

**Filed 5/11/10 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2010 ND 77

Edward J. Tarnavsky,

Plaintiff and Appellant

v.

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

Defendant and Appellee

No. 20100035

Appeal from the District Court of McKenzie County, Northwest Judicial District, the Honorable David W. Nelson, Judge.

AFFIRMED.

Per Curiam.

Edward J. Tarnavsky, self-represented, 12951 8th Street Northwest, Grassy Butte, N.D. 58634, plaintiff and appellant.

David Ray Phillips (argued) and Scott Kenneth Porsborg (appeared), P.O. Box 460, Bismarck, N.D. 58502-0460, for defendant and appellee.

Tarnavsky v. Rankin

No. 20100035

Per Curiam.

[¶1] Edward J. Tarnavsky appeals from an order denying his N.D.R.Civ.P. 60(b) motion for relief from a judgment dismissing his action against McKenzie County Sheriff Ron Rankin for claims involving separate sheriff's sales of Tarnavsky's real and personal property. Tarnavsky argues the district court erred in denying his motion because Rankin's "concession" that a sheriff's deed was "void," which was made during appellate proceedings in Tarnavsky v. Rankin, 2009 ND 149, 771 N.W.2d 578, constituted "newly discovered evidence." Tarnavsky also contends the district court "has exhibited an appearance of impropriety" in its rulings. We summarily affirm under N.D.R.App.P. 35.1(a)(1),(4), and (7); see also Lucas v. Riverside Park Condominiums Unit Owners Ass'n, 2009 ND 217, ¶ 12, 776 N.W.2d 801 ("Adverse rulings alone are not evidence of judicial bias or partiality.").

[¶2] Rankin seeks double costs and attorney fees for a frivolous appeal under N.D.R.App.P. 38. An appeal is frivolous "if it is flagrantly groundless, devoid of merit, or demonstrates persistence in the course of litigation which evidences bad faith." Edwards v. Edwards, 2010 ND 2, ¶ 15, 777 N.W.2d 606 (quoting Healy v. Healy, 397 N.W.2d 71, 76 (N.D. 1986)). In his unsuccessful petition for rehearing in Rankin, 2009 ND 149, 771 N.W.2d 578, Tarnavsky specifically argued that the "Sheriff has conceded in his Appellee Brief and at oral argument that the Sheriff Deed that he issued was without authority and therefore void." In denying the petition for rehearing in Rankin, we necessarily concluded Rankin's "concession" had no effect on the outcome of Tarnavsky's appeal. Because this issue was considered and rejected in connection with the prior appeal, we conclude Tarnavsky's arguments are "so factually and legally devoid of merit that he should have been aware of the impossibility of success on appeal." Questa Res., Inc. v. Stott, 2003 ND 51, ¶ 8, 658 N.W.2d 756. Tarnavsky's appeal is frivolous and demonstrates persistence in the course of litigation which evidences bad faith. Consequently, we award Rankin double costs, including reasonable attorney fees in the nominal amount of \$500, for defending the appeal. See United Valley Bank v. Lamb, 2003 ND 149, ¶ 5 n.1, 669 N.W.2d 117 ("[A] request for attorney's fees should be accompanied by an affidavit

documenting the work performed on appeal if more than a nominal amount is requested.”).

[¶3] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
Daniel J. Crothers
Mary Muehlen Maring