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FILED: February 10, 2021

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

v.

NATALIA NEAL,
Defendant-Respondent.

Clackamas County Circuit Court
18CV02117

A169261

Kathie F. Steele, Judge.

Submitted on September 04, 2020.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Aoyagi, Judge.

Attorney for Appellant: Sharon Neal *pro se*.

Attorney for Respondent: Natalia Neal *pro se*.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed.
 Costs allowed, payable by Appellant.

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF CLACKAMAS

3 SHARON NEAL,

4 Plaintiff,

Case No. 18CV02117

5 v.

GENERAL JUDGMENT OF
DISMISSAL

6 NATALIA NEAL,

7 Defendant.

9 This matter came before the Court on August 6, 2018. Plaintiff was ordered to pay sanctions in the
10 amount of \$2,490 to Defendant by October 6, 2018 in order to avoid dismissal of this case. The
11 Court, having reviewed the Declaration of J. Ryan Adams and the order entered by Judge Redman
12 on August 27, 2018, finds for the reasons therein, that Plaintiff has not complied with the order of
13 this Court. IT IS THEREFORE ORDERED AND ADJUDGED: Plaintiff has repeatedly failed to
14 follow the order(s) of this Court. Thus, Plaintiff's claims in the above captioned case are dismissed
15 with prejudice.

16
17
18 Signed: 10/17/2018 04:40 PM19 Circuit Court Judge Kathie F. Steele
20
21

22 Submitted by:
23 J. Ryan Adams, OSB # 150778
23 Ryan@RuralBusinessAttorneys.com

**GENERAL JUDGMENT OF
DISMISSAL**

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590; Fax 503-212-6392

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

V.

NATALIA NEAL,
Defendant-Respondent.

Clackamas County Circuit Court No. 18CV02117

Court of Appeals No. A169261

**ORDER GRANTING TEMPORARY INJUNCTION AND REFERRING DISPUTE TO
APPELLATE SETTLEMENT CONFERENCE PROGRAM**

Plaintiff moves for reconsideration of the court's order denying her previous motion to stay in this case, and requests an order enjoining further proceedings in *Natalia Neal v. Sharon Neal*, Clackamas County Circuit Court No. 18LT15887, a forcible entry and detainer action that concerns the same real property and residence as this action.

Plaintiff has made at least a preliminary showing of a reasonable likelihood of prevailing in this appeal and ultimately prevailing in the action if this court reverses and remands for further proceedings. Plaintiff also has made a preliminary showing that, absent injunctive relief, she likely will be irreparably harmed by being evicted from the property and residence that she and her late husband purchased and in which she has lived for many years.

The motion for reconsideration is granted and proceedings in *Natalia Neal v. Sharon Neal*, Clackamas County Circuit Court No. 18LT15887, are enjoined temporarily, pending defendant having the opportunity to file a response to plaintiff's motion and further order of this court.

The court refers this dispute to the court's Appellate Settlement Conference Program. Normally, a referral to the Settlement Conference Program would result in the appeal being held in abeyance. However, the court grants partial relief from abeyance for the purpose of ruling on plaintiff's motion after defendant files a response.

James W. Nass

JAMES W. NASS
APPELLATE COMMISSIONER
12/3/2018 9:56 AM

c: Sharon Neal Clackamas County Circuit Court, case number 18CV02117
J Ryan Adams Clackamas County Circuit Court, case number 18LT15887
Genevieve Evarts, ASCP Director

**ORDER GRANTING TEMPORARY INJUNCTION AND REFERRING DISPUTE TO APPELLATE
SETTLEMENT CONFERENCE PROGRAM**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

v.

NATALIA NEAL,
Defendant-Respondent.

Clackamas County Circuit Court No. 18CV02117

Court of Appeals No. A169261

ORDER GRANTING STAY

By order dated December 26, 2019, the court reactivated this appeal from abeyance, including reactivating appellant's motion, under ORS 19.360(1), for review of the trial court's order denying plaintiff's motion to stay. Respondent has filed her objection to the motion. The court having considered the parties' filings, for the reasons set forth below, on review of the trial court's denial of the motion to stay, the court concludes that it is appropriate to grant a stay in this case pending appeal.

Appellant appeals the trial court's general judgment dismissing this case with prejudice. At the time she filed her notice of appeal, she also moved to stay the judgment of dismissal. Although the court generally would deny a motion to stay a judgment of dismissal, in this case, the court observed in its November 8, 2018, order granting temporary stay, that, here, it appears that staying the judgment "will revitalize a preliminary injunction issued earlier by the trial court in the case." Under the terms of that preliminary injunction, "neither party shall convey, transfer, sell, offer to sell, encumber, or leave to another party the property commonly known as 17700 SE Forest Hill Drive, Damascus, Oregon 97089 [(the Forest Hill property)]." (Capitalization and boldface omitted.)

In an order dated November 8, 2018, the court temporarily stayed the judgment of dismissal, remanded the motion to stay to the trial court for a ruling, and stated that, if the trial court denied a stay and appellant timely sought review of that decision under ORS 19.360, the "temporary stay will remain in effect pending" resolution of appellant's motion in this court. The trial court ultimately denied appellant's motion for a stay pending appeal, explaining that, in its view, appellant had failed to make a showing that she was likely to prevail on appeal. See ORS 19.350(3)(a). Appellant moves, under ORS 19.360(1) for review of the trial court's decision denying a stay.¹ As noted, respondent opposes a stay.

¹ Soon after appellant filed her motion under ORS 19.360, the court entered an order holding the appeal in abeyance pending disposition of bankruptcy proceedings involving petitioner. On December 26, 2019, the court reactivated the appeal after having been informed that the bankruptcy court entered an order granting relief from stay.

ORDER GRANTING STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

The court reviews the trial court's decision denying a stay *de novo* on the record made before the trial court. And, in determining whether a stay should be granted, the court considers, in addition to any other factors the court considers important, (1) the likelihood that appellant will prevail on appeal; (2) whether the appeal is taken in good faith and not for the purpose of delay; (3) whether there is any support for the appeal in law or in fact; and (4) the nature of harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

Appellant's complaint in this case concerned entitlement to the Forest Hill property. In the underlying action, appellant sought to compel respondent to convey legal title to the property to appellant pursuant to an alleged agreement between the parties. The complaint included claims for, among other things, specific performance, quiet title, resulting trust, rescission, constructive trust, and breach of fiduciary duty. Before entry of the judgment of dismissal, respondent had moved for summary judgment on appellant's claims and the trial court had issued a letter opinion denying summary judgment as to all claims except one part of one claim, concluding that genuine issues of material fact precluded summary judgment.

The judgment of dismissal at issue on appeal did not result from the trial court's consideration of the merits of appellant's claims. Instead, the trial court dismissed the action because plaintiff had failed to pay sanctions in the amount of \$2,490 and otherwise failed to follow orders of the trial court. If she were to prevail on appeal, she would obtain a remand to the trial court so that her case could be considered and disposed of on the merits.

Appellant asserts that she is likely to prevail on appeal; in her view, the trial court failed to comply with the requirements that must be followed before a court sanctions a party by dismissing a case with prejudice. In *Lang v. Rogue Valley Medical Center*, 361 Or 487, 395 P3d 563 (2017), the Supreme Court considered circumstances where a trial court dismissed the plaintiff's action because it found that counsel had willfully failed to comply with court orders. In that case, which involved dismissal under ORCP 54 B for failure to comply with court orders, the court stated that a court may dismiss an action for failure to comply with court orders if the failure was "willful, in bad faith, or reflected a similar degree of fault and explained that, "before a court dismisses an action for failing to comply with one of its orders, it must consider whether a lesser sanction will suffice and explain why it concluded that dismissal was the appropriate sanction." *Id.* at 501. At a minimum, the "record must disclose why the court concluded that a lesser sanction would not be sufficient." *Id.* According to appellant, the court was required to, but did not, make findings of fact or give explanation regarding willfulness, bad faith, or why the sanction of dismissal with prejudice was just. In light of those arguments, in an order dated December 3, 2018, this court observed that appellant had made a preliminary showing of a reasonable likelihood of prevailing on appeal. In considering whether a stay should be granted pending appeal, given that there is some likelihood that appellant will prevail in arguing that the trial court erred in dismissing her case as a sanction, the court concludes that this factor weighs in favor of granting a stay.

ORDER GRANTING STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Respondent, for her part, emphasizes that, in her view, the appeal is not taken in good faith but, instead, for the purpose of delay. In support of that view, respondent points out that appellant has filed numerous cases against her and that, in light of that myriad litigation, the trial court appointed a single judge to oversee all cases involving appellant and, in a letter, that judge expressed concern about "fraud on the court, which can ultimately create a risk of criminality and criminal proceedings against" appellant. The court is cognizant of the many cases involving appellant, and the trial court's view that appellant had repeatedly failed to comply with court orders. Nonetheless, given the court's view that there is some likelihood that appellant may prevail on appeal and the fact that, in the trial court's view, there were issues of fact precluding summary judgment on the merits of nearly all appellant's claims, the court declines to conclude that this appeal is taken in bad faith.

Respondent next asserts that a stay should not be granted because appellant has filed multiple other appeals that "were not supported by facts or in law." Respondent points out that a number of appeals filed by appellant have been dismissed or affirmed by this court without opinion. Although respondent is correct that a number of other appeals by appellant have been so disposed of, that does not support a determination that there is no support for *this appeal* in fact or in law. Indeed, appellant has provided some case law that, in her view, supports her position that the court erred in dismissing her case as a sanction. And given how the courts have viewed such dismissals in the past, the court concludes that there is some support in fact and law for this appeal.

Finally, the court concludes that the possibility of harm supports granting a stay. In particular, the subject matter of the underlying case is centered on which of the parties is entitled to ownership of the Forest Hill property. A stay would keep in place pending appeal the trial court's requirement that neither party convey, transfer, sell, offer to sell, encumber, or leave to another party that property. On the other hand, denial of a stay would appear to leave respondent free to dispose of the property, which would cause irreparable harm to appellant in the event she were to prevail on appeal and ultimately prevail in the action.

In light of all of those circumstances, the court is persuaded that it is appropriate to grant a stay. The general judgment of dismissal is, therefore, stayed pending disposition of the appeal or further order of the court. This order has the effect of reinstating, pending appeal, the trial court's order that "neither party shall convey, transfer, sell, offer to sell, encumber, or leave to another party the property commonly known as 17700 SE Forest Hill Drive, Damascus, Oregon 97089."



THERESA M. KIDD
APPELLATE COMMISSIONER
1/17/2020 8:40 AM

c: Sharon Neal
Natalia Alexandrovna Neal
Clackamas County Trial Court Administrator

ej

ORDER GRANTING STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Relator,

v.

NATALIA NEAL,
Defendant-Adverse Party.

