

2016

**Roger Bryner, Petitioner/Appellee/Cross-Appellant, v. Utah
Department of Public Safety, Driver License Division,
Respondent/Appellant/Cross-Appellee**

Utah Court of Appeals

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Case No. 20150564-CA

IN THE UTAH COURT OF APPEALS

ROGER BRYNER,

Petitioner/Appellee/Cross-Appellant,

v.

**UTAH DEPARTMENT OF PUBLIC SAFETY,
DRIVER LICENSE DIVISION,**

Respondent/Appellant/Cross-Appellee.

**REPLY BRIEF OF RESPONDENT AS APPELLANT AND
RESPONSE BRIEF OF RESPONDENT AS CROSS-APPELLEE**

**Appeal from a Judgment of the Third Judicial District Court, Salt Lake County,
Judge Andrew H. Stone**

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**FILED
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MAY 09 2016

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COUNSEL'S CERTIFICATE PURSUANT TO RULE 24(f)(1)(C)

I hereby certify that the Brief of Respondent/Appellant/Cross-Appellee contains 3,237 words, including headings, footnotes, and quotations, but excluding the Table of Contents, Table of Authorities, and the Addendum.

I have relied upon the word count of the word processing system, Microsoft Word 2010, used to prepare this brief. The font used is Times New Roman, 13 point.

Certified this 9th day of May, 2016.



Brent A. Burnett
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LIST OF ALL PARTIES

To the best of Respondent's knowledge, all interested parties appear in the caption of this Brief.

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UTAH DEPARTMENT OF PUBLIC SAFETY,
DRIVER LICENSE DIVISION,

Respondent/Appellant/Cross-Appellee.

REPLY BRIEF OF RESPONDENT AS APPELLANT

SUMMARY OF ARGUMENT

Trial courts review challenged informal administrative proceedings by trial de novo. Such trials de novo correct any procedural due process errors that might have occurred. In this action, the trial judge failed to conduct a trial de novo. Instead he reviewed the informal record and remanded this matter for the Division to correct a notice that was deemed inadequate and to consider further evidence. The trial judge did not have the authority to review the informal adjudicative proceeding other than by trial de novo.

Bryner has failed to provide any legal argument to support his claim that the trial judge was correct to review the informal record and rule upon whether the Division erred

instead of holding a trial de novo. The errors that Bryner claims were committed by the Division in its informal proceeding, such as inadequate notice, are the same errors that this Court has previously held are to be corrected through a trial de novo, not by a review of the agency proceeding.

ARGUMENT

THE TRIAL JUDGE ERRED BY NOT HOLDING A TRIAL DE NOVO AS REQUIRED BY UTAH LAW

Bryner had his driver's license suspended by an informal administrative proceeding. Bryner filed his petition for judicial review with the trial court. Judicial review of an informal adjudicative proceeding is done by trial de novo. Utah Code Ann. § 63G-4-402(1)(a) (West Supp. 2015) ("The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings"). The trial judge erred by not conducting a trial de novo.

Bryner argues, without citation to authority, that no trial de novo was needed because the trial judge was able to summarily determine that the notice given in the informal proceeding was defective and that erroneous facts were relied upon as well. Opening Brief of Petitioner at 18.¹ This is contrary to this Court's previous decisions.

An alleged defect in the notice does not excuse the court from following the statutory required review process. Indeed, the absolute right to a trial de novo before the

¹ The only copy of this brief received by the Division was a pdf without numbered pages. To make Bryner's tables of contents and authorities match the brief, the Division has begun its numbering of the brief with the cover as page one.

trial court is meant to correct any such errors. *Brinkerhoff v. Schwendiman*, 790 P.2d 587, 590 (Utah Ct. App. 1990) (allegedly defective notice in the informal proceeding was cured by trial de novo in the district court). In *Brinkerhoff*, the notice of the hearing received by the petitioner did not state that the administrative proceeding would be informal. The trial court reversed the agency's decision on the basis of the defective notice and remanded the matter to the agency. Reversing the trial court, this Court held that the absolute right to a trial de novo meant that the petitioner could not suffer any prejudice.

Claims of factual problems in the administrative proceedings are also cured by a trial de novo, not by a remand to the agency for a new hearing. In *Cordova v. Blackstock*, 861 P.2d 449 (Utah Ct. App. 1993), this Court held that a claim that the residuum rule had been violated was to be reviewed by trial de novo and not by reviewing the informal proceeding's record.

This provision requires that the district court's review of informal adjudicative proceedings be accomplished by holding a new trial, not just by reviewing an informal record. UAPA's statutory scheme ensures that "each applicant has the opportunity to have a formal hearing before the agency, or a [trial] de novo review by the district court." One reason for this statutory scheme is that appellate courts need a complete record in order to review adjudication.

Id. at 451 (citations omitted).

The Utah Supreme Court has expressly approved of this Court's decisions in *Cordova* and *Brinkerhoff*.

[W]e note with approval and adopt the rule previously used in two decisions from the Utah Court of Appeals establishing the right to a new trial without deference to the determinations of an informal administrative proceeding. This rule guarantees the district court the opportunity to correct any deficiencies that may arise because of the informal nature of administrative proceedings and provides an adequate record for future review.

