Larimer County, Colorado, District Court Larimer County Law and Justice Center 201 LaPorte Avenue Fort Collins, CO 80521-2764 (970) 498-6100	2018 APR 16 PM 4:01 DATE FILED: April 16, 2018 CASE NUMBER: 2018CV140 FILED IN COMBINED COURT LARIMER COUNTY, CO ▲COURT USE ONLY▲
Kendra Musgrave *Plaintiff* vs. Loveland Municipal Court Judge, Gerri R. Joneson *Defendant*	District Court Case No.: 18CV140 Division:
Kendra Musgrave, *Pro se* P.O. Box 1101 Greeley, Colorado 80631	
AMENDED COMPLAINT	

In seeking mandamus relief under Colorado Rules of Civil Procedure 106(a)(2) for issuance of final determination of Loveland Municipal Proceeding 352152, and vacation of all subpoenas Kendra Musgrave, complains and alleges and avers as follows:

Parties

1. Plaintiff, Kendra Musgrave, P.O. Box 1101, Greeley, Colorado 80631 appeared before Loveland Municipal Court Judge Gerri R. Joneson in #352152 as of June 1, 2016.

2. Defendant is Loveland Municipal Court Judge Gerri R. Joneson, Loveland Municipal Court, 810 E. 10th Street #200, Loveland, Colorado 80537. Alternatively, 425 W Mulberry St Suite 212, Fort Collins, CO 80521.

Jurisdiction and Venue

3. This court has subject matter jurisdiction over matters of enjoining lower judicial bodies to perform clear legal duties in Larimar County, Colorado. Venue is proper pursuant to Colorado Rules of Civil Procedure 106(a)(2).

General Allegations

As is record and undisputed fact:

4. After obtaining Defendant's cooperation in an ever growing scheme, Assistant City Attorney Vince Junglas, who knew through illegal search of utilities that Plaintiff neither lived nor worked in Loveland which he reported to Loveland police whom he then contacted to contrive charges against Plaintiff. Loveland police then also illegally searched Plaintiff and then physically searched Plaintiff in Greeley, Weld County: an executed threat of physical harm. Det. Katelyn McDonald reported "arrest," on charges of two counts of "aiding and abetting non-payment." A novel concept: if one is out shopping with friends and does not insist the friend(s) *purchase* perhaps shoes, bike, drink, whatever, they could be charged and in Loveland? In fact, the charges do not exist Loveland Municipal Code – or any code – and does not correspond to Loveland Municipal Code cited, and which code does not exist beyond the city of Loveland. Notwithstanding, the date was fatal, as was the incomplete Loveland address.

5. On June 1, 2016 Defendant read off charges that anyone in the filled courtroom could have discovered from the public record not to exist. Or correspond to city ordinance cited. Perhaps half the room, if they were listening, might have recognized the address Defendant cited was incomplete, a general vicinity in a local mall. With a defective summons and complaint citing non-existent charges, *inter alia,* no subject matter jurisdiction, no geographical jurisdiction, the "*City's*" charges in every sense were void ab initio in its case #352152. Defendant did not dismiss or cite error but rather used a loud and threatening tone of voice to prevent Plaintiff from speaking or entering a plea. With the same tone of barely controlled hostility but without in personam jurisdiction, Defendant then *ordered* Plaintiff to conference with Assistant City Attorney Vince Junglas.

6. Plaintiff was quite clear in her declination of conference, her due process right. Defendant remained defiant of Plaintiff's rights. Plaintiff was forced to then argue for her right to decline, pointing out that also she was without counsel and the very discovery Defendant held. Defendant adjourned to June 30, 2016 for Plaintiff to return with counsel to conference with ACA Junglas. Plaintiff objected even asking Defendant if she was *ordering* conference – which she had. Defendant would not relent. A direct an obvious question, Defendant on refused to answer truthfully to a pro se litigant; and while ordering Plaintiff to return with counsel to conference with ACA Junglas. In courts that have subject matter, geographical and in person am jurisdiction, the due proceed right to proceed without counsel is not vitiated but to vitiate the due process right to decline conference.

7. Defendant also refused to release discovery. Defendant declared Plaintiff had to obtain it herself from Loveland's City Attorney's Office: holding hostage Plainitff's right to know the "charges," and "evidence" against her, to Plaintiff's right to refuse conference. (Plaintiff did not obtain discovery.)

8. That Plaintiff felt threatened is undisputed record, but an obvious conclusion to be drawn from the record since Defendant returned on the adjourn date of June, 30, 2016. Defendant declared for the record that Plaintiff had requested conference. Plaintiff interrupted, correcting the record that Defendant had ordered conference. Alone and without

counsel to proceed in an otherwise empty courtroom but for Defendant and her clerk, Defendant *again* adjourned with increased threat: Defendant ordered Plaintiff obtain counsel to conference with ACA Junglas; *or* Defendant would enter a plea for her. Defendant refused to reduce it to a written order. Plaintiff was instead provided with this cryptic notice that Defendant's order and threat was readily apparent to Plaintiff but no one else. (Ex. 1.)

