Brief Of The Appellant

United States Court of Appeals
For the Tenth Circuit

Docket No. 09-3371 (10th cir)

Formerly United States District Court Case
Case No: 09-CV-2603 JTM/DJW

STEWART A. WEBB
Plaintiff,
v.

HON. JUDGE KATHRYN H. VRATIL, in her
Official capacity as Chief Judge
for the United States District Court for

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Appeal from
the United States District Court for the District of Kansas

Brief Of The Appellant

Stewart A. Webb
Pro se Appellant Federal Whistleblower
Mail: P.O. Box 3061
Independence, MO. 64055
913-952-0846
stewwebb@stewwebb.com
http://www.stewwebb.com

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF FACTS

1) The apellant Stewart A. Webb filed an action seeking an order with an attached affidavit showing he will suffer irreparable injury unless the injunction issues,

2) The apellant Stewart A. Webb showed in the affidavit evidence of threatened injury in proffer that the injury outweighs whatever damage the proposed injunction may cause the opposing party, that no injury to the parties including the United States Government and its officials acting as part of an ongoing criminal enterprise can outweigh the pro se Plaintiff's interest in competent legal pleadings attaching the proof to the criminal statutes privately actionable under the RICO and FCA statutes, the latter for which the plaintiff must have an attorney and the former are too complex for the vast majority of pro se Plaintiffs to adequately plead.

3) The apellant Stewart A. Webb showed in the affidavit evidence the injunction, if issued, would not be adverse to the public interest, and that the violations of federal criminal statutes described in the Plaintiff's affidavit and web site vindicate the only recognizable public interest, the enforcement of the nation's laws.

4) The apellant Stewart A. Webb showed in the affidavit evidence there is a substantial likelihood he will eventually prevail on the merits.

5) The apellant Stewart A. Webb showed in the affidavit that a hearing in this proceeding will determine that Bret Landrith cannot be lawfully prevented from representing the plaintiff, stating the following from a Seventh Circuit filing:

"When directed by the Seventh Circuit Court of Appeals to file an entry of appearance in SHELIA MANNIX v. STATE OF ILLINOIS ATTORNEY GENERAL LISA MADIGAN, *et al*. 7th Cir. Case no. 09-1468 , Bret Landrith explained the unconstitutionality of the disbarment on its face and the continuing bad faith of the State of Kansas actors who procured it through extrinsic fraud visible in the order's adoption of Kansas Attorney Discipline agency misrepresentations and on the face of the Price adoption and Bolden records:

> 'The Kansas Supreme Court decision of disbarment on its face violated the Fourteenth Amendment of the United States Bill of Rights. Subsequent to the order of disbarment for bringing James L. Bolden's action to federal court my briefs and representation prevailed in the Tenth Circuit Court of Appeals in reversing the Kansas District Court's dismissal of James L. Bolden's racial discrimination civil rights complaint against the State of Kansas agency the City of Topeka.
>
> Despite efforts of State of Kansas officials to disrupt the appeal by suspending me and making me defend my license during the 10th Circuit briefing schedule and Kansas District Court personnel refusing to delay the transfer of the record on appeal for transcripts until an order had to be issued by the Court of Appeals to stop the obstruction, the Tenth Circuit Court of Appeals Decision *Bolden v. City of Topeka*. 441 F.3d 1129 (10th Cir. 2006) reinvigorated 42 USC Sec. 1981 as a cause of action against government discrimination and real estate takings in *Bolden v. City of Topeka*. 441 F.3d 1129 (10th Cir. 2006). The decision has been favorably cited by the Sixth Circuit in *Coles v. Granville* Case No. 05-3342 (6th Cir. May 22, 2006.
>
> The State of Kansas continues to pursue Bolden's witness and my former client David Martin Price in violation of the Fourteenth Amendment and this conduct has to date resulted in federal court intervention. The State of Kansas Attorney Disciplinary Administrator Stanton A. Hazlett can be heard on the official audio recording of Kansas Supreme Court oral argument emphasizing my association with my client David Martin Price and the First Amendment protected conduct of Price as the reason to disbar me in violation of the US Constitution. The state appellate

judge, Hon. Lee A. Johnson signed the bench warrant to arrest David Martin Price on July 21, 2009 depriving Price of his US Constitutionally protected liberty interests despite the clearly established law that the state court lost jurisdiction during the pendency of the removal and the timely appeal of the remand order. Any action taken in state court after a written notice of removal and before remand is of no force or effect. See Cr*awford v. Morris Trans.,Inc.*, 9*90 S*o. 2d 162, 169 (Miss. 2008).