Archer v. Bd. of State Lands and Forestry, 907 P.2d 1142, 1144-45 (Utah 1995) (citations omitted).

This Court's recent decision in *Christensen v. Rolfe*, 2014 UT App 223, 336 P.3d 40 (informal driver's license proceedings are only reviewed by trial de novo and not by review of the administrative proceeding), was also presented to the trial court. R. 460, 541, 681, 706. In *Christensen*, this Court again affirmed that informal administrative proceedings are reviewed only by trial de novo and not by a review of the record of the informal proceeding. 2014 UT App 223, ¶ 1.

CONCLUSION

The trial judge should have reviewed the challenged informal administrative proceeding by trial de novo. Instead, he reviewed the informal proceeding's record and remanded for the Division to correct errors perceived by the trial judge. The trial court's decision should be reversed and this case should be remanded to the trial court for trial de novo.

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Respondent/Appellant/Cross-Appellee.

RESPONSE BRIEF OF RESPONDENT AS CROSS-APPELLEE

STATEMENT OF JURISDICTION

This action comes within the original jurisdiction of this Court under Utah Code Ann. § 78A-4-103(2)(a)(ii) (West Supp. 2015).

STATEMENTS OF ISSUES ON APPEAL

1. Though warned several times by this Court, Roger Bryner has again used offensive, inappropriate, and disrespectful material in his opening brief. Should Bryner's opening brief be stricken and this Court refuse to reach the merits of his cross-appeal?

Issue Preserved Below and Standard of Review: This issue is unique to the appeal and does not require the review of the trial court's decision.

2. Instead of conducting a trial de novo, the trial judge ruled upon his review of the informal proceeding's record and remanded this action to the Division to conduct a new informal hearing. Does this Court have jurisdiction to review a trial court order remanding an action to the agency?

Issue Preserved Below and Standard of Review: This issue is unique to the appeal and does not require the review of the trial court's decision.

DETERMINATIVE STATUTE

There is no determinative statute relevant to Bryner's cross-appeal.

STATEMENT OF THE CASE

Roger Bryner filed this petition for judicial review of an informal administrative proceeding in which his driver's license was suspended. R. 227-35.

Instead of holding a trial de novo, the trial judge reviewed the informal administrative proceeding. The judge held that he had insufficient information as to what evidence was presented in the informal proceeding. R. 586-87. The trial judge therefore remanded this action for the Division to consider further evidence in a new informal proceeding. R. 587. The trial judge also remanded this action to the Division to give Bryner new notice in lieu of the administrative notice the trial judge held to be inadequate. R. 586-87.

The Court rejects the Division's position that the Court should either substitute its own judgment for the Division's exercise of discretion or defer to the Division's decision when it is unclear the Division exercised its

discretion with the actual facts before it. The statute plainly grants the Division discretion, but the parties' factual submissions do not indicate that the Division even knew of a warrant, as opposed to a citation, being issued against Petitioner. In such case, the alternative remedy of remand is appropriate.

After reviewing the briefs and arguments and evidence submitted in this proceeding, the Court finds the evidence is insufficient to determine whether the Division was notified by a Court of and considered the existence of an outstanding warrant against the Petitioner, as required under Utah Code § 53-3-221(3)(a). The submissions of the parties here indicate that Petitioner was informed of an outstanding citation, as opposed to the existence of a warrant. Properly framing the issue by notice is important for two reasons: First, it informs the Petitioner of the actual basis for the proposed administrative action, and second, it ensures that the Division made its decision based on the actual facts that potentially justify its action.

R. 586-87.

The trial court entered its final order on June 18, 2015. R. 585-87. The Division timely filed its notice of appeal on June 29, 2015. R. 590-92. Bryner filed a post-judgment motion on June 30, 2015, R. 595-99, that was denied by the trial court on August 13, 2015. R. 640-41. Bryner filed his cross notice of appeal on September 4, 2015. R. 643. The Division filed its amended notice of appeal on September 9, 2015. R. 651-52.

STATEMENT OF RELEVANT FACTS

The following quotes from Bryner's opening brief are the only facts relevant to the issues raised in the Division's response brief.

Additionally I believe the Court of Appeals in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 (hereinafter Mike's Case) was incorrect in its ruling, ignoring supreme court legal precedent, and simply ruled the way it did because Mormons from the state government of

Utah were requesting the relief, much as Mormons from the state government of Utah are requesting relief now, and different standards are applied by the Mormon judges of the Court of appeals to grant relief to those they favor over those they do not favor. Because I do not believe that a honest opinion will be forthcoming, I am including arguments that discuss the merits of the decision and constitutional issues.

Statement of issues on appeal

1) The ruling in Mike's Smoke, Cigar & Gifts v. St. George City, 2015 Utah App. 158 is wrong and contrary to the weight of prior controlling legal precedent from the Utah Supreme Court, and a part of a clear pattern of the Court of Appeals ignoring that law to grant relief to favored appellants by way of unequal application of the law.

Bryner's opening brief at 5

I agree that the court of appeals simply got it wrong in Mike's case, and reviewed a nonfinal order to push a decidedly mormon agenda through the courts, and entirely inconsistent with the prior case law on the mater [sic].

