



Court: Shawnee County District Court
Case Number: 2020-CV-000081
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Brett Wheeler #46584
Type: Memorandum Decision and Order

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE**

STATE OF KANSAS ex rel. DEREK SCHMIDT,
ATTORNEY GENERAL,

Plaintiff

2020-CV-81

BRETT WHEELER,

Defendant

MEMORANDUM DECISION AND ORDER

This matter is before the Court on Plaintiff’s petition for injunctive relief and motion for filing restrictions and Defendant Brett Wheeler’s motion for summary judgment. These matters were fully briefed and argued to the Court during a telephone hearing. The Court is ready to rule.

Plaintiff is the State of Kansas on relation of Attorney General Derek Schmidt. Defendant is an inmate currently incarcerated at the Lansing Correctional Facility (“LCF”). This is an action under K.S.A. 60-901 seeking a permanent injunction placing certain restrictions on Wheeler’s court filings. Wheeler has filed numerous lawsuits over a span of 30 years, including habeas petitions related to his underlying criminal convictions, sentences, and conditions of confinement, as well as civil suits against various private individuals, public officials and public entities.

Factual background.

The facts here are set forth in Plaintiff’s petition and confirmed by reference to the Court’s own files as well as information drawn from opinions of the Kansas appellate courts.

This Court may take judicial notice of its own records. *Wentland v. Uhlarik*, 37 Kan. App. 2d 734, 739, 159 P.3d 1035 (2007). It may also take judicial notice of facts capable of immediate and accurate confirmation by easily accessible sources of indisputable accuracy. See K.S.A. 60-409(b).

In 1987, Wheeler was convicted of two counts of rape and two counts of aggravated sodomy in Shawnee County and sentenced to four terms of ten years to life imprisonment to run concurrently. See court file in *State v. Wheeler*, Shawnee County case no. 1986 CR 2627. “Over the next 18 years, Wheeler was released on parole, returned to prison for violating the conditions of his parole, and again released on parole. During some periods of parole, Wheeler committed additional crimes.” *Wheeler v. State*, 2020 WL 1646810, *1 (Kan. App. 2020) (unpublished).

Wheeler has filed numerous cases over the years, particularly in Shawnee County District Court. Beginning in the 1990s, Wheeler filed multiple motions attacking his underlying criminal sentence under K.S.A. 60-1507. These include cases filed in Shawnee County case nos. 1986 CR 2627 (motion to correct illegal sentence under K.S.A. 22-3504 construed as a 1507 motion and denied as untimely); 1994 CV 612 (1507 motion denied); 1994 CV 1127 (1507 motion denied); 1997 CV 401 (1507 motion denied); 2004 CV 901 (1507 motion dismissed); 2004 CV 1777 (1507 motion dismissed); 2009 CV 18 (mandamus dismissed as successive 1507 motion); and 2017 CV 71 (1507 motion denied). Wheeler’s appeals of these matters were similarly unsuccessful. See *Wheeler v. State*, 2020 WL 34552, *1-2 (Kan. App. 2020) (unpublished). He recently filed yet another K.S.A. 60-1507 motion in case no. 2020 CV 121. It was recently dismissed as successive, and Wheeler appealed. The appeal is pending.

Between 2008 and 2019, Wheeler filed numerous motions attacking the conditions of his confinement under K.S.A. 60-1501. These include cases filed in counties other than Shawnee

where Wheeler was incarcerated at various times, including Reno (case nos. 2008 CV 111, 2008 CV 134, 2008 CV 251, 2008 CV 259, 2012 CV 121, and 2013 CV 417); Leavenworth (case nos. 2016 CV 42, 2018 CV 340, and 19 CV 16); Ellsworth (2018 CV 30 and 2018 CV 33); and Wyandotte (2018 CV 950). Most of these cases were dismissed or denied by the court for various reasons; the rest were dismissed at Wheeler's request.

