

DONALD EBY

PLAINTIFF

20-CV-1031

V.

DEPT. I
Electronically Filed
Mar 09 2023 09:00 AM
Elizabeth A. Brown
Clerk of Supreme Court

J. L. O. ET AL...

DEFENDANTS

DISTRICT COURT
LYON COUNTY NEVADA

COMES NOW PLAINTIFF APPEALS TO
N. S. C. THE DISMISSAL OF HIS
COMPLAINT WITH PREJUDICE AND THE
DENIAL OF HIS MOTION TO VACATE
AND NOTICE N. R. S. 41.141 ENTERED
ON 1/31/23

Donald Eby 2/22/23

FILED

2020-07-07 AM 9:29

AMANDA J. KEENE
COURT CLERK, CLERK OF DISTRICT
THIRD JUDICIAL DISTRICT
Loni Kays CLERK

Case No. 20-CV-01031

Dept. No. I

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

* * *

DONALD DOUGLAS EBY,

Appellant

vs

JOHNSTON LAW OFFICE P.C., BRAD JOHNSTON,

LeANN SCHUMANN,

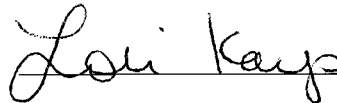
Respondent

CASE APPEAL STATEMENT

1. **DONALD DOUGLAS EBY** is the name of the appellant filing this case appeal statement.
2. Honorable **John P. Schlegelmilch** issued the order being appealed.
3. Donald Douglas Eby is the Appellant in this case.
Donald Douglas Eby 1262 Centerville Lane, Gardnerville, Nevada 89460 is in Proper Person on this appeal.
4. Johnston Law Office P.C., Brad Johnston and LeAnn Schumann are the respondents in this case.
James E. Whitmire, Esq. 10100 W. Charleston Blvd, Suite 250, Las Vegas, Nevada 89135, represents the respondents in this case.
James E. Whitmire, Esq. 10100 W. Charleston Blvd, Suite 250, Las Vegas, Nevada 89135, represents the respondents in this case.
5. James E. Whitmire, Esq. is licensed to practice in the State of Nevada.
6. Appellant was in Proper Person in District Court proceedings.

7. Appellant is filing appeal in Proper Person.
8. No request to proceed in forma pauperis has been filed. The Appellant has failed to pay the required \$250.00 Supreme Court Filing Fee, \$500.00 Surety Bond. A letter was mailed to the Appellant on March 1, 2023 advising Appellant of the non-payment of fees.
9. The proceedings commenced in District Court on a Complaint filed on September 30, 2020.
10. This is a civil case for Negligence – Other. Judge P. Schlegelmilch entered an Order Dismissing Case with Prejudice on January 31, 2023.
11. This matter has previously been the subject of appeals in the Supreme Court filed under docket #82914 and docket #83299
12. This case does not involve child custody/visitation.
13. This case does not have the possibility of settlement.

Dated this 2nd day of March, 2023.



Lori Kays, Deputy

Lyon County Clerk

911 Harvey Way #4

Yerington, NV 89447

(775)463-6503

Case Summary

DONALD DOUGLAS EBY, BRAD JOHNSTON, LeANN SCHUMANN, JOHNSTON LAW OFFICE P.C. ~ COMPLAINT

Case Number: 20-CV-01031

Agency: Third Judicial District Court

Type: Other Negligence Case

Received Date: 9/30/2020

Status: Closed

Status Date: 1/31/2023

Involvements

Primary Involvements

EBY, DONALD DOUGLAS Plaintiff

JOHNSTON, BRAD Defendant

SCHUMANN, LeANN Defendant

JOHNSTON LAW OFFICE P.C. Defendant

Other Involvements

Whitmire, James E. Esq. Defendant's Attorney

EBY, DONALD DOUGLAS Pro Per

Third Judicial District Court (20-CV-01031)

Schlegelmilch, John P. - JPS Dept I - TJDC

[2. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[3. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[4. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[5. REOPEN ~ Reopened Charge](#)

Lead/Active: False

Other Negligence Case

[1. NRCP 3 ~ COMPLAINT](#)

Lead/Active: True

Case Status History

9/30/2020 11:33:00 AM | Open

4/13/2021 11:59:00 AM | Closed

12/2/2022 2:19:00 PM | Reopened

1/31/2023 4:18:00 PM | Closed

Documents

Case Summary

9/30/2020 Complaint.pdf - Filed
9/30/2020 Civil Cover Sheet.pdf - Filed
12/10/2020 First Amended Complaint Arbitration Exempt.pdf - Filed
1/4/2021 Summons - On Return (Brad Johnston Served 12-22-20).pdf - Filed on Return
1/4/2021 Summons - On Return (LeAnn Schumann Served 12-29-20).pdf - Filed on Return
1/12/2021 Motion to Dismiss Plaintiff's First Amended Complaint.pdf - Filed
1/26/2021 Notice of Intent to File Opposition to Defendants Motion to Dismiss.pdf - Filed
2/1/2021 Opposition to Defendant's Motion to Dismiss- Redacted.pdf - Filed
2/1/2021 Opposition to Defendant's Motion to Dismiss.pdf - Sealed

SEALED

2/2/2021 Request for Submission.pdf - Filed
2/2/2021 Reply in Support of Motion to Dismiss Plt's First Amnd Comp.pdf - Filed
2/8/2021 Setting Memo (3-2-21).pdf - Filed
2/9/2021 Amended Opposition to Defendant's Motion to Dismiss - Redacted.pdf - Filed
2/9/2021 Amended Opposition to Defendant's Motion to Dismiss.pdf - Sealed

SEALED

2/16/2021 Motion to Strike Defendant's Reply in Support of Motion to Dismiss.pdf - Filed
2/18/2021 Motion for Theodore Stevens, An Inmate at Lovelock Corr. Center to Appear by Video.pdf - Filed
2/18/2021 Notice of Intent to Appear by Simultaneous Transmission Equipment.pdf - Filed
2/18/2021 Order Denying Motion & Request.pdf - Filed
2/18/2021 Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint with CD.pdf - Filed
Notes: Exhibit F in CD Folder
2/18/2021 Exhibit F CD to Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint\2020-09-15_11.01.17.531.wmv - Filed
2/18/2021 Exhibit F CD to Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint\2020-09-15_12.31.11.265.wmv - Filed
2/18/2021 Exhibit F CD to Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint\desktop.ini - Filed
2/18/2021 Exhibit F CD to Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint\INTERVIEW 1_01-04-2017_31871_1.WMV - Filed
2/23/2021 Response to Plaintiff's Motion for Video Appearance of Theodore Stevens.pdf - Filed
2/24/2021 Motion for Leave to File Second Amended Complaint.pdf - Filed
2/26/2021 Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss (2).pdf - Filed
3/10/2021 Documents From Plaintiff (Received 3-10-21).pdf - For Court Use Only
3/12/2021 Request for Submission of Proposed Order.pdf - Filed
3/12/2021 Order on Motion to Dismiss.pdf - Filed
3/25/2021 Limited Power of Attorney.pdf - For Court Use Only

SEALED

3/29/2021 Letter to Court from Ted Stevens.pdf - For Court Use Only
Notes: 3/30/21 Notice of Appearance sent with letter
3/30/2021 Notice of Appearance - Theodore Stevens.pdf - Filed
Notes: **3/29/21 letter sent with NOA
3/31/2021 Letter Whitmire to Eby.pdf - For Court Use Only
4/5/2021 Motion for Enlargement of Time (Filed by T. Stevens).pdf - Filed
4/5/2021 Limited Power of Attorney and Note from Petitioner (Received From Recorder's Office 4-5-21).pdf - For Court Use Only

SEALED

4/7/2021 Objection to Filed Order of Motion to Dismiss.pdf - Filed
4/7/2021 Transcript Motion Hearing 3-2-21.pdf - Filed
4/12/2021 Second Amended Complaint (2).pdf - Filed
4/12/2021 Response-Opposition to Motion to Enlarge Time to File Second Amended Complaint.pdf - Filed
4/13/2021 Notice of Entry of Order (Order Striking Fugitive Documents and Dmissing Action).pdf - Filed
4/13/2021 Order Striking Fugitive Documents and Dismissing Action With Prejudice.pdf - Filed
4/27/2021 Motion to Vacate Void Judgment - Filed By Theodore Stevens.pdf - For Court Use Only

SEALED

4/27/2021 Motion for a New Trial - Submitted By Theodore Stevens.pdf - For Court Use Only

