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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

Court of Appeals No. 32336-6-III

(State Court No. 12-2-00459-3)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

LINDA BAYS,
Appellant,

v.

ANTHONY GRABICKI
Respondent.

AMENDED BRIEF OF RESPONDENT

EVANS, CRAVEN & LACKIE, P.S.
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I. STATEMENT OF THE CASE

Mr. Grabicki is the bankruptcy trustee for the Bankruptcy Estate of David Bays. CP 021-055. The Bankruptcy Estate contains certain real property located in Stevens County, Washington, referred to as the “Kettle Falls Property.” *Id.* On October 9, 2012, as part of his effort to sell the Kettle Falls Property for the benefit of the Bankruptcy Estate, Mr. Grabicki filed a Complaint for Ejectment of Linda Bays and others, in Stevens County Superior Court. CP 021-055.

On June 4, 2013, both The Honorable Allen C. Nielson and The Honorable Patrick A. Monasmith of the Stevens, Ferry and Pend Oreille County Superior Court recused themselves, and an Order of Recusal was issued. CP 241, 242.

On June 30, 2014, Mr. Grabicki filed an Amended Complaint for Quiet Title and Ejectment against Linda Bays and others. CP 256-264.

In August, 2013, visiting superior court judge the Honorable David Frazier of the Whitman County Superior Court was assigned to preside over the case.

Ultimately, Judge Frazier issued summary judgment orders in favor of Mr. Grabicki, quieting title in him against Ms. Bays and other individuals/entities who had asserted an interest in the Kettle Falls Property and ordering that they be ejected from the property. CP 252-55, CP 277-281.

On January 26, 2015, Ms. Bays filed a Notice of Appeal. The only issue raised by Ms. Bays in her appeal is whether Judge Frazier had “jurisdiction” to preside over this case.

II. ARGUMENT AND AUTHORITIES

For the reasons set forth below, Ms. Bays’ arguments with respect to Judge Frazier’s authority are not only groundless, but are frivolous, and the trial court’s summary judgment orders should be affirmed.

- A. Under the Washington State Constitution, the judge of any superior court may hold superior court in any other county at the request of the superior court judge(s) of the other county.**

Article 4, Section 7, of the Washington State Constitution

states:

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 or her duty to do so. A case in the superior court may be tried by a judge pro tempore either with the agreement of the parties if the judge pro tempore is a member of the bar, is agreed upon in writing by the parties litigant or their attorneys of record, and is approved by the court and sworn to try the case; or without the agreement of the parties if the judge pro tempore is a sitting elected judge and is acting as a judge pro tempore pursuant to supreme court rule. The supreme court rule must require assignments of judges 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 a pending 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. (Emphasis added.)

Significantly, Article 4, Section 7, distinguishes between a visiting superior court judge and a judge pro tempore. A visiting judge must be a superior court judge in another county. By contrast, any attorney may act as a judge pro tempore if agreed upon in writing by the parties or their attorneys of record, approved by the court, and sworn to try the case. In addition, no agreement of the parties is necessary if the judge pro tempore is a sitting elected judge [of any court] and is acting as a judge pro tempore pursuant to Supreme Court rule.

Ms. Bays, throughout her appeal, claims a visiting superior court judge is the same as a judge pro tempore, and that the reference to “elected judge” in Article 4, Section 7, means a superior court judge cannot preside over a case unless he/she has been elected in the county where he/she presides. That is a plain misreading of Article 4, Section 7.

B. Consistent with the Washington State Constitution, under RCW 2.08.150, a superior court judge of one county may hold a session of the superior court in another county if requested to do so by the superior court of the other county.¹

RCW 2.08.150 states:

Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he or she is hereby empowered, if he or she deem it consistent with the state of judicial business in the county or counties whereof he or she is a superior judge (and in such case it shall be his or her duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he or she may deem necessary by the state of judicial business in the county or counties whereof he or she is a superior judge. (Emphasis added.)

