7-26-2012

Telford v. Nye Respondent's Brief Dckt. 39497

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE ORDER RE: HOLLI LUNDAHL TELFORD. HOLLI LUNDAHL TELFORD, Petitioner-Appellant, v. HON. DAVID C. NYE, Respondent.	**Supreme Court Docket No. 39497-2001** **Oneida County Administrative Order No. 2003-3(b)**

RESPONDENT'S BRIEF

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Oneida
Administrative Order No. 2003-3(b)

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I.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal of an Administrative Order declaring Holli Lundahl Telford a vexatious litigant. Ms. Lundahl Telford appeals the Sixth Judicial District Court's *Administrative Order Declaring Vexatious Litigant* (R. 3-5), issued on October 11, 2011, and the same Court's *Declaration That Holli Lundahl Telford is a Vexatious Litigate* [sic] (R. 6-7), issued on October 27, 2011. For purposes of efficiency, Respondent will refer to the two documents together as the "Order."

In his *Order* Administrative Judge Hon. David C. Nye found Ms. Lundahl Telford to be a vexatious litigant pursuant to Idaho Administrative Rule 59. As a result, Judge Nye imposed prefiling conditions precluding Ms. Lundahl Telford from filing any new noncriminal litigation in Idaho courts *pro se* without first obtaining leave of a judge of the court where the litigation is to be filed. The Declaration states that disobedience of the prefiling order shall be punished as a contempt of court and any action filed by Ms. Lundahl Telford without prior leave of the Court may be dismissed by the Court. Ms. Lundahl Telford appeals the findings and resultant prefiling order.

B. Course of Proceedings Below and the Facts

1. Proceedings Below

There are no proceedings before Administrative Judge Nye to which Ms. Lundahl Telford is a party (R. 3). The *Order* was issued following multiple District Judges' and

Magistrate Judges' referrals to Administrative Judge Nye asking him to declare Ms. Lundahl Telford a vexatious litigant (R. 3).

2. Statement of the Facts

Ms. Lundahl Telford has a long history of *pro se* litigation in various state and federal courts. In the Sixth Judicial District alone, Ms. Lundahl Telford has commenced *pro se* at least three litigations, all of which resulted in dismissal (R. 4). A brief search of Westlaw turns up at least 12 more proceedings in state or federal courts that have been decided adversely to Ms. Lundahl Telford in the past seven years alone.[1]

Ms. Lundahl Telford has been declared a vexatious litigant by the United States District Courts for both the District of Idaho and the Western District of Texas and the United States Court of Appeals for the Tenth Circuit.[2] Numerous additional courts have imposed filing restrictions on Ms. Lundahl Telford, including the Utah Supreme Court, the United States Court

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[1] *See Idaho v. Telford*, 2012 WL 192819 (D. Idaho 2012) (dismissed); *Lundahl v. Hawkins*, 407 F. App'x 777 (5th Cir. 2011) (appeal dismissed); *Los Angeles Home-Owners Aid, Inc. v. Lundahl*, 2010 WL 118201, 2010 UT App. 4 (default judgment entered against Lundahl for failure to attend the scheduling conference); *Lundahl v. Hawkins*, 2009 WL 3617518 (W.D. Tex. 2009) (dismissed under 28 U.S.C. § 1915(e) as frivolous); *Lundahl v. U.S. Atty. Gen.,* 2009 WL 637183 (N.D. Tex. 2009) (dismissed for lack of subject matter jurisdiction); *Lundahl v. Nar, Inc.,* 434 F. Supp. 2d 855 (D. Idaho 2006) (imposing filing restrictions); *Johnson v. Stock*, 2005 WL 1349963 (10th Cir. 2005) (dismissed for failure to prosecute); *Lundahl v. Eli Lilly & Co.,* 544 U.S. 997 (2005) (motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for cert. dismissed); *Lundahl v. Fireman's Fund Ins. Co.,* 129 F. App'x 479 (10th Cir. 2005) (dismissed); *Lundahl v. Robbins*, 129 F. App'x 478 (10th Cir. 2005) (dismissed); *Lundahl v. Lewis*, 129 F. App'x 476 (10th Cir. 2005) (dismissed); *Lundahl v. Kunze*, 2005 WL 1353811 (D. Idaho 2005) (dismissed).

