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DIVISION V

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STATE OF NEW MEXICO

Ninth Judicial District Court

DECISION LETTER

February 2, 2018

Re: D-1010-CV-201000060; *Quay County v. Stone*

Dear Counsel, Mr. Lee Stone, and Mr. Dusty Stone,

I have reviewed the multiple filings which Defendants have filed since the trial conducted on November 2, 2015, and November 3, 2015.

Please note subsequent to the November 2015 trial, I received proposed findings of fact and conclusions of law. On November 17, 2015, I entered my findings of fact and conclusions of law.

While Defendants did file various motions and requests after I entered my findings of fact and conclusions of law, no appeal was taken until April 4, 2017.

Prior to filing their appeal, Defendants did, on November 16, 2016, file "Defendant's Motion to Reopen with NMRA 1-060B(2), (3) and (6)." This letter again addresses said motion and the related filings thereto.

I am of the opinion that the time limits for motions attacking a final judgment differs depending on whether the motion is filed pursuant to Rule 1-059 or Rule 1-060(B). The difference between Rules 1-059 and Rule1-060(B) with respect to the authority to grant a new trial are: (1) the grounds for relief under Rule 1-060(B) are narrower than those under Rule 1-059, and (2) the time within which one must seek relief is longer under Rule 1-060(B) than under Rule 1-59. See *Arcuhleta v. New Mexico State Police,* 1989-NMCA-12, 108 N.M. 543.

As previously stated, my final order was entered with the findings of fact and conclusions of law on November 17, 2015. For this reason, the time in which Defendants had to file for Rule 1-059 relief would consequently expire thirty (30) days thereafter.

Conversely, Defendants' Rule 1-060 motion was filed timely, albeit barely.

Defendants' Rule 1-060(B)(2) motion is predicated upon "new evidence"… that is, evidence which did not originate until after the trial concluded in November 2015. Relief pursuant to Rule 1-060(B)(2), however, is generally restricted to evidence that was in existence at the time of trial. See *Rochester v. Rochester,* 1998-NMCA-100; see also *Fowler-Propst v. Datillo,* 1991-NMCA-30. In other words, if the claimed "new evidence" existed but was not known to exist at the time of trial, then it is "new evidence" per Rule 1-060(B)(2); however, if the "new evidence" simply did not exist at the time of trial, then it is not "new evidence" under Rule 1-060(B)(2). For these reasons, Defendants' Rule 1-060(B)(2) motion was denied.

Next, Defendants exhaustively argued in their motion that I should set aside the final order based upon Rule 1-060(B)(3). Defendants put forth in great length excerpts of trial testimony in their "Motion to Reopen with NMRA 1-060(B)(2),(3) and (6)" filed November 16, 2016. Defendants argue Plaintiff committed fraud in the ordinary sense. I, however, opine a disagreement over a witness's testimony or an inconsistency among witnesses' testimonies or a disliking of a witness's testimony does not mean fraud exists in the ordinary sense. At trial, I was persuaded by Plaintiff's argument that the Defendants improperly used the county's property. My opinion has not changed. The fact that Defendants dislike my decision and argue the Plaintiff's witnesses and attorney lied is unpersuasive.

Defendants then argue I should set aside my final order based upon Rule 1-060(B)(6).

Under Rule 1-060(B)(6), it is my understanding that Defendants must show exceptional circumstances. While Defendants, at length, air their disagreement with Plaintiff's witnesses' testimony and assert "new evidence" exists, their argument for fraud upon the court is precisely a recitation of their arguments supporting relief under Rule 1-060(B) (2) and (3). Rule 1-060(B)(6) is to be used only for reasons distinct from Rule 1-060(B)(2) and (3). This is not the case here where Defendants' arguments remain the same.

Further, I do not believe a Rule 1-059 motion may be used to reconsider a denial of a Rule 1-060(B) motion since more than thirty (30) days elapsed from the date findings of fact and conclusions of law were entered.

Based upon the foregoing, I again deny Defendants' "Motion to Reopen" under Rule 1-060(B), and now also under Rule 1-059.

