1999)-----	5
Dike v. Dike, 75 Wn.2d 1, 7, 448 P .2d 490 (1968)-----	4
Robertson v. Commonwealth of Virginia, 25 S.E.2d 352, 358 (1943)-----	4
Mitchell v. Kitsap County., 59 Wn. App. 177, 180-181, 797 P .2d 516 (1990)-----	5

Statutes

RCW 4.28.020-----	3
-------------------	---

Black’s Law Dictionary, Sixth Edition, page 1574-----5

Void Judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a “void judgment” if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted inconsistent with due process. Klugh v. U.S.,D.C.S.C., 610 F.Supp. 892,901. See also voidable judgment.

A. DECISIONS BELOW AND RELIEF REQUESTED.

The Appellant, Daniel M. Harding, is appealing the Superior Court's order dismissing his case. A copy of the April 21, 2014, order dismissing Harding is designated as CP 2-6. Daniel M. Harding respectfully asks this Court to find this order to be void ab initio.

B. ASSIGNMENTS OF ERROR.

1. The Superior Court erred in hearing a motion presented by a movant that was not a party to the case.

INTRODUCTION

The right of a citizen in a free and transparent Democracy to question his government and perhaps even have his day in Court without fear of retribution or financial ruin is a valuable right. The Appellant in this case believes in this right and believes it is worth his time, and the time of this Court, to uphold this right. When the State decides to act vengefully to quiet those that question it by damaging them financially it has a stifling effect upon Democracy itself and is contrary to the public good.

C. STATEMENT OF THE CASE

The case before this Court of Appeals grew from an earlier case in which Daniel M. Harding sued the County of Skagit regarding property taxes. That case was filed 11/26/2012. The County of Skagit assigned the case to a staff lawyer named Arne O. Denny to defend their interests. Mr. Denny sought Summary Judgment, Sanctions and Attorney's fees against Mr. Harding on 12/13/2012. Summary Judgment was granted 2/25/2013, and the Judge in the matter withheld ruling on Sanctions and Attorney's fees. CP 68-71. Not until 5/1/2013 was a request for Sanctions and Attorney's fees made by Mr. Denny. CP 74-78. The Court requested that Mr. Denny prepare an affidavit indicating the hours spent on the case by his office as evidence for the attorney's fees. Mr. Denny presented his affidavit of billing hours to the Court in the amount of \$7,113.75. CP 79-82. On 6/7/2013 a short hearing on the matter was held during which an argument between Mr. Harding and Mr. Denny over the duration of a phone call shortened testimony considerably. Subsequently, a judgment for attorney fees in the amount of \$2,700.00 was awarded to Skagit County. CP 102.

The current case was filed in Island County Superior Court against Arne O. Denny as an individual on March 6, 2014. CP 136-138. It seeks

to answer the question of whether in his desire to harm Mr. Harding financially Arne O. Denny stepped beyond his job description and took it upon himself to personally pad and misrepresent his billing in the affidavit. Specifically did Mr. Denny commit fraud upon Mr. Harding?

On March 20, 2014, Skagit County filed a motion to dismiss and to grant Sanctions and Attorney's fees to Skagit County. CP 115-130.

On April 21, 2014, a hearing was held in Island County Superior Court before the Honorable Alan R. Hancock. RP 1. The motion to dismiss was granted and the motion to award Sanctions and Attorney's fees to Skagit County was denied. CP 2-6. RP 10-17. Among others the finding was "Skagit County was not a party to this case".

D. ARGUMENT WHY THE ORDER DISMISSING HARDING MUST BE VOIDED

Under RCW 4.28.020 the commencement of action by service of summons gave Island County Superior Court jurisdiction over Daniel M. Harding and Arne O. Denny, both as individuals. CP 136-138. The motion to dismiss, CP 115-130, was presented by Skagit County. CP 115, line 18. Skagit County was not served with a summons in this case and

there is nothing in the record to indicate Skagit County applied for or was granted by Island County Superior Court any status in this case at all. In fact, in his ruling, the Honorable Judge Hancock found specifically that “Skagit County is not a party to this case”. CP 6, line 6. RP 6, RP 14-16. Mr. Harding tries to bring up the fact that the motion was brought forward by a non-party in his verbal arguments but to no avail. RP 8, line 1-7.

The footnote on the motion to dismiss reflects that Skagit County can and has elected to pay for Mr. Denny’s defense. CP 115. Note the reference to Judy Keisser’s declaration, CP 13-14, referencing a letter from the risk pool. CP 15-16. This letter indicates that Mr. Denny will be allowed to act Pro Se in his own defense. This does not in any way make Skagit County into a defendant in this case however.

Skagit County is not a party to this case, and the fact that Skagit County presented the motion to dismiss Mr. Harding’s case has the effect of making the ruling void. In the case of *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968) it was quoted from *Robertson v. Commonwealth of Virginia*, 25 S.E.2d 352, 358 (1943) [2] A void judgment is 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”. In the instant case it would be a lack of

jurisdiction of the parties involved. Note the plural use of “party” indicating that just having jurisdiction over Mr. Harding would not be adequate if the Court lacked jurisdiction over the movant of the motion granted. Additionally, Black’s Law Dictionary, Sixth Edition, page 1574, defines this type of judgment:

Void Judgment: One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a “void judgment” if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted inconsistent with due process. Klugh v. U.S.,D.C.S.C., 610 F.Supp. 892,901. See also voidable judgment. Lastly see: State ex re. Turner v. Briggs, 971 P .2d 581 (Wash.App.Div. 1999)

Mr. Harding objected to these issues during his verbal presentation

to Judge Hancock. RP 8, line 1-7. See: Mitchell v. Kitsap County., 59 Wn. App. 177, 180-181, 797 P .2d 516 (1990). A void judgment must be vacated whenever the lack of jurisdiction comes to light. Mr. Harding's objections may have been premature in as much as the ruling had not been issued at that point. To be sure however these objections are not premature at present before the Appellant Court.

E. CONCLUSION

For the above reasons, Mr. Harding respectfully asks this Court to find that the order to dismiss his case be void ab initio.

Dated this 26th day of July, 2014.

By: 
Daniel M. Harding
Pro Se Appellant