Clackamas County Circuit Court
18CV02117

S068318

**ORDER GRANTING MOTION TO WAIVE FILING FEE
AND DENYING PETITION FOR WRIT OF MANDAMUS**

Upon consideration by the court.

The motion to waive the filing fee is granted. The petition for writ of mandamus is denied. The denial of the petition is without prejudice to relator filing a petition for review from the decision of the Court of Appeals in Neal v. Neal (A169261) (petition for reconsideration currently pending).


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
3/18/2021 10:35 AM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Adverse Party

No costs allowed

c: Natalia Alexandrovna Neal
Trevor Robins

gk

**ORDER GRANTING MOTION TO WAIVE FILING FEE
AND DENYING PETITION FOR WRIT OF MANDAMUS**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
Page 1 of 1

IN THE SUPREME COURT OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

NATALIA NEAL,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A169261

S068512

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.



MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
11/4/2021 9:52 AM

c: Trevor Robins
Natalia Alexandrovna Neal

jr

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
Page 1 of 1

IN THE SUPREME COURT OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

NATALIA NEAL,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A169261

S068512

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
8/26/2021 11:10 AM

c: Trevor Robins
Natalia Alexandrovna Neal

jr

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
Page 1 of 1

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Sharon Neal

Plaintiff/Petitioner

v.

Natalia Neal

Defendant/Respondent

Case No. 18CV02117

**ORDER RE: DEFERRAL OR
WAIVER OF FEES**

The court reviewed the *Application for Deferral or Waiver of Fees and Declaration in Support for (Applicant Name):* Sharon E. Neal regarding the following fees:

Filing Fees
 Arbitration Fee
 Other: (describe) _____

Sheriff's service fee
 Trial Fee

Motion Fee

The court finds Applicant:

DOES qualify for a deferral or waiver of fees
 DOES NOT qualify for a deferral or waiver of fees

Additional findings: _____

The court orders:

Determination of fee obligation is postponed at this time. No payment is due from the applicant until further order of the court.

Fees are deferred for full payment. Payment must be made according to the terms of the attached payment plan (or) \$ _____ per month until paid in full

A judgment will be entered against Applicant. Collection costs may be added without further notice if fees are not paid as ordered.

Fees are waived. The court may change or revoke this waiver at a later time.

Application is denied

Application is granted in part: _____

Clerk
Judge Signature:

Aug 10, 2018

[Signature]



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Sharon Neal

Plaintiff/Petitioner

v.

Natalia Neal

Defendant/Respondent

Case No. 18CV02117

**ORDER RE: DEFERRAL OR
WAIVER OF FEES**

The court reviewed the *Application for Deferral or Waiver of Fees and Declaration in Support for (Applicant Name):* Sharon E. Neal regarding the following fees:

Filing Fees Sheriff's service fee Motion Fee
 Arbitration Fee Trial Fee
 Other: (describe) _____

The court finds Applicant:

DOES qualify for a deferral or waiver of fees
 DOES NOT qualify for a deferral or waiver of fees

Additional findings: _____

The court orders:

Determination of fee obligation is postponed at this time. No payment is due from the applicant until further order of the court.

Fees are deferred for full payment. Payment must be made according to the terms of the attached payment plan (or) \$ _____ per month until paid in full

A judgment will be entered against Applicant. Collection costs may be added without further notice if fees are not paid as ordered.

Fees are waived. The court may change or revoke this waiver at a later time.

Application is denied

Application is granted in part: _____

Judge Signature: clerk

8/21/2018

18CV02117
ORFW
Order - Fee Waiver
9759184



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Sharon Neal

Plaintiff/Petitioner

v.

Case No. 18CV02117

Natalia Neal

Defendant/Respondent

The court reviewed the *Application for Deferral or Waiver of Fees and Declaration in Support for (Applicant Name):* Sharon E. Neal regarding the following fees:

Filing Fees Sheriff's service fee Motion Fee
 Arbitration Fee Trial Fee 10/31/2018 Settlement Conference Fee
 Other: (describe) _____

The court finds Applicant:

DOES qualify for a deferral or waiver of fees
 DOES NOT qualify for a deferral or waiver of fees

Additional findings: _____

The court orders:

Determination of fee obligation is postponed at this time. No payment is due from the applicant until further order of the court.

Fees are deferred for full payment. Payment must be made according to the terms of the attached payment plan (or) \$ _____ per month until paid in full

A judgment will be entered against Applicant. Collection costs may be added without further notice if fees are not paid as ordered.

Fees are waived. The court may change or revoke this waiver at a later time.

Application is denied

Application is granted in part: _____

Clark
Judge Signature:

9/10/2018

18CV02117
ORFW
Order - Fee Waiver
9903354



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Sharon Neal,)
Petitioner/Plaintiff,)
Case No. 18 CV 02117
v. Natalia Neal,)
Respondent/Defendant.)
ORDER RE:
DEFERRAL OR WAIVER OF FEES

The court reviewed the *Application for Deferral or Waiver of Fees and Declaration in Support*

For Applicant's Name: Sharon *Neal*
First Middle Last

Regarding the following fees:

ACCESS TO THIS DOCUMENT IS RESTRICTED TO PROTECT THE PRIVACY OF PARTIES

Filing Fee Only Filing Fee + Sheriff's Service Fee*
 Arbitration Fee Trial Fee
 Motion Fee Other (describe): _____

The court finds Applicant:

DOES qualify for a deferral or waiver of fees.
 DOES NOT qualify for a deferral or waiver of fees.

Additional findings. _____

The court orders:

Determination of fee obligation is postponed at this time. No payment is due from the applicant until further order of the court.
 Fees are deferred for full payment. Payment must be made according to the terms of the attached payment plan (or) _____ per month starting 9/25/2018 until paid in full.
 A judgment will be entered against Applicant, collection costs may be added without further notice if fees are not paid as ordered
 Fees are waived. The court may change or revoke this waiver at a later time
 Application is denied.
 Application is granted in part _____

Date

9-25-18

Judge or Court Clerk Signature

L Brand

Fee Deferral or Waiver Order
ODY Code: ORFD or ORFW

18CV02117
ORFW
Order - Fee Waiver
9907170



IN THE CIRCUIT COURT OF THE STATE OF OREGON DEPARTMENT
COUNTY OF WASHINGTON WASHINGTON COUNTY

2018 MAR -6 PM 3: 59

sharon Elizabeth Neal

Petitioner _____ (date of birth) _____
 (name of person to be protected) _____
 by and through his/her Guardian Petitioner: _____

 (name of Guardian Petitioner) _____
 v. _____
 Natalia Alexandrovna Neal _____
 Respondent _____ (date of birth) _____
 (person to be restrained) _____

ORDER AFTER HEARING

(Elderly Persons/Persons with Disabilities
Abuse Prevention Act)

18PO01353

Case No. _____

This matter came before the Court on Tuesday March 6, 20 18. PETITIONER

Appeared in person or by telephone/video
 Was served a copy of this order in court today
 Did not appear
 Attorney: _____
 OSB# _____

 RESPONDENT

Appeared in person or by telephone/video
 Was served a copy of this order in court today
 Did not appear
 Attorney: Caleb S. Leonard
 OSB# 153736

FINDINGS: Respondent has recklessly caused serious emotional harm to petitioner by opening a door into her, shoving her into a wall and has intentionally intimidated her by taking intrusive photographs of her.

Having heard the testimony, IT IS HEREBY ORDERED THAT THE RESTRAINING ORDER
OBTAINED BY PETITIONER ON February 9, 2018 IS: DISMISSED in its entirety. The order shall be removed from LEDS/NCIC. CONTINUED in its entirety. RENEWED in its entirety. The renewed restraining order expires on: _____ (date). CONTINUED/RENEWED but MODIFIED/AMENDED as follows:

Respondent may continue to live at the lower portion of 17700 SE Forest Hills Dr.,
 Damascus OR 97009 pending resolution of the Clackamas County litigation. She may
 not utilize the laundry room. Respondent must pay 1/2 of the ongoing utility bills as a
 condition of continued residency.
 The renewed restraining order expires on: _____ (date).

IMPORTANT: Except as modified or amended, all other portions of the restraining order remain in effect.

SECURITY AMOUNT for VIOLATION OF THIS ORDER IS \$5,000 unless a different amount is specified here: OTHER SECURITY AMOUNT: \$25,000

CERTIFICATES OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT

FIREARMS NOTIFICATION under 42 USC §3796gg-(4)(e): As a result of this order, it may be unlawful for respondent to possess, receive, ship, transport or purchase a **firearm or ammunition** pursuant to **federal law** under 18 USC §922(g)(8) and state law under ORS 124.020(1)(f) and ORS 166.250 to 166.270. This order also may negatively affect respondent's ability to serve in the Armed Forces of the United States or to be employed in law enforcement. [Event Code: NOGR]

NOTICE TO RESPONDENT: If you have questions about whether federal or state laws make it illegal for you to possess or purchase a firearm, and/or about whether this order will affect your ability to serve in the military or be employed in law enforcement, you should consult an attorney.

THIS ORDER CONTAINS A FIREARMS PROHIBITION: This order (or the original order that is continued) contains a firearms and ammunitions prohibition. Respondent SHALL NOT possess FIREARMS or AMMUNITION, and it is unlawful for respondent to do so under the authority provided by Oregon's Elderly Persons and Persons with Disabilities Abuse Prevention Act ORS 124.020(1)(f). [Event Code: FQOR]

FEDERAL & STATE FIREARMS FINDINGS (18 USC 922(g)(8) ("BRADY") AND ORS 166.250 to 166.270: This order may subject respondent to federal and state prosecution for possession, receipt, shipping, transportation, or purchase of firearms or ammunition while it is in effect. This prohibition would apply whether or not the restraining order contains specific terms prohibiting the possession or purchase of firearms or ammunition. [Event Code: ORBY; LEDS Brady Code: Y]

IN 6 BRADY FINDINGS

The Court finds:

A. Relationship: The person protected by this order is (*check at least one*):

- A spouse or former spouse of respondent.
- The parent of respondent's child.
- A person who does or did cohabit (live in a sexually intimate relationship) with respondent.
- Respondent's child.
- A child of an intimate partner* of respondent (*intimate partner is spouse/former spouse, cohabitant/former cohabitant, or parent of respondent's child).

B. Notice and Opportunity to Participate:

The order was issued after a hearing of which respondent received actual notice and at which respondent had the opportunity to participate.

C. Terms of Order:

The order restrains respondent from harassing, stalking or threatening petitioner or petitioner's or respondent's child/ren or engaging in other conduct that would place petitioner in reasonable fear of bodily injury to petitioner or petitioner's or respondent's child/ren; **AND**

Respondent represents a credible threat to the physical safety of petitioner or petitioner's or respondent's child/ren; **OR**

This order by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against petitioner or petitioner's or respondent's child/ren that would be reasonably expected to cause bodily injury.

