

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6190	<hr/> ▲ COURT USE ONLY ▲ <hr/> trial court case No. 99 DR 3717 Div. 9 / Hon. Jack Berryhill
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
FATHER’S RESPONSE TO MADELINE WILSON’S MOTION TO STRIKE	

Sean L. Harrington, father, respectfully submits the within RESPONSE TO MADELINE WILSON’S MOTION TO STRIKE. In support thereof, father states as follows:

1. Opposing counsel, Mr. Huff, has not conferred with father as required.¹ “Parties litigant have a right to rely upon the rules as written. It is the duty of trial courts, as well as our duty, to enforce them when timely objection is made by a party to litigation.” *Capitol Indus. Bank v. Strain*, 442 P.2d 187, 188 (1968).

And, although Wilson now urges that father must “*go through court staff, rather than confer with Wilson directly,*”² Wilson has previously argued just the opposite: “*The mother believes the father has failed to confer with the mother's counsel regarding this alleged hearing. The mother's counsel of record was never contacted for the purpose of clearing any dates on her calendar.*” Dec. 9th 2004 Response at 2.

2. The Motion to Strike is not properly before this Court because Madeline Wilson is not a party to this action. She has filed no Motion to Intervene under Rule 24 and has no legal standing to Move this court for affirmative relief. Her participation as a pseudo-party to this case is a violation of R.P.C. 3.7 (lawyer as witness), to which Mr. Huff has become a facilitator.

¹ Rule 121 of the Rules of Civil Procedure, section 1-15(8), requires moving counsel (1) to confer in good faith with opposing counsel before filing a motion, (2) to certify at the beginning of the motion that he or she has done so, and (3) to advise the court if the relief sought has been agreed to or is not opposed, and (4) to provide a reason if no conference has occurred.

² Wilson’s Nov. 20th 2008 Response at 3.

3. The gist of Wilson’s complaint is that father’s Motions before this court are in the furtherance of an alleged vendetta. The irony of this assertion should not be overlooked: In July of 2005, Wilson emailed mother with an explanation of the relief Wilson seeks from this Court:

Put him in jail, give him some mental help. We cannot ask for attorney fees if we ask for jail time. I would like to see him go into lock-down for 180 days. I think Jane Tidball would do it.

[font color in the original]. A copy of the email exchange is attached hereto and incorporated herein by reference as **Exhibit “A.”**

More to the point, it was Wilson who called this Court’s division clerk to claim that the father should have no contact with her and that the clerk should serve as Wilson’s administrative assistant. That affirmative act—in addition to Wilson’s May 1st 2007 contempt Motion—is what makes the alleged no-contact provision relevant.

4. In her “Course of Proceedings” paragraphs, Wilson raises issues from nearly **nine years ago**, alleging that father had been “*committed to the Colorado Mental Health Institute at Fort Logan for three months.*” *Id.* at 2. Wilson’s inclusion of this matter and all other matters prior to Nov. 6th 2001 is absolutely barred by *res judicata*, because of the November 6th 2001 Stipulated/ordered Agreement of this Court (captioned in part, “resolution of all outstanding issues”).

5. In the federal case (05-cv-01858), Wilson argued by and through Brett Huff:

Res judicata, or claim preclusion, bars a party or its privies "from relitigating issues that were or could have been raised in an earlier action, provided that the earlier action proceeded to a final judgment on the merits." King v. Union Oil Co., 117 F.3d 443, 445 (10th Cir. 1997). To apply the doctrine of *res judicata*, three elements must exist: (1) a judgment on the merits in an earlier action; (2) identity of parties or privies in the two suits; and (3) identity of the cause of action in both suits. *Id.*, citing Satsky v. Paramount Communications, Inc., 7 F.3d 1464, 1467 (10th Cir. 1993). Consideration of the doctrine of *res judicata* is the same whether the court is evaluating plaintiff’s federal claims or state law claims. The test for *res judicata* is the same for both jurisdictions. *See, e.g., Squire v. United Airlines, Inc.*, 973 F. Supp. 1004, 1006 (D.Colo. 1997), citing Michaelson v. Michaelson, 884 P.2d 695, 699 (Colo. 1994).

Nov. 30th 2005 Motion to Dismiss at 6. It should therefore be presumed that both Mr. Huff and Ms. Wilson fully understand the principle of *res judicata*, especially whereas these arguments were raised in objection to father providing factual background to the federal court regarding the same matters that Wilson is now raising.

6. Wilson’s inclusion of this matter under seal is a violation of R.P.C. Rule 8.4(g) for discussing facts that are scandalous and impertinent (*see* Rule 12(f)) and attempting to engender bias on the basis of a perceived or alleged disability.³ Moreover, Wilson failed to disclose that she was a complaining witness in the civil commitment process.