[2] *See Lundahl v. Nar, Inc.,* 434 F. Supp. 2d 855 (2006); *Johnson v. Stock*, 2005 WL 1349963 (C.A.10 (Utah)); *Lundahl v. Hawkins*, 2009 WL 3617518 at 1 (W.D. Tex.).

of Appeals for the Ninth Circuit, the United States District Court for the District of Utah, and the United States Supreme Court.[3]

II.

ISSUES PRESENTED

The issue presented, as framed by Respondent is:

Whether the District Court Administrative Judge erred in declaring Ms. Lundahl Telford a vexatious litigant and requiring her to comply with prefiling conditions before commencing new *pro se* litigation in the Idaho Courts.

III.

STANDARD OF REVIEW

A prefiling order entered by an administrative district judge designating a person as a vexatious litigant may be appealed to the Idaho Supreme Court by such person as a matter of right. I.A.R. 59(f). The findings of the lower court will not be set aside on appeal unless clearly erroneous. I.R.C.P. 52(a). Federal courts have held that a district court's vexatious litigant order is reviewed for abuse of discretion. *De Long v. Hennessey*, 912 F.2d 1144, 1146 (1990). The test for evaluating whether a lower court has abused its discretion is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific

[3] See *Lundahl v. Eli Lilly & Co.,* 544 U.S. 997 (2005); *Lundahl v. Quinn*, 67 P.3d 1000, 1002 (2003); *See Lundahl v. Nar, Inc.,* 434 F. Supp. 2d 855 at 858 (2006) (citing *In re Holli Lundahl*,

choices; and (3) whether the court reached its decision by an exercise of reason. *Schmechel v. Dille*, 148 Idaho 176, 179, 219 P.3d 1192, 1195 (2009).

IV.

ARGUMENT

A. It Was Not an Abuse of Discretion for the District Court Administrative Judge to Declare Ms. Lundahl Telford a Vexatious Litigant and Issue a Prefiling Order

I.A.R. 59(d) states that an administrative judge may find a person to be a vexatious litigant based on a finding that a person has done any of the following: (1) in the immediately preceding seven-year period the person has commenced, prosecuted or maintained *pro se* at least three litigations . . . that have been finally determined adversely to that person; (2) after a litigation has been finally determined against the person, has repeatedly relitigated or attempted to relitigate, *pro se*, the validity of the determination against the same defendants or the cause of action, claim or controversy, or any of the issues of fact or law, determined or concluded by the determination against the same defendant; (3) in *pro se* litigation has repeatedly filed unmeritorious motions, pleadings or other papers . . . or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or (4) has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding.

I.A.R. 59 was adopted in 2011. Prior to its enactment, however, Idaho common law permitted the courts to enjoin individuals from commencing *pro se* litigation in civil cases, if it was deemed necessary to prevent the clear abuse of legal process. This Court issued such a writ

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No. 97-80258, Order (9th Cir. July 17, 1997) and *In re Holli Lundahl*, No. 05-253, Order (D.

of prohibition in 1980, holding that, "[t]o allow one individual, untrained in the law, to incessantly seek a forum for his views both legal and secular by means of pro se litigation against virtually every public official or private citizen who disagrees with him only serves to debilitate the entire system of justice." *Eismann v. Miller*, 101 Idaho 692, 697, 619 P.2d 1145, 1150 (1980).

Other state and federal courts have similarly sought to restrict the ability of vexatious litigants to commence *pro se* litigation without court oversight, by requiring prefiling approval, restricting their ability to proceed *in forma pauperis*, or by denying the particular procedural leniency typically granted to *pro se* litigants. Many of the state and federal cases addressing this issue have dealt with Ms. Lundahl Telford herself. As the Utah Supreme Court stated, "[w]hen an individual avails herself of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate. *Lundahl v. Quinn*, 67 P.3d 1000, 1002 (2003). As a result of Ms. Telford Lundahl's "history of consuming judicial resources without demonstrating adequate legal justification," *Id.* at 1005, that court imposed restrictions on Ms. Lundahl Telford's future filings, including making any fee waivers conditional upon her compliance with that state's rules of appellate procedure.

The United States District Court for the District of Idaho, took a similar tack with Ms. Lundahl Telford in 2005, determining that, "[w]here a litigant applies to proceed in forma pauperis and has a history of frivolous, repetitive filings, a Court need not allow such filings unless the litigant first pays the appropriate fees." *Los Angeles Home-Owners Aid Inc. v.*

Utah July 8, 2004)).