In 2018, Wheeler filed several meritless civil cases in Shawnee County District Court. In case no. 2018 CV 470, he sought an injunction against the Secretary of Revenue and Director of Motor Vehicles regarding a driver's license issue. The case was dismissed. Wheeler appealed but ultimately dismissed his appeal. In case no. 2018 CV 483, he sued the same parties under the Kansas Tort Claims Act ("KTCA") based on the same set of facts. The case was dismissed, Wheeler appealed, and then he dismissed his appeal.

In case no. 2018 CV 570, Wheeler sued the Secretary of Corrections under the KTCA claiming \$5.5 million in damages stemming from the comments of a parole officer. The case was dismissed for failure to state a claim, failure to exhaust administrative remedies, and for naming a defendant who did not have capacity to be sued. Wheeler appealed, the case was remanded to the district court for additional rulings, and it was dismissed again. Wheeler appealed and later dismissed his appeal.

In case no. 2018 CV 571, Wheeler sued the Secretary of Corrections under the KTCA claiming \$5.5 million in damages based on a complaint about the interplay between his criminal sentences in Shawnee and Wyandotte Counties. The case was dismissed for failure to state a claim, among other reasons. Wheeler appealed, and his appeal was dismissed.

In case no. 2018 CV 572, Wheeler sought a remedy in mandamus against the Secretary of Corrections based again on a complaint about the interplay between his criminal cases in

Shawnee and Wyandotte Counties and its effect on the computation of his overall sentence. As part of the litigation he filed several letters to the clerk and the court administrator demanding action and copies of documents in other cases he had filed. He also filed a motion for summary judgment. The district court denied his motion for summary judgment and dismissed the case on various bases, including that the defendant lacked capacity to be sued, Wheeler failed to exhaust administrative remedies, and mandamus was not an appropriate remedy.

In case no. 2018 CV 573, Wheeler sued the Secretary of Corrections under the KTCA claiming \$5.5 million in damages based on complaints about prison mail and copying rules. The case was dismissed for failure to state a claim, failure to exhaust administrative remedies, and for naming a defendant who did not have capacity to be sued. Wheeler appealed, and the matter was remanded to the district court for additional rulings. Wheeler dismissed the appeal before any additional rulings were made.

In case no. 2018 CV 686, Wheeler sued the Secretary of Corrections under the KTCA claiming \$10,000.00 in damages based on complaints about corrections staff taking or misplacing his personal legal documents. He filed a motion for summary judgment and numerous letters to the clerk demanding action and copies of documents in other cases he had filed. The district court denied his motion for summary judgment and dismissed the case on various bases, including that the defendant lacked capacity to be sued, Wheeler failed to exhaust administrative remedies, and he failed to state a claim. Wheeler appealed, then dismissed his appeal.

In case no 2018 CV 721, Wheeler sued the Department of Corrections under the KTCA seeking \$5.5 million based on complaints that a parole officer prohibited Wheeler from living with his alleged common law wife in a certain person's home during a period of post release

supervision. He filed several requests for issuance of business records subpoenas; these were denied by the district court. Wheeler dismissed his case.

In 2018 and 2019, Wheeler filed tort claims in other state district courts against other government entities and actors. In Ellsworth County case no. 2018 CV 38, Wheeler made claims under the KTCA against the Johnson County District Attorney and the Johnson County District Court Administrator based on claims that he was denied a hearing on his petition for expungement. The case was dismissed for failure to state a claim. In Jefferson County case no. 2019 CV 59, he sought \$5.5 million in damages from the Jefferson County District Court based on a records request he made regarding his former girlfriend, Lindsay Slater. In Johnson County case no. 2019 CV 5190, he sought \$5.5 million in damages against the State of Kansas under the KTCA based again on a complaint about a lack of hearing on his petition for expungement. He filed a second case in Johnson County against the Board of County Commissioners based on the same facts, case no. 2019 CV 3759, and the two were consolidated.

During the same time frame, Wheeler filed multiple civil suits in Shawnee County against his elderly mother, Mildred Wheeler (2018 CV 605, 2018 CV 610, and 2018 CV 615), and Slater (2018 CV 957, 2019 CV 288 and 2019 CV 434). In each of these cases, Wheeler submitted multiple letters to the clerk and/or the court administrator, most of them requesting copies of documents in various cases and some of them demanding action on the part of the courts to decide his claims.

