

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0718

FILED

DEC 17 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

GENET MCCANN,

Petitioner,

v.

ORDER

THE TWENTIETH JUDICIAL DISTRICT
COURT, in and for LAKE COUNTY,
HONORABLE JAMES A. MANLEY, presiding,

Respondent.

Genet McCann has presented a motion for leave to file an emergency petition for supervisory control over the Twentieth Judicial District Court, Lake County, regarding orders it has entered in *Matter of the Guardianship and Conservatorship of Anne Marie McCann*, Cause No. DG-14-2/DG-14-3. Specifically, McCann seeks leave to file a petition requesting this Court “to vacate the two ex parte Rule 11 Orders issued by Judge James A. Manley, assign another judge to hear Petitioner’s filed Affidavit to Disqualify Judge Manley, and reverse final judgment in DG 14-2/14-3.” McCann contends the District Court is proceeding under a mistake of law causing a gross injustice or involving constitutional issues of statewide importance for which an appeal is an inadequate remedy.

In *McCann v. McCann*, 2018 MT 207, 392 Mont. 385, 425 P.3d 682, this Court declared McCann to be a vexatious litigant and imposed a pre-filing order that provided, “[b]efore Genet McCann can file any pleading in a Montana district court or the Montana Supreme Court, she is required to obtain pre-filing approval from the court in which she seeks to file. The court may reject any filing upon a determination that the claims asserted or allegations made are harassing, frivolous, or contain unsupported allegations.” *McCann*, ¶ 45. Consequently, McCann has presented a motion for leave to file a petition for

supervisory control and a proposed petition, with attached exhibits. Pending action by this Court, the Clerk of this Court has lodged, but not filed, these documents.

McCann's proposed filings, in summary, allege that the Co-conservators of the estate of her now-deceased Mother, one of whom has been appointed as personal representative of the estate, have worked "in collusion with Judge Manley, to set in motion the final hand-off and cover up of the misappropriation of \$20 million in Estate assets" and have "fraudulently concealed the scheme." McCann alleges that when she attempted to raise issues concerning this fraud, "Judge Manley refused to let me make the claim," noting that the District Court Judge "is long-time personal friends with [Co-conservator] Doug Wold for over 50 years." The *ex parte* orders challenged by McCann involve an expansion of the District Court's June 24, 2015 sanction order that prohibited McCann from filing pleadings in DC-14-2/DC-14-3 without certification by a licensed Montana attorney, to include all cases in the District Court in which Judge Manley is in jurisdiction, and an order rejecting filings McCann had submitted without an attorney certification, including a request to disqualify Judge Manley. McCann's petition asserts these orders "are intended to corruptly block Petitioner's intention to file for removal of the personal representative due to the fraud upon the court that occurred at the onset of the case by the workings of the conservators in collusion with Judge Manley. . . ." As for the attorney certification requirement for filings, McCann offers that, "[w]hen I actually found an attorney to certify them, she received a threat by a Polson attorney whose office is kiddy [sic] corner [to] Judge Manley's office building that if she continued to help me 'things would not go well for her.'"

Regardless of the validity of the District Court's expansion of its sanctions order, McCann was subject to the order imposed by this Court, referenced above, which required her, prior to filing "any pleading in a Montana district court or the Montana Supreme Court," to "obtain pre-filing approval from the court in which she seeks to file." *McCann*, ¶ 45. McCann did not obtain pre-filing approval from the District Court for her affidavit seeking to disqualify Judge Manley, nor seek leave from this Court. She argues a disqualification affidavit does not constitute a "pleading" for purposes of the filing

restrictions, but that document initiates a disqualification proceeding that can include filings, hearings, entry of findings and conclusions, and appeals, *see Draggin' Y Cattle Co. v. Junkermier*, 2017 MT 125, 387 Mont. 430, 395 P.3d 497, and must be considered a "pleading" for this purpose. Consequently, even McCann's attempt to file and pursue disqualification was subject to pre-filing approval, and was filed in violation of this Court's order.

In response to McCann's motion before this Court seeking pre-approval of her proposed petition, we must determine whether "the claims asserted or allegations made are harassing, frivolous, or contain unsupported allegations," requiring denial. *McCann*, ¶ 45. As quoted above, McCann's petition includes allegations of a severe and extreme nature against the parties and the District Court. While this Court is not a factfinding court, and cannot entertain without a record the questions of whether fraud and conspiracy have occurred, more importantly, the petition's allegations are facially harmful to the parties involved and to the judicial system generally, and should never be made without clear and compelling evidentiary support, which has not been provided here. It is precisely this kind of inappropriate practice that necessitates a pre-filing requirement.

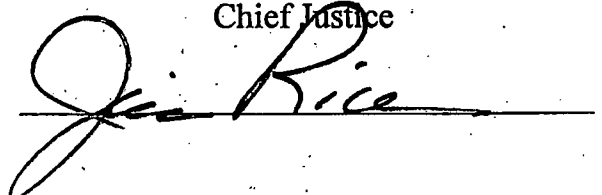
We conclude that a basis for granting leave for filing McCann's proposed petition for supervisory control has not been justified. Therefore,

IT IS ORDERED that the motion for leave to file the proposed petition for Writ of Supervisory Control is DENIED, and this matter is DISMISSED. The Clerk of this Court is directed to assign a cause number for this matter and to file the pleadings that have been lodged herein, along with this order denying the motion and dismissing the matter.

The Clerk is directed to provide a copy of this Order to counsel of record for all parties, and Hon. James A. Manley, Twentieth Judicial District Court, Lake County.

DATED this 7th day of December, 2019.

Chief Justice

A handwritten signature in black ink, appearing to read "Joe Rice", is written over a horizontal line. The signature is fluid and cursive.

Mike McHale

Ingval Gustaf

John Foster

John J. J. J.

John M. Sullivan

Justices