On a separate note, the Defendants have a lengthy history with the District Courts in New Mexico aside from the present matter. I refer your attention to the <u>partial</u> list of cases both opened and closed:

1) D-0101-CV-201703279 (assigned to the Honorable Gregory Shaffer)*
2) D-1010-CV-200600176 (assigned to myself)
3) D-1010-CV-200900035 (assigned to the Honorable Abigail Aragon)*
4) D-1010-CV-200900155 (assigned to myself)
5) D-1010-CV-201000070 (assigned to myself)
6) D-1010-CV-201100146 (assigned to the Honorable Albert J. Mitchell, Jr.)*
7) D-1010-CV-201200032 (assigned to the Honorable Albert J. Mitchell, Jr.)*
8) D-1010-CV-201700040 (assigned to the Honorable Albert J. Mitchell, Jr.)*
9) D-1010-CV-201200008 (assigned to myself)

The aforementioned list does not include matters taken to the appellate courts and/or actions filed within the Unites States District Court for the State of New Mexico (I am personally aware of at least one lawsuit filed by the Stones in federal court as I was a named defendant in said lawsuit; No. 1:3-CV-01192-WJ-GBW).

Further, within the present cause number (D-1010-CV-2010-60), the Stones have filed the following partial list of filings:

1) On July 2, 2010, "Defendants' Answer to Plaintiff's Complaint for Conversion and for Injunctive Relief and Counter Claims against Plaintiff's Combined Third Party Complaint of Defendants'/Third Party Plaintiff's; Sworn Testimony and Affidavits of Defendants'" wherein numerous elected officials were joined as parties to include: the Honorable Albert Mitchell, Jr. and the Honorable Abigail Aragon.

2) On August 17, 2010, Defendants filed their "Third Party Plaintiff's Sworn Statements of Facts, Answer and Objection to Motion to Dismiss Complaint Against Ron Reeves or any other Third Party Response." While Defendants certainly were entitled to respond, it is important to highlight excerpts from this filing:

i) "The Complaint against Ron Reeves involves his not doing anything to uphold these laws and maliciously conspiring with other Third Party Respondent…" p. 1;

ii) "District Judge Albert J. Mitchell, Jr. is also guilty of this same offense… there can be no immunity for this kind of neglect to their duties and abuse of their powers." p. 2;

iii) "This is a case of Public officials letting their egos over rule their logic and laws of the State, abusing their powers because they think no body can fight them…" p. 6.

3) Also on August 17, 2010, Defendants filed "Defendants'/Third Party Plaintiffs' Objection to Plaintiff's Motion to Dismiss." While I don't agree with the Defendants' need to file two separate responses to Plaintiff's motion to dismiss, it is important to highlight excerpts from this filing:

i) "The motion to dismiss filed by Plaintiff is not honest." p.1;

ii) "The (5) Third Party Respondents' employed with the Plaintiff performed personal favors for another citizen with cronyism and favoritism." p. 3;

iii) "Mr. Mitchell [the Honorable Albert J. Mitchell, Jr.] chose to inter the conspiracy and refused to uphold the rules and laws of our Country. ABIGAIL ARAGON [the Honorable Abigail

*denotes cases all involving the substantive issues as in this present cause number

Aragon] refused to take notice of the evidence and failed to uphold the rule of laws of our Country." p. 4.

4) On September 8, 2010, Defendants filed "Defendants' Objection to Plaintiff's Reply to Defendants' Objection to Plaintiffs' Motion for Order of Protection Defendants'/Third Party Plaintiffs' Motion to the Court to Order Plaintiff and Third Party Respondents' to Answer the Discoveries, Affidavit of Defendants'."

Herein, it is important to highlight excerpts of this filing:

i) "As one small example of the unjust ruling in cause No. CV-08-00127 a review of the proceeding and transcript of the hearing held on April 5, 2010 proves Judge Mitchell violated 42 U.S.C. sec. 1988 when Judge Mitchell acknowledged illegal acts of restricting the public road by Defendants' of cause CV-08-00127 (which are Third Party Respondents of this cause CV-2010-00060)… The exhibit photos prove that Judge Mitchell and Judge Aragon both intentionally ignored material facts." p. 2

5) On October 26, 2010, Defendants filed their "Response to Third Party Defendant Ronald Reeves' Response to Defendants/Third Party Plaintiffs' Motion for Summary Judgment." While Defendants certainly were entitled to respond, it is again important to highlight excerpts from this filing:

i) "… he [Ron Reeves] took an oath of office to uphold. Ron Reeves acting outside his scope and authority under the color of the law took part in illegal actions depriving Defendants/Third Party Plaintiffs of their equal protection of the law. Ron Reeves has an obligation to uphold the State Statutes and laws against any and all violators. The Court is fully aware that Ron Reeves cannot legally or ethically under the color of the law take part in illegal activities and allow his Political cohorts and friends the right to violate the laws of New Mexico." p. 2.