In case no. 2018 CV 605, Wheeler sought \$10 million in damages against his mother and his cousin based on allegations that they falsely reported that Wheeler stole money from his mother and used her credit cards without permission. The allegations were substantiated by a state agency. The district court dismissed Wheeler's suit for failure to state a claim. During the

course of the litigation, Wheeler requested issuance of multiple business records subpoenas and wrote several letters to the clerks and the court administrator. This continued after the case was dismissed.

In case no. 2018 CV 610, Wheeler sued his mother for return of personal property she kept in her possession while he was in prison. He also sought \$70,000.00 in damages. The suit was dismissed for failure to state a claim. Wheeler submitted numerous letters to the clerk and court administrator during the pendency of the litigation, and this continued after the case was dismissed.

In case no. 2018 CV 615, Wheeler sued for declaratory judgment granting him a half interest in his mother's home based on alleged promises made by Wheeler's father who had since died. Wheeler filed a motion for default judgment and a motion for summary judgment. The district court ultimately held a hearing and reviewed with Wheeler the deed to the property indicating that Wheeler's mother and father had owned the home as joint tenants with right of survivorship. Wheeler thereafter dismissed his claim.

Two of Wheeler's cases against ex-girlfriend Slater focused on his claims for return of personal property held by Slater and others and damages for its alleged disposal. One of the cases, 2018 CV 957, is still pending. In 2019 CV 288, Wheeler sought damages from Slater based on a claim that she infected him with a sexually transmitted disease. Slater did not answer and default judgment was entered against her, but the district court stayed a damage determination until such time as Wheeler was released from prison.

In many of the cases cited above, Wheeler harassed court staff with statements made in letters filed with the court. For example, in Shawnee County case no. 2017 CV 71, he stated in a letter submitted to the court: "Clerks of the court don't return file-stamped copies unless their

boss gets on their ass.” In another letter submitted in case no. 2018 CV 572 he asked: “Can you please inform your Clerks to stop trying to be lawyers and just do their jobs? Please?” In a letter to the court administrator filed in case no. 2018 CV 483 he said: “[C]an you please explain to my [sic] why Judge Wilson is procrastinating in appointing me legal counsel for Case No. 17-CV-71? It has been 5 months now and I have been continually asking. Do I need to file a complaint against her or can you get her to do her job?”

These types of comments are scattered throughout his myriad court filings. In Shawnee County case no. 2018 CV 470, he submitted approximately 38 letters to the clerk and the court administrator, many of which requested action desired in other cases. In case no. 2018 CV 605, he requested issuance of dozens of business records subpoenas. Wheeler filed similar letters and requests in many of his cases, along with frequent motions for summary judgment.

Procedural history.

Plaintiff filed the instant petition on January 28, 2020, and the motion for filing restrictions the next day. These were personally served on Wheeler on January 29, 2020. This Court granted Wheeler’s request for an extension of time to plead to March 5, 2020. The Court granted a second request for extension to April 4, 2020. On March 5, 2020, Wheeler filed a motion for summary judgment. On March 19, 2020, Plaintiff filed a response. The Court was closed for approximately three months due to the COVID-19 pandemic. When the Court reopened, the matter was set for hearing on August 4, 2020. Wheeler was unable to call in from LCF on that day, and attempts to reach him were unsuccessful, so the hearing was rescheduled to August 25, 2020. On August 6, 2020, the Court approved a temporary restraining order imposing certain filing restrictions pending a decision on the petition. On the same day, the Court filed an order of exemption from suspension of statutory time standards, stating that if Wheeler wished to

file any additional pleading he must do so by August 20, 2020. On August 20, 2020, Wheeler filed an answer and request for continuance of the hearing so that he could subpoena witnesses to testify on his behalf. At the hearing on August 25, 2020, Plaintiff objected to the request for continuance, and the Court denied it.