Id. at 12.

Nobody but Roger Bryner will have ever had his license suspended by the Court of Appeals in the State of Utah in a memorandum decision. If that does not demonstrate bias, and a written and specific intent by the same body to discriminate against the specific individual for over a decade, what does? See 2006 UT App 398 "special leniency on the basis of pro se status is manifestly inappropriate." This is in fact a thinly veiled but explicit message from the Court of appeals to discard the protections of the 14th amendment of the US constitution for the disfavored party. There is nothing especially bad or wrong about my filings, in fact everything I submit is in general exceptional even for attorneys and I have a higher success ratio than most attorneys, and only the political opinions and agenda of the all mormon court of appeals is really at issue. No decision against the Mormons in state government will be forthcoming as long as a disfavored litigant who has been marked, by official opinion, for higher levels of scrutiny than those applied to Mormon attorneys.

Id. at 19.

SUMMARY OF ARGUMENT

Though previously warned by this Court, Bryner has once again inserted material in his brief that is patently offensive and disrespectful to this Court. Bryner has been warned about this behavior, and has been sanctioned for it. This Court should strike Bryner's opening brief and decline to reach the merits of his cross-appeal.

This Court has jurisdiction over appeals from the district court's review of informal administrative proceedings. This Court has already held that the district court's order is an appealable final decision even when it remanded the action back to the agency.

ARGUMENT

I. BRYNER'S OPENING BRIEF SHOULD BE STRICKEN BECAUSE IT CONTAINS STATEMENTS THAT ARE OFFENSIVE AND DISRESPECTFUL TO THIS COURT

A pleading that contains material that is "offensive, inappropriate, and disrespectful" constitutes a violation of rule 24(k) of the Utah Rules of Appellate Procedure. *See Peters v. Pine Meadow Ranch Home Assoc.*, 2007 UT 2, ¶ 12, 151 P.3d 962 (striking briefs on appeal due to inappropriate content). This Court has previously placed Bryner on notice that it would not tolerate his further use of offensive and disrespectful statements about the courts of Utah. This notice was given as early as 2006 in *Bryner v. Lindberg*, 2006 UT App U398.

We place Petitioner on notice that he will not be afforded leniency based upon his pro se status in the application of the procedural rules. Specifically, pleadings containing inappropriate content . . . or pleadings

that appear calculated to harass any party, their counsel, or the court, will be stricken and will result in imposition of other sanctions, as allowed under rules 40 and 33 of the Utah Rules of Appellate Procedure.

Id. at *3 (attached as Addendum A).

This Court further warned Bryner in its Order entered April 10, 2008 in

Bryner v. Lindberg, Case No. 20080065-CA.²

Bryner is hereby placed on notice that any future filings that are frivolous or contain (1) statements constituting personal attacks on the integrity of the Utah courts or judges; (2) burdensome, irrelevant, immaterial or scandalous material; or (3) statements intended to harass the court, any party, or counsel participating in the case are prohibited, shall be stricken, and/or shall result in the imposition of sanctions under rules 33 and 40 of the Utah Rules of Appellate Procedure. A violation of this order shall be contempt, and shall be punished as this court deems appropriate. *See* Utah R. App. P. 40(c) ("This rule shall not be construed to limit or impair the court's inherent and statutory contempt powers.").

Id. at 3 (attached as Addendum B)

This Court also ordered that:

Bryner's future filings in this court shall not be frivolous and shall not include statements that (1) constitute personal attacks on the integrity of Utah courts or judges, . . . ; (2) are "burdensome, irrelevant, immaterial or scandalous", . . . ; or (3) are intended to harass the court, any party, or any counsel participating in the case. The filing of any documents, motions, or pleadings of any kind containing such objectionable content shall be actionable as contempt, shall be stricken, and shall be sanctioned as this court deems appropriate.

Id. (citations omitted).

Shortly after this Court entered this Order, it was forced to use it against Bryner.

In *Bryner v. Bryner*, Case No. 20070811, 2008 WL 2544897 (Utah Ct. App. 2008)

² An undated copy of this Order was obtained by counsel for the Division from this Court's Clerks' Office.

(attached as Addendum C), this Court struck Bryner's brief and declined to reach the merits of his appeal because of his violations of the April 10, 2008 Order and rule 24(k) of the Utah Rules of Appellate Procedure.

More recently, this Court reminded Bryner that "the issuance of an arrest warrant was the result of Bryner's own conduct in another case and was not, as he now claims, a part of an alleged conspiracy involving court personnel to deny his access to the court." *Bryner v. Custodian of Records*, 2016 UT App 40, ¶ 8 (attached as Addendum D).

Bryner's opening brief violates this Court's prior orders and rule 24. Bryner repeatedly accuses this Court of ruling not on the merits of appeals, but in favor of certain parties due to their religion. Opening Brief of Petitioner at 5, 12, 19 (this material is quoted at length in the Statement of Relevant Facts). Bryner also accuses this Court of discriminating personally against him for over a decade. *Id.* at 19.