FULL FAITH AND CREDIT PROVISIONS: This order meets all full faith and credit requirements of the Violence Against Women Act, 18 USC §2265. This Court has jurisdiction over the parties and the subject matter. Respondent was or is being afforded notice and timely opportunity to be heard as provided by Oregon law. This order is valid and entitled to enforcement in this and all other jurisdictions.



DATED: 3 / 6 / 18

JUDGE (Signature)

Judge Keith R. Raines

Print or Type Name of Judge

STATE OF OREGON
CLACKAMAS COUNTY COURTS
FILED

Signed: 1/30/2019 12:32:01 PM

(SLN)

IN THE COURT OF APPEALS OF THE STATE OF OREGON **18 A169878** *ANSWERED*

SHARON ELIZABETH NEAL,
Petitioner-Appellant,

ENTERED **JAN 22 2019**
DOCKETED **BY MAP**

v.

NATALIA ALEXANDROVNA NEAL,
Respondent-Respondent.

Clackamas County Circuit Court No. 18PO01353

Court of Appeals No. A169878

ORDER GRANTING TEMPORARY STAY

Petitioner appeals the trial court's order dismissing this proceeding under the Elderly Persons/Persons with Disabilities Abuse Prevention Act and moves under ORS 19.350 to stay enforcement of the order of dismissal, thereby reinstating the restraining order previously entered in the proceeding.

Petitioner makes a *prima facie* showing that it would be futile to seek a stay from the trial court. Petitioner also makes a *prima facie* showing that there is support in fact and in law for the appeal and that she is reasonably likely to prevail on appeal, that she is taking the appeal in good faith and not for the purpose of delay, and that she will experience irreparable harm if the trial court's order is not stayed.

Therefore, petitioner's motion is granted temporarily, pending respondent having the opportunity to file a response, petitioner having the opportunity to file a reply, and the court's consideration of the parties' submissions. This order temporarily staying the trial court's order has the effect of reinstating the restraining order previously rendered by the trial court in the proceeding.

James W. Nass

JAMES W. NASS
APPELLATE COMMISSIONER
1/17/2019 1:46 PM

c: Sharon Neal
J Ryan Adams
Clackamas County Circuit Court

18PO01353
OR
Order
10494946



ORDER GRANTING TEMPORARY STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

STATE OF OREGON
CLACKAMAS COUNTY COURTS
FILED

IN THE COURT OF APPEALS OF THE STATE OF OREGON 26 AM 8:34

SHARON ELIZABETH NEAL,
Petitioner-Appellant,

ENTERED ENTERED
DOCKETED FEB 26 2019
BY: MAR

v.

NATALIA ALEXANDROVNA NEAL,
Respondent-Respondent.

Clackamas County Circuit Court No. 18PO01353

Court of Appeals No. A169878

ORDER STAYING ORDER OF DISMISSAL

Petitioner appeals the trial court's order dismissing this proceeding under the Elderly Persons/Persons with Disabilities Abuse Prevention Act and moves under ORS 19.350 to stay enforcement of the order of dismissal, thereby reinstating the restraining order previously entered in the proceeding. By order dated January 17, 2019, the court determined that petitioner had made a *prima facie* showing that the trial court's order should be stayed pending appeal, and granted a temporary stay.

Respondent has not filed a response opposing the motion to stay.

Therefore, petitioner's motion is granted, pending the court's disposition of this appeal or further order of the court. This order has the effect of reinstating the restraining order previously rendered by the trial court in the proceeding.

James W. Nass

JAMES W. NASS
APPELLATE COMMISSIONER
2/25/2019 11:25 AM

c: Sharon Neal
J Ryan Adams
Clackamas County Circuit Court

ej

18PO01353
DR
Order
10664792



ORDER STAYING ORDER OF DISMISSAL

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563



CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
OREGON CITY, OR 97045

TODD L. VAN RYSELBERGHE
CIRCUIT COURT JUDGE

(503) 655-8644
FAX (503) 650-8944

October 15, 2018

Verified Correct Copy of Original 10/15/2018

VIA ELECTRONIC MAIL

Mr. Wesley Adams
Tyler Smith & Associates PC
181 N Grant Street, Suite 212
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Mr. Michael Owen Stevens
Stevens & Legal
3699 NE John Olsen Avenue
Hillsboro, OR 97124
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RE: ***Sharon Neal v. Natalia Neal***
Clackamas County Circuit Court Case No. 18CV02117

Dear Counsel:

This matter came before the Court on the defendant's motion for summary judgment. The Court has reviewed the materials submitted by the parties and has considered the arguments made by counsel. The Court rules as follows:

1. Defendant's motion for summary judgment dismissing plaintiff's claim to establish a resulting trust is denied because genuine material issues of fact exist concerning the consideration given to support a resulting trust.
2. Defendant's motion for summary judgment dismissing plaintiff's claim for breach of fiduciary duty is denied because genuine material issues of fact exist concerning whether the relationship between the parties included a fiduciary relationship.



3. Defendant's motion for summary judgment dismissing plaintiff's claim for fraud is granted.
4. Defendant's motion for summary judgment dismissing plaintiff's claim for a constructive trust is denied because genuine material issues of fact exist concerning whether the relationship between the parties included a fiduciary relationship.
5. Defendant's motion for summary judgment dismissing plaintiff's claim for quiet title is denied because genuine material issues of fact exist concerning each party's interest in the property.
6. Defendant's motion for summary judgment dismissing plaintiff's claim for specific performance is denied because genuine material issues of fact exist concerning whether plaintiff has contractual rights to recover the property.
7. Defendant's motion for summary judgment dismissing plaintiff's claim for rescission and unjust enrichment is denied because genuine material issues of fact exist concerning whether defendant's has been unjustly enriched.
8. Defendant's motion for summary judgment dismissing plaintiff's claim for declaratory judgment is denied because genuine material issues of fact exist concerning the party's rights and status relating to the property at issue.
9. Defendant's motion for summary judgment dismissing plaintiff's complaint on the basis of laches is denied because genuine material issues of fact exist concerning whether plaintiff delayed asserting her claim for an unreasonable period of time with full knowledge of all material facts.
10. Defendant's motion for summary judgment dismissing plaintiff's complaint on the basis that plaintiff is not the real party in interest is denied because genuine material issues of fact exist concerning whether an agreement was made to benefit plaintiff.
11. Defendant's motion for summary judgment dismissing plaintiff's complaint on the basis that plaintiff failed to join necessary parties is denied because genuine material issues of fact exist concerning whether Dan Neal's Estate, Oculus Inc.; Anthony Neal and JP Morgan are indispensable parties.
12. Defendant's motion for summary judgment dismissing plaintiff's Complaint on the basis that the Complaint failed to state a claim upon which relief can be granted is denied because genuine material issues of fact exist concerning possession of the property at issue.
13. Defendant's motion for summary judgment dismissing plaintiff's Complaint on the basis of unclean hands is denied because genuine material issues of fact exist concerning whether plaintiff's conduct was serious enough to justify denying relief to plaintiff.

14. Defendant's motion for summary judgment on her counterclaim for ejectment is denied on the basis that genuine material issues of fact exist concerning whether plaintiff has wrongfully withheld the property from plaintiff.

I will ask Mr. Stevens to prepare a form of Order consistent with this ruling.

Very truly yours



TODD L. VAN RYSELBERGHE
Circuit Court Judge
Clackamas County Circuit Court

TLV/jch

App-20
APPENDIX J

IN THE COURT OF APPEALS OF THE STATE OF OREGON

RECEIVED
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MAR 25 2020
— SUPREME COURT
— COURT OF APPEALS

SHARON NEAL)	
)	
Plaintiff-Appellant)	Clackamas County
)	Circuit Court No. 18CV02117
v.)	
)	CA A169261
NATALIA NEAL)	
)	
Defendant-Respondent)	

APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the "General Judgment of Dismissal"
Circuit Court for Clackamas County
dated October 17, 2018
The Honorable Kathie F. Steele

Sharon Neal, Plaintiff-Appellant, Pro Se
17700 SE Forest Hill Drive
Damascus, Oregon 97089
Tel: (503) 658-6355
Email: sharoneneal@yahoo.com

Natalia Neal, Defendant-Respondent, Pro Se
17700 SE Forest Hill Drive
Damascus, Oregon 97089

Submitted: March 25, 2020

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A. Did Plaintiff's alleged conduct actually violate the terms of the preliminary injunction in this case, (which enjoined her from filing for or seeking further injunctive relief on matters adjudicated at the preliminary injunction hearing), when she filled out a court issued form to apply for an Elder Abuse Restraining Order in another court in which she provided information, (pursuant to a question on the form), on all incidents of alleged abuse within the last 180 days but did not seek relief on all such incidents as Plaintiff made that Court aware of the preliminary injunction's restrictions?

B. Did the trial court err in dismissing Plaintiff's entire action with prejudice for failing to pay a limited judgment of \$2,490.00 (consisting of a \$500 sanction and associated attorney's fees of \$1,990.00) when lesser sanctions had not been first tried and proved ineffective and without a finding of bad faith or willfulness?

C. Did the trial court violate Plaintiff's constitutional rights of due process first by entering an order prohibiting her from re-litigating certain matters when Defendant had not filed a cross-complaint for injunctive relief, motion for preliminary injunction or an Order to Show Cause had been issued apprising her that such an order may entered and second by dismissing her action as a sanction without notice and an opportunity to be heard, but simply relying on a declaration of opposing counsel?

D. Did the order enjoining Plaintiff from filing for or seeking further injunctive relief on matters adjudicated at the preliminary injunction hearing abridge Plaintiff's constitutional right to petition the government for the redress of grievances or conflict with her statutory right to seek relief under different statutes for the same conduct?

E. Was the language in the order enjoining Plaintiff so vague, imprecise as to meaning and or ambiguous as to scope as to be unenforceable as to alleged conduct of Plaintiff in violating the order?

F. Was Defendant barred by the doctrine of collateral estoppel or double jeopardy from obtaining sanctions against Plaintiff in this action because Defendant had earlier requested but was denied the identical request for sanctions in Washington County?

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APPELLANTS' OPENING BRIEF AND EXCERPT OF RECORD

STATEMENT OF THE CASE

Nature of the Action and Relief Sought

In this action, Plaintiff and Appellant, Sharon Neal, ("Plaintiff"), an eighty - year-old widow, seeks quiet title to her residence of more than forty-five years against her ex-daughter-in-law, Defendant and Respondent, Natalia Neal ("Defendant"). Defendant became the holder of legal title in March 2008, pursuant to an arrangement with Plaintiff and her late husband, Dean Neal, (deceased 2015) (collectively the "Neals"), with the Neals paying the entire purchase price of \$1 million for the subject property located at 17700 SE Forest Hill Drive, Damascus, Oregon ("Property") to the seller, Charles Clayton, and Defendant agreeing to hold nominal legal title for their benefit.

