

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LANCE W. BURTON,

Appellant,

v.

HONORABLE SUPERIOR COURT JUDGE
ROBERT L. HARRIS and MARY JO
HARRIS, husband and wife, and their marital
community; BOARD OF CLARK COUNTY
COMMISSIONERS (BETTY SUE MORRIS,
MARC BOLDT and STEVE STUART), for
and on behalf of CLARK COUNTY,

Respondents.

No. 41521-6-II

UNPUBLISHED OPINION

Johanson, J. — Lance W. Burton appeals the Cowlitz County Superior Court’s summary judgment dismissal of his civil claims against Clark County Superior Court Judge Robert L. Harris, Judge Harris’s spouse and marital community, and the Board of Clark County Commissioners. Burton asserts that the venue transfer to Cowlitz County was improper. We affirm.

FACTS

I. Malpractice Claim

Burton sued attorney Mark Erickson for malpractice, breach of fiduciary trust, fraud,

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breach of contract, and consumer protection act violations based on Erickson's representation of Burton in a land use action against Clark County. On June 1, 2004, the Honorable Robert L. Harris dismissed the malpractice suit after determining that the statute of limitations had expired. On June 22, Judge Harris denied Burton's June 10 pro se motion for reconsideration. Burton appealed. On August 18, 2005, our court commissioner affirmed Judge Harris's dismissal. The direct appeal mandated on September 14, 2006.

While Burton's appeal was pending and after the mandate, Burton filed several additional motions to vacate. It is unclear from this record whether Judge Harris ruled on all of these motions. But on January 3, 2007, Judge Harris sent a letter to Burton that stated:

I have received copies of your several motions that you have filed over the past couples [sic] of months, including your most recent request for an ex parte meeting. I cannot meet with you without the other side present. In any event, your appeal has been denied and any further appeal time has lapsed. A final order dismissing your litigation has been entered, and there is at this time no way to restore your litigation status.

Clerk's Papers at 157.

II. Civil Suit Against Judge Harris and Board of Commissioners

In March 2009, Burton¹ sued Judge Harris, the judge's spouse and marital community, and the Board of Clark County Commissioners, alleging several causes of action based on Judge Harris's actions in the malpractice suit.² Burton originally filed this action in the Clark County

¹ Burton represented himself in this action.

² These causes of action included (1) several 42 USC § 1983 claims, (2) fraud, (3) federal mail fraud, (4) negligent misrepresentation, (5) negligence, and (6) intentional infliction of emotional distress.

Superior Court, but he then moved for a change of venue.³ The Clark County Superior Court transferred the case to the Skamania County Superior Court. After the assigned Skamania County judge recused from this matter,⁴ the Skamania County Superior Court transferred the matter to the Cowlitz County Superior Court, and the case was assigned to Judge Stephen Warning.

Burton objected to the change of venue to Cowlitz County. On January 28, 2010, Judge Warning denied the objection. On March 15, Burton filed an affidavit of prejudice against Judge Warning. Judge Warning refused to recuse himself, ruling that the affidavit of prejudice was untimely because he had already ruled on the objection to the venue transfer. Judge Warning then granted the respondents' summary judgment motion and dismissed all of Burton's claims with prejudice. On May 28, 2010, Judge Warning denied Burton's motion for reconsideration.

Burton petitioned for direct appeal with the Washington State Supreme Court. The court

³ Burton alleges that "the order became merritless [sic] in Clark County," and asserts that he re-filed the complaint in Skamania County. Br. of Appellant at 2. But there is nothing in the record showing that Burton re-filed this case in Skamania County. In contrast, the clerk's papers contain copies of the Clark County Superior Court docket indicating that venue was changed to Skamania County. The docket also notes that Burton was to pay the fees related to the venue transfer.

⁴ In his opening brief, Burton alleges that Skamania County Superior Court Judge E. Thompson Reynolds was recused on the matter and that the Skamania County court administrator tried to appoint Klickitat County Judge Brian Altman, but Judge Altman was also recused. Burton further alleges that he requested that Retired Judge Thomas Lodge be assigned the case and that he unsuccessfully attempted to obtain contact information for Judge Lodge from "Ms. Suzy Cheffler of the Court Administration office in Olympia," and a court administrator. Br. of Appellant at 3. He also alleges that the Skamania court administrator and the respondents "colluded against" his "objections" in moving the case to Cowlitz County and that the respondents tried to "command[]" Skamania to transfer the case to Pierce County, but the clerk refused to do so. Br. of Appellant at 3. But there is nothing in the record to support any of these factual assertions.

denied direct review and transferred the appeal to us.