SEALED

4/30/2021 Letter from State Bar of Nevada 4_27_21.pdf - For Court Use Only
5/10/2021 Motion for a New Trial.pdf - Filed
5/10/2021 Notice of Appeal.pdf - Filed
5/12/2021 Case Appeal Statement.pdf - Filed
5/18/2021 Receipt for Documents (S.C.).pdf - Filed
5/20/2021 Opposition to Motion for New Trial.pdf - Filed
5/27/2021 Motion for Enlargement of Time.pdf - Filed

Case Summary

6/8/2021 Letter to Donald Eby RE Paperwork.pdf - For Court Use Only
6/9/2021 Order Dismissing Appeal- S.C..pdf - Filed
6/16/2021 Reply to Opposition to Motion for a New Trial.pdf - Filed
6/21/2021 Request to Clerk for Entry of Default as Against Named Defendant.pdf - For Court Use Only
6/21/2021 Civil Process Form - James Whitmore (Served 5-19-21).pdf - Filed
7/1/2021 Clerk's Certificate (S.C.).pdf - Filed
7/1/2021 Remittitur (S.C.).pdf - Filed
7/6/2021 Order Denying Motion for New Trial.pdf - Filed
7/28/2021 Notice of Appeal (2).pdf - Filed
7/28/2021 Case Appeal Statement (2).pdf - Filed
8/2/2021 Receipts for Documents (S.C).pdf - Filed
8/9/2021 Order for Transmission of Record (S.C.).pdf - Filed
8/9/2021 Receipt for Documents (S.C.).pdf - Filed
9/8/2021 Index to Record on Appeal.pdf - For Court Use Only
9/10/2021 Proof of Mailing (Supreme Court).pdf - For Court Use Only
3/15/2022 Notice of Transfer to Court of Appeals (S.C).pdf - Filed
5/13/2022 NEF - 5-12-22.eml - For Court Use Only
9/27/2022 Affirmed in part, reversed in part, and remanded (S.C.).pdf - Filed
10/4/2022 Remittitur - (S.C.).pdf - Filed
10/4/2022 Clerk's Certificate - (S.C.).pdf - Filed
Notes: Reviewed by JPS 11-17-22. No action taken
10/17/2022 Setting Memo (11-4-22).pdf - Filed
11/7/2022 Briefing Order.pdf - Filed
11/16/2022 Transcript Hearing 11-4-22.pdf - Filed
11/22/2022 Motion for Enlargement of Time- Donald Eby.pdf - Filed
11/30/2022 Opposition to Motion for Enlargement of Time.pdf - Filed
12/2/2022 Defendants' Memorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice.pdf - Filed
12/9/2022 Order Granting Extension.pdf - Filed
12/12/2022 Motion to Vacate Order and Judicial Notice.pdf - Filed
12/21/2022 Plaintiff's Memorandum of Points and Authorities and Opposition to Defendant's Points and Authorities.pdf - Filed
12/21/2022 Opposition to Motion to Vacate Order and Judicial Notice.pdf - Filed
12/27/2022 Reply to Opposition to Motion to Vacate.pdf - Filed
1/9/2023 Defendant's Reply Memeorandum of Points and Authorities Concerning Dismissal of Plaintiff's Case with Prejudice.pdf - Filed
1/30/2023 Request for Submission (Post-Appeal Briefs & Motion to Vacate Order and Judicial Notice).pdf - Filed
1/31/2023 Order Dismissing Case With Prejudice.pdf - Filed
2/13/2023 Notice of Entry of Order (Order Dismissing Case With Prejudice).pdf - Filed
2/28/2023 Notice of Appeal (3).pdf - Filed
3/1/2023 Notice of Appeal letter.pdf - For Court Use Only
SEALED
3/7/2023 Case Appeal Statement (3).pdf - Filed

FILED

2023 JAN 31 AM 4:56

Case No.: 20-CV-1031

Dept. No.: I

ANDREA JOERSEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Lou Kay DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY

DONALD DOUGLAS EBY,

Plaintiff,

v.

JOHNSTON LAW OFFICE P.C., BRAD
JOHNSTON AND LEE ANN SCHUMANN,

Defendants.

ORDER DISMISSING CASE WITH PREJUDICE

This Court, having received and reviewed the Nevada Court of Appeals' decision remanding this matter to this Court, the parties memoranda of points and authorities concerning whether this case should be dismissed with prejudice under the factors set forth in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and the factors set forth in *Young*, and good cause appearing, IT IS HEREBY ORDERED that this case is **DISMISSED WITH PREJUDICE IN ITS ENTIRETY.**

The Court finds, as discussed in more detail below, that the conduct of Plaintiff Donald Eby ("Eby") in this matter, giving due and careful consideration to the factors set forth in *Young* and its progeny, as well as Eby's status as a *pro se* litigant, warrant dismissal of this matter with prejudice because an alternative, lesser sanction would be neither adequate nor appropriate under the facts and circumstances before this Court.

I.

Eby filed this lawsuit against the Defendants on September 30, 2020, alleging, among other things, a legal malpractice claim. Eby then filed a First Amended Complaint on December 10, 2020, alleging claims for (1) legal malpractice, (2) elder abuse, (3) breach of fiduciary duty, (4) intentional infliction of emotional distress, (5) negligent infliction of emotion distress, and (6) punitive damages. Defendants moved to dismiss Eby's First Amended Complaint on January 12, 2021, pursuant NRCp 12(b)(5), for failure to state a claim upon which relief may be granted. In response to the Defendants' motion, Eby filed a *Notice of Intent to File Opposition to Defendant's Motion to Dismiss* on January 26, 2021, and then an *Opposition to Defendant's Motion to Dismiss* on February 1, 2021. Defendants thereafter filed their reply on February 2, 2021. This Court issued a setting memo on February 8, 2021, setting March 2, 2021, as the date for a hearing on the Defendants' motion to dismiss.

Before the March 2 hearing occurred, Eby filed an *Amended Opposition to Defendants' Motion to Dismiss* on February 9, 2021, and a *Motion to Strike Defendant's Reply in Support of Motion to Dismiss* on February 16, 2021. Neither of these filings were proper.

On February 18, 2021, Eby filed a motion to have Theodore Stevens – a non-lawyer, convicted murderer then incarcerated at the Lovelock Correctional Center – appear by electronic means on Eby's behalf at the hearing this Court scheduled for March 2, 2021. A notice of intent to appear was also filed for Mr. Stevens. This Court denied Eby's request to have Mr. Stevens appear on his behalf, explaining in a written order that "[a]s Mr. Stevens is not a licensed attorney in the State of Nevada, he cannot represent the Plaintiff. Any representation would be the unauthorized practice of law."¹ The Court took no other disciplinary action against Eby as a result of his initial attempt to have a non-lawyer appear in this matter on his behalf.

¹ Defendants filed a *Response to Plaintiff's Motion for Video Appearance of Theodore Stevens* on February 23, 2021, arguing, consistent with the Court's order, that "Eby is asking this Court to permit a non-lawyer to practice law on Eby's behalf and for the undersigned counsel for Defendants (and Defendants themselves) to overlook the request" in violation of Rule 5.5 of the Nevada Rules of Professional Conduct.

1 Ignoring this Court's determination and admonishment that Mr. Stevens could not
2 represent Eby, Eby filed a *Motion for Leave to File Second Amended Complaint* on February 24,
3 2021. In that motion, Eby sought to file an amended complaint to add Mr. Stevens as a plaintiff.
4 This motion was a blatant attempt by Eby to circumvent this Court's prior order. Eby also filed
5 another *Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss*. It
6 appears that all of these filings were authored, ghost-written, or co-authored by Mr. Stevens,
7 notwithstanding this Court's prior order stating that Mr. Stevens could not represent Eby in this
8 matter. In fact, the filings stated that Eby and Mr. Stevens entered into a purported contingency
9 agreement to split equally between them any recovery Eby obtained in this case. This too was
10 an attempt by Eby to circumvent this Court's prior order.

11 On March 2, 2021, this Court, as scheduled, held a hearing on the Defendants' motion to
12 dismiss Eby's First Amended Complaint. At that hearing, the Court first denied Eby's *Motion*
13 *to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss* and Eby's *Motion for*
14 *Leave to File Second Amended Complaint*. The Court explained that the latter motion was filed
15 by Mr. Stevens – an unauthorized individual that is not licensed to practice law – and that the
16 Court would be referring both Eby and Mr. Stevens to the proper authorities, including the Lyon
17 County District Attorney and the State Bar, with respect to their unlawful, and indeed criminal,
18 conduct involving the unauthorized practice of law. The Court also admonished Eby that he was
19 trying to improperly circumvent the Court's prior order regarding Mr. Stevens inability to appear
20 on Eby's behalf.