The Division urges this Court to review the cited statements made by Bryner in his brief and determine if they violate this Court's prior warnings and orders. If this Court finds that they do, Bryner's brief should be stricken and this Court should decline to reach the merits of his cross-appeal.

II. THIS COURT HAS JURISDICTION TO REVIEW THE TRIAL COURT'S FINAL ORDER EVEN THOUGH IT REMANDED THIS MATTER TO THE DIVISION

Bryner's argument that this Court is without jurisdiction is based on his claim that *Mike's Smoke, Cigar & Gifts v. St. George City*, 2015 UT App 158, 353 P.3d 626, was wrongly decided. Opening Brief of Petitioner at 5, 8-14. Bryner's argument is that the

trial judge did not enter a final order because he remanded this matter to the Division to hold a new hearing rather than conduct de novo review. But this Court, following the Utah Supreme Court's precedent, has already held that an order remanding a petition for judicial review back to the administrative agency is a final order because it ended the controversy between the parties in the district court. *Mike's Smoke*, 2015 UT App 158, ¶¶ 10-11.

This Court reached this decision following the Utah Supreme Court's decision in *Zions Management Services v. Record*, 2013 UT 36, 305 P.3d 1062. *Zions* involved an appeal from a trial court's order remanding the action back to the administrative body to conduct arbitration. The Supreme Court held that remand was a final appealable order because it left nothing more to be done in the trial court. *Id.*, ¶ 26.

This Court has jurisdiction to consider this appeal. The trial court remanded this action to the Division to hold a new hearing. R. 587. Nor does the language in the trial court's ruling on Bryner's post-judgment motion, "[t]hat Order contemplates no further action by this Court until the agency completes this action" (R. 640), change the result. It is similar to the statement by the trial court in *Mike's Smoke*³ that this Court held did not alter the appealed from order into a non-final order. 2015 UT App 158, ¶ 12.

While Bryner argues that *Mike's Smoke* was wrongly decided, he fails to argue why this Court should ignore stare decisis and consider reversing its prior decision. This Court is bound to follow the holding of *Mike's Smoke* because horizontal stare decisis

³ "until after the City [Council] holds an evidentiary hearing."

requires that an earlier decision by the same court govern later decisions. *State v. Becker*, 2015 UT App 304, ¶ 10, 365 P.3d 173. “Although we have authority to overrule our own precedent in some limited circumstances, we will ‘not do so lightly’ - the challenged decision must be (1) ‘clearly erroneous’ or (2) ‘conditions [must] have changed so as to render the prior decision inapplicable.’” *Roberts v. Roberts*, 2014 UT App 211, ¶ 44, 335 P.3d 378. The decision in *Mike’s Smoke* is not clearly erroneous. Nor have conditions changed since last year when the decision was made.

This Court has jurisdiction to consider the Division’s appeal.

CONCLUSION

Bryner’s opening brief should be stricken as a sanction for his use of patently offensive and disrespectful statements concerning this Court. Further, this Court has jurisdiction to hear the Division’s appeal from the trial court’s order.

Respectfully submitted this 9th day of May, 2016.



BRENT A. BURNETT
Assistant Solicitor General
Attorney for Respondent/Appellant
Cross-Appellee

CERTIFICATE OF MAILING

This is to certify that I mailed, first class postage prepaid, two copies of the foregoing REPLY AND RESPONSE BRIEF OF RESPONDENT/APPELLANT/CROSS-APPELLEE to the following this 9th day of May, 2016:

Roger Bryner
General Delivery
Clearfield, Utah 84089

Petitioner/Appellee/Cross-Appellant

Brent A. Bruneel

ADDENDUM “A”

2006 WL 2779855

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Court of Appeals of Utah.

Roger BRYNER, Petitioner,

v.

Honorable Judge Denise P. LINDBERG and Lana
Bryner, Respondents.

Nos. 20060754-CA, 20060814-CA.

Sept. 28, 2006.

Certiorari Denied Feb. 12, 2007.

Original Proceeding in this Court.

Attorneys and Law Firms

Roger Bryner, Midvale, Petitioner Pro Se.

Brent M. Johnson, Salt Lake City, for Respondent
Honorable Denise P. Lindberg.

Before Judges DAVIS, McHUGH, and ORME.

MEMORANDUM DECISION (Not For Official
Publication)

PER CURIAM:

*1 Petitioner Roger Bryner filed two petitions seeking extraordinary relief in the nature of mandamus.

The petition in case no. 20060754-CA essentially challenges restrictions imposed by the district court in managing the cases between Roger Bryner and Lana Bryner. Petitioner challenges a restriction placed on both parties requiring that only a single motion from each party can be pending at any time. He also challenges restrictions on using standby counsel. While that petition was pending, Petitioner filed a second petition, case no. 20060814-CA, also seeking extraordinary relief against Judge Lindberg. In the interest of judicial economy, we address both petitions.

In an order dated April 20, 2006, the district court ruled:

The Court enjoins each side from filing more than one motion at a time. No additional motions may be filed by that side until the other side has had an opportunity to answer. The movant may then reply to the opposition, and file a notice to submit. The matter will then be submitted for decision. Once the Court has had the opportunity to rule on the pending motion, that party will then be free to file other motions. By imposing this limitation the Court does not intend to interfere with the parties' constitutional rights. Rather, the Court is exercising its inherent authority to manage its caseload in the most effective and efficient way, in order to ensure that all matters that the parties wish to bring for action by the Court can be attended to in a thorough and orderly manner.