In equity such an arrangement is known as a resulting trust which arises by operation of law where one party pays the full purchase price for real property, yet title is placed in the name of another person or entity, nominally, for the benefit of the person(s) paying the purchase price. The resulting trust is created in equity to prevent unjust enrichment. In this situation, the nominal title holder, Defendant, has paid nothing toward the purchase of the property. In August 2016, Defendant refused to convey title to the beneficial owner, Plaintiff, at Plaintiff's request. Indeed, Defendant sought thereafter to evict her. Unjust enrichment would result if this abhorrent situation were to prevail where a person who actually paid nothing for a property in an arrangement with another person to simply hold title for the

person who paid the purchase price, was able to gain full beneficial ownership by repudiating the arrangement, in essence, by perpetrating fraud and deceit.

Plaintiff commenced this action by filing her Complaint on January 18, 2018, alleging claims for quiet title, specific performance, resulting trust, constructive trust, fraud / breach of fiduciary duty, unjust enrichment, declaratory and injunctive relief. The injunctive relief sought to enjoin Defendant from transferring, encumbering or selling the home pendente lite and from evicting or attempting to evict Plaintiff as the relationship between the two of them at the same residence became strained.

Nature of the Judgment

The Clackamas County trial court entered a judgment of *dismissal with prejudice* of the entire action as a sanction for Plaintiff's having failed to timely pay a limited judgment awarding a sanction of \$500 and associated attorneys' fees of \$1,990 on July 24, 2018 -- to be paid on or before October 6, 2018. A copy of the judgment of dismissal, attached as **ER-1**, forms the basis of this appeal.

Basis of Appellate Jurisdiction

Appellate jurisdiction is based on **ORS 2.516** and **ORS 19.205**.

Effective Date for Appellate Purposes

The Judgment was entered on October 18, 2018. Notice of Appeal was served and filed on November 2, 2018. The notice of appeal was within the 30 days provided for by **ORS 19.255**.

Question Presented on Appeal

A. Did Plaintiff's alleged conduct actually violate the terms of the preliminary injunction in this case, (which enjoined her from filing for or seeking further injunctive relief on matters adjudicated at the preliminary injunction hearing), when she filled out a court issued form to apply for an Elder Abuse Restraining Order in another court in which she provided information, (pursuant to a question on the form), on all incidents of alleged abuse within the last 180 days but did not seek relief on all such incidents as Plaintiff made that Court aware of the preliminary injunction's restrictions?

B. Did the trial court err in dismissing Plaintiff's entire action with prejudice for failing to pay a limited judgment of \$2,490.00 (consisting of a \$500 sanction and associated attorney's fees of \$1,990.00) when lesser sanctions had not been first tried and proved ineffective and without a finding of bad faith or willfulness?

C. Did the trial court violate Plaintiff's constitutional rights of due process first by entering an order prohibiting her from re-litigating certain matters when Defendant had not filed a cross-complaint for injunctive relief, motion for preliminary injunction or an Order to Show Cause had been issued apprising her that such an order may entered and second by dismissing her action as a sanction without notice and an opportunity to be heard, but simply relying on a declaration of opposing counsel?

D. Did the order enjoining Plaintiff from filing for or seeking further injunctive relief on matters adjudicated at the preliminary injunction hearing abridge Plaintiff's constitutional right to petition the government for the redress of grievances or conflict with her statutory right to seek relief under different statutes for the same conduct?

E. Was the language in the order enjoining Plaintiff so vague, imprecise as to meaning and or ambiguous as to scope as to be unenforceable as to alleged conduct of Plaintiff in violating the order?

F. Was Defendant barred by the doctrine of collateral estoppel or double jeopardy from obtaining sanctions against Plaintiff in this action because Defendant had earlier requested but was denied sanctions in Washington County?

Summary of Argument

The root of this appeal stems from the fact that Plaintiff simply listed a prior incident on her Petition for an Elder Abuse Restraining Order (an entirely different case) that had been discussed at a preliminary injunction hearing in this case on January 23, 2018, because such listing was a required disclosure, but Plaintiff was careful not to violate that preliminary injunction by seeking further relief on that incident because she made the Court aware of the January 23, 2018 order, thus that Court explicitly did not consider the incident and Plaintiff's listing was not done willfully or in bad faith because such disclosure was compelled by the elder abuse statute. [ORS 124.010(1)(d)]

Prior to dismissing the entire action with prejudice as a sanction, the trial court failed to make the necessary specific finding of willfulness, bad faith or intentional disobedience on the part of Plaintiff and that the sanction was just which included a determination that lesser sanctions had either been tried and had not worked or that less onerous sanctions would not work. See, Pamplin v. Victoria, 877 P.2d 1196, 1245 (1994) 319 Or. 429 (1994) ; Hahn v. Hills, 70 Or.App. 275, 281, 689 P.2d 995 (1984)

The order prohibiting Plaintiff from relitigating incidents that had already been adjudicated at the January 23, 2018 was imposed without due process in that Defendant had not filed a cross-complaint for injunctive relief, motion for injunctive relief and an Order to Show Cause had not been issued; alternatively, the Court lacked subject matter jurisdiction to enter a preliminary injunction when no injunctive relief claim had been pleaded by Defendant. See, Cooley v. Cooley, 144 Or.App. 410, 418 (1996); Hood River County v. Dabney, 246 Or. 14, 21, 423 P.2d 954 (1967). Plaintiff's due process rights were violated a second time when the Court dismissed her action upon receipt of a declaration from Defendant's

counsel without providing notice to Plaintiff or an opportunity to be heard by Plaintiff. See, In re Devers , 328 Or. 230, 233, 974 P.2d 191 (1999) State ex rel. v. Hall, 153 Or. 127, 129, 55 P.2d 1102 (1936)

Plaintiff's constitutional right to petition the government for redress of grievances was abridged by the order prohibiting her from filing for or seeking further injunctive relief on matters adjudicated at the hearing on January 23, 2018. See, Ringgold-Lockhart v. Cty. of Los Angeles, 761 F.3d 1057 (9th. Cir. 2014) The elder abuse statute was not an issue on January 23, 2018 as the court was just attempting to maintain the status quo while Plaintiff and Defendant litigated ownership and occupancy maintaining dual occupancy. The order restricted Plaintiff from seeking and fully complying with the requirements for an Elder Abuse Restraining Order which she had a right to seek and obtain under Oregon law even if the same incidents were involved.

Moreover, the Order conflicted with Oregon law that grants immunity to persons who in good faith reports elder abuse [ORS 124.075], especially in light of the fact that the Plaintiff's petition was granted on a finding of such abuse. When a person is alleged to have filed repetitive motions which are without merit (as Defendant accused Plaintiff in this case and resulted in the Order), an opposing party may defeat those actions by raising collateral estoppel as a bar and seek to recover costs and fees under **ORCP 17 and ORS 20.105**. Here, the Court terminated Plaintiff's rights of petition and supplanted all of the procedures and remedies governing reconsideration motions without good cause.

The language in the order prohibiting Plaintiff from re-litigating incidents adjudicated at the January 23, 2018 hearing was overly broad, vague and imprecise as to scope in that it was unclear whether the provision related to the instant case, Clackamas County, Case No. 18CV02117 only, or applied to all other cases, courts and governmental agencies.

The language was also imprecise, ambiguous and vague as to the meaning of “*Plaintiff shall not file for or request further injunctive relief on matters this Court has adjudicated at the hearing held January 23, 2018*” in that it was unclear whether apprising another court of such incidents for background purposes only without specifically seeking further injunctive relief on them violated the order.

The trial court did not actually consider Plaintiff’s objection to imposition of sanctions on collateral estoppel grounds in that Defendant had requested the identical sanctions and fees in the Washington County elder abuse proceeding and had been denied her request. The motion in Clackamas County placed Plaintiff in double jeopardy for the same conduct and resulted in inconsistent rulings on the same conduct by two different courts.

Statement of Facts

Plaintiff and Dean Neal purchased the Property in 1972 when it was ten acres of vacant land in a timber district. They improved the property with a home and moved in with their family in 1974 with their 3 children. Plaintiff has resided at the Property ever since to the present date.

Due to business problems in or about 1998, Dean Neal approached an acquaintance, Charles Clayton, and proposed a sale of the Property with a lease back to the Neals. Mr. Clayton accepted the proposal. Title transferred, but Plaintiff and her family remained the occupants of the property paying rent to Mr. Clayton. This relationship between Mr. Clayton and the Neals became strained and lawsuits were filed. The lawsuits were resolved in September 2007 by a mediated settlement agreement pursuant to which Plaintiff and Dean Neal agreed to purchase the property from Mr. Clayton for \$1 Million.

While escrow was open, Plaintiff and Dean Neal discussed the arrangement with Defendant, their then daughter-in-law, whereby she would hold title for their benefit, Plaintiff and Dean Neal, who would pay the full purchase price of the Property to Mr. Clayton on her behalf. Defendant was a Russian national who met and married the Neals' son, Anthony Neal, in 2003. In 2007-08, Anthony Neal and Defendant lived at the Property in the downstairs level with Plaintiff and Dean Neal who lived upstairs. Defendant agreed to this arrangement where she would hold legal title for the benefit of Plaintiff and Dean Neal, the beneficial owners.

Escrow on the purchase of the Property from Mr. Clayton closed in March 2008 with Plaintiff and Dean Neal depositing cash of \$310,000 plus the closing costs of \$15,666.17. After escrow closed Plaintiff and Dean Neal continued to make payments on the loan taken out for the remainder of the purchase price, as well as property taxes and insurance.

In 2015 Dean Neal died and Plaintiff was his estate representative and sole beneficiary under his will. In 2016, Anthony Neal and Defendant divorced. The divorce became final in 2018. In August 2016 Plaintiff asked Defendant to convey title to her and to move out of the residence, (assistance for moving was offered to the Defendant). Defendant declined and has continued to stay at the residence living in the downstairs floor while Plaintiff lives on the upstairs floor.

Plaintiff commenced this action in January of 2018 to obtain a decree of quiet title; additional claims for specific performance, resulting trust, constructive trust, fraud/breach of fiduciary duty, unjust enrichment, declaratory and injunctive relief were alleged. The injunctive relief sought to enjoin Defendant from transferring, encumbering or selling the home pendente lite and from evicting or attempting to evict Plaintiff as the relationship between the two of them at the same residence became strained.

In December 2018, Plaintiff, filed a motion for preliminary injunction. In connection with this motion, Plaintiff alleged a number of incidents of abuse or aggression on the part of Defendant against Plaintiff in support of a stay away and conduct provisions in the proposed preliminary injunction. The incidents occurred between June of 2017 and continued through February 2018, and still continue to this present day where Defendant has physically abused or endangered the life of Plaintiff. In the instant case, Defendant contended that many of these incidents had already been the subject of prior litigation or police complaints.

