

FILED IN COMBINED COURTS
LARIMER COUNTY, CO

☐ Small Claims ☐ County Court ☒ District Court
☐ Probate Court ☐ Juvenile Court

Larimer County, Colorado

Court Address: 201 LaPorte Avenue, Fort Collins, CO
80521

DATE FILED: April 13, 2018
CASE NUMBER: 2018CV140

-VS-

(Name & Address)

Phone Number:

▲ COURT USE ONLY ▲

Case Number:

Div.: Ctrm:

Please see attached.

Signature

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of the _____
was served on the other party by:

☐ Hand Delivery, ☐ Faxed to this number _____, or
☐ by placing it in the United States mail, postage pre-paid, and addressed to the following (include name
and address):

To: _____

☐ Petitioner/Plaintiff or ☐ Respondent/Defendant

PAID
AMT. \$ 224.87
DATE 4/13/18

General Allegations

As is undisputed record and fact:

4. After illegally searching Plaintiff, Loveland police traveled into Weld county with a defective summons and complaint - no chargeable offense, no such city ordinance, no correspondence to city ordinance cited, no ~~an~~ actual Loveland address, rather than general vicinity, no affirmative act, geographical jurisdiction, subject matter jurisdiction, *inter alia*. City's charges in every sense were void ab initio in its case #352152.
5. When Defendant appeared without counsel on June 1, 2016, Defendant did not cite error or dismiss. Rather, Defendant used a loud and threatening tone of voice to prevent Plaintiff from speaking or entering a plea. With the same tone but without in personam jurisdiction, Defendant ordered Plaintiff to conference with Assistant City Attorney Vince Junglas.
6. Plaintiff was quite clear in her declination, then and always. Although declination of conference is a due process right, Defendant would not relent. Plaintiff asked if Defendant if she was ordering conference. Plaintiff had to argue point out on the record that she was without the very discovery that the Defendant held.
7. Defendant refused to release discovery. Defendant declared on the record that Plaintiff had to obtain it herself from Loveland's City Attorney's Office.
8. With the same tone of barely controlled hostility but without in personam jurisdiction, Defendant adjourned to June 30, 2016 for Plaintiff to appear with counsel to conference with ACA Junglas. In courts that have subject matter, geographical and in personam jurisdiction, the due right to proceed without counsel is not vitiated but to vitiate the due process right to decline conference. That Plaintiff felt threatened is undisputed record, but an obvious conclusion to be drawn from the record since Defendant returned on the adjourn date.
9. Defendant refused to accept plea. Defendant declared Plaintiff had requested conference. Plaintiff interrupted, correcting the record that Defendant had ordered conference. Defendant *again* adjourned but with increased threat: Defendant ordered Plaintiff obtain counsel to conference with ACA Junglas; *or* Defendant would enter a plea for her, that was then reduced to this rather cryptic appearing notice (Ex. 1.)
10. Thus Plaintiff was forced to obtain counsel at her own expense. He then entered his appearance, declined conference with ACA Junglas, and pre-paid the jury fee in anticipation of entering a plea.
11. Counsel was ordered to appear "trial ready" on July 28, 2016.
12. Counsel drove approximately 80-100 miles each way to appear in person. Defendant was not on the bench on January 28, 2016. 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.

General Allegations

As is undisputed record and fact:

4. After illegally searching Plaintiff, Loveland police traveled into Weld county with a defective summons and complaint - no chargeable offense, no such city ordinance, no correspondence to city ordinance cited, no ~~an~~ actual Loveland address, rather than general vicinity, no affirmative act, geographical jurisdiction, subject matter jurisdiction, *inter alia*. City's charges in every sense were void ab initio in its case #352152.

5. When Defendant appeared without counsel on June 1, 2016, Defendant did not cite error or dismiss. Rather, Defendant used a loud and threatening tone of voice to prevent Plaintiff from speaking or entering a plea. With the same tone but without in personam jurisdiction, Defendant ordered Plaintiff to conference with Assistant City Attorney Vince Junglas.