21 After addressing these preliminary matters, the Court heard argument on the Defendants'
22 motion to dismiss Eby's first amended complaint. During that argument, the Court advised the
23 parties in open court that it would be granting the Defendants' motion in part and denying it in
24 part and further granting Eby leave to file a second amended complaint to articulate, if he could,
25 his malpractice claim based on a violation or abuse of a power of attorney. However, the Court
26 admonished Eby once again that Mr. Stevens could not participate in the case as a party or as
27 Eby's representative. The Court further admonished Eby that the Court would not consider
28 documents submitted by Mr. Stevens, although they would be kept as part of the court record.

1 Following all of these oral pronouncements and admonishments in open court, the Court
2 issued its written *Order on Motion to Dismiss* on March 12, 2021. In that written order, this
3 Court made the following rulings and directives:

4 1. Defendants' motion to dismiss is granted with respect to Eby's second
5 (elder abuse), third (breach of fiduciary duty), fourth (intentional infliction of
6 emotion distress), and fifth (negligent infliction of emotion distress) claims for
7 relief, and those claims are dismissed with prejudice.

8 2. Eby's first claim for relief (legal malpractice) "is dismissed except as
9 with respect to any claim for alleged malpractice associated with a power
10 attorney that is referenced in the First Amended Complaint for which a more
11 definite statement is to be provided to the Court and Defendants."

12 3. "The Court has also instructed Mr. Eby that he is entitled to be
13 represented by counsel of his choice. Any future filings that are in handwriting
14 and/or authored by Mr. Stevens will not be accepted and will be rejected. Mr.
15 Eby has been advised to follow the applicable Local Rules of practice, which are
16 publicly available."

17 4. Eby is "granted leave and shall file, in typewritten form in compliance
18 with the Local Rules, an amended Complaint that articulates, in detail, the
19 alleged malpractice associated with the subject power of attorney."

20 5. If Eby fails to file an amended complaint in accordance with this Court's
21 order within thirty days, "***this matter will be dismissed with prejudice in its***
22 ***entirety.***"

23 6. "The Court reminds Mr. Stevens and Mr. Eby that Mr. Stevens is not to
24 author any documents to be submitted to the Court and that Mr. Stevens shall
25 not engage in the unauthorized practice of law and/or be assisted in such
26 unauthorized practice of law by Mr. Eby."

27 Despite these clear instructions and dire warnings, Eby ignored and defied this Court.
28 And his conduct was not isolated.

1 First, Eby and Mr. Stevens submitted to the Court a limited power of attorney and notice
2 of appearance in plain violation of this Court's prior orders. These documents were received on
3 March 25 and March 30, 2021, respectively, and docketed for "FOR Court Use Only" because
4 they were improper and violative of the Court's prior orders.

5 Second, Eby and Mr. Stevens filed a *Motion for Enlargement of Time* on April 5, 2021,
6 seeking additional time to file a second amended complaint. Notably, this motion cited the
7 Court's March 12 *Order on Motion to Dismiss* that admonished Eby that Mr. Stevens could not
8 participate in this case. Yet, Eby and Mr. Stevens filed the motion together. Eby was
9 accordingly well-aware of the contents of this Court's March 12 *Order on Motion to Dismiss*
10 because he specifically sought relief from the deadline that order established for Eby to file of a
11 second amended complaint. Nevertheless, Eby defied what this Court said in the same written
12 order with respect to what Eby must do and not do if he wished to proceed with this lawsuit and
13 file a second amended complaint.²

14 Third, on April 7, 2021, Eby and Stevens filed an objection to the Court's March 12
15 *Order on Motion to Dismiss*, challenging this Court's order. This too demonstrates that Eby was
16 aware of what this Court's March 12 order warned; namely, that this matter would be dismissed
17 in its entirety with prejudice if Eby did not file a proper complaint within thirty days of the order.
18 Nonetheless, Eby then filed, with Mr. Stevens purportedly his attorney-in-fact, a "Second
19 Amended Complaint" on April 12, 2021, that not only included "Theodore Stevens Power of
20 Attorney Plaintiff" but also claims for relief that this Court had already dismissed with prejudice.

21 Eby accordingly intentionally defied this Court after the Court advised him how he could
22 proceed if he wished to do so. In fact, the Second Amended Complaint filed on April 12, 2021,
23 mirrored what Eby sought to file prior to this Court's March 2 hearing and subsequent March 12
24 *Order on Motion to Dismiss*. Thus, Eby was repeating the same conduct over and over again in
25 utter disregard of this Court.

26
27 ² Defendants filed a response/opposition to Eby's *Motion to Enlarge Time to File Second*
28 *Amended Complaint* on April 12, 2021. In that filing, Defendants detailed Eby's misconduct
and noted that "Plaintiff's disregard for and contempt of this Court could not be more apparent
or blatant, further warranting the dismissal of this lawsuit in its entirety with prejudice."

1 This Court, upon receiving Eby's Second Amended Complaint, did what it said it would
2 do in the face of Eby's defiant conduct. Specifically, this Court, consistent with its March 12
3 *Order on Motion to Dismiss*, issued its *Order Striking Fugitive Documents and Dismissing*
4 *Action with Prejudice* on April 13, 2021, striking Eby's Second Amended Complaint and
5 dismissing this matter with prejudice due to Eby's "failure to file a Second Amended Complaint
6 pursuant to this Court's Order of March 12, 2021." This Court noted in its order that it previously
7 warned Eby about Mr. Steven's improper involvement in this case and that the Court would not
8 tolerate such involvement.

9 Eby, through Stevens, then filed a *Motion to Vacate Void Judgment* and a *Motion for a*
10 *New Trial* on April 27, 2021. These fugitive documents were docketed "For Court Use Only"
11 as they too were plainly improper. Eby then filed another *Motion for New Trial* on May 10,
12 2021. Eby did not ask this Court for another opportunity to proceed without Mr. Stevens in
13 accordance with this Court's March 12 *Order on Motion to Dismiss* or otherwise explain his
14 prior conduct. Instead, Eby insisted that his Second Amended Complaint was timely and
15 properly filed in the name of Theodore Stevens.

16 Thus, Eby made clear, even after his case was dismissed with prejudice, that he would
17 not respect or abide by any ruling or order this Court issued. This Court denied Eby's motion
18 for a new trial on July 6, 2021.³

19 Eby filed an appeal from this Court's *Order Denying Motion for New Trial*, and that
20 appeal was assigned to the Nevada Court of Appeals. The Court of Appeals affirmed this Court's
21 action in part, reversed them in part, and remanded this matter for further proceedings.
22 Specifically, the Nevada Court of Appeals held that that this Court "correctly concluded that
23 Eby's nonlawyer agent was engaged in the unauthorized practice of law" and affirmed this
24 Court's "decision to strike the second amended complaint on that ground." However, the Court
25

26 ³ Eby filed an appeal from this Court's April 13, 2021, *Order Striking Fugitive Documents and*
27 *Dismissing Action with Prejudice*; however, but that appeal was dismissed on June 4, 2021,
28 because Eby failed to pay the required filing fees. The remittitur issued on June 29, 2021, and
it was received by this Court on July 1, 2021. This Court's order denying Eby's *Motion for a*
New Trial followed.

1 of Appeals found that this Court erred in dismissing Eby's "remaining malpractice claim with
2 prejudice without conducting the analysis required under" *Young*.

3 Following remand, this Court held a status conference with the parties on November 4,
4 2021. At that status conference, this Court asked the parties to submit briefing on whether this
5 matter should be dismissed with prejudice under the factors set forth in *Young*. This decision
6 now follows the parties' briefing.

7 II.

8 The Nevada Supreme Court, under *Young* and its progeny, has identified factors that a
9 court must consider before dismissing a lawsuit with prejudice as a sanction for improper and
10 abusive litigation practices. These factors include: (1) the feasibility and fairness of alternative,
11 less severe sanctions; (2) whether sanctions penalize a party for the misconduct of his or her
12 attorney; (3) the severity of the sanction relative to the offending conduct; (4) the degree of
13 willfulness of the offending party; (5) the need to deter the parties and future litigants from
14 similar abuses; (6) the policy favoring adjudication on the merits; and (7) the extent to which the
15 non-offending party would be prejudiced by a lesser sanction. *See Young*, 106 Nev. at 93. The
16 Court finds that these factors warrant dismissal of Eby's case with prejudice.