9. Forced to obtain counsel at her own expense, counsel reviewed "discovery." Plaintiff's months of years old residential utility records as well as that of other third party strangers, and each line of private driver's license information and her picture, *inter alia,* obtained even prior to "investigation," and repeatedly before issuance of summons and complaint, was made public, in the record of Loveland's Municipal Court record over which Defendant presides. Also made public in the "discovery," that is record although held private by law and statute was corporate tax information. The publicized information and *sole* evidence and only claim in support of "charges," in every sense, two counts of aiding and abetting third party corporate strangers, each, in *non-payment* of "tax" - was an *unsigned* corporate audit with correspondent *unsigned* demands for payment of but one corporate stranger. There was no tax bill of any amount that required a pay-off. Without any tax due, without any tax bill, Plaintiff was criminally charged, in every sense, for the pay-off of over $5,000 that either corporate stranger without legal basis was presumed guilty of not making. (It is record.) Plaintiff could only *prove* her *innocence* of these charges of aiding and abetting *non*-payment of "tax" was to make payment of the *non-tax* derived from the *non*-tax bill from the *non*-audit that either corporate stranger was presumed guilty of not paying (undisputed record.) Hence, the filing of non-existent charges in a non-existent court: Defendant, a municipal court judge, has *no* judicial power whatsoever to review, especially an initial review, or decide taxes, *owed or otherwise*. Or any matter involving a corporate actor. Or, for that matter, any charge of "aiding and abetting non-payment," *inter alia.* Police can only charge natural persons. Counsel fired off his appearance, declined conference with ACA Junglas, and pre-paid the jury fee in anticipation of entering a not-guilty plea.

10. Counsel was ordered to appear "trial ready" on July 28, 2016.

11. Counsel drove approximately 80-100 miles each way to appear in person. Defendant was not on the bench on January 28, 2016. A male judge filled in. Plaintiff through counsel entered a "not guilty" plea with demand for 6 man jury. Plaintiff and her counsel then filled out the enclosed (Ex. 2) listing a valid address for Plaintiff (Ex. 3) that Plaintiff may also receive any courtesy copies served upon counsel. It takes one day to receive postal delivery from Loveland, Colorado.

12. Defendant never issued the Pre-Trial Order.

13. Rather than issue ab subpoenas through the clerk on a natural person in Loveland, Defendant and ACA Junglas without benefit of a clerk, without notice, shared Defendant's courtroom as their address in their captions when issuing and executing their out of state subpoenas searching private third party corporate entities. Defendant issued her last subpoena on her own motion, designating herself as "District Judge."

14. Plaintiff through counsel filed an objection as well as a separate "Motion to Dismiss for Prosecutorial Misconduct and for Charging the Defendant Without Probable Cause For A Non-Existent Crime." The title alone appears self-explanatory.

15. Thus making the making the pay-off amount to prove "innocence" suddenly appear reasonable, ACA Junglas filed a non-responsive over 100-page *Response*; and Defendant ordered a hearing on same, as well as an "evidentiary hearing," but without notice: Instead of serving Plaintiff's counsel, or even serve Plaintiff at the address provided to the Court, Defendant searched Plaintiff's driver's license and each line of information contained. Defendant then searched Plaintiff's address as listed on her license. There, *Defendant* served Plaintiff, exclusive of her counsel, with Defendant's August 12, 2016 "notice" (Ex. 4), directly communicating with Plaintiff who was represented, exclusive of her counsel, and a prohibition under Colorado's Professional Code of Responsibility that Defendant is subject to. The handwriting on the "notice" appears to be Defendant's. Clearly excerpted from the handwritten title of counsel's Motion to Dismiss is "with Non-Existent Crime," as the "notice" would then give notice that the "notice" was self-defeating: thus, giving notice that the "hearing," was also without legal basis or purpose.

16. Although billed, albeit secretly, as an "evidentiary" hearing, Loveland police were not present on August 23, 2016 although there were others employed by the City of Loveland, apparently present as witness for the "evidentiary," hearing. Surprised, Plaintiff's counsel argued lack of notice as well as that Loveland police had traveled into Weld county.

17. Defendant ordered from the bench a "probable cause hearing." Defendant repeated and slowly enunuciated "probable cause hearing," set for September 22, 2016 that it was quite abundantly clear to all present; but refused to reduce it to a written order, according to pattern (see ¶ 8), although her handwritten note was plainly visible in the court file. Defendant also ordered counsel to Reply to ACA Junglas' Response to his Motion to Dismiss with Prejudice for Prosecutorial Misconduct and for Charging Defendant Without Probable Cause for a Non-Existent Crime, and file his "Pre-Trial" motions by September 6, 2016 which was reduced to written order.