Legal analysis.

Plaintiff seeks a permanent injunction imposing certain filing restrictions on Wheeler's suits in the state district courts of Kansas. An injunction is "an order to do or refrain from doing a particular act." K.S.A. 60-901. "The granting of an injunction is equitable in nature and involves the exercise of judicial discretion." *Friess v. Quest Cherokee, L.L.C.*, 42 Kan. App. 2d 60, 63, 209 P.3d 722 (2009). "To obtain injunctive relief, the movant must show: (1) there is a reasonable probability of irreparable future injury to the movant; (2) an action at law will not provide an adequate remedy; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) the injunction, if issued, would not be adverse to the public interest." *Bd. of Cty. Com'rs of Reno Cty. v. Asset Mgmt. & Mktg. L.L.C.*, 28 Kan. App. 2d 501, 506, 18 P.3d 286 (2001).

Plaintiff asserts that the State of Kansas has been irreparably injured by Wheeler's pattern and practice of filing repetitive and frivolous lawsuits. Plaintiff points out that these lawsuits drain the resources of the state in the time and money spent by state officials defending these actions and by the judiciary in processing and deciding them. Plaintiff argues that an action at law will not provide a remedy because Wheeler is incarcerated and has no financial resources to pay a money judgment or sanctions entered against him for his continual pursuit of frivolous claims. Plaintiff argues that the threatened injury of future meritless lawsuits filed by Wheeler outweighs any damage that reasonable filing restrictions would cause to Wheeler because the

restrictions sought would not deny him meaningful access to the courts. Finally, Plaintiff asserts that reasonable filing restrictions placed upon Wheeler would not be adverse to the public interest because they would alleviate the strain on state resources and protect future individuals and entities from the harassment of responding to frivolous lawsuits.

Wheeler provided no significant response to these arguments either in his written submissions or during his hearing on the request for injunction and filing restrictions. Wheeler said during his hearing that he is “about done with district court.” He said he has prevailed in more than just the few cases pointed out by Plaintiff. He also said that he does not believe the defendants in his district court cases felt harassed by his lawsuits, including his elderly mother.

Further, Wheeler filed a motion for summary judgment arguing that Plaintiff’s request for injunction and filing restrictions is barred by collateral estoppel because a request for filing restriction in an earlier case was denied. He points to Shawnee County case no. 2018 CV 570, one of Wheeler’s KTCA claims against the Secretary of Corrections. There, the Secretary of Corrections filed a motion to dismiss. Wheeler filed various motions. The district court dismissed the case. Wheeler appealed. The case was remanded for the district court to rule on Wheeler’s motions. The district court denied Wheeler’s motions. Wheeler dismissed his appeal.

Two months later, in the same case, the State of Kansas filed a motion to impose filing restrictions on Wheeler. The district court denied the motion because the case was closed and there was nothing pending. The district court suggested that “the statewide scope of relief sought . . . may require a separate filing of an action.”

“Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”

Robbins v. City of Wichita, 285 Kan. 455, 460, 172 P.3d 1187 (2007). Wheeler raises an argument based on the undisputed fact of the district court’s holding in case no. 2018 CV 570. Thus, the only question is whether he is entitled to judgment as a matter of law.

“[T]he doctrine of collateral estoppel prevents a second litigation of the same issues between the same parties or their privies even in connection with a different claim or cause of action.” *In re City of Wichita*, 277 Kan. 487, 506, 86 P.3d 513 (2004). The bar of collateral estoppel applies only if the person seeking to apply it can establish the following elements: “(1) a prior judgment on the merits which determined the rights and liabilities of the parties on the issue based upon ultimate facts as disclosed by the pleadings and judgment, (2) the parties must be the same or in privity, and (3) the issue litigated must have been determined and necessary to support the judgment.” *Id.*

Collateral estoppel does not apply here. In case no. 2018 CV 570, there was no judgment on the merits of the request for filing restrictions. The request was made after the case was closed and the district court declined to consider its merits. For this reason, Wheeler’s motion for summary judgment is denied.

The Court will grant the injunction and impose filing restrictions.

“Included in a court's inherent power is the ability to control its docket,” encompassing the power “to impose reasonable filing restrictions to curb abusive filing practices” that “place a strain on the judicial system.” *Holt v. State*, 290 Kan. 491, 498-500, 232 P.3d 848 (2010). The restrictions must be reasonable, and the person subject to them is entitled to notice and an opportunity to be heard on the proposed restrictions. The person need not be physically present to state his or her objections. *Id.* at 501. See also *State ex rel. Stovall v. Lynn*, 26 Kan.App.2d 79, 975 P.2d 813 (1999) (reasonable filing restrictions approved).

This Court agrees with the arguments made by Plaintiff in his petition for injunction and motion for filing restrictions. The numerous lawsuits filed by Wheeler are repetitious, frivolous, meritless, and abusive. He has squandered the limited resources of the court and other state agencies with his filings. He has subjected government employees and private persons targeted by his lawsuits to aggravating and abusive allegations. The Court concludes that Plaintiff has carried his burden to prove entitlement to a permanent injunction imposing reasonable filing restrictions on Wheeler.

The Court imposes the following filing restrictions as requested by Plaintiff. Restrictions very similar to these have been previously approved by the appellate court in *Muathe v. Loy*, 2017 WL 3112920 (Kan. App. 2017) (unpublished).

1. With the sole exception of a Notice of Appeal in this matter, Wheeler is enjoined and may not, proceeding pro se, file any pleading in this case, any existing cases, or any new cases, in any district court of the State of Kansas without express authorization of this Court or another judge of a district court designated to review such filings. New suits by Wheeler which are signed and brought by a lawyer licensed to practice in this state or admitted pro hac vice are not subject to this restriction.
2. Should Wheeler, proceeding pro se, seek to file further pleadings in this case other than a Notice of Appeal, or further pleadings in another existing case, Wheeler shall submit the pleadings to this Court for review, or another judge of a district court designated to review such filings, and the clerk shall not file the pleadings unless and until the appropriate district court reviews them and certifies that they are not frivolous and repetitive. Should further pleadings be inadvertently filed in this case or in another

existing case without the appropriate district court's review, opposing counsel or party shall not respond to them except upon order of the Court.

3. Should Wheeler, proceeding pro se, seek to file any new case in any district court in this state, Wheeler must file an application for leave to file a petition. The application shall be delivered to the chief judge of the judicial district where the suit is filed, or the chief judge's designee, and shall include:
 - a. a copy of this order and any subsequent orders related to filing restrictions;
 - b. a copy of the proposed petition;
 - c. a notarized affidavit certifying that the claims have not been previously asserted, the claims are not frivolous or made in bad faith, and the claims comply with all civil and appellate procedures and rules; and
 - d. a current list of all lawsuits currently pending or previously filed with any district court in this state, including a statement of the parties, claims, and disposition of same if possible.

The chief judge, or the chief judge's designee, will then determine if the petition or pleading is lacking in merit, is duplicative, or is frivolous. If not, and if the petition or pleading is otherwise found to comply with the above requirements in subsections (a)-(d), Wheeler will be granted leave to file it. A failure to comply with the rules and orders of the Court may subject Wheeler to sanctions and/or punishment for contempt. Further, no party shall be required to respond to anything filed by Wheeler that has not been approved by a court of competent jurisdiction or filed by a Kansas-licensed attorney on Wheeler's behalf.

4. The filing restrictions are effective as of the date and time shown on the electronic file stamp of this order. All pro se filings and cases submitted by Wheeler in the district courts of Kansas after this date are subject to court screening.
5. The clerk of the Shawnee County District Court is directed to serve a copy of this order on the chief judge of each of the judicial districts in Kansas.

CONCLUSION

For the reasons set forth above, Plaintiff's petition and motion for filing restrictions are granted. Wheeler's motion for summary judgment is denied.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically and deposited in the U.S. Mail, on the date stamped on the order, providing notice to the following:

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