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STATE OF WEST VIRGINIA
TWENTY-THIRD JUDICIAL CIRCUIT

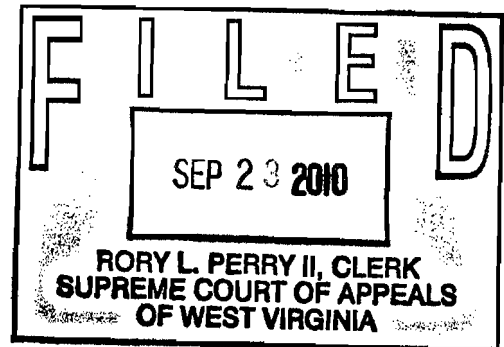
380 W. SOUTH STREET, SUITE 3411
MARTINSBURG, WV 25401

JOHN G. YODER, CIRCUIT JUDGE

304-264-1947
FAX 304-267-3883

BERKELEY, JEFFERSON
AND MORGAN COUNTIES

September 20, 2010



Rory L. Perry II
Clerk of the Court
West Virginia Supreme Court of Appeals
State Capitol Room E-317
Charleston, WV 25305

Re: Petition for Extraordinary Relief in the Nature of a Writ of Prohibition and
Mandamus filed by Keith William DeBlasio

Dear Mr. Perry:

I am writing this letter in response to a phone call my law clerk, Ellen D'Angelo, had with your deputy clerk. Pursuant to the request of your deputy clerk, I will use this opportunity to address the Petition for Extraordinary Relief in the Nature of a Writ of Prohibition and Mandamus filed with the West Virginia Supreme Court of Appeals on September 3, 2010, by Keith William DeBlasio, naming me as a respondent.

In his petition, Mr. DeBlasio asserts that he was wrongfully denied the opportunity to file a civil complaint in the Circuit Court of Morgan County by Circuit Clerk Kimberly Jackson. The civil complaint was initially refused by the Circuit Clerk's Office because Mr. DeBlasio could not pay the required filing fees. At that time, the deputy clerk informed Mr. DeBlasio that he could submit an application for waiver of the filing fees, accompanied by a financial affidavit, which Mr. DeBlasio did. The petitioner further asserts that I wrongfully denied his application for waiver of the filing fees on August 7, 2008.

The petitioner argues that W.Va. Code § 59-2-1 sets forth a mechanism by which a person who cannot afford filing fees in a civil action is able to proceed without prepayment by filing a financial affidavit that meets the financial requirements as dictated by the West Virginia Supreme Court of Appeals. Petitioner further argues that W.Va.R.Civ.P. 77(e) requires the circuit courts to accept applications for a waiver of the filing fees if the applicant meets the financial requirements and thus permit the filing of a civil complaint.

The Court does not dispute that the petitioner seems to meet the financial guidelines based on his affidavit; however, the Court would submit that, based on the statute cited by petitioner, meeting the financial guidelines alone does not make the application *de facto* approved. W.Va. Code § 59-2-1(c) requires, “The affidavit shall state the nature of the action, defense or appeal and the affiant’s belief that he or she is entitled to redress.” Petitioner does not state in his affidavit that he has legal grounds which entitle him to redress in a court of law or what the grounds are. Instead, all petitioner writes is, “Civil action on homeowner’s association, property damage, and tenant issues.” Financial Affidavit and Application of Keith DeBlasio, July 28, 2010, p. 1. While the Court does not expect this application to rise to the level of specificity required in a complaint, petitioner does not state with any detail the nature of the requested relief or why he is entitled to that relief, if at all.

Due to the lack of detail in the affidavit, the Court proceeded to examine the petitioner’s proposed complaint, which is attached to this letter. It was at this time that the Court became aware of petitioner’s attempt to file a frivolous and cumbersome suit against several defendants without paying any filing fees. Specifically, the suit names six individual defendants allegedly in conjunction with some dispute involving a homeowners’ association. Petitioner never specifies in what capacity the defendants are being sued and does not establish that the defendants were even official officers of the homeowners’ association.¹ Further, petitioner does not state valid causes of action. Instead, he uses the complaint to make unclear and purposeless accusations, especially because the conduct by “board members” of which he is complaining occurs in the same time period at which he appears to be acting as an authoritative figure of the homeowners’ association.² His claims with regards to Defendant Lambert are utterly confusing since petitioner pleads that she resigned before the alleged “misconduct” occurred.³ On the face of the complaint, the Court could neither understand nor correct for petitioner the causes of action he was attempting to plead.

The Court, therefore, denied petitioner’s application for a waiver of the filing fees based on two grounds: (i) the application failed to sufficiently state the information required by W.Va. Code § 59-2-1(c), and (ii) the Court used its inherent power to prevent the filing of frivolous litigation, whereby petitioner would not be required to pay the filing fees. The filing fees in civil actions serve as a deterrent to plaintiffs who attempt to pursue less than meritorious cases and a means for courts to offset the expenses involved with services provided to parties in civil cases. In this case, the filing fees, as a deterrent to needless filings, were circumvented by the petitioner’s request for waiver, leaving him in a position to pursue seemingly harassing litigation against several other members of the community.