6) On November 15, 2010, Defendant Lee Stone filed his "Objection to Motion to Dismiss by Albert J. Mitchell Jr. and Abigail Aragon." While it was appropriate for Defendant to respond, it is important to again highlight certain excerpts from this filing:

i) "When Albert J. Mitchell Jr. and Abigail Aragon used their power to cover up and help anyone to violate State Statutes and violate Private Citizens Civil rights they became as guilty as the perpetrators of the crimes." p. 2.

7) On November 15, 2010, Defendant Dusty Stone similarly filed his "Third Party Plaintiff's Objection to the First Motion to Dismiss Third Party Plaintiffs' Complaint Based Upon Judicial Immunity and for failure to State a Claim Upon Which Relief can be granted." Defendant Dusty Stone was well within his right to respond, but once again, it is important to highlight excerpts from this filing:

i) "Due to Abigail Aragon and Albert J. Mitchell, Jr. obvious corruptions and violations they cannot deny or support their action with any legitimacy." pp 1-2;

ii) "Through malicious and corrupt conduct of Abigail Aragon and Albert J. Mitchell Jr. they have violated the Codes of Judicial Conduct…" p. 2;

iii) "Abigail Aragon and Albert J. Mitchell Jr. performed a malicious abuse of process when they entered the conspiracy and abused their powers trying to reach an ill-legitimate end to benefit their cohorts covering up crimes and statutory violations." p. 2

8) On December 23, 2010, Defendants filed their "Objection to Judge Reeb's Decision Letter and Request for Reconsideration and for Evidence to be Considered." (I parenthetically note this was technically Defendants' second "Objection" as the first "Objection" was filed on December 14, 2010.) Nonetheless, while I take no issue with the Defendants' objections per se, it is again important to highlight excerpts from this second "Objection":

i) "Under the color of the law Ronald Reeves has abused his power and has maliciously and intentionally deprived Defendants of their Civil rights as has caused Defendants to be victims of malice prosecution and abuse of process." p. 3;

ii) "Page number three gives Judge Albert J. Mitchell Jr. and Abigail Aragon a dismissal because of immunity… The Rules of Discovery, if they were allowed would prove Albert Mitchell and Abigail Aragon were working on their private agendas." p. 4;

iii) "Defendants further request that this Honorable Court not to maliciously hinder the gathering of the evidence and reframe from depriving Defendants of the opportunity to prepare a defense for their protection." p. 5.

9) On January 10, 2011, Defendants filed their "Fact and Conclusions of Law with Objection to the Orders Granting Third-Party Defendants Ronald Reeves, Albert J. Mitchell and Abigail Aragon Motion to Dismiss and Ruling on Summary Judgment." Yet again, it is important to highlight excerpts from this filing:

i) "The allegations against these Respondents was not for their actions in their legal capacity, it is for their participation in a conspiracy involving their cohorts and private citizens." p. 1-2;

ii) "When this Court agrees with Third Party Respondents' and rules that they are above the laws and do not have to answer Interrogatories and do not have to obey the rules of discovery mandated by State Statues for every citizen the Judge of his Court is stepping outside his scope of authority, no one should be considered above the laws of the United States, or New Mexico." p.2.

10) On March 21, 2011, Defendant Lee Stone filed his "Motion to Dismiss." While I can concur Defendant Stone was well within his right to file such a motion, I must again highlight excerpts from motion:

i) "The sole purpose of harassing the Stones is to support the conspiracy of Robin Smith that several public officials are involved in with the intent to acquire real estate that Lee Stone resides upon." p. 1;

ii) Timothy L. Rose has misused his authority and the District Attorneys office to prove his loyalty to the conspiracy and corrupt political machine of Quay county." p. 1;

iii) "Timothy L. Rose has violated the laws of the State that mandates his ethical and legal duties of the Office of the District Attorney when he chose, to misuse his authority, and defend

Private Citizens who was brought as Third Party Respondents that are involved with the conspiracy to acquire real estate." p. 2.

11) On April 5, 2011, Defendant Dusty Stone filed "Defendant Dusty Stone's Motion and Memorandum in Support of Motion for Summary Judgment Against Plaintiff." While Defendant Dusty Stone may certainly file a motion for summary judgment, it is necessary to again highlight excerpts from this filing:

i) "Timothy L. Rose has misused his authority and the District Attorneys office to prove his loyalty to the officials, not the public. By filing this unethical lawsuit, he is misusing the Plaintiff under the color of the law to violate Defendants civil rights." p.2;

ii) "I suspect that some or all of the Third Party Respondents handed him [Tim Rose] the fraudulent information he has acted upon. Defendant is unsure if the officials informed him of the conspiracy he was getting involved with or not, however when he [Tim Rose] had the crime brought to his attention and continues to operate in a manner that covers up crimes he is a conspirator." p.4

12) On June 7, 2011, Defendant Lee Stone filed his "Clarification as to the need for a Pretrial Scheduling Conference" wherein he states: "In my experience with the Tenth Judicial Court, watching three different Judges he [Albert Mitchell, Jr.] was exactly right, none of the Judges have honored or upheld any Law or Rule and cannot support their rulings and can only claim that their rulings are bases on their personal discretion with no legal support." p. 2.