17 ***The Feasibility and Fairness of Alternative, Less Severe Sanctions.***

18 Under *Young* dismissal need not be preceded by less severe sanctions, but the feasibility
19 and fairness of alternative sanctions should be considered before dismissal with prejudice occurs.
20 This factor weighs heavily in favor of dismissal with prejudice because this Court incrementally
21 addressed Eby's improper conduct before it finally dismissed this case with prejudice. The
22 incremental discipline did not, however, deter or cure Eby's misconduct. Accordingly, dismissal
23 with prejudice is warranted.

24 When Eby first asked to have Mr. Stevens appear in this case, this Court did not sanction
25 or discipline Eby. The Court only denied Eby's request and advised Eby, in writing, that Mr.
26 Stevens' presence would constitute the unauthorized practice of law. Eby did not, however,
27 accept or abide by this Court's ruling. Instead, in an improper attempt to circumvent this Court's
28 ruling, Eby and Mr. Stevens filed a *Motion for Leave to File a Second Amended Complaint* on

1 February 4, 2021, seeking to add Mr. Stevens as a plaintiff. In response to that act, the Court
2 denied Eby's motion, explained to Eby that Mr. Stevens could not participate in this case, and
3 advised Eby that the Court would be reporting him to the proper authorities, including the State
4 Bar, with respect to his active participation in Mr. Stevens' unauthorized practice of law.

5 This was the first disciplinary action or sanction the Court took, which did not affect
6 Eby's ability to pursue this case in accordance with the applicable rules of procedure and
7 governing substantive law. The Court also granted Eby another chance and opportunity to file
8 an amended complaint, without Mr. Stevens' involvement. In giving Eby this opportunity, the
9 Court admonished Eby, in no uncertain terms, that his failure to comply with the Court's order
10 would result in the dismissal of his case with prejudice. *See March 12 Order on Motion to*
11 *Dismiss*. But Eby still refused to heed the Court's warning or abide by the Court's orders because
12 Eby and Mr. Stevens filed more fugitive documents and ultimately a Second Amended
13 Complaint that violated this Court's prior rulings. It was only then that the Court struck Eby's
14 complaint and dismissed this case with prejudice. That dismissal was warranted because the
15 gradual discipline the Court patiently employed failed to deter, let alone correct, Eby's improper
16 and abusive conduct. Thus, less severe, alternative sanctions were neither feasible nor fair when
17 Eby filed his Second Amended Complaint on April 12, 2021. The Court also finds that less
18 severe, alternative sanctions are neither feasible nor fair now.

19 ***Dismissal Does Not Penalize Eby for the Conduct of His Counsel or Mr. Stevens.***

20 Eby was not represented by counsel in this matter; therefore, the dismissal of his case
21 with prejudice will not penalize him for the conduct of his attorney. Additionally and more
22 importantly, dismissal of this case with prejudice does not penalize Eby for the individual
23 conduct of Mr. Stevens. This *Young* factor accordingly supports dismissal of Eby's case with
24 prejudice.

25 Mr. Stevens is a convicted murderer serving a life sentence in the custody of the Nevada
26 Department of Corrections. He, therefore, could not act alone without Eby's assistance to author
27 and file fugitive documents in this case. Eby had to provide him with information concerning
28 this case, including the written orders this Court issued, and Eby continued that conduct *after*

1 this Court issued its March 12, 2021 *Order on Motion to Dismiss*, which stated, again in no
2 uncertain terms, that Mr. Stevens was not to author and file documents. This fact is clear to this
3 Court because Mr. Stevens submitted documents to this Court that referenced, and in fact
4 contested, this Court's March 12 Order. Accordingly, Eby did not care what this Court said or
5 ordered with respect to Mr. Stevens' unauthorized practice of law. Eby continued to facilitate
6 and support it in total disregard of the law and this Court. Dismissal of Eby's case does not,
7 therefore, punish Eby for the independent conduct of Mr. Stevens; it punishes Eby for his own
8 conduct and the conduct he coordinated with Mr. Stevens.

9 ***The Severity of the Sanction Relative to the Offending Conduct.***

10 The Court recognizes that dismissal with prejudice is a severe sanction, but here it is
11 proportionate to Eby's conduct. Eby has demonstrated that he does not care what this Court says
12 or does and that he will not abide by this Court's orders. He has acted in the manner he has seen
13 fit, regardless of this Court's rulings. Even when this Court provided Eby with a final chance to
14 file an amended complaint, he refused to do that in a manner that complied with the law, the
15 local rules of practice, and this Court's prior orders. The Court can identify few examples of
16 conduct more severe than filing an amended complaint that runs contrary to the law, disregards
17 and violates the Court's prior decisions and orders, and includes the criminal act of the
18 unauthorized practice of law. The severity of Eby's conduct accordingly warrants dismissal of
19 this case with prejudice.

20 ***The Willfulness of the Offending Party.***

21 Willful refers to acts that are intentional, conscious, and directed toward achieving a
22 purpose. Eby's conduct easily meets this definition because his conduct was not and has never
23 been inadvertent or accidental. Rather, Eby intentionally and consciously pursued an
24 impermissible litigation strategy with Mr. Stevens before **and after** this Court informed him on
25 multiple occasions that he could not do so. Indeed, the Court finds there are no extenuating
26 circumstances that justify Eby's defiance of this Court. Thus, Eby's willful conduct in the face
27 of this Court's rulings further justifies dismissal of Eby's case with prejudice.
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1
2 ***The Need to Deter the Parties and Future Litigants from Similar Abuses.***

3 To deter Eby from engaging in the conduct he has committed here and to deter future
4 litigants from engaging in similar unacceptable behavior, the appropriate action for this Court to
5 take is to dismiss this case with prejudice. Anything short of that result would encourage Eby
6 and other litigants to defy this Court. The Court accordingly finds that deterrence warrants
7 dismissal with prejudice. Indeed, if Eby's illicit litigation practices go unchecked, it will
8 encourage him and future litigants to engage in equally or even more egregious behavior. This
9 Court will not encourage such behavior by imposing a sanction short of dismissal with prejudice.

10 ***Policy Favoring Adjudication on the Merits.***

11 The Court recognize that public policy favors adjudicating lawsuits on the merits, but
12 that policy does not outweigh Eby's sanctionable conduct in this case. His conduct has been
13 egregious, and, consequently, the Court finds that he should lose any right he had to litigate this
14 case on the merits. When, after being afforded a final opportunity to file a complaint that alleged
15 a legal claim against the Defendants, he refused and failed to do so. Moreover, there is currently
16 no claim to adjudicate on the merits because Eby failed to file any valid complaint that has
17 alleged a claim for relief against the Defendants. As the Nevada Court of Appeals recognized,
18 Eby did not challenge this Court's decision to dismiss all of his claims with prejudice pursuant
19 to NRCP 12(b)(5), save and except for his power of attorney/legal malpractice claim, and as the
20 Nevada Court of Appeals also recognized, this Court properly struck Eby's Second Amended
21 Complaint. Thus, the only claim that could conceivably remain for adjudication on the merits is
22 Eby's power of attorney/legal malpractice claim, but Eby has never properly alleged or
23 articulated that claim. Public policy favoring adjudication on the merits does not, therefore,
24 warrant any sanction less than dismissal of this matter with prejudice.

25 ***Prejudice to Defendants.***

26 This Court is finally tasked with considering the extent to which the Defendants would
27 be prejudiced by a lesser sanction imposed on Eby. The Court finds that the Defendants will be
28 prejudiced by a lesser sanction than dismissal with prejudice, and, therefore, this factor supports

1 dismissal of Eby case with prejudice. The Defendants have been dealing with this lawsuit for
2 over two years now, and during that time, the Defendants have been the recipients of court filings
3 that were improper and emanating from Mr. Stevens and Eby's coordinated attempt to attack the
4 Defendants in their profession. The prejudice the Defendants will suffer if this matter is not
5 dismissed with prejudice will accordingly be substantial. Underscoring this conclusion is what
6 has already transpired. This Court admonished Eby that he and Mr. Stevens were not allowed
7 to pursue this case in tandem and further advised Eby he would be reported to the proper
8 authorities for doing so; yet, Eby continued to litigate this matter with Mr. Stevens at his side,
9 forcing the Defendants, in turn, to respond to fugitive documents that were plainly improper. If
10 this Court imposes any sanction other than dismissal, Eby has demonstrated that the Defendants
11 will continue to face the same conduct. Therefore, the final factor for this Court's consideration
12 under *Young* – prejudice to the Defendants by a lesser sanction – supports dismissal of Eby's
13 case with prejudice.

