

FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County  
Honorable Judge Set Tingey  
Date 8/17/18  
Time 4:05 am  
Deputy Clerk TA

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

BENEFICIAL FINANCIAL I INC.,

Plaintiff,

v.

MARILYNN THOMASON,

Defendant.

Case No. CV-2015-74

**ORDER FINDING MARILYNN  
THOMASON A  
VEXATIOUS LITIGANT**

On July 13, 2018, this Court entered its Notice of Proposed Order Regarding Vexatious Litigant. Defendant Marilynn Thomason was given 20 days to respond to the Notice. Within that time frame, this Court received from Thomason "Thomason's Objection to ICAR 59 Notice – Lack of Standing – Lack of Jurisdiction" and "Thomason's Demand for Discovery ICAR 59 Notice and Jury Trial – Lack of Standing – Lack of Jurisdiction".<sup>1</sup> The Court having reviewed the response from Thomason determines that a hearing on this matter is not necessary.

In "Thomason's Demand for Discovery ICAR 59 Notice and Jury Trial – Lack of Standing – Lack of Jurisdiction", Thomason first alleges a right to conduct discovery. While Thomason may conduct discovery with regard to the claim of the Plaintiff within the parameters of the civil rules and the trial court's direction, there is no right to conduct discovery with regard to consideration of a vexatious litigant under Rule 59, ICAR.

Thomason is also apparently challenging the standing and jurisdiction of the administrative district judge (ADJ) to consider the application of Rule 59 to Thomason's

<sup>1</sup> Thomason has also filed with the trial judge documents again arguing a lack of standing and lack of jurisdiction.

conduct. The trial judge has previously rejected Thomason's arguments regarding lack of standing and jurisdiction. The ADJ also has standing and jurisdiction to consider the application of Rule 59 to Thomason and her course of conduct. Arguments regarding lack of standing and jurisdiction are without merit.

Thomason also appears to assert a trial by jury. However, there is no right to trial by a jury in a vexatious litigant determination.

In "Thomason's Objection to ICAR 59 Notice – Lack of Standing – Lack of Jurisdiction", Thomason again argues that the ADJ has no standing or jurisdiction to consider the trial judge's referral. Rule 59, ICAR vests the ADJ with discretion to consider whether an individual is a vexatious litigant. *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013). Additionally, that determination is based on the discretion of the ADJ – there is no right to a trial let alone a jury trial.

Thomason asserts that placing limitations on her ability to file claims or assert motions adversely affects her "due process" and constitutional rights. However, there is no fundamental constitutional right of a pro se litigant to assert claims or file motions without prior approval of the court. *Telford*, supra. While Thomason refers to a 9<sup>th</sup> Circuit decision as to what may be required in a vexatious litigant determination, the ADJ is not bound by 9<sup>th</sup> Circuit decisions. Rather, the guiding authority is Rule 59, ICAR.

Thomason argues that the requirements of Rule 59(d)(1) have not been met. However, subsection (1) is only one of three grounds upon which an individual may be declared a vexatious litigant.

Finally, Thomason makes a number of unsubstantiated claims of fraud, collusion, conspiracy, etc. While Thomason may believe that such unfounded claims militate against a vexatious litigant determination, the opposite is true.

Thomason alleges that there is a lack of evidence to support a vexatious litigant determination. However, as stated in the prior notice, the ADJ reviewed the complete file in this case and further took judicial notice of other litigation in which Thomason was a party. As set out in the Notice, that evidence supports a vexatious litigation determination.

Thomason also argues that there can be no vexatious litigation determination since the trial judge lacks standing and jurisdiction to consider the underlying claims. As indicated above, that argument has repeatedly been addressed by the trial judge wherein the trial judge found that there was standing and jurisdiction. If Thomason disagrees with a decision of the trial judge, she may ultimately appeal that decision. However, repeated objections, repeated motions to reconsider and raising the same argument over and over again are simply evidence of vexatious and harassing behavior.

Pursuant to Rule 59, Idaho Court Administrative Rules, a person may be declared a vexatious litigant if that person:

(a) . . . habitually, persistently, and without reasonable grounds engages in conduct that:

(1) serves merely to harass or maliciously injure another party in a civil action;

(2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; or

(3) is imposed solely for delay, hinder the effective administration of justice, impose an unacceptable burden on judicial personnel and resources, and impede the normal and essential functioning of the judicial process. Therefore, to allow courts to address this impediment to the proper functioning of the courts while protecting the constitutional right of all individuals to access to the courts, the Court adopts the procedures set forth in this rule.

Subsection (d)(3) provides that the administrative district judge may find a person to be a vexatious litigant where the litigant, "while acting pro se, repeatedly files unmeritorious motions, pleadings or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay".

With regard to the present action in which the Plaintiff seeks to foreclose on property subject to a deed of trust, Thomason filed counterclaims, cross-claims, and/or third-party claims. The record reflects that Thomason has repeatedly asserted claims of improper venue, lack of jurisdiction, lack of standing, and repeatedly sought recusal of the presiding judge. Even though the district court ruled on those arguments, Thomason has repeatedly raised and reargued those issues.

In consideration of the foregoing, the ADJ finds that Thomason has pursued litigation and argued motions which are not supported by existing law nor based on a good faith argument. Thomason's conduct has served to harass the district court and the other party to the action. Furthermore, the conduct has resulted in unnecessary delay and has hindered the effective administration of justice.

As such, the ADJ finds that Thomason has engaged in conduct which meets the criteria of Rule 59(a), ICAR, and that Thomason should be declared a vexatious litigant.

Accordingly, it is ORDERED as follows:

1. Marilyn Thomason is hereby declared to be a vexatious litigant;
2. Thomason is prohibited from filing pro se any petition, complaint, counter-claim, cross-claim or third-party complaint in the courts of this state unless Thomason first obtains leave of a judge of the court where the litigation is proposed to be filed.

3. As to any issue decided by the Court in any litigation in which Thomason is a party, Thomason may pursue a single motion for reconsideration but is precluded from making repeated objections and repeated motions for reconsideration.

Disobedience of this order may be punished as a contempt of court. If Thomason files any litigation without first obtaining the required leave of a judge to file the litigation, the court may dismiss the action. In addition, any party named in the litigation may file a notice stating that the plaintiff is a vexatious litigant subject to a pre-filing order. The filing of such notice shall stay the litigation. The litigation shall be dismissed by the court unless the plaintiff, within fourteen (14) days of the filing of the notice, obtains an order from the presiding judge permitting the litigation to proceed. If the presiding judge issues an order permitting the litigation to proceed, the time for the defendants to answer or respond to the litigation will begin to run when the defendants are served with the order of the presiding judge. The clerk is directed to provide a copy of this Order to the Administrative Director of the Courts.

This Order does not preclude the ability of Thomason to seek relief from a decision of the trial court through a proper appeal. Furthermore, Thomason is entitled to appeal this Order to the Idaho Supreme Court pursuant to the Idaho Appellate Rules.

IT IS SO ORDERED.

Dated this 17 day of August, 2018.

  
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JOEL E. TINGEY  
ADMINISTRATIVE DISTRICT JUDGE  
DISTRICT SEVEN, STATE OF IDAHO

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17 day of August, 2018, the foregoing document was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, by facsimile, by email, or by causing the same to be delivered to their courthouse boxes.

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Kim Muir  
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by

  
Deputy Clerk