In a June 20, 2006 minute entry, the district court reiterated that "the filing restrictions were designed to strike a balance between the parties' constitutional right to seek redress from the courts and the Court's need to manage its caseload appropriately."

In an August 10, 2006 order, the court stated its position that, in appearances before the court, Petitioner "must elect whether to appear pro se or be represented by counsel." Although noting that Petitioner could "freely consult with anyone of his choosing outside the courtroom," the court stated that if he wished to receive assistance of counsel in the court, "counsel must enter his appearance and then counsel (not the petitioner) will be the only one who will be allowed to file Motions, to make argument to the Court, or to conduct any presentation or cross-examination of proffered evidence."

In the petition filed as case no. 20060754-CA, Petitioner requests an order (1) requiring Judge Lindberg to allow an attorney to sit silently by him and pass notes, (2) declaring the filing restrictions unconstitutional, and (3) remanding all issues regarding child custody to the commissioner, rather than to the district court judge. The claim that the district court cannot determine child custody issues is without merit, and we do not consider it

further.

"Extraordinary relief may be granted if ... the petitioner can establish that a lower court 'exceeded its jurisdiction or abused its discretion.' " *Burke v. Lewis*, 2005 UT 44, ¶ 9, 122 P.3d 533 (quoting Utah R. Civ. P. 65B (d)(2)(A)); see also *State v. Stirba*, 972 P.2d 918, 922 (Utah Ct.App.1998) (holding that abuse of discretion for purposes of extraordinary writs must be more blatant "than the garden variety 'abuse of discretion' featured in routine appellate review"). "Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority." Utah R. Civ. P. 65B(d)(4).

*2 The district court did not abuse its discretion in adopting the filing restrictions. The court imposed reasonable restrictions on both parties by precluding the filing of multiple motions until a previous motion filed by the same party was resolved. Petitioner's contention that the court did not apply the restriction to both parties is frivolous. The opposing parties' request for hearing on a pending motion does not constitute the filing of a multiple motion in violation of the filing restriction. Under the circumstances, the district court's restrictions are reasonable and do not constitute an abuse of discretion.

Petitioner's claim that he has been denied the constitutional right to counsel of his choice is unsupported and without merit. The case law he cites concerns the Sixth Amendment right to counsel extended to criminal defendants. Both proceedings in which Petitioner is involved are civil proceedings, and the cited authorities are not pertinent. Nevertheless, the discussion in *United States v. Gonzales-Lopez*, --- U.S. ---, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), cited by Petitioner, is illustrative of the discretion that a court possesses governing representation by counsel, even in a criminal case. The majority opinion acknowledged the "trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar." The supreme court also acknowledged the trial court's "inherent power to enforce rules or adhere to practices that determine which attorneys may appear before it, or to make scheduling and other decisions that effectively exclude a defendant's first choice of counsel." *Id.* at 2565-66.

The district court did not restrict Petitioner from either representation the courtroom. district court constitutional proceedings is by counsel or consultation with counsel outside Under the circumstances, the claim that the abused its discretion or violated a purported right to have

standby counsel in the civil without merit.

The petition seeking extraordinary relief in case no. 20060814-CA duplicates some claims from the petition in case no. 20060754-CA. The second petition also seeks relief from the district court's order denying cross-motions to enforce the settlement agreement, which is the subject of the appeal pending as case no. 20060214-CA. In addition, the petition contains patently offensive and disrespectful statements regarding the district court judge.

Rule 40 of the Utah Rules of Appellate Procedure provides an equivalent to rule 11 of the Utah Rules of Civil Procedure and requires a party to sign all filings as a certification that they are not frivolous or interposed for purposes of delay. Bryner states in the second petition:

I further certify that to the best of my knowledge, information and belief the statements contained therein are true, however, I am not a lawyer and no reasonable unbiased judge could presume to hold me to the same standard of knowledge of law that an attorney would be held to.

*3 On the contrary, rule 40(b) states, in part:

The court may, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action against any attorney or person who practices before it for inadequate representation of a client, conduct unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply with these rules or order of the court.

Utah R.App. P. 40(b).

In addition, because Bryner "avails [himself] of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate." *Lundahl v. Quinn*, 2003 UT 11, ¶ 4, 67 P.3d 1000. "This is particularly true where the filings in question are routinely frivolous and have been brought with the apparent purpose, or at least effect, of harassment, not only of opposing parties, but of the judicial machinery itself." *Id.*

at ¶ 5. "The courts of this state possess the powers necessary to maintain the orderly disposition of matters brought before them, including the power to levy sanctions and, in appropriate cases, to hold in contempt the parties who appear before them." *Id.* at ¶ 15.