14 ***Eby's Status as a Pro Se Litigant.***

15 The Nevada Supreme court stated in *Young* that the factors listed therein are not exhaustive.
16 An additional consideration that this Court takes into now, but not identified in *Young*, is that
17 Eby is a *pro se* litigant. The Court finds, however, that fact does not warrant a sanction less
18 severe than dismissal with prejudice. This Court repeatedly advised Eby that he could hire an
19 attorney or represent himself but that he could not proceed with Mr. Stevens as his representative
20 or co-plaintiff. And this Court gave Eby several chances to cure his misconduct and pursue his
21 case in a proper manner. He did not do so. Therefore, the fact that Eby was a *pro se* litigant
22 who consciously decided to proceed with Mr. Stevens – in defiance of this Court – does not
23 warrant a lesser sanction.

24 **III.**

25 This Court has duly considered the factors set forth in *Young* and carefully reviewed the
26 parties' arguments concerning whether this case should be dismissed with prejudice. Due to
27 Eby's willful misconduct, the record before this Court, and all factors to be considered under
28 *Young*, this Court finds that this case should be dismissed with prejudice.

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BASED ON THE FOREGOING and GOOD CAUSE APPEARING, IT IS HEREBY
ORDERED that this matter is **DISMISSED WITH PREJUDICE** in its entirety.

IT IS SO ORDERED.

DATED this 26th day of January, ²⁰²³~~2022~~.


DISTRICT COURT JUDGE

FILED

2023 FEB 13 AM 10:37

ANDREA ANDERSEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
Victoria Toral DEPUTY

CASE NO.: 20-CV-01031

DEPT. NO.: I

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR LYON COUNTY

DONALD DOUGLAS EBY,

Plaintiff,

v.

JOHNSTON LAW OFFICE P.C., BRAD
JOHNSTON AND LEE ANN SCHUMANN,

Defendants.

NOTICE OF ENTRY OF ORDER

Defendants JOHNSTON LAW OFFICES P.C., BRAD JOHNSTON, and LEE ANN SCHUMANN (collectively, "Defendants"), by and through their attorneys of record, Santoro Whitmire, hereby provide written notice of entry of the *Order Dismissing Case With Prejudice* attached hereto as **Exhibit 1**.

Dated this 13th day of February, 2023.

SANTORO WHITMIRE

James E. Whitmire / by BMS w/
JAMES E. WHITMIRE, ESQ. *authorization NO BAR 8515*
Nevada Bar No. 6533
10100 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89135
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of February 2023, I caused the foregoing document to be served via U.S. Mail on the following:

Donald Douglas Eby
1262 Centerville Lane
Gardnerville, NV 89460

Cheryl Compston
Cheryl Compston

Exhibit 1

Exhibit 1

FILED

2023 JAN 31 AM 4:56

Case No.: 20-CV-1031

Dept. No.: I

ANDREA ANDERSEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Lori Kay DEPUTY

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR LYON COUNTY**

DONALD DOUGLAS EBY,

Plaintiff,

v.

JOHNSTON LAW OFFICE P.C., BRAD
JOHNSTON AND LEE ANN SCHUMANN,

Defendants.

ORDER DISMISSING CASE WITH PREJUDICE

This Court, having received and reviewed the Nevada Court of Appeals' decision remanding this matter to this Court, the parties memoranda of points and authorities concerning whether this case should be dismissed with prejudice under the factors set forth in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and the factors set forth in *Young*, and good cause appearing, IT IS HEREBY ORDERED that this case is **DISMISSED WITH PREJUDICE IN ITS ENTIRETY.**

The Court finds, as discussed in more detail below, that the conduct of Plaintiff Donald Eby ("Eby") in this matter, giving due and careful consideration to the factors set forth in *Young* and its progeny, as well as Eby's status as a *pro se* litigant, warrant dismissal of this matter with prejudice because an alternative, lesser sanction would be neither adequate nor appropriate under the facts and circumstances before this Court.

I.

Eby filed this lawsuit against the Defendants on September 30, 2020, alleging, among other things, a legal malpractice claim. Eby then filed a First Amended Complaint on December 10, 2020, alleging claims for (1) legal malpractice, (2) elder abuse, (3) breach of fiduciary duty, (4) intentional infliction of emotional distress, (5) negligent infliction of emotion distress, and (6) punitive damages. Defendants moved to dismiss Eby's First Amended Complaint on January 12, 2021, pursuant NRCP 12(b)(5), for failure to state a claim upon which relief may be granted. In response to the Defendants' motion, Eby filed a *Notice of Intent to File Opposition to Defendant's Motion to Dismiss* on January 26, 2021, and then an *Opposition to Defendant's Motion to Dismiss* on February 1, 2021. Defendants thereafter filed their reply on February 2, 2021. This Court issued a setting memo on February 8, 2021, setting March 2, 2021, as the date for a hearing on the Defendants' motion to dismiss.

Before the March 2 hearing occurred, Eby filed an *Amended Opposition to Defendants' Motion to Dismiss* on February 9, 2021, and a *Motion to Strike Defendant's Reply in Support of Motion to Dismiss* on February 16, 2021. Neither of these filings were proper.

On February 18, 2021, Eby filed a motion to have Theodore Stevens – a non-lawyer, convicted murderer then incarcerated at the Lovelock Correctional Center – appear by electronic means on Eby's behalf at the hearing this Court scheduled for March 2, 2021. A notice of intent to appear was also filed for Mr. Stevens. This Court denied Eby's request to have Mr. Stevens appear on his behalf, explaining in a written order that “[a]s Mr. Stevens is not a licensed attorney in the State of Nevada, he cannot represent the Plaintiff. Any representation would be the unauthorized practice of law.”¹ The Court took no other disciplinary action against Eby as a result of his initial attempt to have a non-lawyer appear in this matter on his behalf.

¹ Defendants filed a *Response to Plaintiff's Motion for Video Appearance of Theodore Stevens* on February 23, 2021, arguing, consistent with the Court's order, that “Eby is asking this Court to permit a non-lawyer to practice law on Eby's behalf and for the undersigned counsel for Defendants (and Defendants themselves) to overlook the request” in violation of Rule 5.5 of the Nevada Rules of Professional Conduct.

1 Ignoring this Court's determination and admonishment that Mr. Stevens could not
2 represent Eby, Eby filed a *Motion for Leave to File Second Amended Complaint* on February 24,
3 2021. In that motion, Eby sought to file an amended complaint to add Mr. Stevens as a plaintiff.
4 This motion was a blatant attempt by Eby to circumvent this Court's prior order. Eby also filed
5 another *Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss*. It
6 appears that all of these filings were authored, ghost-written, or co-authored by Mr. Stevens,
7 notwithstanding this Court's prior order stating that Mr. Stevens could not represent Eby in this
8 matter. In fact, the filings stated that Eby and Mr. Stevens entered into a purported contingency
9 agreement to split equally between them any recovery Eby obtained in this case. This too was
10 an attempt by Eby to circumvent this Court's prior order.

11 On March 2, 2021, this Court, as scheduled, held a hearing on the Defendants' motion to
12 dismiss Eby's First Amended Complaint. At that hearing, the Court first denied Eby's *Motion*
13 *to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss* and Eby's *Motion for*
14 *Leave to File Second Amended Complaint*. The Court explained that the latter motion was filed
15 by Mr. Stevens – an unauthorized individual that is not licensed to practice law – and that the
16 Court would be referring both Eby and Mr. Stevens to the proper authorities, including the Lyon
17 County District Attorney and the State Bar, with respect to their unlawful, and indeed criminal,
18 conduct involving the unauthorized practice of law. The Court also admonished Eby that he was
19 trying to improperly circumvent the Court's prior order regarding Mr. Stevens inability to appear
20 on Eby's behalf.

21 After addressing these preliminary matters, the Court heard argument on the Defendants'
22 motion to dismiss Eby's first amended complaint. During that argument, the Court advised the
23 parties in open court that it would be granting the Defendants' motion in part and denying it in
24 part and further granting Eby leave to file a second amended complaint to articulate, if he could,
25 his malpractice claim based on a violation or abuse of a power of attorney. However, the Court
26 admonished Eby once again that Mr. Stevens could not participate in the case as a party or as
27 Eby's representative. The Court further admonished Eby that the Court would not consider
28 documents submitted by Mr. Stevens, although they would be kept as part of the court record.

1 Following all of these oral pronouncements and admonishments in open court, the Court
2 issued its written *Order on Motion to Dismiss* on March 12, 2021. In that written order, this
3 Court made the following rulings and directives:

4 1. Defendants' motion to dismiss is granted with respect to Eby's second
5 (elder abuse), third (breach of fiduciary duty), fourth (intentional infliction of
6 emotion distress), and fifth (negligent infliction of emotion distress) claims for
7 relief, and those claims are dismissed with prejudice.