At the hearing on January 23, 2018, the Court granted Plaintiff's application for a preliminary injunction and enjoined Defendant from selling, transferring, encumbering or attempting to evict Plaintiff from the Property pending trial, but also made the order mutual and added a restriction barring Plaintiff from relitigating any incidents raised in the proceeding. The order was prepared by Defendant's counsel, Ryan Adams, Esq., (even though Plaintiff was the prevailing party) and signed by Judge Katherine E. Weber on February 2, 2018.

The final four paragraphs of the preliminary injunction order provide, as follows:

4. Plaintiffs motion for a preliminary injunction is GRANTED IN PART and MODIFIED as follows:

(a) **NEITHER PARTY SHALL CONVEY, TRANSFER, SELL, OFFER TO SELL, ENCUMBER, OR LEASE TO ANOTHER PARTY THE PROPERTY COMMONLY KNOWN AS 17700 SE FOREST HILL DRIVE, DAMASCUS, OREGON 97089.**

5. Plaintiff shall neither file for nor request further injunctive relief on matters which this Court has adjudicated at the hearing held January 23, 2018.

6. Violation of this order by any party may be punishable as contempt of court as defined in ORS 33.015(2)(b).

[Order, dated 2/2/2020] {bold added for emphasis}

On February 9, 2020, Plaintiff, in pro per, filed a “Petition for Restraining Order to Prevent Abuse (Elderly Persons and Persons with Disabilities Abuse Prevention Act) (“EPPDAPA”), in the Circuit Court of Washington County, Case No. 18P001353 (“Petition”) against Defendant. In her Petition, Plaintiff sought a restraining order based on incidents which occurred after the Preliminary Injunction hearing held on January 23, 2018. Specifically, Plaintiff sought injunctive relief to address incidents that occurred on February 3, 5, and 8, 2018, each of which are described on Page 3 of the 5-page Petition under the heading “Paragraph 3: Description of Abuse”. (See, ER-2 through ER-6, Petition for Restraining Order, Sharon Neal v. Natalia Neal, Washington County Circuit Court Case No. 18PO01353, Exhibit “5” to [AMENDED] PLAINTIFF’S RESPONSE TO DEFENDANT’S OBJECTION AND PLAINTIFF’S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018 filed in this case on August 2, 2018)

The EPPDAPA Petition is a form that contains a series of questions and was drafted by the Office of the State Court Administrator. The Petition contains a warning in bold print underneath the caption entitled: “**Notice to Petitioner**”, “**You must provide complete and truthful information. If you do not, the court may dismiss your restraining order and also hold you in contempt**”.

On Page 4 of the EPPDAPA Petition, Question 4 asks the petitioner to provide the following information: “Describe the incident of abuse that happened in the last 180 days (describe how respondent hurt or threatened to hurt you);”.

This language posed a predicament for Plaintiff because on the ~~one~~ hand, she was enjoined from requesting further injunctive relief on matters which the Court in the underlying case had adjudicated at the hearing held on January 23, 2018, yet the EPPDAPA application form was asking her to provide a list of ~~the~~ abuse which had occurred within the last 180 days. Plaintiff interpreted this question as being informational only because the prior page, Page 3 had asked for the incidents of abuse that were the subject of the Petition. This form was provided to Plaintiff in the Office of the Court Clerk.

Plaintiff listed in response to this latter question an incident that had occurred on December 23, 2017 which incident had been the subject of adjudication at the January 23, 2018 hearing in the instant case. Judge Raines who heard the EPPDAPA Petition was apprised by Plaintiff and Defendant of Judge Weber's Order of February 2, 2018 barring Plaintiff from seeking further injunctive relief on matters adjudicated at the January 23, 2018 hearing. The Court (Judge Raines) indicated that he would not consider any incidents prior to January 23, 2018 in ruling on the Petition. The Court granted Plaintiff's request for an Elder Abuse Restraining Order at the conclusion of the hearing on March 6, 2018.

(See, ER-7 through ER-9, Order After Hearing, Sharon Neal v. Natalia Neal, Washington County Circuit Court Case No. 18PO01353, Exhibit "4" to [AMENDED] PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND PLAINTIFF'S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018 filed in this case on August 2, 2018)

On February 28, 2018, Defendant, through her counsel, filed a Motion for Contempt and Sanctions against Plaintiff for having violated the term of the Order entered February 2, 2018 prohibiting Plaintiff from seeking further injunctive relief

on matters adjudicated at the January 23, 2018 hearing. The motion came on for hearing before Judge James Redman on April 30, 2018.

Plaintiff had counsel at the hearing who made several arguments. He argued that the Order of February 2, 2018 did not state specifically where or in which court(s) the prohibition against re-litigation applied, (i.e., limited to Case No. 18CV02117 or generally in all other courts). He argued that ambiguity or doubts should be construed against the drafter of the provision who was Defendant's counsel. Plaintiff's counsel also argued that Judge Raines presiding over the Petition in Washington County was fully aware of the prohibition contained in the February 2, 2020 order and although prior incidents of abuse came up in the Petition and at the hearing, the Court was careful not to consider those incidents and thus, no harm, no foul, (i.e., the prior incidents were simply informational or background). Counsel also argued that Defendant had requested an identical award of sanctions in the Washington County petition proceeding and the Court denied her request and Defendant was seeking re-litigation of her unsuccessful sanctions request in a different forum — forum shopping or collateral estoppel.

[Transcript, 4/30/18, Plaintiff's Counsel, 61:18 – 63:19]

After the argument, Judge Redman made a finding on the record that: "*part of the rulings that Judge Weber made were again raised in Washington County, even though the Washington County judge declined to reconsider them.*" Having made that finding he ruled as follows: "*There will be a \$500 sanction assessed against Plaintiff*". **[Transcript, 4/30/18, Judge Redman, 64:7-16]** The Order on Defendant's Motion for Contempt and Motions to Dismiss was prepared by Plaintiff's counsel and signed by Judge Redman on May 11, 2018.

Defendant moved for an additional award of attorneys' fees incurred in bringing the Motion for Contempt and Sanctions and was awarded \$1,990.00 on

July 24, 2018. A limited judgment and ~~money~~ award in the amount of \$2,490.00 in favor of Defendant was entered inclusive of the sanctions and attorneys' fees.

Plaintiff filed a motion to vacate the May 11, 2018 sanctions order of \$500 pursuant to **ORCP 71**, which came on for hearing on August 6, 2018 before Judge Redman. Plaintiff argued that the sanctions should be vacated because she did not intend to violate the order prohibiting her from seeking further relief on incidents that were the subject of the January 23, 2018 hearing, but merely had listed some prior incidents in response to a question on the form which asked her to list incidents of abuse within the past 180 days. In particular, one incident involved a report to police regarding identity and bank theft on the part of Defendant which was an ongoing investigation and thus was not "adjudicated" on January 23, 2018. [Transcript, 8/6/18, Sharon Neal, 117:9 – 118:9] The motion was denied, and the Court ordered Plaintiff to pay the sanctions. The Court requested Defendant's counsel to prepare the order. Defendant's counsel added a provision that was never discussed or mentioned in any papers or during the hearing, namely, that if Plaintiff did not pay the sanctions within 60 days the case would be dismissed. The proposed order did not say "dismissed with prejudice". The order prepared by Defendant's counsel provided in pertinent part, as follows:

IT IS THEREFORE ORDERED:

1. Plaintiffs motion to vacate an order of sanctions is DENIED. **To avoid dismissal**, Plaintiff shall pay the limited judgment ~~and~~ money award entered on July 24, 2018 by October 6, 2018 (60 days),

[Order, dated 8/27/2018] [bold added for emphasis]

The term "**To avoid dismissal**" was added by Defendant's counsel. No such order was made by the trial court at the hearing. No findings were made requisite to dismissing a case as a sanction. On or about October 9, 2018, the limited

judgment of \$2,490.00 not having been paid, Defendant's counsel submitted a declaration to the Court, (Judge Kathie F. Steele), with a proposed "General Judgment of dismissal" stating that the sanctions in the amount of \$2,490.00 had not been paid by October 6, 2018, as ordered by the Court on August 6, 2018. The pertinent language of the judgment provided, as follows:

IT IS THEREFORE ORDERED AND ADJUDGED: Plaintiff has **repeatedly** failed to follow the **order(s)** of this Court. Thus, Plaintiff's claims in the above captioned case are dismissed **with prejudice**.

[Dismissal Judgment, signed 10/17/2018] {bold added for emphasis}

No hearing was set on the application for entry of judgment. Plaintiff was not given an opportunity to challenge the statements in the declaration of Defendant's counsel or object to the proposed judgment of dismissal with prejudice. The Court signed the judgment soon after the declaration and proposed judgment were submitted on October 17, 2018 without a hearing.

Plaintiff timely filed a Notice of Appeal on November 2, 2018. Plaintiff-Appellant seeks reversal of the judgment on a number of grounds.

ASSIGNMENT OF ERROR

A. The trial court erred in **finding** that Plaintiff's alleged conduct violated the terms of the preliminary injunction in this case.

B. The trial court erred in dismissing Plaintiff's entire **action** with prejudice as a sanction for failing to pay a limited judgment consisting of a \$500 sanction and associated attorney's fees of \$1,990.00 when lesser sanctions had not been first been tried and proved ineffective and without a finding of bad faith or willfulness.

C. The trial court violated Plaintiff's constitutional rights of due process first by entering an order prohibiting her from re-litigating certain matters when Defendant had not filed a cross-complaint for injunctive relief, motion for preliminary injunction and an Order to Show Cause had not been issued apprising her that such an order may entered and second, by dismissing her action as a sanction without notice and an opportunity to be heard, but simply relying on a declaration of opposing counsel.

D. The trial court erred by enjoining Plaintiff from seeking further injunctive relief on matters adjudicated at the preliminary injunction hearing because doing so abridged Plaintiff's right to petition the government for the redress of grievances under the elder abuse prevention act.

E. The trial court erred in placing language in the order enjoining Plaintiff from filing for or relitigating certain matters which was vague, imprecise as to meaning and ambiguous as to scope so as to leave Plaintiff to speculate as to what exact conduct was prohibited.

F. The trial court erred in awarding sanctions against Plaintiff after the Defendant had already requested but was denied the identical sanctions request in Washington County-- collateral estoppel barred re-litigation of the same sanctions request.

PRESERVATION OF ERROR

On April 30, 2018, at the hearing on Defendant's Motion for Contempt and Sanctions, Plaintiff's counsel objected on the grounds that the language in the preliminary injunction order was ambiguous as to scope, that the references to incidents already adjudicated at the January 23, 2018 hearing were simply informational or background because the Court was aware of the prior ruling prohibiting re-litigation of incidents heard on January 23, 2018, and that Defendant had requested the identical imposition of sanctions for violation of the preliminary injunction order in the Washington County case and had been denied sanctions or attorneys' fees. [Transcript, 4/30/18, Plaintiff's Counsel, 61:18 – 63:19]

On August 6, 2018, at the hearing on Plaintiff's motion to vacate the sanctions award, Plaintiff argued that she did not actually violate or intend to violate the court's order prohibiting her from relitigating incidents adjudicated at the January 23, 2018 hearing on her motion for preliminary injunction.