Lundahl, 2005 WL 1140649 (D. Idaho, 2005). The issue of the abusive consumption of judicial resources was more completely addressed by the same court in 2006, in a separate case involving Ms. Lundahl Telford, in which it cited its "inherent power to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances." *Lundahl v. Nar, Inc.*, 434 F. Supp. 2d 855, 855 (2006). In that case, the court found Ms. Lundahl Telford's suit to be a "blatant attempt to relitigate previously unsuccessful claims that were dismissed as frivolous in the Utah state courts," *Id.* at 856, and stated that:

> The Court's scarce resources are being consumed by Plaintiff's repetitious, frivolous, and meritless filings. In conformance with the other courts listed above, this Court now holds that because she is a vexatious litigant, it is necessary to restrict the future filings of Lundahl, her agents, employees, assigns, and all persons acting in concert or participating with her, in this District as well.

Id. at 860. In the decision, the court cites the United States Supreme Court's finding that:

> Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interest of justice. The continual processing of . . . frivolous requests . . . does not promote that end.

Id. (citing *In re McDonald*, 489 U.S. 180, 184, 109 S. Ct. 993, 103 L. Ed. 2d 158 (1989)).

Ms. Lundahl Telford has a long history of the type of abusive litigiousness that I.A.R. 59 was drafted to prevent. The rationale applied by this Court and other courts in determining whether it is appropriate to impose filing restrictions on a particular litigant clearly applies here. I.A.R. 59(d) states that an administrative judge may find a person to be a vexatious litigant based on any one of four scenarios mentioned above. Although Ms. Lundahl Telford's conduct and

history support a finding under all four, Administrative Judge Nye based his findings in the *Order* on I.A.R. 59(d)(1) and (4).

1. I.A.R. 59(d)(1)

Under I.C.A.R 59(d)(1), a determination of vexatious litigant is warranted if, in the last seven years, a person has commenced or maintained *pro se* at least three litigations that have been finally determined adversely to the person. It is clear from the record that in the past seven years, Ms. Lundahl Telford has commenced litigation *pro se* at least three times in which there has been a determination adverse to her position. The lower court cited three cases filed in the Sixth Judicial District alone (R. at 4).

In addition, this Court may take judicial notice of the following proceedings decided against Ms. Lundahl Telford in the past seven years: *Idaho v. Telford*, 2012 WL 192819 (D. Idaho 2012) (dismissed); *Lundahl v. Hawkins*, 407 F. App'x 777 (5th Cir. 2011) (appeal dismissed); *Los Angeles Home-Owners Aid, Inc. v. Lundahl*, 2010 WL 118201, 2010 UT App. 4 (default judgment entered against Lundahl for failure to attend the scheduling conference); *Lundahl v. Hawkins*, 2009 WL 3617518 (W.D. Tex. 2009) (dismissed under 28 U.S.C. § 1915(e) as frivolous); *Lundahl v. U.S. Atty. Gen.,* 2009 WL 637183 (N.D. Tex. 2009) (dismissed for lack of subject matter jurisdiction); *Lundahl v. Nar, Inc.,* 434 F. Supp. 2d 855 (D. Idaho 2006) (imposing filing restrictions); *Johnson v. Stock*, 2005 WL 1349963 (10th Cir. 2005) (dismissed for failure to prosecute); *Lundahl v. Eli Lilly & Co.,* 544 U.S. 997 (2005) (motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for cert. dismissed); *Lundahl v. Fireman's Fund Ins. Co.,* 129 F. App'x 479 (10th Cir. 2005) (dismissed); *Lundahl v. Robbins*,

129 F. App'x 478 (10th Cir. 2005) (dismissed); *Lundahl v. Lewis*, 129 F. App'x 476 (10th Cir. 2005) (dismissed); *Lundahl v. Kunze*, 2005 WL 1353811 (D. Idaho 2005) (dismissed).