8 2. Eby's first claim for relief (legal malpractice) "is dismissed except as
9 with respect to any claim for alleged malpractice associated with a power
10 attorney that is referenced in the First Amended Complaint for which a more
11 definite statement is to be provided to the Court and Defendants."

12 3. "The Court has also instructed Mr. Eby that he is entitled to be
13 represented by counsel of his choice. Any future filings that are in handwriting
14 and/or authored by Mr. Stevens will not be accepted and will be rejected. Mr.
15 Eby has been advised to follow the applicable Local Rules of practice, which are
16 publicly available."

17 4. Eby is "granted leave and shall file, in typewritten form in compliance
18 with the Local Rules, an amended Complaint that articulates, in detail, the
19 alleged malpractice associated with the subject power of attorney."

20 5. If Eby fails to file an amended complaint in accordance with this Court's
21 order within thirty days, "*this matter will be dismissed with prejudice in its*
22 *entirety.*"

23 6. "The Court reminds Mr. Stevens and Mr. Eby that Mr. Stevens is not to
24 author any documents to be submitted to the Court and that Mr. Stevens shall
25 not engage in the unauthorized practice of law and/or be assisted in such
26 unauthorized practice of law by Mr. Eby."

27 Despite these clear instructions and dire warnings, Eby ignored and defied this Court.
28 And his conduct was not isolated.

1 First, Eby and Mr. Stevens submitted to the Court a limited power of attorney and notice
2 of appearance in plain violation of this Court's prior orders. These documents were received on
3 March 25 and March 30, 2021, respectively, and docketed for "FOR Court Use Only" because
4 they were improper and violative of the Court's prior orders.

5 Second, Eby and Mr. Stevens filed a *Motion for Enlargement of Time* on April 5, 2021,
6 seeking additional time to file a second amended complaint. Notably, this motion cited the
7 Court's March 12 *Order on Motion to Dismiss* that admonished Eby that Mr. Stevens could not
8 participate in this case. Yet, Eby and Mr. Stevens filed the motion together. Eby was
9 accordingly well-aware of the contents of this Court's March 12 *Order on Motion to Dismiss*
10 because he specifically sought relief from the deadline that order established for Eby to file of a
11 second amended complaint. Nevertheless, Eby defied what this Court said in the same written
12 order with respect to what Eby must do and not do if he wished to proceed with this lawsuit and
13 file a second amended complaint.²

14 Third, on April 7, 2021, Eby and Stevens filed an objection to the Court's March 12
15 *Order on Motion to Dismiss*, challenging this Court's order. This too demonstrates that Eby was
16 aware of what this Court's March 12 order warned; namely, that this matter would be dismissed
17 in its entirety with prejudice if Eby did not file a proper complaint within thirty days of the order.
18 Nonetheless, Eby then filed, with Mr. Stevens purportedly his attorney-in-fact, a "Second
19 Amended Complaint" on April 12, 2021, that not only included "Theodore Stevens Power of
20 Attorney Plaintiff" but also claims for relief that this Court had already dismissed with prejudice.

21 Eby accordingly intentionally defied this Court after the Court advised him how he could
22 proceed if he wished to do so. In fact, the Second Amended Complaint filed on April 12, 2021,
23 mirrored what Eby sought to file prior to this Court's March 2 hearing and subsequent March 12
24 *Order on Motion to Dismiss*. Thus, Eby was repeating the same conduct over and over again in
25 utter disregard of this Court.

26
27 ² Defendants filed a response/opposition to Eby's *Motion to Enlarge Time to File Second*
28 *Amended Complaint* on April 12, 2021. In that filing, Defendants detailed Eby's misconduct
and noted that "Plaintiff's disregard for and contempt of this Court could not be more apparent
or blatant, further warranting the dismissal of this lawsuit in its entirety with prejudice."

1 This Court, upon receiving Eby's Second Amended Complaint, did what it said it would
2 do in the face of Eby's defiant conduct. Specifically, this Court, consistent with its March 12
3 *Order on Motion to Dismiss*, issued its *Order Striking Fugitive Documents and Dismissing*
4 *Action with Prejudice* on April 13, 2021, striking Eby's Second Amended Complaint and
5 dismissing this matter with prejudice due to Eby's "failure to file a Second Amended Complaint
6 pursuant to this Court's Order of March 12, 2021." This Court noted in its order that it previously
7 warned Eby about Mr. Steven's improper involvement in this case and that the Court would not
8 tolerate such involvement.

9 Eby, through Stevens, then filed a *Motion to Vacate Void Judgment* and a *Motion for a*
10 *New Trial* on April 27, 2021. These fugitive documents were docketed "For Court Use Only"
11 as they too were plainly improper. Eby then filed another *Motion for New Trial* on May 10,
12 2021. Eby did not ask this Court for another opportunity to proceed without Mr. Stevens in
13 accordance with this Court's March 12 *Order on Motion to Dismiss* or otherwise explain his
14 prior conduct. Instead, Eby insisted that his Second Amended Complaint was timely and
15 properly filed in the name of Theodore Stevens.

16 Thus, Eby made clear, even after his case was dismissed with prejudice, that he would
17 not respect or abide by any ruling or order this Court issued. This Court denied Eby's motion
18 for a new trial on July 6, 2021.³

19 Eby filed an appeal from this Court's *Order Denying Motion for New Trial*, and that
20 appeal was assigned to the Nevada Court of Appeals. The Court of Appeals affirmed this Court's
21 action in part, reversed them in part, and remanded this matter for further proceedings.
22 Specifically, the Nevada Court of Appeals held that that this Court "correctly concluded that
23 Eby's nonlawyer agent was engaged in the unauthorized practice of law" and affirmed this
24 Court's "decision to strike the second amended complaint on that ground." However, the Court
25

26 ³ Eby filed an appeal from this Court's April 13, 2021, *Order Striking Fugitive Documents and*
27 *Dismissing Action with Prejudice*; however, but that appeal was dismissed on June 4, 2021,
28 because Eby failed to pay the required filing fees. The remittitur issued on June 29, 2021, and
it was received by this Court on July 1, 2021. This Court's order denying Eby's *Motion for a*
New Trial followed.

1 of Appeals found that this Court erred in dismissing Eby's "remaining malpractice claim with
2 prejudice without conducting the analysis required under" *Young*.

3 Following remand, this Court held a status conference with the parties on November 4,
4 2021. At that status conference, this Court asked the parties to submit briefing on whether this
5 matter should be dismissed with prejudice under the factors set forth in *Young*. This decision
6 now follows the parties' briefing.

7 II.

8 The Nevada Supreme Court, under *Young* and its progeny, has identified factors that a
9 court must consider before dismissing a lawsuit with prejudice as a sanction for improper and
10 abusive litigation practices. These factors include: (1) the feasibility and fairness of alternative,
11 less severe sanctions; (2) whether sanctions penalize a party for the misconduct of his or her
12 attorney; (3) the severity of the sanction relative to the offending conduct; (4) the degree of
13 willfulness of the offending party; (5) the need to deter the parties and future litigants from
14 similar abuses; (6) the policy favoring adjudication on the merits; and (7) the extent to which the
15 non-offending party would be prejudiced by a lesser sanction. *See Young*, 106 Nev. at 93. The
16 Court finds that these factors warrant dismissal of Eby's case with prejudice.

17 *The Feasibility and Fairness of Alternative, Less Severe Sanctions.*

18 Under *Young* dismissal need not be preceded by less severe sanctions, but the feasibility
19 and fairness of alternative sanctions should be considered before dismissal with prejudice occurs.
20 This factor weighs heavily in favor of dismissal with prejudice because this Court incrementally
21 addressed Eby's improper conduct before it finally dismissed this case with prejudice. The
22 incremental discipline did not, however, deter or cure Eby's misconduct. Accordingly, dismissal
23 with prejudice is warranted.

24 When Eby first asked to have Mr. Stevens appear in this case, this Court did not sanction
25 or discipline Eby. The Court only denied Eby's request and advised Eby, in writing, that Mr.
26 Stevens' presence would constitute the unauthorized practice of law. Eby did not, however,
27 accept or abide by this Court's ruling. Instead, in an improper attempt to circumvent this Court's
28 ruling, Eby and Mr. Stevens filed a *Motion for Leave to File a Second Amended Complaint* on

1 February 4, 2021, seeking to add Mr. Stevens as a plaintiff. In response to that act, the Court
2 denied Eby's motion, explained to Eby that Mr. Stevens could not participate in this case, and
3 advised Eby that the Court would be reporting him to the proper authorities, including the State
4 Bar, with respect to his active participation in Mr. Stevens' unauthorized practice of law.

5 This was the first disciplinary action or sanction the Court took, which did not affect
6 Eby's ability to pursue this case in accordance with the applicable rules of procedure and
7 governing substantive law. The Court also granted Eby another chance and opportunity to file
8 an amended complaint, without Mr. Stevens' involvement. In giving Eby this opportunity, the
9 Court admonished Eby, in no uncertain terms, that his failure to comply with the Court's order
10 would result in the dismissal of his case with prejudice. *See March 12 Order on Motion to*
11 *Dismiss*. But Eby still refused to heed the Court's warning or abide by the Court's orders because
12 Eby and Mr. Stevens filed more fugitive documents and ultimately a Second Amended
13 Complaint that violated this Court's prior rulings. It was only then that the Court struck Eby's
14 complaint and dismissed this case with prejudice. That dismissal was warranted because the
15 gradual discipline the Court patiently employed failed to deter, let alone correct, Eby's improper
16 and abusive conduct. Thus, less severe, alternative sanctions were neither feasible nor fair when
17 Eby filed his Second Amended Complaint on April 12, 2021. The Court also finds that less
18 severe, alternative sanctions are neither feasible nor fair now.

19 ***Dismissal Does Not Penalize Eby for the Conduct of His Counsel or Mr. Stevens.***

20 Eby was not represented by counsel in this matter; therefore, the dismissal of his case
21 with prejudice will not penalize him for the conduct of his attorney. Additionally and more
22 importantly, dismissal of this case with prejudice does not penalize Eby for the individual
23 conduct of Mr. Stevens. This *Young* factor accordingly supports dismissal of Eby's case with
24 prejudice.

25 Mr. Stevens is a convicted murderer serving a life sentence in the custody of the Nevada
26 Department of Corrections. He, therefore, could not act alone without Eby's assistance to author
27 and file fugitive documents in this case. Eby had to provide him with information concerning
28 this case, including the written orders this Court issued, and Eby continued that conduct *after*

1 this Court issued its March 12, 2021 *Order on Motion to Dismiss*, which stated, again in no
2 uncertain terms, that Mr. Stevens was not to author and file documents. This fact is clear to this
3 Court because Mr. Stevens submitted documents to this Court that referenced, and in fact
4 contested, this Court's March 12 Order. Accordingly, Eby did not care what this Court said or
5 ordered with respect to Mr. Stevens' unauthorized practice of law. Eby continued to facilitate
6 and support it in total disregard of the law and this Court. Dismissal of Eby's case does not,
7 therefore, punish Eby for the independent conduct of Mr. Stevens; it punishes Eby for his own
8 conduct and the conduct he coordinated with Mr. Stevens.

9 ***The Severity of the Sanction Relative to the Offending Conduct.***

10 The Court recognizes that dismissal with prejudice is a severe sanction, but here it is
11 proportionate to Eby's conduct. Eby has demonstrated that he does not care what this Court says
12 or does and that he will not abide by this Court's orders. He has acted in the manner he has seen
13 fit, regardless of this Court's rulings. Even when this Court provided Eby with a final chance to
14 file an amended complaint, he refused to do that in a manner that complied with the law, the
15 local rules of practice, and this Court's prior orders. The Court can identify few examples of
16 conduct more severe than filing an amended complaint that runs contrary to the law, disregards
17 and violates the Court's prior decisions and orders, and includes the criminal act of the
18 unauthorized practice of law. The severity of Eby's conduct accordingly warrants dismissal of
19 this case with prejudice.

20 ***The Willfulness of the Offending Party.***

21 Willful refers to acts that are intentional, conscious, and directed toward achieving a
22 purpose. Eby's conduct easily meets this definition because his conduct was not and has never
23 been inadvertent or accidental. Rather, Eby intentionally and consciously pursued an
24 impermissible litigation strategy with Mr. Stevens before **and after** this Court informed him on
25 multiple occasions that he could not do so. Indeed, the Court finds there are no extenuating
26 circumstances that justify Eby's defiance of this Court. Thus, Eby's willful conduct in the face
27 of this Court's rulings further justifies dismissal of Eby's case with prejudice.
28

1
2 ***The Need to Deter the Parties and Future Litigants from Similar Abuses.***

3 To deter Eby from engaging in the conduct he has committed here and to deter future
4 litigants from engaging in similar unacceptable behavior, the appropriate action for this Court to
5 take is to dismiss this case with prejudice. Anything short of that result would encourage Eby
6 and other litigants to defy this Court. The Court accordingly finds that deterrence warrants
7 dismissal with prejudice. Indeed, if Eby's illicit litigation practices go unchecked, it will
8 encourage him and future litigants to engage in equally or even more egregious behavior. This
9 Court will not encourage such behavior by imposing a sanction short of dismissal with prejudice.

10 ***Policy Favoring Adjudication on the Merits.***

11 The Court recognize that public policy favors adjudicating lawsuits on the merits, but
12 that policy does not outweigh Eby's sanctionable conduct in this case. His conduct has been
13 egregious, and, consequently, the Court finds that he should lose any right he had to litigate this
14 case on the merits. When, after being afforded a final opportunity to file a complaint that alleged
15 a legal claim against the Defendants, he refused and failed to do so. Moreover, there is currently
16 no claim to adjudicate on the merits because Eby failed to file any valid complaint that has
17 alleged a claim for relief against the Defendants. As the Nevada Court of Appeals recognized,
18 Eby did not challenge this Court's decision to dismiss all of his claims with prejudice pursuant
19 to NRCp 12(b)(5), save and except for his power of attorney/legal malpractice claim, and as the
20 Nevada Court of Appeals also recognized, this Court properly struck Eby's Second Amended
21 Complaint. Thus, the only claim that could conceivably remain for adjudication on the merits is
22 Eby's power of attorney/legal malpractice claim, but Eby has never properly alleged or
23 articulated that claim. Public policy favoring adjudication on the merits does not, therefore,
24 warrant any sanction less than dismissal of this matter with prejudice.

25 ***Prejudice to Defendants.***

26 This Court is finally tasked with considering the extent to which the Defendants would
27 be prejudiced by a lesser sanction imposed on Eby. The Court finds that the Defendants will be
28 prejudiced by a lesser sanction than dismissal with prejudice, and, therefore, this factor supports

1 dismissal of Eby case with prejudice. The Defendants have been dealing with this lawsuit for
2 over two years now, and during that time, the Defendants have been the recipients of court filings
3 that were improper and emanating from Mr. Stevens and Eby's coordinated attempt to attack the
4 Defendants in their profession. The prejudice the Defendants will suffer if this matter is not
5 dismissed with prejudice will accordingly be substantial. Underscoring this conclusion is what
6 has already transpired. This Court admonished Eby that he and Mr. Stevens were not allowed
7 to pursue this case in tandem and further advised Eby he would be reported to the proper
8 authorities for doing so; yet, Eby continued to litigate this matter with Mr. Stevens at his side,
9 forcing the Defendants, in turn, to respond to fugitive documents that were plainly improper. If
10 this Court imposes any sanction other than dismissal, Eby has demonstrated that the Defendants
11 will continue to face the same conduct. Therefore, the final factor for this Court's consideration
12 under *Young* – prejudice to the Defendants by a lesser sanction – supports dismissal of Eby's
13 case with prejudice.

14 ***Eby's Status as a Pro Se Litigant.***

15 The Nevada Supreme court stated in *Young* that the factors listed therein are not exhaustive.
16 An additional consideration that this Court takes into now, but not identified in *Young*, is that
17 Eby is a *pro se* litigant. The Court finds, however, that fact does not warrant a sanction less
18 severe than dismissal with prejudice. This Court repeatedly advised Eby that he could hire an
19 attorney or represent himself but that he could not proceed with Mr. Stevens as his representative
20 or co-plaintiff. And this Court gave Eby several chances to cure his misconduct and pursue his
21 case in a proper manner. He did not do so. Therefore, the fact that Eby was a *pro se* litigant
22 who consciously decided to proceed with Mr. Stevens – in defiance of this Court – does not
23 warrant a lesser sanction.

24 **III.**

25 This Court has duly considered the factors set forth in *Young* and carefully reviewed the
26 parties' arguments concerning whether this case should be dismissed with prejudice. Due to
27 Eby's willful misconduct, the record before this Court, and all factors to be considered under
28 *Young*, this Court finds that this case should be dismissed with prejudice.

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BASED ON THE FOREGOING and GOOD CAUSE APPEARING, IT IS HEREBY
ORDERED that this matter is **DISMISSED WITH PREJUDICE** in its entirety.

IT IS SO ORDERED.

DATED this 26th day of January, ²⁰²³~~2022~~.