The Defendant Christy Ryan was employed by Defendant Jefferson Center for Mental Health. Based on contact by Defendants Ryan and Wilson with the Jefferson County Attorney's Office, Assistant County Attorney John Thirkell contacted Jefferson Center for Mental Health to have them do a mental health evaluation.

March 21st 2002 Order in JeffCo N^o 01CV1376. [Underline emphasis added].

7. Wilson’s analysis of father’s “*outlandish theory that the Jefferson Center for Mental Health, State of Colorado Mental Health Institute at Fort Logan [CMHIFL]. . Ms Ryan, Ms. Wilson and others all conspired together*” (Motion to Strike at 2) is an attempt to perpetuate a continuing fraud that has already been committed on this Court:

As the March 21st 2002 Order (*supra*) notes, Ms. Ryan (petitioner/mother) was an employee of the Jefferson Center for Mental Health (JCMH), to which the civil commitment (00MH243) was delegated. Mother’s direct supervisor, at her behest, intervened and redirected father from a health-care facility of his choice (provided by Kaiser) —in violation of § 27-10-116 (1)(a) — to the state mental hospital. CMHIFL

³ It is professional misconduct for a lawyer to “engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person’s race, gender, religion, national origin, **disability**, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process.” R.P.C. 8.4(g)

records reveal, “[JCMH] did not want him to be at West Pines –wanted him in a more secure setting.”

In addition, mother’s supervisor (Tom Olbrich, the JCMH Clinical Director) furnished a fraudulent document to CMHIFL disguised as a diagnostic “referral,” but which contained nothing other than the information that his employee (mother, Christy Ryan) had provided him.⁴ The “referral” was bogus because father had never been treated by JCMH and father had never authorized the release of any records to JCMH.

8. Next, Wilson claims that “*This Court noted that Harrington’s conduct, in and out of court, in the divorce proceedings, was ‘erratic, unpredictable, angry, and out-of-control.’*” Motion at 2. She is referring to Judge Zimmerman’s March 21, 2002 Order of Dismissal in 01CV1376, *supra*. The problem with this contention is that Judge Zimmerman never met or observed father.⁵ Moreover, that dismissal was a dismissal for lack of jurisdiction (the failure to file a CGIA notice), **not** a judgment on the merits. Father never had an opportunity to present evidence or call witnesses.

9. Next, Wilson urges that father endeavors to hold Wilson accountable for her tortious conduct and wanton acts of fraud, noting that father has “*sued Wilson four times and lost.*” *Id.* at 3. Aside from the fact that this is a misrepresentation,⁶ Wilson has erroneously conflated the concept of “losing” a case on the merits with a case that is dismissed for want of jurisdiction. All of the cases described by Wilson were dismissed for lack of jurisdiction. “It is well settled in Colorado that a dismissal for

⁴ The referral was a near-verbatim duplicate of mother’s Affidavit in support of the mental health hold. The affidavit, itself, was pure conjecture, because mother had no contact with father for seven months.

⁵ Thus, any opinion he developed was a predetermination based on his *ex parte* discussions with Judge Tidball. “Every person who appears in court expects to receive a determination of his case based on the merits of the case and not on extrinsic circumstances, and the right to a fair trial includes the right to be tried by an impartial and unbiased judge.” Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* (Little, Brown & Company 1996).

⁶ For example, there were three cases, not four. The third (district court, Wise County, TX) is pending a Motion for New Trial based upon newly discovered evidence. In addition, the district attorney in Arapahoe County has opened an “inquiry” to determine whether Ms. Wilson committed perjury in the filing of her affidavit and statements claiming not to have provided legal advice to mother in Texas. Also, a complaint will be filed with the State Bar of Texas, pointing out that Wilson lied during the course of a disciplinary investigation.

lack of subject matter jurisdiction is not a judgment on the merits” *In re Estate of Murphy*, ___P.3d___ (Colo. App. No. 07CA0901, August 7, 2008).⁷

10. Next, Wilson points out that “*Harrington . . . resorted to filing a grievance against Wilson’s attorney, the undersigned,*” with the U.S. District Court’s Committee on Conduct. Motion at 3. “*That grievance was also dismissed.*” *Id.*⁸ That grievance was filed because, **just as Mr. Huff is doing now**, gratuitous references were made to attorney disciplinary proceedings for the purpose of gaining a tactical advantage in collateral civil litigation.

The case law in Colorado makes it abundantly clear that it is misconduct for an attorney to make use of a grievance filed for the purpose of gaining a tactical advantage in civil litigation, such as in an effort to make a showing of bad faith or disreputable character. *See, generally*, C.R.C.P. 251.32; *and see People v. Smith*, 830 P.2d 1003, 1005-06 (Colo. 1992) (Reference to confidential disciplinary proceedings in civil action constituted violation and, in conjunction with violation of other disciplinary rules, warranted suspension)); accord *In re Smith*, 989 P.2d 165, 172 (Colo. 1999) (The right of access to the courts does not include abusive process against persons, who seek to have a lawyer investigated for alleged misconduct. The public policy of encouraging people to report lawyer misconduct has been consistently favored over the right of a lawyer, who has been falsely accused to obtain judicial relief) (citing *Toft v. Ketchum*, 18 N.J. 280, 113 A.2d 671, 675 (1955)).