The petition filed in case no. 20060814-CA duplicates requests for relief contained in the previous appeals and in the first petition seeking extraordinary relief. In addition, the second petition contains statements that are patently offensive and disrespectful of the district court. We place Petitioner on notice that he will not be afforded leniency based upon his pro se status in the application of the procedural rules. Specifically, pleadings containing inappropriate content or duplicating claims in prior or pending proceedings, or pleadings that appear calculated

to harass any party, their counsel, or the court, will be stricken and will result in imposition of other sanctions, as allowed under rules 40 and 33 of the Utah Rules of Appellate Procedure. Utah R.App. P. 33; 40.

We deny both petitions seeking extraordinary relief in case nos. 20060754-CA and 20060814-CA.

All Citations

Not Reported in P.3d, 2006 WL 2779855, 2006 UT App 398

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ADDENDUM “B”

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Roger Bryner,)	ORDER
)	
Petitioner,)	Case No. 20080065-CA
)	
v.)	
)	
Judge Denise P. Lindberg)	
and Judge William Barrett,)	
)	
Respondents.)	

Before Judges Greenwood, McHugh, and Orme.

Pursuant to rule 33(c)(2) of the Utah Rules of Appellate Procedure, Petitioner Roger Bryner was ordered to appear and show cause why damages should not be awarded to Respondents based upon Petitioner's filing of a frivolous petition for a writ of habeas corpus. "[A] frivolous appeal, motion, brief or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b). Damages may include single or double costs and/or reasonable attorney fees. See id. R. 33(c)(2). Under rule 33, a frivolous appeal or proceeding is one that has "no reasonable legal or factual basis." O'Brien v. Rush, 744 P.2d 306, 310 (Utah Ct. App. 1987). An appellate court considering imposition of sanctions is not required to find subjective bad faith before sanctions can be awarded under rule 33. See id. This court determined that the petition for writ of habeas corpus was frivolous because it was without a basis in law or fact. See Bryner v. Hon. Lindberg and Barrett, 2008 UT App 53. Furthermore, Bryner's argument at the order to show cause hearing that he thought his petition was well taken does not insulate him from paying damages. Consequently, this court could assess damages against Bryner pursuant to rule 33. Despite this conclusion, this court exercises its discretion and chooses not to impose an award of damages under rule 33 in this instance.

We caution Bryner, however, to take care with future filings, both in terms of the proper use of the motions and

remedies afforded by the rules and in terms of the content of those documents. Bryner's memorandum, dated March 10, 2008, demonstrates the basis for our concern about inappropriate content in his filings. Indeed, we have previously admonished Bryner about such conduct. See Bryner v. Hon. Lindberg, 2006 UT App 398 (advising Bryner that inappropriate pleadings may be stricken or result in imposition of sanctions). That memorandum contains material that is "offensive, inappropriate, and disrespectful" and constitutes a violation of rule 24(k) of the Utah Rules of Appellate Procedure. See Peters v. Pine Meadow Ranch Home Assoc., 2007 UT 2, ¶ 12, 151 P.3d 962 (striking briefs on appeal due to inappropriate content). The memorandum includes material that personally attacks the integrity of Utah courts and judges, rather than challenging claims of alleged legal or factual error. See id. at ¶¶ 7 & 15. We note the following instances of objectionable content:

1. The statement on pages one and two to the effect that no Utah court will declare the Utah Standards of Professionalism and Civility unconstitutional "due to the fact that they ultimately report to the Utah Supreme Court, and thus are biased."
2. The statement on page two that Utah trial court judges "routinely use[] court proceedings which males have brought against females to punish the males without due process and without jurisdiction."
3. The statement on page three attributed to an attorney, but not containing a direct quotation, that the trial judge's court "was so unconstitutional and biased as to be impossible to achieve any level of fairness in" and that "literally dozens of attorneys have expressed the same thoughts regarding [the trial judge] in regards to this case."
4. The statement on page four that two district court judges have "conspired" to limit his ability to criticize those judges in connection with retention elections by entering orders that require him to comply with standards of civility and professionalism.

5. The statement on page four that "[w]hile [the] Pine Meadows [case] has established the precedent that disagreement and telling the truth about the courts can lead to violations of due process and punishing the 'boy who said the emperor had no clothes' I disagree and am seeking to void the rules of professionalism and civility which led to these very bad decisions of law by taking my case to federal court. . . ."

Bryner is hereby placed on notice that any future filings that are frivolous or contain (1) statements constituting personal attacks on the integrity of the Utah courts or judges; (2) burdensome, irrelevant, immaterial or scandalous material; or (3) statements intended to harass the court, any party, or counsel participating in the case are prohibited, shall be stricken, and/or shall result in the imposition of sanctions under rules 33 and 40 of the Utah Rules of Appellate Procedure. A violation of this order shall be contempt, and shall be punished as this court deems appropriate. See Utah R. App. P. 40(c) ("This rule shall not be construed to limit or impair the court's inherent and statutory contempt powers.")

Based on the foregoing,

IT IS HEREBY ORDERED that the order to show cause, dated February 22, 2008, is withdrawn and no damages are imposed at this time.

IT IS FURTHER ORDERED that Bryner's future filings in this court shall not be frivolous and shall not include statements that (1) constitute personal attacks on the integrity of Utah courts or judges, see Peters, 2007 UT 2 at ¶¶ 7 & 15; (2) are "burdensome, irrelevant, immaterial or scandalous", see Utah R. App. P. 24(k); or (3) are intended to harass the court, any party, or any counsel participating in the case, see Bryner v. Hon. Lindberg, 2006 UT App 398. The filing of any documents, motions, or pleadings of any kind containing such objectionable content shall be actionable as contempt, shall be stricken, and shall be sanctioned as this court deems appropriate.

Dated this ____ day of April, 2008.

FOR THE COURT

Pamela T. Greenwood,
Presiding Judge

ADDENDUM “C”

2008 WL 2544897

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Court of Appeals of Utah.

Roger BRYNER, Petitioner and Appellant,
v.

Lana BRYNER, Respondent and Appellee.

No. 20070811-CA.

June 26, 2008.

Third District, Salt Lake Department, 044904183; The
Honorable William W. Barrett.

Attorneys and Law Firms

Roger Bryner, Midvale, Appellant Pro Se.

Emily B. Smoak and Thomas J. Burns, Salt Lake City, for
Appellee.

Before Judges BENCH, BILLINGS, and McHUGH.

MEMORANDUM DECISION (Not For Official
Publication)

PER CURIAM:

Footnotes

- ¹ Mr. Bryner was previously admonished that his filings would be stricken if they contained inappropriate content. See *Bryner v. Hon. Lindberg*, 2006 UT App 398U, paras. 6-8 (mem.) (per curiam).

*1 Roger Bryner appeals the trial court's contempt order and judgment entered on September 25, 2007. This matter is before the court on its own motion to strike Mr. Bryner's brief.

The Utah Supreme Court has ruled that an appellate court is not required to address the merits of an appeal if an appellant's brief contains unfounded accusations impugning the integrity of the court. See *Peters v. Pine Meadow Ranch Home Ass'n*, 2007 UT 2, ¶ 1, 151 P.3d 962. In these situations, the brief may be stricken and the appellate court may decline to consider the appeal as a sanction for violations of rule 24(k) of the Utah Rules of Appellate Procedure. See *id.* ¶ 23.

In this court's April 10, 2008 Order, Mr. Bryner was specifically ordered that his future filings must not contain frivolous content or include any statements that: (1) constitute an attack on the integrity of Utah courts or judges, see *id.* ¶¶ 7, 15; (2) are burdensome, irrelevant, immaterial, or scandalous, see Utah R.App. P. 24(k); or (3) are intended to harass the court, any party, or any counsel participating in the case.¹ Based on the violations of this court's Order and rule 24(k) of the Utah Rules of Appellate Procedure, we strike Mr. Bryner's brief and decline to reach the merits of his appeal. See *Peters*, 2007 UT 2, ¶ 23.

Accordingly, the trial court's order and judgment are affirmed.

All Citations

Not Reported in P.3d, 2008 WL 2544897

ADDENDUM “D”

2016 WL 869057

NOTICE: THIS OPINION HAS NOT BEEN
RELEASED FOR PUBLICATION IN THE
PERMANENT LAW REPORTS. UNTIL RELEASED,
IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Court of Appeals of Utah.

Roger BRYNER, Appellant,

v.

CUSTODIAN OF RECORDS, Appellee.

No. 20150685-CA.

March 3, 2016.

Third District Court, Salt Lake Department, No.
140906706; The Honorable Vernice S. Trease.

Attorneys and Law Firms

Roger Bryner, Appellant Pro Se.

Todd J. Godfrey and Bradley W. Christopherson, for
Appellee.

Before Judges J. FREDERIC VOROS JR., STEPHEN L.
ROTH, and MICHELE M. CHRISTIANSEN.

Decision

PER CURIAM:

*1 ¶ 1 Roger Bryner appeals the dismissal of his civil case against the custodian of records for the Holladay Justice Court. We affirm.

¶ 2 Bryner was a defendant in a traffic case in the Holladay Justice Court. He filed a request under the Government Records Access and Management Act (GRAMA), seeking documents from his own case as well as sentencing documents in cases involving other persons who had been charged with the same offenses. He pursued appeals from the denial of his GRAMA request. Ultimately, the Management Committee of the Utah Judicial Council issued an order that granted Bryner's appeal in part and denied it in part.

¶ 3 In September 2014, Bryner filed the civil complaint in this case, claiming that the Holladay Justice Court did not comply with the Management Committee's order. On April 13, 2015, the district court held a motion hearing at which Bryner was allowed to appear by telephone. The district court stated that Bryner must appear in court in person for future proceedings. The district court set a trial date for June 8, 2015. The court reset the motion hearing for April 27, 2015, and also ordered the parties to be present on that date to engage in face-to-face discussions in an effort to resolve the case. Bryner requested that this discussion take place by telephone, which the court denied. Bryner did not appear on April 27, 2015, and the court denied his pending motion for summary judgment.

¶ 4 On April 30, 2015, Bryner filed a "motion to designate defendant" in which he sought to amend his complaint to name the court clerk of the Holladay Justice Court as a defendant. On May 5, 2015, Bryner filed a motion to issue a subpoena to the court clerk or "declare it unnecessary." In separate May 28, 2015 orders, the district court denied the motion to amend the complaint to add a new defendant and granted the motion to issue a subpoena directed to the court clerk, stating that Bryner was responsible for service of the subpoena. On the same day, the district court issued a subpoena.