18. Defendant also on August 23, 2016, threatened Plaintiff's counsel as well as Plaintiff. Amazingly, and perhaps worse yet, was Defendant's silence as she positioned her body toward counsel and scowled as he addressed the court and in response to counsel's exclamation, "I am not going to be hometowned?!" Thus *he* was directed to participate in a *private* conference without Plaintiff. On Plaintiff's tab.

19. On or about August 26, 2016, Plaintiff was briefly provided access to the court file after filling out an (i) application and (ii) providing her driver's license. An onerous condition if not an illegal search. Plaintiff complied as by then anyone could and had accessed her license information by then part of the public record. Although each item filed or issued by the court is scanned in case of loss, Plaintiff was only allowed to access the file upon approval and when (iii) Municipal court room that remains under recorded video surveillance is not in use; and (iii) a Municipal Court Clerk could also sit next to/over the person reviewing the file and, (iv) only for the amount of time the clerk would spare according to the convenience of the clerk or supervisor. In this instance but a half an hour with Patty "Barrop." Who then refused to print out the docket/register of actions, as it had not been applied for and specifically listed on the application for access to the record. Whereby Plaintiff, driving in from another county, was instructed to fill out another application for the docket/register of actions. That would then have to be picked up rather than mailed. Plaintiff applied but to date Plaintiff has never received a copy of the docket/register of actions.

20. ACA Junglas then served his motion to dismiss with prejudice *and* with probable cause dated September 2, 2016 to Plaintiff's counsel the same date. (Ex. 5) At such time ACA Junglas' motion to dismiss with prejudice and with probable cause had not been filed with the Loveland's Municipal Court. Also, at that time, ACA Junglas emailed Plaintiff's counsel that Defendant would be out and not return to the bench until September 8, 2016. Whereupon he expected Defendant to rule upon his motion if it was unopposed.

21. If Plaintiff through counsel did not oppose ACA Junglas' latest motion, the earliest that Defendant could rule on his motion would be September 8, 2016. The September 6, 2016 would expire prior to Defendant's return to the bench on September 8, 2016.

22. No issuances from Court or City or any filings were received on September 6, 2017.

23. As is public record and fact, the Loveland Municipal courtroom was (a) closed on Tuesday September 6, 2016; (b) no calendar was posted, and (c) Judge Joneson was not presiding.

24. Loveland's Municipal Court clerk's office confirmed that there had been no ruling this this case #352152. The case was still active. It neither appeared that ACA Junglas motion to dismiss with prejudice *and* with probable cause had been filed by then, but Plaintiff was denied a printout of the docket.

25. Plaintiff then on September 6, 2016, filed a Discharge of Counsel (Ex. 6) again citing her address for service, the same as the court's records as of July 28, 2016. Although unnecessary, at least in other courts, Plaintiff declared her basis for proceeding pro se was to protect her rights. The Discharge of Counsel with Plaintiff's service address was incorporated at the beginning of Plaintiff's pro se Reply that also inventoried the entire record to date, and concluded again with address of service at Plaintiff's signature and was also filed September 6, 2016 (Ex. 7). The Discharge of Counsel with Plaintiff's service address was incorporated at the beginning of Plaintiff's pro se Response/Objection to City's Motion to Dismiss that also concluded with Plaintiff's address of service and also filed on September 6, 2016 (Ex. 7). Plaintiff's address was plainly typed at the beginning and at the end of each of Plaintiff's documents. There could be no confusion or mistake as to who ACA Junglas or Defendant should serve in this matter and where.

26. As is public record and fact, the Loveland Municipal courtroom was again (a) closed on Tuesday September 7, 2016; (b) no calendar was posted, and (c) Judge Joneson was not presiding.

27. No issuances from Court or City or any filings were received on September 7, 2017.

28. Rather than wait for mail delivery of the Reply, ACA Junglas obtained it directly from the post office on September 7, 2017.

29. No issuances from either the City or the Court were received on September 8, 2016.

30. No issuances from either the City or the Court on September 9, 2016. Nor, would the Clerk's Office verbally confirm or inform Plaintiff if there had been a final ruling. Clerk's office again refused a printout of the docket/register of actions. (Notwithstanding any requirement

for search and recovery of any court filing or issuance voids it.) Complying, again, with the onerous conditions set by the Municipal Court, Plaintiff applied for a printout of the docket, the record for transcripts, *inter alia*, and for more than a half of an hour. (Ex. 9.) To date, the application has been ignored and otherwise Plaintiff has been at all times denied access to the court, specifically the record, that these statements are taken from and summarize.

