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Federal Nat. Mortg. Ass'n v. Allen Support Brief Dckt. 37972

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David Bruce Allen
222 Kootenai Fourth Avenue
Sandpoint, near [83864]
State of Idaho

Appearing at all times In Propria Persona

IN THE SUPREME COURT OF THE STATE OF IDAHO

Federal National Mortgage Assoc.,)
a.k.a. FANNIE MAE, a corp.)
created by Congress of the United)
States)
Plaintiff/Respondent,)

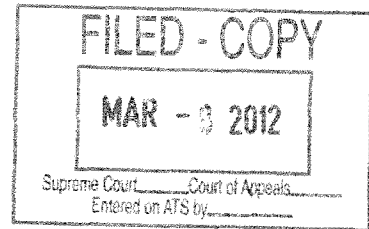
Sup.Ct. No. 37972-2010
Bonner Case No. CV-2009-1865

BRIEF IN SUPPORT OF:
PETITION FOR REVIEW

vs.)

David B. Allen, an individual; and)
DOES I through X, unknown)
occupants of the property commonly)
knows as 1596 E. Shingle Mill)
Road, Sandpoint, Bonner County,)
Idaho.)

Defendants/Appellants.)



COMES NOW, Defendant/Appellant, David Bruce Allen, appearing at all times in propria persona pursuant to I.R.C.P. Rule 10(a)(1) and the public policy of this State, moves the Court to Grant the Petition for Review from the Idaho Court of Appeals pursuant to IAR Rule 118 in the above entitled case from the decision of the Court filed January 31st, 2012, and cause will appear based upon IAR Rule 118(1), (2), and (4).

A brief in support is required to be filed within 14 days of the filing of the Petition for Review pursuant to IAR Rule 118(a). Brief was mailed to the Court on the 6th of March, 2012

and is timely.

The issue stems from the Idaho Court of Appeals converting the July 2nd, 2010 Second Motion to Vacate Judgment into a Motion for Reconsideration pursuant to IRCP Rule 11(a)(2)(B).

Rule 11(a)(2). Successive applications for orders or writs - Motions for reconsideration states to wit:

B) Motion For Reconsideration. A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

Barmore v. Perrone, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008); *PHH Mortgage Services Corp. v. Pereira*, 146 Idaho 631, 200 P.3d 1180 (2009).

Final Judgment was entered by the entry of judgment and default judgment on the 7th day of April, 2010. See ROA and is incorporated herein by its reference. The first sentence of Reconsideration Rule – 11(a)(2)(B) mandates that a motion for reconsideration must be filed no later than fourteen (14) days from the final judgment. The Second Motion to Vacate Judgment which was filed on July 2nd, 2010, was filed close to three (3) months after the entry of final judgment, thus, there was no way for the Appellant to have filed a motion for reconsideration under this rule.

In addition, the time between the first Motion to Vacate and the Second Motion to Vacate had more than fourteen (14) days between the Motions and Orders. The First Motion to Vacate was decided prematurely in violation of IRCP Rule 7(b)(3) setting the standard of the time line

for deciding motions on the merits. *Parkside Sch., Inc. v. Bronco Elite Arts & Athletics, LLC*, 145 Idaho 176, 178, 177 P.3d 390, 392 (2008). Both Motion to Vacate primary dealt with jurisdictional issues in which this Court has stated many times that jurisdiction can be raised at any time, See Appellant's Brief and is incorporated herein by its reference, which is another standard the Court of Appeals failed to maintain.

Whether or not there are multiple Motions to Vacate on the same subject matter does not make the second Motion a Motion for Reconsideration, unless so titled by the movant. Additionally, the Rules of Court does not specifically deny Appellant the ability to file multiple Motions to Vacate, in which the Court of Appeals has on its own initiative decided to “re-name” Appellant's Motion to something other than what it was called, in order to deprive the Appellant of his day in Court once again.

This act violated the Appellant's right to due process of law under the 14th Amendment in denying him the right to be heard on the merits of the Appeal in a meaningful timely manner. In addition, the Court of Appeals violated the standard set in many Idaho Supreme Court decisions of, “It is equally well settled principal of law that “Standing is a preliminary question to be determined by this Court before reaching the merits of the case.” *Trountner v. Kempthorne*, 142 Idaho 389, 391, 128 P.3d 926, 928 (2006) citing *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002); as cited in *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007).

The Federal Court in which Idaho adopted its rules of civil procedure has stated that the “Proper and exclusive method, under Rule 55(c), for attacking default judgment in district court is by way of Rule 60(b) motion, and because 60(b) does not extend time for filing notice of

appeal, party is required to file notice of appeal within 30 days of entry of default judgment; since denial of Rule 60(b) motion is in itself final appealable order, party's failure to file notice of appeal until after denial of 60(b) motion means that court's review on appeal is restricted to those issues raised in 60(b) motion." *Gulf Coast Fans, Inc. v. Midwest Electronics Importers, Inc.* (1984, CA11 Fla) 740 F.2d 1499, 39 Fr Serv.2d 1391. and "Appeal from denial of Rule 60(b) decision does not bring original judgment up for review, but only decision on request for relief from judgment under Rule 60(b). *Fox v. Brewer* (1980, CA8 Mo) 620 F.2d 177, 29 Fed Serv.2d 1193. See IRCP Rule 55(c). The purpose of Rule 55(c) in providing for the setting aside of default judgment was to relieve against imposition of default merely upon lapse of time requirement in making an answer to the complaint. *Stoner v. Turner*, 73 Idaho 117, 247P.2d 469 (1952). This rule specifically states that a Rule 60(b) motion is to be used, which is yet another reason why the Motion to Vacate could not ever be a Motion for Reconsideration. As the Court of Appeals admits my Second Motion to Vacate was timely with my filed Notice of Appeal.

Most if not all of my issues on appeal are issues of jurisdiction surrounding standing by counsel and an unauthorized interference by a district court judge not assigned to the case. "It is equally well settled principal of law that "Standing is a preliminary question to be determined by this Court before reaching the merits of the case." *Trountner v. Kempthorne*, 142 Idaho 389, 391, 128 P.3d 926, 928 (2006) citing *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002); as cited in *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007). See Appellant's Appeal Brief and is incorporated herein by its reference.

Relief from Default judgment is favored in doubtful cases. *Baldwin v. Baldwin*, 114 Idaho 525, 757 P.2d 1244 (Ct App. 1988). If the Court looked at the totality of the record, this case is at

least a doubtful case, if not an outright denial of due process of law. It is also repeatedly this Court's Position that Default Judgments are not favored in the law. See *Dellwo v. Peterson*, 34 Idaho 697, 203 P. 472 (1921); *Mead v. Citizens Auto. Inter-Insurance Exch.*, 78 Idaho 63, 297 P.2d 1042 (1956); *Garren v. Saccomanno*, 86 Idaho 286, 385 P.2d 396 (1963).

WHEREFORE Appellant prays that the Court will Grant the Motion for Review.

Dated this 5th day of March, 2012.


David Bruce Allen

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2012, I caused to be served a true and correct copy of BRIEF IN SUPPORT OF: PETITION FOR REVIEW; Certificate of Service, by the method indicated below, and addressed to the following:

Mark D. Perison
MARK D. PERISON, P.A.
314 South 9th Street, Suite 300
Post Office Box 6575
Boise, near [83707-6575]
State of Idaho

U.S. Mail
 Hand Delivered
 Faxed to:

Derrick J. O'Neill
ROUTH, CRABTREE, OLSEN, P.S.
300 Main Street, Suite 150
Boise, near [83702]
State of Idaho

U.S. Mail
 Hand Delivered
 Faxed to:

By: 
David Bruce Allen