¶ 5 On June 4, 2015, Bryner moved to reschedule the June 8 trial, stating that he was "unable to afford to serve process," and the district court "refused to waive fees for service of process." He also stated that he could not afford to travel to Salt Lake City for trial on his civil complaint and that he could not personally appear in the district court because he was subject to arrest on an outstanding warrant from the Holladay Justice Court. Bryner failed to appear for trial. Opposing counsel appeared, along with the court clerk of the Holladay Justice Court. The district court dismissed the case as a consequence of Bryner's failure to appear. Noting opposing counsel's objection to a continuance, the district court stated,

This court makes a record that the subpoena was issued regarding the witness he was concerned he would not be able to subpoena. That witness is present and Mr. Bryner would have been able to hear her testimony on this date. The Court makes a record of Mr. Bryner's concern for an outstanding warrant out of Holladay Justice Court. The Court rules that is not a basis for him not to appear in Court. The

Court denies Mr. Bryner's motion to continue this trial and moves forward. Based on Mr. Bryner's failure to appear and failure to put on evidence, with [the court clerk] present, the Court dismisses this case with prejudice. Additionally the court renders the pending motions [moot]. The Court denies Mr. Bryner's motion for a telephone conference.

*2 ¶ 6 "In reviewing a trial court's decision to dismiss for failure to prosecute, we accord the trial court broad discretion and do not disturb its decision absent an abuse of discretion and a likelihood that an injustice has occurred." *Hartford Leasing Corp. v. State*, 888 P.2d 694, 697 (Utah Ct.App.1994). "In determining whether the court abused its discretion, we 'balance the need to expedite litigation and efficiently utilize judicial resources with the need to allow parties to have their day in court.' " *Id.* (citing *Meadow Fresh Farms, Inc. v. Utah State Univ.*, 813 P.2d 1216, 1219 (Utah Ct.App.1991)). In analyzing whether a trial court has abused its discretion in dismissing a case for failure to prosecute, we consider (1) the conduct of both parties, (2) the opportunity each party has to move the case forward, (3) what each party has done to move the case forward, (4) the amount of difficulty or prejudice that may have been caused to the other side, and (5) whether injustice may result from the dismissal. *Cheek v. Clay Bulloch Constr., Inc.*, 2011 UT App 418, ¶ 7, 269 P.3d 964. In performing this review, we consider that "the plaintiff, as the party initiating the lawsuit, has the primary responsibility to move the case forward" and that the defendant has no general responsibility to move plaintiff's case forward. See *Hartford Leasing*, 888 P.2d at 698 n. 2.

¶ 7 Because Bryner did not appear at the trial to present evidence in support of his claims that the Holladay Justice Court violated the Management Committee's order, those claims are not preserved for appeal.¹ The only issue before this court is whether the district court abused its discretion in denying his belated requests to continue the trial and hold a further telephone scheduling conference and in dismissing his civil case for failure to appear at trial. Bryner had ample notice of the trial date in his civil case. The court denied his motion to join the court clerk

as a defendant. The court granted Bryner's alternative motion to issue a subpoena to compel the clerk's appearance at trial, clarifying that Bryner was responsible for service. Four days before the scheduled trial, Bryner moved to continue the trial and hold a scheduling conference because he claimed he could not afford to serve the subpoena, could not afford transportation to court, and was subject to arrest on an outstanding warrant if he appeared in court. None of these circumstances excused Bryner from his primary responsibility to move his civil case forward. Contrary to his argument, rule 4-502 of the Utah Rules of Judicial Administration, which pertained to discovery disputes, did not require the district court to hold a further conference in this case.

¶ 8 Bryner argues that he was misled by the district court and the opposing party because he was not informed that the Holladay Justice Court clerk would be available at trial. At his request, the district court issued a subpoena to compel the attendance of a witness. Although he failed to serve the subpoena, the witness was present at trial. As the plaintiff in this civil case, Bryner had the primary responsibility to move the case forward. It was not the responsibility of the district court or the opposing party to prosecute Bryner's case or assure that it moved forward. Bryner was aware of the trial date. Bryner did not appear in person in court for any hearing in the civil case that he initiated, even when he was specifically required by the district court to do so. By failing to appear, he clearly risked the possibility that the case would be dismissed. Furthermore, the issuance of an arrest warrant was the result of Bryner's own conduct in another case and was not, as he now claims, a part of an alleged conspiracy involving court personnel to deny his access to the court. We conclude the district court did not abuse its discretion in denying a continuance or the request for a scheduling conference and in dismissing the case.

*3 ¶ 9 We affirm the district court's dismissal of the underlying case with prejudice.

All Citations

--- P.3d ----, 2016 WL 869057, 2016 UT App 40

Footnotes

¹ Bryner attempts to raise a jurisdictional issue by alleging that the district court lacked authority to review the Management Committee's order. Because Bryner filed the underlying case seeking to enforce the Management Committee's order, which necessarily involved review of its requirements, this assertion lacks merit.

Bryner v. Custodian of Records, --- P.3d --- (2016)

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