

In the Supreme Court of the State of Idaho

RANDY BURNSIDE,

Plaintiff-Appellant,

v.

NATIONSTAR MORTGAGE, LLC,
dba MR. COOPER; BANK OF
AMERICA, N.A.,

Defendants-Respondents.

PRE-FILING ORDER

Supreme Court Docket No. 47886-2020

Teton County District Court No.
CV41-19-0212

This matter is before the Court on Respondents' MOTION TO DECLARE RANDY A. BURNSIDE A VEXATIOUS LITIGANT, filed on September 29, 2020. Having considered the motion, and pursuant to Idaho Administrative Rule 59(g), the Court finds that there is a basis to conclude that RANDY BURNSIDE is a vexatious litigant and that a Pre-Filing Order should be issued.

FINDINGS OF FACT

1. In 2016, RANDY BURNSIDE filed a civil action in Teton County Case No. CV-2016-183, seeking to enjoin foreclosure proceedings that were initiated after RANDY BURNSIDE defaulted on his mortgage loan. RANDY BURNSIDE represented himself *pro se* in the action. The district court, the Honorable Gregory W. Moeller, granted summary judgment in the defendants' favor and, on December 2, 2016, entered a Judgment dismissing the Complaint with prejudice.

2. Thereafter, RANDY BURNSIDE filed a *pro se* Notice of Appeal in Idaho Supreme Court Case No. 44765. After the appellate briefing was completed, RANDY BURNSIDE moved to voluntarily dismiss the appeal. The Idaho Supreme Court granted the motion and entered an Order dismissing the appeal on November 13, 2017.

3. While his appeal in Case No. 44765 was pending, and following a trustee sale of his property, RANDY BURNSIDE initiated proceedings in Teton County Case

No. CV-2017-028 by filing a *pro se* Complaint alleging causes of action against the same defendants who were named in the 2016 action. RANDY BURNSIDE subsequently moved to amend his Complaint to add a defendant and to allege additional causes of action. Among other claims, RANDY BURNSIDE alleged that the deed of trust by which he had secured his mortgage loan was null and void and that the foreclosure sale should be set aside based on alleged defects in the sale process. The district court, the Honorable Bruce L. Pickett, denied the motion to amend and granted summary judgment in the defendants' favor, ruling that many of RANDY BURNSIDE'S claims were barred by *res judicata* and that others failed on their merits. RANDY BURNSIDE thereafter filed a motion for reconsideration, which Judge Pickett denied. Judge Pickett entered a Judgment dismissing the case with prejudice on November 13, 2017.

4. On December 26, 2017, RANDY BURNSIDE filed a *pro se* Notice of Appeal from Judge Pickett's Judgment of dismissal, thereby initiating Idaho Supreme Court Case No. 45677. The Idaho Court of Appeals decided the appeal against RANDY BURNSIDE in an Opinion issued on September 24, 2019. RANDY BURNSIDE did not seek review of the Court of Appeals' Opinion, and a Remittitur issued on October 16, 2019.

5. While his appeal in Case No. 45677 was pending, RANDY BURNSIDE commenced a third civil action, in Teton County Case No. CV41-19-212, concerning the same mortgage loan and foreclosure sale that were the subject of the 2016 and 2017 actions. RANDY BURNSIDE was initially represented by counsel in that case, but his counsel subsequently withdrew and RANDY BURNSIDE proceeded *pro se* throughout the remainder of the district court proceedings. The district court, the Honorable Steven W. Boyce, granted the defendants' motion to dismiss, ruling that all of RANDY BURNSIDE'S claims were barred by *res judicata* and collateral estoppel. Judge Boyce entered a Judgment dismissing the Complaint with prejudice on February 11, 2020.

6. Judge Boyce's February 11, 2020 Judgment is the subject of RANDY BURNSIDE'S appeal in this case, Idaho Supreme Court Case No. 47886. RANDY BURNSIDE initiated the appeal *pro se*, but he has since retained attorney Quentin W.

Lackey to represent him. Mr. Lackey filed his Notice of Appearance in this appeal on November 4, 2020. On October 5, 2020, the Clerk of the Court entered an Order conditionally dismissing the appeal because RANDY BURNSIDE failed to file his Appellant's Brief. On November 4, 2020, Mr. Lackey filed a Motion for Extension of Time to file the Appellant's Brief, which was granted. The Appellant's Brief is due on December 9, 2020.

7. In addition to the foregoing cases, RANDY BURNSIDE has commenced or maintained, *pro se*, at least two other litigations since 2016. On October 20, 2017, RANDY BURNSIDE filed a *pro se* Notice of Appeal in Idaho Supreme Court Case No. 45466, but the appeal was dismissed after RANDY BURNSIDE failed to pay the required fees for preparation of the Clerk's Record and Reporter's Transcript. On July 24, 2019, RANDY BURNSIDE filed a Notice of Appeal in Idaho Supreme Court Case No. 47216. RANDY BURNSIDE was initially represented by counsel in that appeal, but his counsel subsequently withdrew and RANDY BURNSIDE maintained the appeal *pro se*. The appeal was dismissed after RANDY BURNSIDE failed to file his Appellant's Brief.

CONCLUSIONS OF LAW

1. Within the immediately preceding seven-year period, RANDY BURNSIDE has initiated and/or maintained, *pro se*, at least three litigations that have been finally decided adversely to him.

2. RANDY BURNSIDE has repeatedly sought or attempted to relitigate, *pro se*, either: (A) the validity of prior determinations against RANDY BURNSIDE; or (B) claims or issues of fact or law that have previously been finally determined against RANDY BURNSIDE.

3. While acting *pro se*, RANDY BURNSIDE has repeatedly filed unmeritorious pleadings, has used frivolous litigation as a means to delay foreclosure and eviction, and has forced defendants and respondents in the actions to incur unnecessary legal expenses.

4. Randy Burnside's litigation tactics are a drain on judicial resources and can only be interpreted as a means to harass or cause unnecessary delay.

ORDER

Therefore, after due consideration and good cause appearing,

IT IS HEREBY ORDERED that RANDY BURNSIDE shall be prohibited from instituting any new litigation in any Idaho state court *pro se* without first obtaining leave from a judge of the court where the litigation is proposed to be filed. Any litigation filed in violation of this Order may be punished as contempt of court pursuant to Idaho Court Administrative Rule 59(h). Such litigation may also be summarily dismissed pursuant to Idaho Court Administrative Rules 59(j).


Dated this 14 day of December, 2020.

By Order of the Idaho Supreme Court



Roger S. Burdick, Chief Justice

ATTEST:



Melanie Gagnepain, Clerk

cc: Counsel of Record
Administrative Director of the Courts