IN THE UTAH COURT OF APPEALS

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Roger Bryner, Petitioner, v. Honorable Judge Denise P. Lindberg and Lana Bryner, Respondents.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060754-CA Case No. 20060814-CA F I L E D (September 28, 2006) 2006 UT App 398

Original Proceeding in this Court

Attorneys: Roger Bryner, Midvale, Petitioner Pro Se
Brent M. Johnson, Salt Lake City, for Respondent Honorable Denise P. Lindberg

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Petitioner Roger Bryner filed two petitions seeking extraordinary relief in the nature of mandamus.

The petition in case no. 20060754-CA essentially challenges restrictions imposed by the district court in managing the cases between Roger Bryner and Lana Bryner. Petitioner challenges a restriction placed on both parties requiring that only a single motion from each party can be pending at any time. He also challenges restrictions on using standby counsel. While that petition was pending, Petitioner filed a second petition, case no. 20060814-CA, also seeking extraordinary relief against Judge Lindberg. In the interest of judicial economy, we address both petitions.

In an order dated April 20, 2006, the district court ruled:

> The Court enjoins each side from filing more than one motion at a time. No additional motions may be filed by that side until the other side has had an opportunity to answer. The movant may then reply to the opposition,

> and file a notice to submit. The matter will then be submitted for decision. Once the Court has had the opportunity to rule on the pending motion, that party will then be free to file other motions. By imposing this limitation the Court does not intend to interfere with the parties' constitutional rights. Rather, the Court is exercising its inherent authority to manage its caseload in the most effective and efficient way, in order to ensure that all matters that the parties wish to bring for action by the Court can be attended to in a thorough and orderly manner.

In a June 20, 2006 minute entry, the district court reiterated that "the filing restrictions were designed to strike a balance between the parties' constitutional right to seek redress from the courts and the Court's need to manage its caseload appropriately."

In an August 10, 2006 order, the court stated its position that, in appearances before the court, Petitioner "must elect whether to appear pro se or be represented by counsel." Although noting that Petitioner could "freely consult with anyone of his choosing outside the courtroom," the court stated that if he wished to receive assistance of counsel in the court, "counsel must enter his appearance and then counsel (not the petitioner) will be the only one who will be allowed to file Motions, to make argument to the Court, or to conduct any presentation or cross-examination of proffered evidence."

In the petition filed as case no. 20060754-CA, Petitioner requests an order (1) requiring Judge Lindberg to allow an attorney to sit silently by him and pass notes, (2) declaring the filing restrictions unconstitutional, and (3) remanding all issues regarding child custody to the commissioner, rather than to the district court judge. The claim that the district court cannot determine child custody issues is without merit, and we do not consider it further.

"Extraordinary relief may be granted if . . . the petitioner can establish that a lower court 'exceeded its jurisdiction or abused its discretion.'" Burke v. Lewis, 2005 UT 44,¶9, 122 P.3d 533 (quoting Utah R. Civ. P. 65B(d)(2)(A)); see also State v. Stirba, 972 P.2d 918, 922 (Utah Ct. App. 1998) (holding that abuse of discretion for purposes of extraordinary writs must be more blatant "than the garden variety 'abuse of discretion' featured in routine appellate review"). "Where the challenged

proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority." Utah R. Civ. P. 65B(d)(4).

The district court did not abuse its discretion in adopting the filing restrictions. The court imposed reasonable restrictions on both parties by precluding the filing of multiple motions until a previous motion filed by the same party was resolved. Petitioner's contention that the court did not apply the restriction to both parties is frivolous. The opposing parties' request for hearing on a pending motion does not constitute the filing of a multiple motion in violation of the filing restriction. Under the circumstances, the district court's restrictions are reasonable and do not constitute an abuse of discretion.

Petitioner's claim that he has been denied the constitutional right to counsel of his choice is unsupported and without merit. The case law he cites concerns the Sixth Amendment right to counsel extended to criminal defendants. Both proceedings in which Petitioner is involved are civil proceedings, and the cited authorities are not pertinent. Nevertheless, the discussion in United States v. Gonzales-Lopez, 126 S. Ct. 2557 (2006), cited by Petitioner, is illustrative of the discretion that a court possesses governing representation by counsel, even in a criminal case. The majority opinion acknowledged the "trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar." The supreme court also acknowledged the trial court's "inherent power to enforce rules or adhere to practices that determine which attorneys may appear before it, or to make scheduling and other decisions that effectively exclude a defendant's first choice of counsel." Id. at 2565-66.

The district court did not restrict Petitioner from either representation by counsel or consultation with counsel outside the courtroom. Under the circumstances, the claim that the district court abused its discretion or violated a purported constitutional right to have standby counsel in the civil proceedings is without merit.

The petition seeking extraordinary relief in case no. 20060814-CA duplicates some claims from the petition in case no. 20060754-CA. The second petition also seeks relief from the district court's order denying cross-motions to enforce the settlement agreement, which is the subject of the appeal pending as case no. 20060214-CA. In addition, the petition contains

patently offensive and disrespectful statements regarding the district court judge.

Rule 40 of the Utah Rules of Appellate Procedure provides an equivalent to rule 11 of the Utah Rules of Civil Procedure and requires a party to sign all filings as a certification that they are not frivolous or interposed for purposes of delay. Bryner states in the second petition:

> I further certify that to the best of my knowledge, information and belief the statements contained therein are true, however, I am not a lawyer and no reasonable unbiased judge could presume to hold me to the same standard of knowledge of law that an attorney would be held to.

On the contrary, rule 40(b) states, in part:

> The court may, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action against any attorney or person who practices before it for inadequate representation of a client, conduct unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply with these rules or order of the court.

Utah R. App. P. 40(b).

In addition, because Bryner "avails [himself] of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate." Lundahl v. Quinn, 2003 UT 11,¶4, 67 P.3d 1000. "This is particularly true where the filings in question are routinely frivolous and have been brought with the apparent purpose, or at least effect, of harassment, not only of opposing parties, but of the judicial machinery itself." Id. at ¶5. "The courts of this state possess the powers necessary to maintain the orderly disposition of matters brought before them, including the power to levy sanctions and, in appropriate cases, to hold in contempt the parties who appear before them." Id. at ¶15.

The petition filed in case no. 20060814-CA duplicates requests for relief contained in the previous appeals and in the first petition seeking extraordinary relief. In addition, the second petition contains statements that are patently offensive

and disrespectful of the district court. We place Petitioner on notice that he will not be afforded leniency based upon his pro se status in the application of the procedural rules. Specifically, pleadings containing inappropriate content or duplicating claims in prior or pending proceedings, or pleadings that appear calculated to harass any party, their counsel, or the court, will be stricken and will result in imposition of other sanctions, as allowed under rules 40 and 33 of the Utah Rules of Appellate Procedure. Utah R. App. P. 33; 40.

We deny both petitions seeking extraordinary relief in case nos. 20060754-CA and 20060814-CA.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge