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IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE ESTATE OF EDWARD M.
BOLAND, Deceased,

PAUL BOLAND AND MARY GETTEL,
Co-Personal Representatives of the Estate
of Dixie L. Boland,

Petitioners and Appellants,

v.

CHRIS BOLAND, BARRY BOLAND,
ED BOLAND CONSTRUCTION, INC.,
& NORTH PARK INVESTMENTS, LLC.

Respondents and Appellees.

DA 18-0370

**APPELLEES' MOTION TO
DISMISS APPEAL AND
FOR ATTORNEYS'
FEES AND COSTS**

Appellees Chris Boland, Barry Boland, Ed Boland Construction, Inc., and North Park Investments, LLC, by and through their counsel of record, Faure Holden Attorneys at Law, P.C., respectfully submit this Motion to Dismiss Appeal and for Attorneys' Fees and Costs.

Pursuant to Mont. R. App. P. 16(1), opposing counsel was contacted by both email and phone, but was out of the office and did not respond to the email. It is

assumed that Paul Boland and Mary Gettel object to this motion.

FACTS

This probate is one of 5 pending cases involving the Boland siblings.¹ In this case, Appellants Mary Gettel and Paul Boland, as Co-Personal Representatives of the Estate of Dixie Boland, say they seek to recover assets from Ed Boland Construction, Inc. and North Park Investments, LLC that they assert are owed to the Estate of Edward M. Boland. The District Court denied their Petition to Recover Assets on March 13, 2018. Exhibit A.

Appellants filed a Motion to Set Aside on March 30, 2018, which contained allegations of bias and prejudice against Judge Pinski. Although Paul Boland “fully understands that decisions of the Court cannot be the basis of a determination of bias or prejudice. Nevertheless, the 3 huge mistakes made by the Judge in this case seem so obviously in error that further inquiry may be necessary.” Exhibit B, p. 8. Paul Boland then alleges:

Paul is aware that Chris Boland or his corporation has made a significant contribution to Judge Pinski's campaign fund during his election bid. In addition, Paul has seen the Judge Pinski at The Peak, a gymnasium which Chris Boland and his previous attorney, Gary Bjelland, often go to exercise. Paul is not aware of any improper communication regarding this case nor any other indication of impartiality apart from the decisions of the Court, but if there is any

¹ The other 4 are: The Estate of Dixie Boland (DP-16-0017, Thirteenth Judicial District Court, Yellowstone County); The Estate of Dixie Boland v. Chris Boland (DV-15-1560, Thirteenth Judicial District Court, Yellowstone County); The Estate of Edward M. Boland v. Classic Design (DV-14-852, Thirteenth Judicial District Court, Yellowstone County); and The Estate of Edward M. Boland v. Ed Boland Construction, Inc., Chris Boland, Barry Boland, and North Park Investments, LLC (BDV-17-0795, Eighth Judicial District Court, Cascade County, containing allegations identical to those in the Petition to Recover Assets and consolidated with this probate under ADP-15-0125).

such matters it would be appropriate for Judge Pinski to disclose those facts so that a reasonable determination of impartiality can be made. Exhibit B, p.8.

Two hearings have been held, and another is scheduled for September 6, 2018. Exhibits C, D, and E. Sanctions have been imposed against Mr. Towe and Paul Boland. Exhibits D and E. This appeal was filed after sanctions were issued, but before the final hearing to determine the appropriate sanctions.

ARGUMENT

I. The District Court stayed all motions pending a decision on sanctions.

First, ruling on Appellant's Motion to Set Aside, along with numerous other motions, was specifically held in abeyance by the District Court due to the accusations of bias and prejudice against Judge Pinski. *See* Exhibit C, 5:1-3; Exhibit B. The District Court resolved those issues and will be imposing sanctions upon Mr. Towe and Paul Boland. Exhibits D and E. The District Court will then rule upon all pending motions. The Motion to Set Aside was not deemed denied.

Second, the Motion to Set Aside is not a Rule 50(b), 52(b), 59, or 60(b) motion. Rules 50 and 52 do not apply. It cannot be a Rule 59 or 60 motion because no final judgment or order was issued. It is nothing more than a non-existent motion for reconsideration of no effect. *Nelson v. Driscoll*, 285 Mont. 355, 359, 948 P.2d 256, ____ (Mont. 1997) (motions for reconsideration are "not provided for in the rules of civil or appellate procedure[.]"); *ABC Collectors, Inc. v. Birnel*, 2006 MT

148, ¶¶ 14, 18, 332 Mont. 410, 138 P.3d 802, (Mont. 2006)(“The motion was precisely what it purported to be - a motion for reconsideration not authorized by Montana civil procedure rules. It merely regurgitated arguments the District Court had already considered and rejected.” (internal citations omitted)).

Third, there were two hearings held in this matter. Exhibits C and D. Appellees believe this appeal was filed in an attempt to circumvent the District Court’s jurisdiction and avoid the imposition of sanctions. Such a tactic is improper. *See CNA Ins. Cos. v. Dunn*, 273 Mont. 295, 301-302, 902 P.2d 1014, 1018 (1995).

II. There is no final order or judgment from which to appeal.

A party may only appeal from a final judgment, or as applicable in this case, from a “deemed denied” motion. Mont. R. App. P. 6(1). As discussed above, the Motion to Set Aside was not deemed denied, nor could it be.

The Court’s Order is not a final judgment because it does not conclusively determine the rights of the parties, nor does it settle all claims in controversy in this action. Mont. R. App. P. 4(1)(a) and 6(5)(a). There are still at least 6 motions pending: Chris Boland’s Motion to Remove Co-Personal Representative Paul E. Boland; Chris Boland’s Motion for Protective Order; Paul Boland’s Petition to Remove Chris Boland as Co-Personal Representative; Chris Boland’s Motion to Stay; Paul Boland’s Motion for an Order Compelling Discovery; and Paul Boland’s

Motion for Reimbursement. There has been no final judgment.

Even if the March 13, 2018 Order constituted a final judgment, the District Court has not determined the amount of costs, attorneys' fees, and sanctions, so no appeal is timely. Mont. R. App. P. 4(1)(a). The Court's Order is not appealable because it adjudicated fewer than all claims as to all parties. Mont. R. App. P. 6(5)(a).

III. Appellees should be awarded their attorneys' fees and costs.

Mont. R. App. P. 19(5) allows sanctions for filing an appeal "for purposes of harassment or delay, or taken without substantial or reasonable grounds." "When an appeal is entirely unfounded and causes delay, the respondent is entitled to reasonable costs and attorneys' fees." *Federated Mutual Ins. Co. v. Anderson*, 277 Mont. 134, 145 920 P.2d 97, 104 (1996).

As Judge Pinski observed, "Paul Boland and Mr. Towe have disrupted and vexatiously multiplied these proceedings, mocked this Court's integrity, and turned this into case [sic] into a three-ring circus ... Mr. Towe should be ashamed of his misconduct." Exhibit E, p. 8. This appeal appears to be more of the same, and it appears to be an outright effort to get rid of a judge who ruled against them and held them accountable for the entirely unfounded accusations they levied.

Appellees respectfully request the Court award reasonable attorneys' fees and costs against Appellants in responding to this baseless appeal. *Snow v. Snow*, 2002

MT 143, ¶ 32, 310 Mont. 260, 49 P.3d 610.

CONCLUSION

Appellees requests the Court dismiss this appeal and award them their reasonable attorneys' fees and costs and any other sanction this Court deems appropriate.

DATED this 10th day of August, 2018.

Faure Holden Attorneys at Law, PC

/s/ Katie R. Ranta

Katie R. Ranta

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman typeface of 14 points; is double spaced except for footnotes and quoted and indented material; and the word count does not exceed 1,250 words, i.e., is 1,190 words.

Dated this 10th day of August, 2018.

Faure Holden Attorneys at Law, P.C.

/s/ Katie R. Ranta

Katie R. Ranta

CERTIFICATE OF SERVICE

I, Katie Rose Ranta, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed - Dismiss - Appellee's Motion to Dismiss to the following on 08-10-2018:

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Electronically Signed By: Katie Rose Ranta
Dated: 08-10-2018