Pursuant to § 1446, "it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." Re*solution Trust Corp. v. Bayside Developers, 4*3 F.3d 1230, 1239(9th Cir. 1994); Moor*e v. Interstate Fire Insurance, 717* F.Supp 1193 (S.D. Miss.1989); *South Carolina v. Moore, 447* F.2d 1067, 1073 (4th Cir. 1971). "Any further proceedings in the state court in the removed action, unless *and until thecase i*s *remanded, would* be a nullity. 1A Moore's Federal Practice § 0.168[3-8-4]. See also, *Caldwell v. Montgomery Ward and Co., 207 F.*Supp. 161 (S.D.Texas 1962).

Kansas Attorney General Steve Six and Hon. Lee A. Johnson are both responsible for knowing that it is also clearly established that jurisdiction over a case passes from the district court to the court of appeals immediately and automatically upon the filing of a notice of appeal. *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985); *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 3d § 3949.1 at 39-40 (1999).

Hon. Lee A. Johnson was the same judge that repeatedly issued orders denying my motions for access to Price's parental rights trial court and adoption records in *In the Matter of Baby C*, Kansas State Court of Appeals Case No. 03 90035 A. I had been retained in the appeal of the interstate adoption/parental termination of David Martin Price' infant son. I was denied the opportunity to produce the same evidence in defense of my disbarment. Baby C was kidnapped under fraud and sold to a couple in the State of Colorado. Price was never given access to the adoption case which unlawfully preceded the termination of his parental rights despite the clearly established right of a natural parent to have access to the records to defend against termination under Kansas controlling precedent in *Nunn v. Morrison*, 608 P.2d 1359, 227 Kan. 730 (Kan., 1980) determining a nondiscretionary duty to make available SRS records used to terminate parental rights.

The Hon. Lee A. Johnson initiated the disbarment of me for seeking these records and for asserting that Price as an American Indian not on a reservation was still within the protection of the federal Indian Child Welfare Act. A position the Kansas Supreme Court has now adopted in *In The Matter Of A.J.S.*, Kansas Supreme Court Case No. 99,130 (KS March 27th 2009).

The State of Kansas also continues to pursue the process server in the federal litigation relating to David Martin Price and the federal action to enjoin the bad faith State of Kansas disbarment proceeding in over 7 years of retaliation. See *State of Kansas, Dept. of CSE v Janice Lynn King* , KS Dist. Case no. 09-4109-JAR removed to federal court on August 2, 2009.

After disbarment in 2005, I have been prevented repeatedly from obtaining employment even in manual labor positions. This is despite the fact I moved to flee the persecution and became a citizen of the State of Missouri. The State of Kansas Office of Attorney Discipline acting through its state officials has made repeated fraudulent representations to Missouri employers including between April 11 and April 30, 2007 during a failed scheme to entrap me in a temporary clerical assignment with State of Kansas Attorney Discipline Official Rex A. Sharp and his associate Isaac L.

Diel.

While the continuing retaliation against my former client David Martin Price in violation of 18 USC §§241 and 242 is at the direction of Kansas Attorney General Steve Six, the State of Illinois is actively extorting prospective legal representation of Price in Kansas State court extorting prospective legal representation my former client Samuel K. Lipari in Missouri state and federal courts. See *Lipari v. Novation LLC*, Mo 16th Cir. Case 0816-04217, Proposed Third Proposed Amended Petition at pages 125-127 describing Jerome Larkin, the Administrator The Illinois Attorney Registration and Disciplinary Commission conduct to prevent a licensed attorney from adequately representing Lipari's witness Dustin Sherwood in the W.D. of Missouri federal bankruptcy court and of an earlier attempt by the same attorney to compromise Lipari's prosecution of the Novation LLC hospital supply cartel.'"

6.) The apellant Stewart A. Webb stated in the petition that "The Plaintiff does not bring this action or claim under the civil rights laws of 42 USC § 1981et seq., instead the

Plaintiff brings this action for injunctive relief pursuant to the 1st and 6th Amendments of the U.S. Constitution."

7). The apellant Stewart A. Webb stated in the petition"The Plaintiff prays that the court enjoin the Chief Justice Kathryn H. Vratil of Kansas District Court from being an instrument of the State of Kansas Officials corruption by enforcing under the color of state law, any prohibition against Bret Landrith representing the Plaintiff in Federal District Court in this matter, and thereby restore the color of law to this federal jurisdiction."

8). The apellant Stewart A. Webb stated in the petition "The Plaintiff prays that the United States District Court for the District of Kansas in joint participation with federal officials, Kansas's officials, actors, agents, subcontracted agents, et al., will not give by instructions to the law clerks of the federal trial or appeals courts to dismiss any and all claims or pleadings filed by the Plaintiff, in violation of equal protection under the color of law."

9). The apellant Stewart A. Webb stated in the petition that "The plaintiff prays that Chief Justice Kathryn H. Vratil of Kansas District Court and the United States District Court for the District of Kansas be restrained from control by federal FBI officials, Kansas's officials, actors, agents, subcontracted agents, et al., and Chief Justice Kathryn H. Vratil and the United States District Court will not allow violation the Plaintiffs due process rights guaranteed by the constitution, in any more cases, in which the Plaintiff is a party. "

10). The apellant Stewart A. Webb requested in the petition the relief that "The Plaintiff

prays that the court enjoin the Chief Justice Kathryn H. Vratil of Kansas District Court from being an instrument of the State of Kansas Officials and U.S. District Court for the District of Kansas, State of Kansas officials, actors, agents, subcontracted agents, et al., and not deny the Plaintiff the constitutional right to redress his grievances regarding his mistreatment by the Millman Bush Crime family RICO enterprise, so that the constitutional questions of law will take precedence over all other matters, and to prevent the corrupt influence of State of Kansas Officials over the U.S. District Court for the District of Kansas, federal officials, State of Kansas officials, actors, agents, subcontracted agents, et al., as well as, the law have corruptly used the U.S. District Courts for the District of Colorado, Missouri and Kansas seeking to sanction or arrest on the Plaintiff, as a chill effect to violate the redress of his grievances."

11). The apellant Stewart A. Webb requested in the petition the relief that "The Plaintiff prays that the court enjoin the Chief Justice Kathryn H. Vratil of Kansas District Court from being an instrument of the State of Kansas Officials and U.S. District Court for the District of Kansas, federal officials, State of Kansas officials, actors, agents, subcontracted agents, et al., and not sanction or place the chill effect upon the Plaintiff for redress of his grievances by continuing to prevent his attorney from representing him or practicing law in Kansas District Court."

ARGUMENT

ISSUE I: Whether The Trial Court Erred By Denying In Forma Pauperis Status In the Face of Evidence of Injury to the Appellant's Rights From Lack of Counsel And Contradicting the Non Frivolous Finding By the US District Court For The District of Colorado

The trial court is prohibited from *sua sponte* dismissal of the plaintiff's cause or denial of the plaintiff's in forma pauperis status under the US Supreme Court's overturning of the Tenth Circuit Court of Appeals in *Erickson v. Pardus*, 511 U.S. 9 (2007).

The trial court is prohibited from *sua sponte* dismissal of the plaintiff's cause based on earlier decisions of the Kansas District Court where the plaintiff was not a party or in privity including *David Martin Price v. Kathryn H. Vratil, et al.*, No. 09-2198 under the 2008 controlling law of the US Supreme Court in *Taylor v. Sturgell* where the court specifically held that "…such 'nonparty preclusion' runs up against the 'deep-rooted historic tradition that everyone should have his own day in court.'" *Taylor v. Sturgell* 553 U.S. ___ (2008).

The relief sought in equity by the appellant was solely the vindication of the rights of the appellant to have adequate legal representation in future separate racketeering proceedings against defendants not a party to this action in equity.

The memorandum in support of the plaintiff's motion for summary judgment specifically gave the trial court evidence of injury to similarly situated individuals who were retaliated against through extrinsic fraud over federal court proceedings to meet the burden of proving the 1st and 2nd criteria for injunctive relief under *Kansas Hospital*

Association v. Whiteman, 835 F. Supp. 1548, 1551-2 (D.Kan. 1993).

The evidence of retaliation against similarly situated victims prevails in summary judgment: "…evidence of a similarly situated individual who was retaliated against "might also be sufficient to show the existence of an unconstitutional municipal policy giving rise to section 1983 liability." *Id.* at 725 n.26" *Melton v. City of Oklahoma City*, 879 F.2d 706, 725 n.26 (10th Cir. 1989).