6. Plaintiff was quite clear in her declination, then and always. Although declination of conference is a due process right, Defendant would not relent. Plaintiff asked if Defendant if she was ordering conference. Plaintiff had to argue point out on the record that she was without the very discovery that the Defendant held.

7. Defendant refused to release discovery. Defendant declared on the record that Plaintiff had to obtain it herself from Loveland's City Attorney's Office.

8. With the same tone of barely controlled hostility but without in personam jurisdiction, Defendant adjourned to June 30, 2016 for Plaintiff to appear with counsel to conference with ACA Junglas. In courts that have subject matter, geographical and in personam jurisdiction, the due right to proceed without counsel is not vitiated but to vitiate the due process right to decline conference. That Plaintiff felt threatened is undisputed record, but an obvious conclusion to be drawn from the record since Defendant returned on the adjourn date.

9. Defendant refused to accept plea. Defendant declared Plaintiff had requested conference. Plaintiff interrupted, correcting the record that Defendant had ordered conference. Defendant *again* adjourned but with increased threat: Defendant ordered Plaintiff obtain counsel to conference with ACA Junglas; *or* Defendant would enter a plea for her, that was then reduced to this rather cryptic appearing notice (Ex. 1.)

10. Thus Plaintiff was forced to obtain counsel at her own expense. He then entered his appearance, declined conference with ACA Junglas, and pre-paid the jury fee in anticipation of entering a plea.

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

12. Counsel drove approximately 80-100 miles each way to appear in person. Defendant was not on the bench on January 28, 2016. 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.

13. Defendant never issued the Pre-Trial Order.
14. Defendant and ACA Junglas shared her courtroom as their address for the known duration, and when issuing and executing, without benefit of a clerk, out of state subpoenas searching private third party corporate entities. Defendant issued her last subpoena on her own motion, designating herself as "District Judge."
15. 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.
16. Yet Defendant ordered a hearing on same, *as well as* an "evidentiary hearing," but without notice. Rather than serve 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), to directly communicate with Plaintiff who was represented, although prohibited by Colorado's Professional Code of Conduct 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.
17. Loveland police were not present at the "evidentiary" hearing on August 23, 2016. However, their activities and travels through Weld county were again declared, without dispute, on the record. Defendant ordered from the bench a probable cause hearing set for September 22, 2016, that she noted in her hand 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. On or about August 26, 2016, Plaintiff was briefly provided access to the court file after filling out an (i) application. Although each item of the court file is scanned in case of loss, Plaintiff was only allowed to access the file (ii) when the Municipal court room that remains under recorded video surveillance is not in use; and (iii) when 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.
19. 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.

20. 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.

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

22. 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.

23. Plaintiff was verbally informed on Tuesday September 6, 2016 by Loveland's Municipal Court clerk's office that there had been no ruling this this case. The case was still active. It neither appeared that ACA Junglas motion to dismiss with prejudice and with probable cause had been filed.

24. At that time on September 6, 2016, Plaintiff filed a Discharge of Counsel (Ex. 6). Plaintiff declared her basis for proceeding pro se to protect her rights. Plaintiff's Discharge of Counsel declared a valid address for service, the same address provided to the Court July 28, 2016. The Discharge of Counsel was incorporated with each pro se Reply and Response/Objection to City's Motion to Dismiss 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.

25. 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.

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

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

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

29. No issuances from either the City or the Court on September 9, 2016. Nor, would the Clerk's Office verbally inform Plaintiff if there had been a final ruling. Clerk's office again refused a printout of the docket/register of actions. 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. 8.) To date, the application has been ignored and otherwise denied but without notice thereof.

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

31. 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. 9.) 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*).

32. It never happened.

33. *To date*, Plaintiff has never been served with the final determination of #352152 if it was ever issued, nor provided access to the court despite application. (Notwithstanding any requirement for search and recovery of any court filing or issuance voids it.)

34. 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 has shown a distinct and willful proclivity for improper service of improper issuances while failing to issue and properly serve that which she is mandated by law. Defendant should be sanctioned.

WHEREFORE in accordance with CRCP 106, Plaintiff prays this Court enjoin Defendant answer with issuance 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's 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