[Transcript, 8/6/18, Sharon Neal, 117:9 – 118:9]

On August 6, 2018, the Court did not order that Plaintiff's case would be dismissed if she did not pay within 60 days, Judge Redman merely ordered Plaintiff to pay within 60 days and did not discuss or make an order as to consequences for a violation. [Transcript, 8/6/18, Judge Redman, 120:22 – 121:6] The dismissal warning was added by Defendant's counsel to the proposed order. The Court entered a judgment of dismissal with prejudice based on the declaration of Defendant's counsel and proposed judgment form submitted by him. No hearing was held. Plaintiff was not given a chance to argue against dismissal with prejudice and was not given adequate notice.

ARGUMENT

A. The Trial Court Erred In Finding that Plaintiff Violated the Terms of the Order Enjoining Her From Filing for or Requesting Further Injunctive Relief on Matters Adjudicated at the Preliminary Injunction Hearing Because the Elder Abuse Petition / Act Required Her to Disclose Prior Incidents of Abuse Within 180 Days.

A.1. Standard of Review:

A question of whether a party committed contempt must first be proved to a clear and convincing standard by the trial court. **O.R.S. 33.055(11)** The trial court's legal conclusions are then reviewed for errors of law and the appellate court is

bound by the trial court's factual findings if they are supported by evidence in the record. Emerson v. Kusano, 260 Or.App. 577, 581, 320 P.3d 610 (2014); Dept. of Human Services v. N. P., 257 Or.App. 633, 639, 307 P.3d 444 (2013) The trial court did not require Defendant to prove contempt by clear and convincing evidence. Additionally, the trial court did not actually consider the impossibility defense raised by Plaintiff. **O.R.S. 33.055(10)** Because of the lack of clear findings before finding Plaintiff in contempt, de novo review is requested.

A.2. Discussion:

O.R.S. 33.045 defines the types of sanctions a court may impose for contempt – the willful disobedience of a court order. A monetary fine is considered a “remedial” sanction whereas confinement is “punitive”. **O.R.S. 33.055** stipulates the procedures for imposition of remedial sanctions such as the \$500 sanction imposed against Appellant on April 30, 2018, the non-payment of which ultimately resulted in dismissal of her action. **O.R.S. 33.055(10)** provides that “Inability to comply with an order of the court is an affirmative defense”. **O.R.S. 33.055(11)** provides that “*In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence*”.

Plaintiff argued that it was impossible for her to comply with the Court’s order enjoining her from filing for and requesting further injunctive relief on matters adjudicated by the Court on January 23, 2018 because she was compelled / ordered to disclose all prior incidents in connection with her Petition for an Elder Abuse Restraining Order upon penalty of contempt and having her petition dismissed for non-compliance. [Transcript, 8/6/18, Sharon Neal, 117:9 – 118:9]

If a person is placed in legal jeopardy by conflicting judicial and legal orders where it makes her impossible to comply with both, there is no real choice exercised and thus, no mens rea, an element of contempt. Plaintiff raised this argument first to the trial court at the April 30, 2018 contempt hearing and again on Plaintiff's motion to vacate the sanctions award on August 6, 2018. Both times the Court dismissed the argument without expressly ruling whether Plaintiff was compelled to disclose all prior incidents of abuse in connection with her Petition.

The Court's procedures required Plaintiff to fill out the form "Petition For Restraining Order To Prevent Abuse" in order to proceed with her Petition and this form was prepared by the State Trial Court Administrator so as to comply with the governing statute, **O.R.S. 124.005** et seq. The form warned Plaintiff that "You must provide complete and truthful information. If you do not, the court may dismiss your restraining order and hold you in contempt". (See, ER-2)

Pages 3 and 4 of Plaintiff's Petition, in particular Question 4 on Page 4 required Plaintiff to "*Describe the incident of abuse that happened in the last 180 days*" and this was followed by Question 5 on Page 4 which required Plaintiff to answer: "*Are there incidents other than those described in question 4, above, in which respondent injured or threatened to injure you?*" Plaintiff reported the incidents of abuse subject to the Petition on Page 3 and listed the one incident that had been adjudicated on January 23, 2018 on Page 4 which she did not consider to be a part of her Petition at all but was another incident, disclosure of which was required. Any confusion about this distinction was clarified during the argument on the Petition in which both Petitioner and Respondent apprised the Court of the order prohibiting Plaintiff from filing for or requesting further injunctive relief on matters adjudicated at the January 23, 2018 hearing, which covered all alleged incidents up to that date. (See, ER-23 (ER-10 through ER-125), Transcript of Hearing on March 6, 2018 in re Sharon Neal v. Natalia Neal, Washington County

Circuit Court Case No. 18PO01353, Exhibit "4" to DECLARATION OF WES ADAMS IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S ORCP 71 MOTION TO VACATE PART OF THE ORDER ENTERED ON FEBRUARY 2, 2018 filed in this case on August 24, 2018)

The Court, in imposing sanctions against Plaintiff, never expressly ruled on her impossibility defense let alone considered whether Defendant proved contempt under the applicable standard of clear and convincing evidence. The Court relied on two facts: 1) Plaintiff was aware of the order, 2) and yet wrote about a prior incident on her Petition for Elder Abuse Restraining Order. Those facts alone were insufficient to address the impossibility defense. The Court needed to find that Plaintiff was not compelled to disclose all prior incidents on her Petition, a finding which the Court could not make because she was compelled by law to do this.

The manner in which Plaintiff handled her dilemma of being torn between two conflicting mandates was a reasonable one. She chose to list or disclose the prior incidents but also disclose to the Court the existence of the order or prohibition against seeking further injunctive relief on those incidents. The Court in the elder abuse case did what was expected with this information, Judge Raines expressly only considered and ruled on the Petition for those incidents which occurred after January 23, 2018. For Plaintiff to be found in contempt and sanctioned on such a thin evidentiary foundation seems not to comport with the clear and convincing evidence standard in light of her impossibility defense.

But, even further, the Plaintiff did not, in violation of that order, file for nor request injunctive relief for matters already adjudicated at the January 23, 2018 hearing, Plaintiff filed for and requested the restraining order because of an incident on February 3rd, 2018, of breaking and entering on the part of two (2) individuals appearing to target the Plaintiff's personal documents which are supportive of Plaintiff in this civil litigation. In this incident, Law Enforcement

was called-in, fingerprints were obtained from the scene of the crime, and a forensic sketch artist was brought in by the police to try and identify the thieves. While the perpetrators fled and have yet to be apprehended, the Defendant, Natalia Neal is a Person-Of-Interest to the police, as it is believed that the break-in was commissioned. A police investigation is still underway with the Clackamas County Sheriff's Department under Case No. 18-003-345. An email sent to Plaintiff from Deputy Sheriff Steven Funk with the Clackamas County Sheriff's Office confirms these facts, a copy of which is attached hereto as **ER-126**, (*Letter from Clackamas County Deputy Sheriff Stephen R. Funk, Exhibit "3" to [AMENDED] PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND PLAINTIFF'S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018 filed in this case on August 2, 2018*)

The Elder Abuse Restraining Order was also filed for and requested based upon an incident of physical abuse by the Defendant onto the Plaintiff, which occurred on February 5th, 2018. As a result of these two very serious and alarming incidents, both occurring after January 23, 2018, the Plaintiff applied for the Elder Abuse Restraining Order on February 9, 2018, which was granted.

Both of these incidents, which occurred in February, are listed on, and are the basis for, the Plaintiff's application for the Elder Abuse Restraining Order.

The Honorable Keith Raines who granted the said restraining order found all of the foregoing incidents which occurred well after January 23, 2018, so compelling that after a hearing on March 6, 2018, (where Defendant's counsel argued against the issuance of the restraining order both on the February incidents, and the issue of the January 23, 2018 order), decided to continue and keep the Restraining Order in effect for 1 year (until March of 2019). A copy of that *Continued Order* is attached hereto as **ER-7 through ER-9**.

Judge Raines further stated at the March 6, 2018 hearing that he was not going to consider any of the incidents which had occurred prior to the hearing on January 23, 2018 in his order for granting and continuing the Restraining Order. (That portion of the March 6, 2018 hearing transcript is attached hereto as **ER-23**)

The trial court's lack of comment upon or making findings concerning these uncontested facts in the record in this case is troubling. The trial court simply agreed with Defendant that Plaintiff's petition violated the Order of January 23, 2018, which stated: [5. *Plaintiff shall neither file for nor request further injunctive relief on matters which this Court has adjudicated at the hearing held January 23, 2018;*]. The trial court sanctioned the Plaintiff \$500, plus related attorney fees of \$1,990. This sanction was imposed due to the Defendant contending and the trial court agreeing that Plaintiff's listing of the 'December 23, 2017' incident on Plaintiff's petition for an Elder Abuse Restraining Order was a violation of that January 23, 2018 order. (The subject sanction order and attorney fee assessment issued on August 27, 2018 in this case is attached as **ER-127 through ER-133**)

Plaintiff contends the issuance of that sanction was in error for the reasons stated above. Plaintiff did not file for nor request further injunctive relief based on matters adjudicated at the hearing on January 23, 2018. Plaintiff reported a prior incident on her form for informational purposes only and not for the purposes of obtaining further relief for that same incident. The incidents adjudicated on the application for the Elder Abuse Restraining Order occurred in February, well after the January 23, 2018 hearing. This fact is undisputed based upon the evidence on the record, (Petition for the Elder Abuse Restraining Order (**ER-2 through ER-6**) and hearing transcript (**ER-10 through ER-125**)). The sanction of \$500 from which the *Judgment of Dismissal* ultimately derived was not lawful or proper.

B. The Trial Court Erred In Dismissing Plaintiff's Entire Action With Prejudice As An Initial Sanction For Failing To Pay A Limited Judgment of \$2,490.00 When Lesser Sanctions Had Not Been First Been Tried And Proved Ineffective.

B.1 Standard of Review:

Imposition of sanctions is ordinarily reviewed under the abuse of discretion standard. See Asato v. Dunn, 206 Or App 753, 758-59 (2006); Adams v. Hunter Engineering Co., 126 Or App 392 (1994). However, if the question is whether the court made the required findings before imposing sanctions, it is a question of law and should be reviewed de novo. Pursuant to **ORAP 5.40(8)**, Plaintiff asks the Court to review this appeal de novo.

B.2 Discussion:

In connection with imposing a dismissal sanction, a court must make a finding of fact of willfulness or bad faith and further make a finding that a dismissal sanction is just, especially or in light of the availability of other lesser sanctions. Pamplin v Victoria, 319 Or. 429, 877 P.2d 1196 (1994), Pamplin v. Victoria, 138 Or. App. 563, 909 P.2d 1245 (1996)

The Oregon Court of Appeals summarized the standard for a dismissal sanction, as follows:

"Dismissal is the most drastic of sanctions, to be reserved for the most severe violations. Hahm v. Hills, 70 Or.App. 275, 281, 689 P.2d 995 (1984). As the Supreme Court said in Pamplin, the trial court must set forth "the analytical process by which [it] concluded that dismissal is 'just' in view of * * * the other sanctions that are

available." 319 Or. at 431, 877 P.2d 1196 (emphasis supplied). In our view, that means that the ultimate sanction of dismissal should not be imposed without considering whether less onerous sanctions are available."

Pamplin v. Victoria, 138 Or.App. 563, 909 P.2d 1245 (1996)

In this case, there were no findings of fact or explanations made by the trial court to explain why the sanction of dismissal with prejudice was "just", nor were there any findings of willfulness or bad faith, or fault of similar degree made.

Considering that none of the required elements have been met to justify the judgment of dismissal under the established case law of *Pamplin*, Plaintiff is entitled to reversal and remand on this issue alone. This is an issue of law and should be reviewed de novo. Because the facts are clear that no such findings were made prior to imposition of the dismissal sanction, reversal should be automatic. Indeed, the Judgment of Dismissal was entered without any hearing being held or an opportunity given to Plaintiff to challenge the dismissal sanction.

A required factual finding of bad faith or willful disobedience on the part of Plaintiff should be almost impossible to establish in light of the legal requirement of disclosure of prior incidents on the form for Plaintiff's Petition for an Elder Abuse Restraining Order. Plaintiff actually believed disclosure was required by the law because the Petition form stated so. This form was drawn so as to comply with the Elder Abuse Prevention Act. However, Plaintiff did not attempt to seek further injunctive relief on any prior incidents because she made it known at the hearing on the restraining order to the Court that incidents prior to January 23, 2018 could not be re-litigated under the Court's order in this case and the Court did not consider them. (See, ER-23) This evidences Plaintiff's good faith and non-

willful conduct in simply describing all incidents of abuse, as required by the Petition form, but not seeking further injunctive relief on such incidents.

Willful disobedience or bad faith conduct must be proved to a clear and convincing evidence standard. Rather than remand and allow the Sword of Damocles to hang over Plaintiff, this Court should consider ruling that under the facts and circumstances in this record, the required factual finding of willfulness or bad faith to a clear and convincing evidentiary standard could not be made.

The instructional mandate given on Page 1 of that Elder Abuse Restraining Order Petition (See, ER-2), sternly admonishes the petitioner in bold print “**You must provide complete and truthful information. If you do not, the court may dismiss your restraining order and may also hold you in contempt.**”

Oregon Legislative Policy codified in **ORS 124.075 [Immunity of person making report in good faith]** states specifically that “*(1) Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any criminal or civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. . . .*”. This legislative immunity protects Plaintiff against the contempt sanction imposed by the Court. (The elder abuse restraining order was only based upon incidents after January 23, 2018). In this case, the Court found that the Plaintiff had been abused by the Defendant, and issued the Elder Abuse Restraining Order. On an issue of law, **ORS 124.075**, by and of itself, the sanction could not lawfully have been made against Plaintiff as she was, in good faith and with reasonable grounds reporting acts of elder abuse, and as such immune from any criminal or civil liability. (See, ER-7 through ER-9)

The dismissal sanction came about because Plaintiff did not comply with the Court's order of August 6, 2018 requiring her to pay the judgment of \$2,490 within 60 days. As the case was dismissed by a judgment signed on October 17, 2018 following a declaration of non-compliance by Defendant's counsel, it is clear that dismissal was the first sanction imposed for violation of the Court's August 6, 2018 Order yet the judgment mistakenly contains language that Plaintiff had "*repeatedly*" violated the Court's order, which was not the case. Dismissal was entered without the required factual finding that lesser sanctions would not have been effective. Here, Plaintiff contended that she was entitled to a setoff against Defendant for theft and other incidents but was never given an opportunity in a hearing prior to dismissal to raise this defense. The trial court could have handled this situation by imposing an escalating penalty or fine against Plaintiff if it determined that the setoff did not apply prior to dismissing.

Dismissal was a particularly inappropriate sanction and therefore unjust because the non-compliance had absolutely nothing to do with the merits of the case. Plaintiff's action concerns ownership of real property and it was dismissed because she failed to pay a monetary sanction/fee award for having violated an interim order of the court by filing a petition for an Elder Abuse Restraining Order in another court. There could be no further disconnect between the merits of the underlying case and the sanction imposed of dismissal of the action with prejudice-- a judgment on the merits, such that the claims could not be re-filed or re-litigated even though the reason for dismissal had nothing to do with settling the title and ownership dispute of the property. Here, the litmus test on the merits was passed prior to dismissal by the Defendant's Motion for Summary Judgment, which motion the trial court (staunchly) denied.

C. The Trial Court Violated Plaintiff's Constitutional Rights Of Due Process By Entering An Order Prohibiting Her From Re-Litigating Certain Matters When No Cross-Complaint For Injunctive Relief, Motion For Preliminary Injunction Or An Order To Show Cause Had Been Issued Apprising Her That Such An Order May Entered, And Second, By Dismissing Her Action As A Sanction Without Notice And An Opportunity To Be Heard

C.1 Standard of Review:

Whether a party has been denied due process of law under the Fourteenth Amendment is reviewed for errors of law. *State v. Weller*, 241 Or App 690, 250 P3d 979 (2011); *State v. Nelson*, 166 Or App 189, 193, 999 P2d 1161 (2000)

C.2 Discussion:

On the one hand, Plaintiff filed a complaint alleging a claim for injunctive relief and then filed a form motion for a preliminary injunction. These pleadings provided the court with subject matter jurisdiction, met the minimum requirements for injunctive relief under **ORCP 79**, and provided adequate notice and an opportunity to be heard by Defendant. The same cannot be said for the Court's Order granting injunctive relief against Plaintiff. Defendant did not file a Cross-Complaint, motion for preliminary injunction nor was an Order to Show Cause issued, yet the Court made the restraining order mutual and added a special provision enjoining Plaintiff from filing for or seeking further injunctive relief on matters adjudicated at the January 23, 2018 hearing. Based on the absence of any pleadings, motion or order to show cause regarding such injunctive relief the Court lacked jurisdiction to enter the order against her.

Even if the Court possessed some inherent jurisdiction to enter this order, Plaintiff was not given any notice or a fair opportunity to be heard before this injunctive relief was entered against her and thus, entry of the order violated her right of due process. If the notice of the proposed relief is so defective or lacking that it does not satisfy the requirements of due process, the court is deprived of jurisdiction to enter an order arising out of such a defective procedure. Hood River County v. Dabney, 246 Or. 14, 21, 423 P.2d 954 (1967)

The due process violations did not end with entry of the initial order but continued and became more aggravated in connection with dismissal of the action based on the violation of said order. The provision placing dismissal as a penalty for non-payment of the sanctions and fee award of \$2,490 in the Court's order of August 6, 2018 was not actually ordered by the Court at the hearing, but was surreptitiously inserted in the proposed order based solely on the initiative of Defendant's counsel as the Court never mentioned dismissal, nor was it mentioned in any papers preceding the hearing. The Court signed the proposed order which contained the dismissal advisory.

When Plaintiff failed to pay the \$2,490.00 prior to October 6, 2018, a different judge read the language in the order of August 6, 2018 and dismissed the case with prejudice without providing Plaintiff any opportunity to object to the dismissal provision or to the declaration of Defendant's counsel. Moreover, the proposed judgment of dismissal submitted by Defendant's counsel contained the additional language "*with prejudice*" which words were not contained in the August 6, 2018 ruling, rather this key language was inserted after and into the proposed judgment by the Defendant's counsel without affording notice or an opportunity to be heard to Plaintiff. In re Devers , 328 Or. 230, 233, 974 P.2d 191 (1999) (essential elements of due process are notice and opportunity to be heard).

Here, the record establishes that the dismissal provision in the August 6, 2018 order and dismissal with prejudice provision in the October 17, 2018 judgment were ordered without due process.

D. The Order Enjoining Plaintiff From Filing For Or Seeking Further Injunctive Relief On Matters Adjudicated At The Preliminary Injunction Hearing Abridged Plaintiff's Constitutional Right To Petition The Government For The Redress Of Grievances and Conflicted With Her Statutory Right To Seek Relief Under the Elder Abuse Statutes For The Same Conduct

D.1 Standard of Review:

Whether a court has abridged a litigant's right of petition or denied her a right to seek relief under a particular statute is a constitutional question reviewed for errors of law. See, e.g., State v. Weller, 241 Or App 690, 250 P3d 979 (2011) U.S. courts apply the strict scrutiny standard when a fundamental constitutional right found in the Bill of Rights is infringed. Roe v. Wade, 410 U.S. 113, 155 (1973)

D.2 Discussion:

The First Amendment to the U.S. Constitution provides in relevant part that "*Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances*". It has long been established that all First Amendment freedoms are protected by the 14th Amendment from invasion by the States. Edwards v. S. C., 372 U.S. 229, 235 (1963). Private individuals engaged in civil disputes have a right of access to the Courts. Bill Johnson's Rest., Inc. v. N.L.R.B., 461 U.S. 731, 753 (1983). The order prohibiting

Plaintiff from filing for or seeking further injunctive relief on matters adjudicated at the hearing on January 23, 2018 abridged this right because Plaintiff had a statutory right to seek injunctive relief under the Elderly Persons And Persons With Disabilities Abuse Prevention Act, **ORS 124.005** et seq on the same conduct.

Plaintiff's complaint did not allege a claim for elder abuse in her complaint and restraining orders under this statute are generally handled separately from regular civil actions in a proceeding tailored to the requirements of the Act. At the preliminary injunction hearing on January 23, 2018, the Court was adjudicating the motion based on the standards applied in civil proceedings under **ORCP 79**. The court was attempting to maintain the status quo in light of the pending quiet title case where Plaintiff and Defendant were disputing ownership while maintaining dual occupancy in an adversarial relationship. The special standards, procedures, rules and requirements of the Elder Abuse Prevention Act were not before the Court on January 23, 2018 or actually adjudicated.

The order restricted Plaintiff from seeking injunctive relief based upon, and fully complying with, the requirements of the Elder Abuse Prevention Act, a claim which she had a right to seek and obtain under Oregon law even if the same incidents were before the court in the preliminary injunction in the quiet title litigation. Moreover, the Order conflicted with Oregon law that grants immunity to persons who in good faith report elder abuse:

124.075 Immunity of person making report in good faith; identity confidential. (1) Anyone participating in good faith in the making of a report of elder abuse and who has reasonable grounds for making the report shall have immunity from any criminal or civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

[ORS 124.075]

The Order prohibiting Plaintiff from seeking further relief is not the type of injunctive relief that is authorized by **ORCP 79** as such activity is not a harm or injury that could or would render a judgment ineffectual. Rather, when a person is alleged to have filed repetitive motions which are without merit (as Defendant accused Plaintiff in this case which resulted in the subject Order), an opposing party may defeat those actions by raising collateral estoppel as a bar and seek to recover costs and fees under **ORCP 17** and **ORS 20.105**.