The appellant's cause was not frivolous and he was entitled to summary judgment for injunctive relief to proving the 1st and 2nd criteria for injunctive relief under *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1548, 1551-2

The appellant was entitled to summary judgment for injunctive relief under the third criteria of *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1551-2 because the injunction would not be adverse to the public interest.

The public interest in the appellant obtaining the representation of Landrith is not dependant on the Kansas Supreme Court and is separate from any state action after Landrith was admitted to the Kansas District Court. "The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. " *Theard v. United States*, 354 U.S. 278, 281 (1957). Thus, for example, "disbarment by federal courts does not automatically flow from disbarment from state courts." *Id*. at 282; accord *In re Ruffalo*, 390 U.S. 544, 547 (1968). This is true even when admission to a federal court is predicated upon admission to the bar of the state court of last resort. See *Selling v. Radford*, 243 U.S. 46, 49 (1916); see also *Theard*, 354 U.S. at 281 ("While a lawyer is

admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route."). Once federal admission is secured, a change in circumstances underlying state admission – such as a shift in domicile -- is "wholly negligible " on the right to practice before a federal court. *Selling,* 243 U.S. at 49.

The appellant's cause is not frivolous and he is entitled to preliminary injunctive relief allowing him the representation of Landrith and summary judgment for injunctive relief having met the first three criteria of *Kansas Hospital Association v. Whiteman*, 835 F. Supp. 1551-2 and because the plaintiff is readily able to meet the standard in this jurisdiction for the fourth criteria that there is a strong likelihood the plaintiff will ultimately prevail in his investigation of criminal conduct and in the plaintiff's private civil racketeering claims under 18 U. S. C. § 1961, *et seq*.

The proffered evidence and testimony of the plaintiffs racketeering claims have been found by US District Court for the District of Colorado Senior Judge, Hon. Richard Matsch then adopted the findings of Wyoming District Judge Hon. Clarence Addison Brimmer, Jr. after a deposition of the plaintiff that public interest requires summoning a grand jury in a telephone hearing with the plaintiff and the plaintiff's fellow relator Lt. Commander USN Ret., Office of Intelligence Al Martin.

Star Fuel Marts, LLC v. Sam's East, Inc., 362 F.3d 639, 653 (10th Cir. 2004).

Whereas for the above stated reasons which are supported with legal arguments and factual evidence in the Motion for Summary Judgment and accompanying Memorandum of Support for Summary judgment the appellant respectfully requests that this court issue an order permitting the plaintiff to proceed with legal representation by Landrith in the

US District Court for the District of Kansas in his investigation of criminal conduct appellant occurring in the State of Kansas and legal 1961, *et seq*. representation of the plaintiff's private civil racketeering claims under 18 U. S. C. §

Respectfully submitted,

S/ Stewart A. Webb
Stewart A. Webb
Pro se Federal Whistleblower
Mail: P.O. Box 3061
Independence, MO. 64055
913-952-0846
stewwebb@stewwebb.com
http://www.stewwebb.com

CERTIFICATE OF SERVICE/COMPLIANCE

I certify the brief in body is 10 pages meeting the length requirement and that the electronic file is virus scanned and free from CA Internet Security Suite 2010 Edition Antivirus software.

I hereby certified I have served the above motion on opposing parties by filing the motion March 10, 2010 on the court's ECMF electronic filing system.

I further certified I have served the Memorandum and exhibits by US Mail containing a link to an html version of the same available online at

http://www.stewwebb.com/stew_webb_vs_bush_millman_lindner_clinton_crime_syndicate_122009.htm
http://sites.google.com/site/stewwebbvjudgevratil

to the following by depositing it in the US Mail with First Class postage affixed:

U.S. District Court for the District of Kansas
500 State Ave., 259 U.S. Court house
Kansas City, Kansas 66101.

Hon. Kathryn H. Vratil
U.S. District Court for the District of Kansas
500 State Ave., 259 U.S. Court house
Kansas City, Kansas 66101.

Stewart A. Webb
Federal Whistleblower
Mail: P.O. Box 3061
Independence, MO. 64055
913-952-0846
stewwebb@stewwebb.com
http://www.stewwebb.com

On this 10th day of March 2010.

Respectfully submitted,

S/ Stewart A. Webb,
Stewart A. Webb
Federal Whistleblower
Mail: P.O. Box 3061
Independence, MO. 64055
913-952-0846
stewwebb@stewwebb.com
http://www.stewwebb.com