This statute, like Article 4, Section 7, authorizes a superior court judge of one county to preside over a superior court case in

¹ Significantly, judges pro tempore are addressed by a separate statute: RCW 2.08.180. Like Article 4, Section 7, of the Washington State Constitution, that statute indicates that a superior court judge pro tempore can be: (1) a lawyer, as long as he/she is agreed to by the parties or their attorneys, approved by the court, and sworn to try the case; (2) or any sitting elected judge [of any court], pursuant to supreme court rule.

another county if requested to do so by the judges of the other courts.

C. Court rules authorize the superior court administrator to act for the presiding superior court judge in requesting the appointment of a visiting judge.

Under the local rules for Ferry, Pend Oreille and Stevens County, general management of the Superior Court is vested in the presiding judge. LAR 3. One of the duties of the Court Administrator, as the presiding judge's representative, is case assignments and trial calendar management. LAR 3(d)(2). And under LRGAL 10 of Ferry, Stevens and Pend Oreille Counties, the Court Administrator may arrange for a visiting judge when both Tri County judges are unable to act.

Spokane County local rules authorize the Superior Court Administrator to assist the presiding judge with administrative responsibilities. Subject to the general supervision of the presiding judge, the court administrator's duties include

coordinating with the state court administrator and with the visiting judge program. Spokane County LAR 0.2(f).²

In the instant case, Ms. Bays argues Judge Frazier was not requested to preside over the case by a Superior Court judge from Stevens County. While there is no evidence in the record of the specific request, the Washington Constitution does require that a request for a visiting judge be made part of the record before the visiting judge has authority to act. *State v. Hawkins*, 164 Wn. App. 705, 712, 265 P.3d 185 (2011).

D. Ms. Bays' appeal is frivolous and Mr. Grabicki should be awarded his costs and attorney's fees.

Under RAP 18.9(a), the Court may order an appellant and/or counsel to pay terms to the respondent as a sanction for filing a frivolous appeal. A frivolous appeal is one which raises no debatable issues and is totally devoid of merit. *See, Protect*

² Ms. Bays cites LAR 6 in support of her position. But LAR 6 addresses only elected judges pro tempore under Washington Constitution Article 4, Section 7, and RCW 2.08.180. It does not address visiting superior court judges.

The Peninsula's Future v. City of Port Angeles, 175 Wn. App. 201, 220, 304 P.3d 914 (2013).

This is not the first time Ms. Bays has challenged the authority of a visiting Superior Court Judge. She made the same argument in In Re: Marriage of Bays, Erickson, 131 Wn. App. 1032, 2006 WL 281183 (2006), and her argument was summarily rejected. In light of that case, and the plain language of the Washington State Constitution and RCW 2.08.150 concerning the appointment of a visiting Superior Court Judge, Ms. Bays' appeal is frivolous and the Court should assess terms under RAP 18.9(a).

E. Specific relief requested re: ejectment of Linda Bays, Angela Thunstrom, William B. Klinger, Sr., and any agents, squatters, tenants or other occupants of the property and writ of restitution.

In October, 2002, the subject real property was awarded to David Bays, Linda Bays' ex-husband, in a dissolution proceeding. Because David Bays was in Bankruptcy when the Dissolution Findings of Fact and Conclusions of Law were

issued, the bankruptcy Trustee assumed “ownership” of his property interest, and for years, has been attempting to sell the property for the benefit of the bankruptcy estate. And for years Linda Bays, separately and in conjunction with others, including her children, Kelly Case and Angela Thunstrom, have been tirelessly working to frustrate the Trustee in this regard. Ms. Bays’ efforts have generally fallen into two categories: (1) repeated collateral attacks on the Dissolution Findings of Fact and Conclusions of Law, and the repeated assertion of frivolous claim(s) against individuals involved in the dissolution and David Bays’ bankruptcy, including judges, lawyers, and the bankruptcy trustee, (which claims have included challenges to the jurisdiction of judges who decide issues against her); and (2) the assertion of rights in the property allegedly held by others with whom Linda Bays is somehow related, including her son, Kelly Case, her daughter, Angela Thunstrom, and dubious entities in which Ms. Bays and her children have claimed

membership, such as the Linjericks Society and the Sonlight Pathway Society.