2. I.A.R. 59(d)(4)

Administrative Judge Nye also based his *Order* on I.A.R. 59(d)(4), which provides that an administrative judge may declare a person a vexatious litigant if the person has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding. Ms. Lundahl Telford has been declared to be a vexatious litigant in various other jurisdictions. The court in *Los Angeles Home-Owners Aid, Inc. v. Lundahl,* stated in 2005 that, "[Lundahl's] filing history in other courts is a matter of public record and shows she is a vexatious litigant." 2005 WL 1140649 at 4 (D. Idaho 2005). The same court issued a decision in 2006 on an order to show cause why a vexatious litigant order should not be issued against Ms. Lundahl Telford. The court held that such an order was warranted, finding that, "Lundahl's belligerent attempt to evade collateral estoppels supports the allegations below that her *modus operandi* is to relitigate claims in a new jurisdiction once they have been dismissed elsewhere as frivolous. *Lundahl v. Nar, Inc.,* 434 F. Supp. 2d at 857.

> Because the record now before the Court shows beyond cavil that Lundahl's litigation activities have been both numerous and abusive, the Court finds that Lundahl is a vexatious litigant and her litigation activities are in fact abusive, harmful, and intended to harass and annoy both the parties she names in her lawsuits and the entire judicial system she purports to invoke. Both the number and content of the filings indicate the harassing and frivolous nature of Lundahl's claims. Lundahl has a lengthy history of targeting the same defendant and any party previously associated with her lawsuits, including judges, clerks, and attorneys, in each of her subsequent actions. When Lundahl is subject to an adverse determination in one court, she simply moves to a new forum to pursue the same claim.

Id. at 859 (citations omitted).

The United States Tenth Circuit Court of Appeals imposed filing restrictions on Ms. Lundahl Telford in 2005, finding that she has "a lengthy and abusive history of filing frivolous, prolix, and vexatious actions and pleadings, both in this court and in other state and federal courts," noting that it had previously dismissed at least three appeals filed by Ms. Lundahl Telford. *Johnson v. Stock*, 2005 WL 1349963 at 2 (C.A.10 (Utah)). The court called Ms. Lundahl Telford's complaints "replete with fanciful, implausible and bizarre factual assertions," *Id.* at 3, and continued, stating:

> Her legal claims, including antitrust claims, are virtually all meritless. If there is a viable argument lurking within one of her claims, it is obscured by Ms. Lundahl's abusive litigation practices. . . . Lundahl has named opposing attorneys, judges, court clerks, and other court personnel as defendants, accusing them of joining in a massive conspiracy against her. . . . Her vexatious litigiousness has resulted in an immense waste of judicial resources. "The right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." *Winslow v. Hunter (In re Winslow),* 17 F.3d 314, 315 (10th Cir.1994).

Id.

The United States District Court for the Western District of Texas issued an order in 2009 accepting a magistrate judge's recommendation that Ms. Lundahl Telford have a filing injunction entered against her "because of her extensive history of vexatious litigation in other courts." *Lundahl v. Hawkins*, 2009 WL 3617518 at 1 (W.D. Tex.)

> [G]iven Lundahl's extensive litigation history, the Court agrees that a pre-filing injunction against Lundahl is appropriate. As the Magistrate Judge noted, a pre-filing injunction must be tailored to protect the courts and innocent parties, while preserving the legitimate rights of litigants. Because of Lundahl's history of

> litigiousness and of repeatedly suing certain defendants, the court finds that enjoining Lundahl from filing suit in federal district court against anyone she has filed suit against previously, as the Magistrate recommends, serves this purpose.

Id. at 5 (citations omitted).

Other courts that have issued pre-filing restrictions against Ms. Lundahl Telford include the Utah Supreme Court, which declined to allow her the leniency granted to *pro se* litigants:

> Individuals have a right to represent themselves without being compelled to seek professional assistance. Where they are largely strangers to the legal system, courts are understandably loath to sanction them for a procedural misstep here or there. Holli, however, is hardly a stranger to the legal system. Where most ordinary individuals find themselves in court on only a handful of occasions in their lives, Holli has managed to embroil herself in more litigation in just a few years than one would think humanly possible. When an individual avails herself of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate.
>
> 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. . . . Where Holli has chosen to make legal self-representation a full-time hobby, if not a career, it is not too much to expect her to strictly abide by the rules governing the appearance of parties before this court. Therefore, she shall be charged with the full knowledge and understanding of all relevant statutes, rules and case law.

Lundahl v. Quinn, 67 P.3d at 1002.

