

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

APR 21 2010

STATE OF NORTH DAKOTA

Edward J Tarnavsky,
Plaintiff, Appellant

McKenzie County 27-08-C-071

NDSC 20100035

vs.

Ron Rankin, Sheriff of McKenzie
County, personally and in his
professional capacity, Defendant,
Appellee

APPEAL FROM THE ORDER DENYING
RULE 60B RELIEF

MCKENZIE COUNTY DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT
HONORABLE DAVID A NELSON, PRESIDING

APPELLANT REPLY BRIEF

Edward J Tarnavsky, pro se Appellant
12951 8th St NW
Grassy Butte ND 58634
701-863-6834

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STATEMENT OF THE CASE

1. This brief is in reply to the Sheriff’s Appellee brief, where a fraud on the court had been committed as evidenced by the Defendant/Appellee in paragraph 20 of his Appellee brief.

STANDARD OF REVIEW

3. The standard of review of review on a NDRCvP 60 b motion is whether or not the court abused its discretion: *State Bank of Burleigh County Trust Co v Patten, 357 NW2d 239, (ND 1984)* . The Motion was brought after the Supreme Court had returned jurisdiction to the district court. The Supreme Court had ruled by affirmation on the Plaintiff’s appeal of a motion granting Summary Judgment of Dismissal with prejudice to the Sheriff. Since this present Motion was a combined Rule 60 b, 15 b, and 56, with the court’s denial all questions presented are ultimately questions of law.

STATEMENT OF THE FACTS

4. During the Oral Arguments of Tarnavsky v Rankin June 8, 2009, the Sheriff conceded that the Sheriff Deed that he issued to Morris Tarnavsky, on redemption from the Sheriff sale of June 5, 2007, was invalid. The district court did not confirm the sale as required by law. A legal inference of this admission is that the Sheriff did indeed commit the required predicate acts actionable under RICO. The concession made at the oral arguments directly contradicted the Sheriff's Answer in which he stated that he did nothing wrong. (appendix p16 paragraph V.)

5. The Sheriff now denies the facts presented to the trial court, as stated in paragraph 20 in his Appellee brief dated April 7, 2010.

ISSUES ON APPEAL

6. The Plaintiff/ Appellant now concedes the third issue presented as being moot, and substitutes this new issue in its stead.

ARGUMENT

7. The Sheriff in his Appellee brief on paragraph 20 now argues that there was no admission of the Sheriff Deed being invalid.

8. The Sheriff had ample opportunity to bring such denials forth to the district court.

9. In the plaintiff's Reply Brief dated October 26, 2009 (attached) the challenge was made to substantiate the evidence in rebuttal of the Motion. There was no reply to that challenge.

10. The Plaintiff notes the last response made by the Sheriff was dated December 19, 2009. There was no demand for a hearing made by the Sheriff at that time. The Sheriff's sole responses to the Plaintiff's combined Rule 60 b Motion are contained in the Appellee's Supplemental Appendix. This Appendix consists of two documents each two pages in length. Nowhere in the trial court record of this Motion is there any denial of any sort on any issue.

11. The Sheriff and his attorney display a lack of professional integrity by making such a denial to bolster his claim that the Plaintiff's Motion for relief is frivolous. By attempting to deny the validity of the Sheriff Deed, the Sheriff and his attorney commit a fraud on the court.

12. It is this late stage denial, which has no evidentiary support, that constitutes a material misrepresentation of fact. As stated in the Appellee brief, by citation of NDRCvP 60 b, this rule is the exclusive remedy for a fraud on the court.

13. The Plaintiff now respectfully requests that the Sheriff and his attorney be held in contempt and that a remedial sanction of a reversal and remand to the district court with instruction to endorse the proposed judgment be granted.

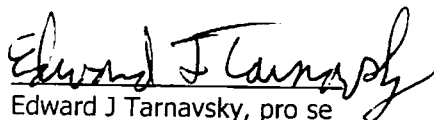
14. In light of the Sheriff's denial contained in paragraph 20 of his Appellee Brief, the Plaintiff concedes that the third issue (the lack of a hearing) is now moot as it is the Sheriff in his resistance to this appeal that

is now making a frivolous argument. Plaintiff/Appellant requests that double costs be awarded to the Appellant.

CONCLUSION

15. The Plaintiff/Appellant Ed Tarnavsky respectfully requests that the Supreme Court reverse the decision of the district court and remand this matter back to the district court for further proceedings to endorse the proposed remedy, and for other such relief as may be just. Plaintiff requests that double costs be awarded to the Plaintiff

Respectfully submitted this 20th day of April, 2010



Edward J Tarnavsky, pro se
12951 8th St NW
Grassy Butte ND 58634
701-863-6834