DISTRICT COURT JUDGE

Case Summary

DONALD DOUGLAS EBY, BRAD JOHNSTON, LeANN SCHUMANN, JOHNSTON LAW OFFICE P.C. ~ COMPLAINT

Case Number: 20-CV-01031

Agency: Third Judicial District Court

Type: Other Negligence Case

Received Date: 9/30/2020

Status: Closed

Status Date: 1/31/2023

Involvements

Primary Involvements

EBY, DONALD DOUGLAS Plaintiff

JOHNSTON, BRAD Defendant

SCHUMANN, LeANN Defendant

JOHNSTON LAW OFFICE P.C. Defendant

Other Involvements

Whitmire, James E. Esq. Defendant's Attorney

EBY, DONALD DOUGLAS Pro Per

Third Judicial District Court (20-CV-01031)

Schlegelmilch, John P. - JPS Dept I - TJDC

[2. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[3. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[4. NRCP 5 ~ ANSWER](#)

Lead/Active: False

[5. REOPEN ~ Reopened Charge](#)

Lead/Active: False

Other Negligence Case

[1. NRCP 3 ~ COMPLAINT](#)

Lead/Active: True

Case Status History

9/30/2020 11:33:00 AM | Open

4/13/2021 11:59:00 AM | Closed

12/2/2022 2:19:00 PM | Reopened

1/31/2023 4:18:00 PM | Closed

Documents

Events

3/2/2021 1:30:00 PM | Motion Hearing | DEPT I 20-CV-01031 | Court Room B

Andersen, Andrea Deputy Clerk -
AANDERSEN

Staff - STAFF

Court Room B - CourtRmB

Geurts, Patrick Bailiff - X004896

JOHNSTON, BRAD (Defendant)

Defendant

Schlegelmilch, John P. - JPS (Dept I -
TJDC)

Whitmire, James E. Esq. (Defendant's
Attorney)

obo Defendants

EBY, DONALD DOUGLAS (Plaintiff)

Plaintiff, in Pro Per

Notes: Court denied the Motion to Strike Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss and Motion for Leave to File Second Amended Complaint as it was filed by an unauthorized individual that is not licensed to practice in the State of Nevada. Court will refer Ted Stevens and Donald Eby to the State Bar and the Pershing, Lyon and Douglas County District Attorneys for unlawful practice. Court noted Mr. Stevens and Mr. Eby entered into a contract in an attempt to get around the February 18, 2021 Order. Mr. Whitmire and Mr. Eby argued the Motion to Dismiss. Court granted the Motion to Dismiss except the claim of malpractice relating to breach fiduciary duty and the power of attorney. Court granted Plaintiff thirty (30) days to file a second amended complaint to allege particular facts and circumstances constituting the breach. If the Plaintiff fails to file the second amended complaint within thirty (30) days, the matter will be dismissed without prejudice. Defendant to file an answer to the second amended complaint within twenty (20) days of service. Court finds no grounds presented for other claims. Court advised parties, if anything comes in from the prison from Mr. Stevens, it will be filed, however, it will not be considered and the matter will be forwarded to the proper authorities for unauthorized practice of law. Court will not condone Mr. Stevens to file in the case as Mr. Stevens is not a real party in interest in this case. Court directed Plaintiff to refer to the Third Judicial District Court Rules to ensure his pleadings are in proper format. Court will not accept the Assignment of Interest because it is a retainer agreement by a non-lawyer and is illegal. Court advised Mr. Whitmore that defense does not need to respond to any of Mr. Stevens filings unless otherwise directed to do so by the Court. Any filings from Mr. Stevens will be considered frivolous. Mr. Whitmore to prepare the Order and submit a copy to the Plaintiff along with a Request for Submission. Plaintiff is to have five (5) days, plus three (3) days for mailing to file an objection to the terms of the proposed Order.

11/4/2022 9:00:00 AM | Status Hearing | 20-CV-01031 Dept. I | Court Room B

Sceirine, Tanya Clerk - TSCEIRINE

Staff - STAFF

Court Room B - CourtRmB

Geurts, Patrick Bailiff - X004896

Johnston, Brad M. Esq.

lawclerk1 - LAW1

Schlegelmilch, John P. - JPS (Dept I -
TJDC)

Whitmire, James E. Esq. (Defendant's
Attorney)

EBY, DONALD DOUGLAS (Plaintiff)

Notes: Status hearing post remittitur from the Supreme. Based on the opinion issued by the Court of Appeals which upheld the striking of the complaint and Mr. Stevens unauthorized practice of law. Court found the only potential issue was the malpractice action based on the power of attorney. Court felt going forward on the Young v Riberio factors the Court will need some type of pleadings. Court heard statement of Mr. Whitmire and Mr. Eby. Court ordered simultaneous briefs on the Young factors as to dismissal with or without prejudice. Briefs are due December 2, 2022 and any reply briefs are due December 16, 2022. Court advised that if either party requests a hearing the Court will hold hearing for argument otherwise the Court will deem the matter submitted. Court advised proposed orders be submitted with originating briefs. In relation to Mr. Stevens the Court ordered that he is not to pen, file or write anything in relation to this matter and Court will require Mr. Eby file affirmations that Stevens did not write the document. Court advised Mr. Eby he needs to follow NRCP. Court advised Mr. Eby that it does not take any settlement demands and is precluded from looking at any settlement documents.

CIVIL COVER SHEET

County, Nevada
Case No. 20-CV-01031
(Assigned by Clerk's Office) Dept I

FILED

2020 SEP 30 AM 11:51

I. Party Information

Plaintiff(s) (name/address/phone):

Donald Douglas Eby
1267 Carleville Ln
Gardnerville NV 89460

Attorney (name/address/phone):

Pro Per

Defendant(s) (name/address/phone):

Brad Johnston, Lee Ann Schumann
W 27 State Route 208 Yerington NV 89447
ES 1150 Elm Dr Reno 89512

Attorney (name/address/phone):

JANEA SCHUMANN
COURT ADMINISTRATOR
JUDICIAL DISTRICT
d.d. DEPUTY

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property

- ☐ Landlord/Tenant
 - ☐ Unlawful Detainer
- ☐ Title to Property
 - ☐ Foreclosure
 - ☐ Liens
 - ☐ Quiet Title
 - ☐ Specific Performance
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property
 - ☐ Partition
 - ☐ Planning/Zoning

Negligence

- ☐ Negligence - Auto
- ☐ Negligence - Medical/Dental
- ☐ Negligence - Premises Liability (Slip/Fall)
- ☒ Negligence - Other

Legal malpractice

Torts

- ☐ Product Liability
 - ☐ Product Liability/Motor Vehicle
 - ☐ Other Torts/Product Liability
- ☐ Intentional Misconduct
 - ☐ Torts/Defamation (Libel/Slander)
 - ☐ Interfere with Contract Rights
- ☐ Employment Torts (wrongful termination)
- ☐ Other Torts
 - ☐ Anti-trust
 - ☐ Fraud/Misrepresentation
 - ☐ Insurance
 - ☐ Legal Tort
 - ☐ Unfair competition

Probate

- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside Estates
- ☐ Probate Trust/Conservatorships
- ☐ Other Probate

Other Civil Filing Types

- ☐ Construction Defect
- ☐ Breach of Contract
 - ☐ Building & Construction
 - ☐ Insurance Carrier
 - ☐ Commercial Instrument
 - ☐ Other Contracts/Acct/Judgment
 - ☐ Collection of Actions
 - ☐ Employment Contract
 - ☐ Guarantee
 - ☐ Sale Contract
 - ☐ Uniform Commercial Code
- ☐ Civil Petition for Judicial Review
 - ☐ Other Administrative Law
 - ☐ Department of Motor Vehicles
 - ☐ Employer's Insurance of Nevada
- ☐ Appeal from Lower Court (also check applicable civil case box)
 - ☐ Transfer from Justice Court
 - ☐ Justice Court Civil appeal
- ☐ Civil Writ
- ☐ Other Special Proceeding
- ☐ Other Civil Filing
 - ☐ Compromise of Minor's Claim
 - ☐ Conversion of Property
 - ☐ Damage to Property
 - ☐ Employment Security
 - ☐ Enforcement of Judgment
 - ☐ Foreign Judgment - Civil
 - ☐ Other Personal Property
 - ☐ Recover of Property
 - ☐ Stockholder Suit
 - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark and Washoe Counties only.)

- ☐ NRS Chapters 78-88
- ☐ Investments (NRS 104B)
- ☐ Commodities (NRS 90)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Securities (NRS 90)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

92320

Date

Del Steen

Signature of initiating party or representative

See other side for family-related case filings.

LCC LL FORM 26.026