13) On January 13, 2014, Defendant Lee Stone filed his motion entitled "Judge David P. Reeb, Jr. Named as Defendant in Fed. Cause No. 1;13-CV-011925-WJ-GBW and Objection to Continued Lack of Notice." While Mr. Lee Stone was entitled to object to my remaining as the presiding judge in CV-2010-60 (the present cause number) due to his suit against me in federal court, Mr. Stone goes on to state:

i) "Judge David P. Reeb, Jr. has… committed perjury multiple times… and these corrupt acts of Judge David P. Reeb, Jr. are willful, wanton, reckless, intentional, persistent in nature, continually harming Defendant Lee Stone." p. 1

The aforementioned 13 filings are but a small sample of a case replete with allegations concerning unethical conduct by state court judges, a district attorney and a large number of elected officials to Quay County government. In this regard, our case is similar to *Landrith v. Schmidt,* United States Court of Appeals Tenth Circuit, Nos. 12-3302 and 12-3332; D.C. No. 2:12-CV-02161-CM-GLR)(D. Kansas).

The most succinct descriptions of the larger scale of the Defendants' abuse of the legal system were written by Attorneys Mark Standridge and Mark Jarmie. Therein, Counsel appropriately articulates their frustration with the Stones' improper filings and ultimately conclude: "Judges Aragon and Mitchell would respectfully submit that the Stones' libelous, scandalous, impertinent and unsupported accusations, which are peppered throughout their "Objection/Motion for Reconsideration," should be stricken pursuant to Rule 1-012(F) NMRA. See "Response to "Objection to the Order Granting Motion to Dismiss Civil Complaint Against County of Quay,

Franklin McCasland, Bill Curry, Robert Lopez, Richard Primrose, and Larry Moore and Motion for Reconsideration" filed June 24, 2011, p.4

I note Mr. Standridge and Mr. Jarmie's filing was filed in 2011. By my count, between the initial filing of the Complaint on June 9, 2010 to the present date, Defendants have collectively filed ten (10) "Objections," and said objections are not simply "responses" to motions:

-September 9, 2010
-December 14, 2010
-December 23, 2010
-February 3, 2011
-June 7, 2011
-May 21, 2012
-January 13, 2014
-October 23, 2015
-October 23, 2015
-October 29, 2015

The point of the foregoing discussion is to establish the Stones, through their litany of pro se filings over the last seven and a half years, have seemingly attempted to congest this court's docket as well as several other district judges' dockets. I am of the opinion that the Stones are intentionally filing frivolous pleadings in bad faith. Again, I note Mr. Standridge's description of the Stones' filing as "libelous, scandalous, impertinent, and unsupported accusations." (Insightfully, Mr. Standridge arrived at his opinion relatively quickly and approximately six and a half years prior to my drafting this letter.)

I believe *State ex rel. New Mexico State Highway and Transp. Dept. v. Baca,* 1995-NMSC-033, gives courts an "inherent power to impose a variety of sanctions on both litigants and attorneys in order to regulate their docket, promote judicial efficiency and deter frivolous filings."

Also, the right of access to the court is not absolute. See *Cummings v. X-Ray Associates of New Mexico,* 1996-NMSC-035.

I have on numerous occasions within this case alone contemplated imposing attorney's fees as a sanction; however, I am aware of the Stones' indigent status, and financial sanction against them seems draconian in light of this. Conversely, it would not be justifiably prudent to allow the Stones to continue filing at the expense of Quay County. Jointly, I interpret the holdings in *Baca* and *Cummings* to allow, in rare cases, prohibition of pro se filings, which appears to be the most appropriate option.

Accordingly, I will make a finding the District Court has the inherent power to restrict Defendants from further pro se filings in the District Court in this particular cause number. The Defendants have a history of abusive filings as demonstrated above. Further, Defendants have a history of filing unnecessary objections to routine orders, and seemingly desire to clog the dockets of the New Mexico District Courts. This court does impose the following carefully tailored restriction to

future filings by Defendants, to-wit: all future filings must be approved by an attorney licensed to practice law in the state of New Mexico.

I request Ms. Martinez prepare the appropriate form of order.

Respectfully,