Here, the Court truncated Plaintiff's rights of petition under the Elder Abuse Prevention Act concerning incidents adjudicated by the Court at the January 23, 2018 hearing. In *Bill Johnson's Restaurants, Inc. v. NLRB* 461 U.S. 731 (1983), the concurring opinion of Justice Brennan recognized a constitutional "*right to file and to prosecute a lawsuit*" and distinguished between prior restraints and subsequent sanctions. This concurrence recognized that the right to petition the courts is particularly threatened by prior restraints that would "*totally deprive [a litigant] of a remedy for an actual injury.*" Id. at 742

The Order also had the effect of supplanting all of the procedures and remedies governing reconsideration motions without good cause. Oregon does not have a vexatious litigant statute, but this Order falls into the same category of relief imposed by federal and other state courts on alleged vexatious litigants. But this Order did not contain the remedial pre-filing provisions mandated by federal and other state courts in order to comply with due process. The United States Court of Appeals for the Ninth Circuit has acknowledged the "*inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.*" *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990); see also *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007). More specifically, the All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent power to enter prefilings orders

against vexatious litigants. Weissman v. Quail Lodge Inc., 179 F.3d 1194, 1197 (9th Cir. 1999). Such pre-filing orders “*are an extreme remedy that should rarely be used*,” as they can “*tread on a litigant’s due process right of access to the courts*.” Molski, 500 F.3d at 1057.

Accordingly, the Ninth Circuit has outlined four requirements before a district court may enter a pre-filing order: (1) the litigant must be given notice and a chance to be heard before the order is entered; (2) the district court must compile “an adequate record for review”; (3) the district court must make substantive findings about the frivolous or harassing nature of the plaintiff’s litigation; and (4) the vexatious litigant order “*must be narrowly tailored to closely fit the specific vice encountered*.” Molski id. (citing De Long, 912 F.2d at 1147–48).

Not only were none of these protections afforded Plaintiff but the order failed to give Plaintiff a pre-filing option as is mandated in federal court. No such option was afforded to Plaintiff who received a blanket prohibition Order abridging her constitutional right of access to the courts.

E. The Language In The Order Enjoining Plaintiff From Filing For Or Seeking Further Injunctive Relief Was Overly Broad, Vague, Imprecise As To Meaning And Was Ambiguous As To Scope So As To Be Unenforceable.

E.1 Standard of Review:

Whether the language in an order for injunctive relief is overbroad or too vague, ambiguous or imprecise as to be unenforceable is a question of law and should be reviewed under the de novo standard. **ORS 19.415(3), ORAP 5.40(8)(d)**

E.2 Discussion:

The subject preliminary injunction order was vague, ambiguous and imprecise as to scope in that it did not indicate where or precisely in which courts, governmental agencies, or other forums the “re-filing” prohibition was to take effect leaving Plaintiff to speculate as to its precise contours. One plausible interpretation is that the Order was limited to the present case. However, there are many other plausible interpretations including but not limited to that it was effective in all regular civil actions in Courts of the State of Oregon but not elder abuse prevention proceedings; that it was effective in not only all Oregon State Courts but also all governmental agencies in Oregon; or in all courts, federal and state, no matter where situated; or in all possible forums and arenas including arenas such as private arbitrations, organizations, associations and so forth.

If the Order only applied to civil actions in Oregon but not special proceedings such as applications for temporary restraining orders under the Oregon Elder Abuse Prevention Act, Plaintiff would not be in violation and she should not have been sanctioned or found in contempt for speculating incorrectly.

The Order was also vague as to the litigation conduct that constituted “filing for” or “seeking further injunctive relief” on matters adjudicated at the January 23, 2018 hearing. A precise list of those matters was not contained in the order and all matters raised at the hearing were not resolved on January 23, 2018. For example, Plaintiff’s claim of identity and bank theft was the subject of an ongoing police investigation and was not fully resolved or “adjudicated” on January 23, 2018. Plaintiff was forced to speculate as to whether a matter was actually adjudicated because a list was not provided; clarity was lacking.

Similarly, due to imprecision it was left open for Plaintiff to speculate as to what actions were prohibited by the language. Plaintiff interpreted the Order as

allowing her to list prior incidents of abuse adjudicated at the January 23, 2018, but not to file for or seek further injunctive relief. The Court in which she sought an elder abuse restraining order was apprised of the order by the Plaintiff and ruled that it would not consider those prior incidents. Plaintiff's interpretation of the Order was that it allowed her to describe the prior incidents but not seek relief for them. However, the trial court on April 30, 2018 implicitly ruled otherwise that by simply having listed a prior incident on her Petition form, she violated the "file for" provision. This strict interpretation was not made known until after the fact.

Finally, because Plaintiff had a right to seek an elder abuse restraining order (which was granted) she was protected under **ORS 124.075** from reporting such abuse. The Order was overbroad in that it prohibited Plaintiff from not only acting on her legitimate statutory rights but also from bringing an appropriate motion for reconsideration under **ORCP 79** not based on new facts or law.

The order also violated **ORCP 79(d)** which requires injunctive relief orders to be specific: "Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance, shall be specific in terms, shall describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained, . . ." Here, the Order contained no list, no specificity, no hearing transcript attached, nor discussion of what matters were "adjudicated". The specificity requirement is necessary to protect those who are enjoined by informing them what they must do or refrain from doing; See, Burton v. City of Belle Glade, 178, F.3d 1175, 1200 (11th Cir. 2000) (discussing a similar specificity requirement in FRCP 65(d))

F. Plaintiff Was Subject To Double Jeopardy and Defendant Was Barred by Collateral Estoppel On Sanctions Because Defendant Requested But Was Denied Sanctions In Washington County

F.1 Standard of Review:

Whether Plaintiff was subject to double jeopardy on contempt sanctions and Defendant was barred by collateral estoppel from revisiting the issue of sanctions in Clackamas County after Defendant had tried and failed to obtain sanctions for the same conduct in Washington County is a legal question reviewed de novo as the facts are undisputed.

F.2 Discussion:

The trial court gave no consideration to Plaintiff's argument that double jeopardy or the doctrine of collateral estoppel barred Defendant from relitigating the issue of sanctions against Plaintiff in Clackamas County after the Defendant had already requested and been shot down in this identical request for sanctions in Washington County based on the same conduct at issue. The trial court did not rule on this argument when it assessed sanctions of \$500 against Plaintiff for conduct already adjudicated in Washington County and being found not in violation of the subject Order. **ORS 20.105** was the applicable statute at issue in both Washington County and Clackamas County. The same parties were involved. The same acts or conduct were at issue:

“Common law collateral estoppel is a doctrine developed by courts to prevent unnecessary relitigation of issues. As a court-made doctrine, it is the responsibility of courts to determine the scope of the doctrine and ensure that any expansion of the doctrine preserves the integrity of the legal system. The effect of collateral estoppel is that: ***

When an issue of ultimate fact had been determined by a valid and final judgment, that determination also settles the same issue in another action (a) between the same parties on a different claim, and (b) against persons who are so closely identified with a party that they are said to be 'in privity' with parties to the earlier civil action." State Farm Fire & Cas. v. Reuter, 299 Or. 155, 157, 700 P.2d 236 (1985)"

State v. Ratliff, 304 Or. 254, 744 P.2d 247 (1987)

Defendant did not present any argument as to why collateral estoppel would not apply at the hearing on April 30, 2018. The Court did not cite any reason why this doctrine would not apply in the instant case. Defendant had her opportunity to seek sanctions against Plaintiff in Washington County and was denied. The issue should not have been open to re-litigation in Clackamas County. The defense of collateral estoppel was raised by Plaintiff at the hearing on April 30, 2018 and this issue was preserved.

CONCLUSION

Based on the foregoing, the trial court erred first when it entered a vague and overbroad order against Plaintiff enjoining her from filing for or seeking further injunctive relief on matters adjudicated at the January 23, 2018 hearing when no cross-complaint for injunctive relief, motion for preliminary injunction or order to show cause had been filed; the order abridged her right of access to seek relief under the Elder Abuse Prevention Act; the court erred again when it assessed sanctions against Plaintiff for conduct that did not violate the order. The court erred in sanctioning Plaintiff for violating the order when she did not do so in a willfully disobedient or bad faith manner. The court erred when it failed to apply collateral estoppel to the sanctions request as Defendant had previously requested

EXCERPT OF RECORD

INDEX

Judgment of Dismissal (October 17, 2018) **ER-1**

Petition for Restraining Order, Sharon Neal v. Natalia Neal, Washington County Circuit Court Case No. 18PO01353, Exhibit "5" to *[AMENDED] PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND PLAINTIFF'S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018* filed in this case on August 2, 2018 **ER-2 to ER-6**

Order After Hearing, Sharon Neal v. Natalia Neal, Washington County Circuit Court Case No. 18PO01353, Exhibit "4" to *[AMENDED] PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND PLAINTIFF'S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018* filed in this case on August 2, 2018 **ER-7 to ER-9**

Transcript of Hearing on March 6, 2018 in re Sharon Neal v. Natalia Neal, Washington County Circuit Court Case No. 18PO01353, Exhibit "4" to *DECLARATION OF WES ADAMS IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S ORCP 71 MOTION TO VACATE PART OF THE ORDER ENTERED ON FEBRUARY 2, 2018* filed in this case on August 24, 2018 **ER-10 to ER-125**

Letter from Clackamas County Deputy Sheriff Stephen Funk, Exhibit "3" to *[AMENDED] PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION AND PLAINTIFF'S HEARING BRIEF ON MOTION TO VACATE THE SANCTIONS ORDER ENTERED ON MAY 14, 2018* filed in this case on August 2, 2018 **ER-126**

Sanction Order and related attorney fee assessment entered in this case on August 27, 2018 **ER-127 to ER-133**

**CERTIFICATION OF COMPLIANCE
WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS**

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 9,893 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(d)(ii) and 5.05(4)(g).

Dated this 25th day of March 2020.

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PROOF OF SERVICE

I certify that on the 25th day of March 2020 the original foregoing Plaintiff--Appellant's Opening Brief was personally delivered to:

Appellate Court Administrator
Appellate Courts Records Section
1163 State Street
Salem Oregon 97301

I further certify that on the 25th day of March 2020 a true and correct copy of the foregoing Plaintiff--Appellant's Opening Brief was deposited in the United States Post Office at Portland, Oregon, with first class postage prepaid thereon addressed to:

Natalia Neal, Defendant-Respondent, Pro Se
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Dated this 25th day of March 2020.

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