ANALYSIS

Burton argues that it was error to transfer this action to Skamania County Superior Court after he had specifically requested that Retired Judge Thomas Lodge hear the case.⁵ Burton asserts that he was entitled to have Judge Lodge hear the case (and that Judge Lodge had a personal right to hear the case), apparently as a pro tem judge, because the judge had made prior discretionary rulings.⁶ He also appears to challenge Judge Warning's refusal to recuse himself based on Burton's March 15, 2010 affidavit of prejudice.⁷ Additionally, Burton argues that the various court administrators and judges erred when they (1) refused to help him locate Judge Lodge, (2) charged him fees for the venue transfer, (3) failed to transfer all of the required filings to the new venue, and (4) failed to transfer the case to Pierce County.⁸

As the appellant, Burton has the burden of perfecting the record on appeal so that we have before us the information and evidence relevant to the issues he raises. RAP 9.2(b); *Bulzomi v.*

⁵ It appears that Judge Lodge was a superior court judge in Clark County. *See Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998), *review denied*, 137 Wn.2d 1015 (1999).

⁶ We note that although Burton appears to allege that Judge Lodge entered rulings in a land use case in which Erikson had represented Burton, Burton does not suggest that Judge Lodge made any rulings in Burton's civil action against Judge Harris.

⁷ We note that although Burton has attached a copy of the affidavit of prejudice to his brief, that filing is not part of the official appellate record. Furthermore, even if we were to consider this document, Burton does not dispute that Judge Warning had already made discretionary rulings in this case and, therefore, fails to show that Judge Warning erred when he denied the motion. RCW 4.12.050(1).

⁸ This last argument makes little sense and it is not clear from the record or the briefing exactly what Burton is talking about in regard to an attempted transfer of venue to Pierce County.

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Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994) (citing *State v. Vazquez*, 66 Wn. App. 573, 583, 832 P.2d 883 (1992)). Failure to provide an adequate record “precludes review of the alleged errors.” *Bulzomi*, 72 Wn. App. at 525 (citing *Allemeier v. Univ. of Washington*, 42 Wn. App. 465, 472-73, 823 P.2d 306 (1985), *review denied*, 105 Wn.2d 1014 (1986)). Here, the record on appeal contains no information or evidence related to any of the above arguments. Accordingly, we decline to address these issues further.

Burton also contends in his issue statements that Judge Warning erred when he ruled that the summary judgment order was improper because “material evidence did not support doing so.” Br. of Appellant at 7. Burton does not, however, present any argument supporting this issue, and he clarifies in his reply brief that he is challenging only Judge Warning’s authority to consider this matter.⁹ Even though the respondents have addressed potential substantive issues related to the summary judgment ruling, Burton’s opening brief and reply brief establish that he never intended to raise such issues before this court.¹⁰ Accordingly, we do not address any issues related to the summary judgment order itself.

Burton requests attorney fees and expenses under RAP 18.1(a); RCW 4.84.010; RCW 4.84.030, RCW 4.84.170, and RCW 4.84.190. Because Burton is not the prevailing party, we

⁹ After acknowledging that he could have argued raised challenges related to “[t]he case against Judge Harris,” or (2) “the legal [a]uthority and [j]urisdiction of Superior Court Judge, Mr. Stephen Warning of Cowlitz County,” Burton states he has always intended the court to examine, “the latter, i.e. the unlawful actions of Clark, Skamania and in particular Cowlitz County and its Judge, Stephen Warning.” Reply Br. at 2.

¹⁰ Burton’s “Statement of Grounds for Direct Review,” which he filed with our Supreme Court on July 15, 2010, also supports this conclusion.

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deny his request for attorney fees and expenses.¹¹

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Armstrong, P.J.

Van Deren, J.

¹¹ Respondents do not request attorney fees and costs.