That court also restricted Ms. Lundahl Telford's ability to request a waiver of filing fees, stating that, "[i]t stands to reason that Holli should not be allowed to harass the judiciary of this state at public expense. . . . Holli has routinely taken advantage of the affidavit of impecuniosity to obtain virtually cost-free access to this court." *Id.* at 1005. The United States Supreme Court similarly denied Ms. Lundahl Telford's motion for leave to proceed *in forma pauperis* and petition for certiorari, stating, "[a]s petitioner has repeatedly abused this Court's process, the

Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38 (a) is paid and petition submitted in compliance with Rule 33.1." *Lundahl v. Eli Lilly & Co.*, 544 U.S. 997, 125 S. Ct. 1940 (2005).

3. Administrative Judge Nye Did Not Abuse His Discretion in Finding Ms. Lundahl Telford to Be a Vexatious Litigant and Issuing His Prefiling Order

I.A.R. 59 clearly contemplates that making a finding of vexatious litigant and issuing a prefiling order is at the discretion of the administrative judge. A plain reading of the rule shows that although the judge *may* issue such an order, he or she is not required to. Administrative Judge Nye thus correctly viewed this issue as one of discretion. He acted within the boundaries of such discretion, making the determination after it was referred to him for consideration by various other judges and magistrates, pursuant to I.A.R. 59(c), complying with the provisions of I.A.R. 59(d), and by providing Ms. Lundahl Telford the 14 days required by I.A.R. 59(e) to provide a written response to his findings and proposed order.

Ms. Lundahl Telford's litigation history, detailed above, and the findings of other courts regarding her vexatious litigiousness provide ample evidence that Judge Nye reached his decision by an exercise of reason. Judge Nye did not abuse his discretion in issuing the *Order* against Ms. Lundahl Telford, and the State respectfully request that the *Order* be affirmed, and Ms. Lundahl Telford's appeal denied.

B. Ms. Lundahl Telford's Briefing Provides No Basis for Overturning the *Order*

Ms. Lundahl Telford has provided this Court with no basis for overturning the *Order*. First, she argues that she had until October 28, 2011 to respond to the proposed Order filed

October 11, 2011. I.A.R. 59(e) provides that, after an administrative judge issues the proposed prefiling order and findings in support of the order, the person to be designated as a vexatious litigant "shall then have 14 days to file a written response to the proposed order and findings." The proposed order and findings itself stated that Ms. Lundahl Telford had 14 days to respond. The final day upon which Ms. Lundahl Telford could have filed a response was October 25, 2011.

Ms. Lundahl Telford also argues that the three Sixth Judicial District cases cited by Judge Nye in his *Order* (R. at 4), were not decided adversely to her, because they were dismissed before the courts reached the merits. Ms. Lundahl Telford is mistaken. Presumably, having brought the cases, she desired them to be heard. A determination that the court is without jurisdiction to hear them is therefore an adverse ruling, just as a determination that an action must be dismissed for failure to state a claim would be an adverse ruling. Furthermore, Ms. Lundahl Telford fails to acknowledge the other numerous cases decided against her in other jurisdictions in the past seven years.

Finally, Ms. Lundahl Telford argues that the orders issued by other states and federal courts declaring Ms. Lundahl Telford to be a vexatious litigant, and imposing prefiling conditions or injunctions against her, are void, and therefore do not satisfy I.A.R. 59 (d)(4). This argument is entirely without merit as this Court is without jurisdiction to invalidate the judgments issued in another state or by the various federal courts which have addressed Ms. Lundahl Telford's abusive litigation activities.

IV.

CONCLUSION

Administrative Judge Nye did not abuse his discretion in finding Ms. Lundahl Telford to be a vexatious litigant and issuing a prefiling order. The lengthy record of Ms. Lundahl Telford's litigation activities in various state and federal courts demonstrates her pattern of abusing the judicial system, and complies with the requirements set forth in I.A.R. 59. Based on the forgoing, the State respectfully requests that the Court affirm the *Order* entered by Administrative Judge Nye, and deny Ms. Lundahl Telford's appeal.

DATED this 26th day of July, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

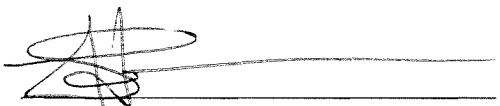
By: _____
SHASTA KILMINSTER-HADLEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2012, I caused to be served a true and correct copy of the foregoing by the following method to:

Holli Lundahl Telford
10621 S. Old Hwy 191
Malad, ID 83252

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: _____



SHASTA KILMINSTER-HADLEY