31. No issuances from either the City or the Court were received on September 10, 2016 or on September 12, 2016.

32. On September 12, 2016, Plaintiff was denied access to the record, even a printout of the docket as well as any verbal information as to the dispensation of the proceeding #352152. Plaintiff was forced to guess what might be happening, as reflected in Plaintiff's same date motion (Ex. 10.) that a) if ACA Junglas did not file his motion with the Court, the Court should deem it filed as it would have been served upon counsel in bad faith; b) after review of such motion and that of Plaintiff's, Court should issue a decision; or c) serve any decision rendered in accordance with CRCP Rule 5; d) as well to vacate all their subpoenas; and d) any pending court date, (including probable cause hearing set for September 22, 2016, *inter alia*).

33. It never happened.

34. *To date,* Plaintiff has never been served with any determination on any motions filed or any final determination of #352152 if it was ever issued. There is no other remedy to cause Defendant to perform her clear legal duty.

First Claim for Relief

35. Plaintiff incorporates the allegations of paragraphs 1-34 herein.

36. The right to represent oneself is absolute and no more pronounced than in a municipal court. No court, especially a municipal court, has the prerogative of refusing to hear and otherwise outright ignore the self-represented. Certainly, if there is no in personam jurisdiction.

Second Claim for Relief

37. Plaintiff incorporates the allegations of paragraphs 1-34 herein.

38. Municipal Rule 232(b) requires issuance of a judgment. Defendant has had more than ample time to issue a final determination of #352152.

Third Claim for Relief

39. Plaintiff incorporates the allegations of paragraphs 1-34 herein.

40. Colorado Rules of Civil Procedure Rule 5 requires service of all orders to the Plaintiff at the address she provided to the court, the same address on each of her pro se filings.

41. Due process mandates that judgment be issued and properly served upon Plaintiff. Borer v. Lewis, 91 P.3d 375 (Colo. 2004), citing Weber v. Williams, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) (stating that "a judgment rendered without service is . . . void") (quoting Great West Min. Co. v. Woodmas of Alston Min. Co., 12 Colo. 46, 53, 20 P. 771, 775 (1888)).

42. A judgment of dismissal with prejudice entered without notice is void. Thompson v. McCormick, 138 Colo. 434, 335 P.2d 265 (1959); Radinsky v. Kripke, 143 Colo. 454, 354 P.2d 500 (1960).

Fourth Claim for Relief

43. Plaintiff incorporates the allegations of paragraphs 1-34 herein.

44. Defendant is barred from issuing her final determination of #352152 nunc pro tunc as that would vitiate Plaintiff's right to appeal. In Re Marriage of Spector 867 P.2d 181 (1993) "Further, the nunc pro tunc effect of an order as to the parties' rights cannot reduce the time nor defeat the right to seek review. See Joslin Dry Goods Co. v. Villa Italia, Ltd., 35 Colo.App. 252, 539 P.2d 137 (1975)." Self-evidently, a final order for Loveland's #352152 issued nunc pro tunc would be void on its face: as providing due process and vitiating due process at the same time.

Fifth Claim for Relief

45. Plaintiff incorporates the allegations of paragraphs 1-34 herein.

46. It was clear to Defendant by way of Plaintiff's motion dated September 12, 2016 that although, Plaintiff had an absolute due process, she still did not know right to know if Defendant ruled upon ACA's Junglas final motion or Plaintiff's motion to dismiss. Or, if all their subpoenas and pending court dates were vacated or *not*. It is the substance, not the form, of a request to the court which controls the necessity for proper notice. Phillips v. Phillips, 155 Colo. 538, 400 P.2d 450 (1964); Cont'l Oil Co. v. Benham, 163 Colo. 255, 430 P.2d 90 (1967).

47. Although it is a violation of Plaintiff's due process right to be forced to conduct any search and discovery for any filing or court issuance, Plaintiff has been denied verbal information from the court, denied access to the record, docket/register of actions, court file, and the court.

Conclusion

Defendant's sole judicial power in this matter #352152 was to issue a dismissal with prejudice and serve Plaintiff with same in accordance with CRCP Rule 5. Rather than act within her judicial power set by statute or submit to statutory mandate, Defendant chose to engaged in and execute any number of flagrant and repugnant acts. Defendant has gone out of her way show a distinct and willful proclivity for improper service of improper issuances, but to date has refused her mandate to issue a final determination in #352152 and serve it upon Plaintiff in accordance with law. Defendant should be sanctioned.

WHEREFORE in accordance with CRCP 106, Plaintiff prays this Court enjoin Defendant answer with issuance and proper service of her final determination of #352152 dated no earlier than the service date of this Complaint and no later than 21 days from service thereof; and grants to Plaintiff all ancillary fees and costs of enjoining Plaintiff to execute her clear legal duty.

Dated: April 11, 2018

Kendra Musgrave
P.O. Box 1101
Greeley, Colorado 80631