Under RAP 12.2, the Appellate Court may reverse, affirm, or modify the decision being reviewed and “take any other action as the merits of the case and interest of justice may require.” Here, in light of this case’s history and Ms. Bays’ obstructionist litigation tactics since 2002, Mr. Grabicki requests that the Court, in addition to affirming the trial court’s summary judgment orders and awarding terms against Ms. Bays and/or her counsel, direct that the Stevens County Superior Court, within ten days of this Court’s decision, issue a Writ of Restitution with respect to Parcel A and Parcel B (the Kettle Falls Property) which provides as follows:

It is hereby ORDERED, ADJUDGED AND DECREED that the Sheriff of Stevens County, State of Washington be allowed to break and enter the above-described premises, located at 1698 Nichols Road, Kettle Falls, Washington 99141, Stevens County, Washington and command serve Linda Bays, individually and as a member of the Linjericks Society, an unincorporated society, as a member of the Linjericks Society, a corporation sole, and as a member of the Sonlight Pathway

Society, Angela Thunstrom, individually and as a member of the Linjericks Society, an unincorporated society, as a member of the Linjericks Society, a corporation sole, and as a member of the Sonlight Pathway Society, William B. Klinger, Sr., individually and as a member of the Linjericks Society, an unincorporated society, as a member of the Linjericks Society, a corporation sole, and as a member of the Sonlight Pathway Society, the Linjericks Society, an unincorporated society, and all its members and the Sonlight Pathway Society and all its members, and any other persons present on the property to leave the premises taking with them any personal property they wish to keep within five days (120 hours). If the foregoing individuals do not vacate the premises voluntarily within five days (120 hours), the Sheriff or Marshal shall remove them and any personal property left behind shall be deemed abandoned. If the premises are unoccupied this Writ of Restitution shall be served by securely attaching the Writ on a conspicuous place on the premises.

No appeal of said Writ of Restitution shall be taken or allowed.

III. CONCLUSION

The Washington State Constitution and a Washington statute allow a superior court judge from one county to preside over a superior court case in another county as a “visiting judge” if requested to do so by the judges of the other county. The Superior Court Administrator acts as the designee of the county

superior court judges with respect to certain matters of court administration, including the assignment of visiting judges. Here, Judge Frazier was appointed to preside over the Stevens County case. Because his appointment was in full compliance with the Constitution, statute, and applicable court rules, Judge Frazier had the authority to preside over this matter and his summary judgment orders should be affirmed.

Because this appeal is frivolous, Ms. Bays and/or her counsel should be assessed terms under RAP 12.2.

Finally, given the history and procedural posture of this case and Ms. Bays' long history of obstructionist litigation tactics, the Court should direct the Stevens County Superior Court to issue the Writ of Restitution described above.

Dated this 29 day of September, 2015.

EVANS, CRAVEN & LACKIE, P.S.

By 
CHRISTOPHER J. KERLEY, #16489
Attorneys for Respondent

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 30 day of September, 2015, a copy of the AMENDED BRIEF OF RESPONDENT was delivered to the following persons in the manner indicated:

Linda Bays 1698 Nichols Rd. Kettle Falls, WA 99141	VIA REGULAR MAIL <input checked="" type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> VIA FACSIMILE <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA EMAIL <input checked="" type="checkbox"/>
Jay Nuxoll, WSBA 3506 13843 SE 10th Street Bellevue, WA 98005-3817	VIA REGULAR MAIL <input checked="" type="checkbox"/> VIA CERTIFIED MAIL <input type="checkbox"/> VIA FACSIMILE <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> VIA EMAIL <input checked="" type="checkbox"/>

9-30-15 /Spokane, WA
(Date/Place)

Carol L. Myers
Carol L. Myers