Trial courts’ inherent power to manage litigation on its docket is well-established in West Virginia and in the federal courts. *See* Syl. Pt. 3, *State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders*, 697 S.E.2d 139 (2010) (citations omitted) (“A court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its

¹ The complaint names Defendants Stone and DiMattina, not as official officers, but rather, indicates that defendants “claimed to be” officers. Petitioner’s Complaint, attached, p. 7.

² Much of the complaint cites conduct since 2002 to the present as a basis for the claims, yet petitioner says he filed the bylaws for the association on July 6, 2010. Petitioner’s Complaint, attached, p. 7.

³ The complaint states that Defendant Lambert resigned on or before October 28, 2001. Petitioner’s Complaint, attached, p. 4.

jurisdiction.”). In this case, the Court relied on its inherent power to deny the waiver of the filing fees to avoid this frivolous and vexatious litigation, which was determined to be such based on the reasons set forth above, from clogging the judicial system and crowding the docket.

The United States Supreme Court has recognized that courts must be able to control the judicial process and safeguard it from abuse, and with this end in mind, the Court has found that lower courts’ inherent power extends to dismissing litigation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991) (“A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process . . . outright dismissal of a lawsuit, which we had upheld in *Link*, is a particularly severe sanction, yet is within the court’s discretion.”). The situation in this case is less severe than that described by the Court because the petitioner is not foreclosed from bringing his suit; rather, this Court has taken the position that if petitioner wants to pursue this extensive and needless litigation, he will have to pay the filing fees required to process his suit.

In response to petitioner’s argument that W.Va.R.Civ.P. 77 requires circuit courts to waive civil filing fees if the financial affidavit meets the relevant guidelines, this Court has reviewed the rule and believes petitioner’s argument is severely misplaced. Rule 77 was designed to broaden circuit courts’ procedural powers by providing a mechanism for indigent parties that have meritorious claims to access the court system. *State ex rel. Lunsford v. Weber*, 153 W.Va. 544, 170 S.E.2d 671 (1969). Yet, there is no evidence that in promulgating W.Va. Code § 59-2-1, which was then implemented in-part by Rule 77, the legislature intended to limit the power of the courts to manage their affairs. Such a reading of the statute and the rule would cripple the trial courts and serve only to foster the filing of frivolous litigation, which is contrary to the goal of the rules themselves. Even though a procedural rule exists on permitting the waiver of civil filing fees, that rule should not be interpreted to limit courts’ inherent power. *See Chambers*, 501 U.S. at 49 (“The Court’s prior cases have indicated that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.”).

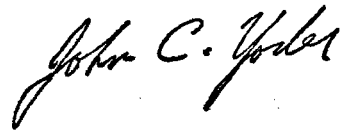
There is no doubt that the West Virginia Supreme Court of Appeals has upheld the authority of trial courts to control unnecessary litigation. In fact, the Supreme Court of Appeals has said, “West Virginia trial courts have the authority to sanction parties that file frivolous lawsuits.” *Davis ex rel. Davis v. Wallace*, 211 W.Va. 264, 267, 565 S.E.2d 386, 389 (2002). The ability of the courts to prevent this type of litigation comes from a combination of the rules that guide judicial procedure and the inherent power of the court; therefore, the rules must necessarily be construed as a compliment to courts’ inherent power and vice versa, so that one tool does not effectively negate the potency of the other. *See Clark v. Druckman*, 218 W.Va. 427, 434, 624 S.E.2d 864, 871 (2005) (“We believe our *Rules of Civil Procedure*, our *Rules of Professional Conduct*, and the court’s inherent authority provide adequate safeguards to protect against abusive and frivolous litigation tactics.”).

This Court understands the dangers posed by the inherent power of courts and does not rely on such power lightly. However, there is no real consequence of forfeiture, as petitioner has the alternative of filing his needless suit, after paying the filing fees, and the Court will be forced to entertain petitioner’s suit, at least until another party moves to dispose of the litigation. The Court simply does not want to encourage the overloading of the judicial system by accepting waivers of

filing fees for suits that the statute and the rule were not intended to accommodate. Since the statute and the rule do not contemplate these circumstances, the Court is forced to rely on its inherent power, so as not to allow litigation that will harass and embarrass other members of the community and divert precious resources away from other cases that warrant judicial attention.

It is for these reasons that the Court denied Mr. DeBlasio's application for waiver of civil filing fees, and it is for the same reasons that the Court opposes petitioner's Writ of Prohibition and Mandamus. If any further information or explanation is requested, please do not hesitate to contact my office at (304) 264-1947.

Respectfully,

A handwritten signature in black ink that reads "John C. Yoder". The signature is written in a cursive, flowing style.

John C. Yoder, Circuit Judge
Twenty-Third Judicial Circuit

EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE