

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0601

ROBERT B. TASSIN

VERSUS

RICHARD L. STALDER, ET AL

Judgment Rendered: OCT 17 2007

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 456,835, Division "27-B"

Honorable Donald R. Johnson, Judge Presiding

Robert B. Tassin
Angola, LA

Plaintiff/Appellant
In Proper Person

Stacey Johnson
Assistant Attorney General
Baton Rouge, LA

Counsel for Defendants/Appellees
Richard Stalder, et al

Cyrus J. Greco
William H.L. Kaufman
Baton Rouge, LA

Counsel for Defendant/Appellee
Doug Welborn, Clerk of Court

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

HUGHES, J.

This is an inmate's appeal of a decision of the 19th Judicial District Court denying his "Motion to Vacate or Reduce Court Cost." For the following reasons, the judgment of the district court is reversed in part, affirmed in part, and remanded to the district court with instructions.

FACTS AND PROCEDURAL HISTORY

Appellant Robert B. Tassin is appealing an August 24, 2005 judgment of the 19th Judicial District Court denying his "Motion to Vacate or Reduce Court Cost" that were assessed to him in a June 16, 1999 judgment. The 1999 judgment resulted from a complaint filed by Tassin in the 19th Judicial District Court in which he alleged that funds had been illegally seized from his inmate account. On June 16, 1999 judgment was rendered dismissing Tassin's suit with prejudice at his cost. Although Tassin filed for appeal, that appeal was ultimately dismissed based upon his failure to timely file a brief. In October of 2003 Tassin filed an ex parte motion requesting the court to vacate or reduce the court costs assessed against him in the 1999 suit. Specifically Tassin alleges that, in the 1999 suit, he was over-charged in six instances. On November 4, 2003 the motion was denied by handwritten notation on the bottom of the motion. No notice was sent to Tassin of the denial. Subsequently, Tassin inquired as to the status of the motion and was advised by Commissioner Smart to re-file the motion to vacate or reduce court costs and request a contradictory hearing. According to Tassin, he did as the Commissioner suggested. Tassin avers he later filed an "Application for Writ of Mandamus" with the Supreme Court of Louisiana.

On May 9, 2005, a video hearing was held on Tassin's motion to vacate or reduce court costs. Tassin was present at the hearing. Based on the evidence, the Commissioner recommended that Tassin's motion be

denied with prejudice and at his cost. The district court adopted the commissioner's recommendation in an August 24, 2005 judgment that denied Tassin's motion, with prejudice, at his cost.

From the August 24, 2005 judgment, Tassin appeals and urges the following assignments of error:

- 1) The district court erred in failing to acknowledge the Clerk of Court's breach of duty to notify petitioner of the November 4, 2003 judgment.
- 2) The district court erred in holding a hearing where jurisdiction was not vested because no pleading was pending in the 19th Judicial District Court.
- 3) The district court erred in failing to apply the law to the evidence:
A deprivation of property without due process of law.

LAW AND ARGUMENT

In his first assignment of error, Tassin alleges the district court erred in failing to acknowledge that the Clerk of Court breached its duty to notify him of the November denial of the "ex parte" motion. As more fully explained below, the lack of notice to Tassin of the November denial caused no harm to him. The inmate received a contradictory hearing on the merits of his motion. As such, we find that this assignment of error is without merit.

Tassin next alleges that the trial court erred in holding the contradictory hearing on his motion to vacate or reduce. Tassin admits that he requested that the motion be re-filed and set for contradictory hearing in a letter of January 25, 2004. Furthermore, Tassin was present at the hearing on the motion and was given the opportunity to argue the merits of his case. This assignment of error is likewise without merit.

In his final assignment of error, Tassin alleges he was deprived of property without due process of law. In this argument, Tassin presents the original six instances of “over-” or “improper-” charges. Additionally, Tassin argues that he was wrongfully charged twice for the filing of the “ex parte” motion.

Regarding the six alleged “over-charges,” we affirm the recommendation of the Commissioner and the trial court as we find no error in the fees assessed. We find that the charges to which Tassin objects have been adequately explained by the office of the clerk and are authorized by law. As to the double charges, we do find that it was unnecessary to require Tassin to “re-file” the motion in order to procure the hearing.¹ Pursuant to the provisions of LSA-C.C.P. art. 963, the motion should have been served on all parties and set for contradictory hearing if Tassin was not “clearly entitled” to the relief he sought. There is no requirement that Tassin “re-file” an identical motion in order to obtain a hearing. We find that it is error to assess Tassin with the costs of filing the same motion twice.² A review of the record indicates that on October 31, 2003 Tassin was charged \$60.00 for a “motion without order” and was again charged \$58.60 for a “motion” on November 7, 2003. Neither the affidavit of the Clerk of Court that was filed to explain all other alleged over-charges, nor the recommendation of the commissioner, addresses this specific allegation. A complete review of the record reveals that Tassin did not file any other motion subsequent to the ex

¹ LSA-C.C.P. art. 963 states:

If the order applied for by written motion is one to which mover is clearly entitled without supporting proof, the court may grant the order ex parte and without hearing the adverse party.

If the order applied for by written motion is one to which the mover is not clearly entitled, or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party.

The rule to show cause is a contradictory motion.

² The motion is the same, however, the “second” charge is for the filing of the motion without the “ex parte” instruction.

parte motion to vacate costs. We find Tassin's argument that he was "double-charged" in this instance to have merit.

CONCLUSION

The decision of the trial court is affirmed in part, reversed in part, and remanded to the district court with instructions to order the Clerk of Court to credit Mr. Tassin's expense sheet as requested in the amount of \$58.60. Each party shall bear their own costs for this appeal.

AFFIRMED IN PART; REVERSED IN PART; REMANDED WITH INSTRUCTIONS