⁷ The same holds true for dismissals from federal court. *See, e.g., Ray v. Eyster*, 132 F.3d 152, 155 (3rd Cir. 1997) (When a trial court “determines that it lacks subject matter jurisdiction, it cannot decide the case on the merits. It has no authority to do so”); *Frederiksen v. City of Lockport*, 384 F.3d 437, 438 (7th Cir. 2004) (Only a court with jurisdiction may render a disposition on the merits).

⁸ Of course it was dismissed. Attorney self-regulation is notoriously feckless. *See* Alan Prendergast, “The hush-hush world of attorney-attorney privilege,” *The Westword* (Oct. 5, 2007) (“The fact is that the state’s attorney discipline process is shrouded in more mystery than a Dionysian cult. Of the 5,000 complaints the ARC receives each year, less than 10 percent are considered worthy of actual investigation, and only a small fraction of those cases lead to a public hearing . . . The rest are settled behind closed doors because — well, because lawyers like it that way.”); David Luban, *Lawyers and Justice* (Princeton Univ. Press, 1988) at xviii, xxvi. (“[I]t is a well-known problem that the [attorney] disciplinary system does not work very well; in 1970, a committee of the American Bar Association, headed by retired Supreme Court Justice Tom Clark, described self-regulation as a ‘scandalous situation,’ finding that a ‘substantial number of malefactors’ continue to practice law. There is little evidence suggesting any notable improvement since then”).

11. Next, Wilson argues that the Court of Appeals did not “open the door for Harrington’s allegations directed toward Ms. Wilson.” Motion at 4. As discussed in father’s recent previous pleadings, the remand from *Harrington III* and *Harrington IV* was a **general remand** that does not limit this court’s continuing jurisdiction over post-dissolution matters. A court “which properly acquires jurisdiction of the parties and subject matter in a dissolution action retains that jurisdiction until all matters arising out of the litigation are resolved.” *Gonzales v. Dist. Court*, 629 P.2d 1074, 1075 (Colo. 1981) (contempt for failure to comply with a dissolution court’s order is not a separate proceeding but a continuance of the dissolution action); *see also Mockelmann v. Mockelmann*, 121 P.3d 337 (Colo.App. 2005) (same).

12. Finally, Wilson urges this Court to strike father’s pleadings concerning the alleged “no contact order,” abuse of process claims, and sanctions, “*among many others, against Ms. Wilson . . . [as] . . . immaterial and impertinent.*” This is a misplaced view of the Court’s role in securing the orderly administration of justice and preserving the dignity of the legal process. As the Colorado Supreme Court said in *People v. Radinsky*, “Our most sacred duty is to maintain the integrity of the law profession by disciplining lawyers who indulge in practices which are designed to perpetrate a fraud on the courts.” 490 P.2d 951, 952 (1971).

WHEREFORE, Respondent prays for an order denying Madeline Wilson’s Motion to Strike.

Dated this 8th day of December, 2008.



Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of December, 2008, a true and accurate copy of the foregoing *RESPONSE* has been mailed, first class postage prepaid, to the following:

First Judicial District Court
Division 9
100 Jefferson County Parkway
Golden, CO 80401

and by facsimile to: Law Office of Madeline Wilson at: 303-321-3196; and
by electronic mail to: David H. Yun (DYun@jalegal.com) and
Brett N. Huff (bhuff@huffandleslie.com)





In a message dated 7/27/2005 9:30:50 A.M. Mountain Daylight Time, cryan72@msn.com writes:

Madeline,

Thank you for the info. The property violation that I was attempting to describe was the \$5000 settlement from division of property in those same orders.

So He was supposed to remit payments of \$75/mo and has not made any such payments. Also, they ordered that he have no contact with my school, employer or licensing authorities which he has violated repeatedly, and continues to attempt to violate by trying to locate my employer (described in his own letter of May 2205). I understand that I would have to testify if these issues were brought to court. Regarding your no contact order, what would you most likely anticipate the court to do about it?

Put him in jail, give him some mental help. We cannot ask for attorney fees if we ask for jail time. I would like to see him go into lock-down for 180 days. I think Jane Tidball would do it.

I know it is impossible to know for sure, but I am trying to weigh the pros and cons.

By the way, if he is in MN, I seem to recall him mentioning that he was working for US Bank there on a contract. If anyone is searching, they might check it out.

Christy



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