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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case No. 16AP1149

NOV 28 2016
CLERK OF COURT OF APPEALS
OF WISCONSIN

PAUL A. ADAMS,
Petitioner-Appellant,

V.

State of Wisconsin,
Respondent.

APPEAL FROM THE WAUKESHA COUNTY CIRCUIT COURT
, CASE NO.S 04CM, 07CT2518, 08TR9102, 13TR5557
THE HONORABLE RALPH M. RAMIREZ PRESIDING.

BRIEF OF PAUL A. ADAMS

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November 2016

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ISSUES PRESENTED FOR REVIEW

1. By failing to provide Adams notice and ANY of the records used (to Adams) to make the decision owed money(s) in these cases, was Adams procedural due process rights to a fundamentally fair hearing violated.

The court did not answer the question.

2. Were Adams Constitutional rights violated when the court(s) failed to make any cost determination of Adams ability to pay any fines if in fact he owed any money(s).
3. Is the Dec 11,2015 collection decision void for the above reasons and further it is inaccurate.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument in this case is necessary due to the fact that Adams has numbers of cognitive issues and mental disabilities that make it impossible for him to present the issues in any meaningful way in written form. The fact that the collections decision is inaccurate in (so far as Adams can tell) the amount of 2674.0 \$, out of a total of 6585.24 \$ make it more then likely Adams appeal has merit. Adams believes that publication is also necessary because there is no controlling case's on a defendants right to a hearing in Municipal court, an appearance, when he is incarcerated in a county jail on criminal charges, and the Municipal court will not produce the defendant even though he notified the court of his

incarceration in the county jail

STATEMENT OF THE CASE

On or about December 11, 2015 Adams received a "Inamte trust account statement" that simply had written on it; Obligations have been added. An amount of 6,585.24 \$ was added. At no time was Adams provided notice by anybody that a collections decision had been held. At no time was Adams provided with any of the records that were used to make a determination Adams owed any money(s).

On April 1, 2016 Adams filed a motion in the circuit court for a "injunctive relief and cost determination. On May 25, 2016 a hearing was held in the circuit court before Judge Ramirez wherein the court refused to address the cost determination issue raised by Adams in his motion by ending the call/hearing; stating : THE COURT: Were finished here, sir. Thank you. Good luck to you, Mr. Adams.

On May 25, 2016 during the circuit court hearing, Adams advised the court that he was never provided any notice, or any of the records/evidence used to make decisions that he owed moneys. That Adams procedural due process rights were violated and any hearings held in Adams absence were not fundamentally fair.

Further, Adams proved to the court that any collections decisions were factually inaccurate rendering the whole collections order void. The May 4, 2004 plea and sentencing hearing transcript (Doc.No. 44) prove that in case 04CM940 there is a 2674.0 \$ error in the collection hearing and order.

Moreover, Adams was never present during a cost determination hearing and his ability to pay. As Adams stated, he has no records in this case, but believes these records could be from Municipal orders, rendered while he was in the county jail on related charges. Adams did notify the Municipal court of his incarceration in the county jail.

Adams does not know if in fact these alleged moneys he is contesting he owes are from Municipal decisions or not. He is guessing due to the numbers of times he was in the county jail for felony charges, and received notice from the Municipal court that he had hearings for citations related to the felony charges.

What Adams does know is that every time he was in the county jail and received said notices from the Municipal court to appear, he motioned the Municipal court notifying then he was in county jail, was unable to appear, and wished to appear.

THE BOTTOM LINE IS ADAMS HAS NO RECORDS OF ANY OF THE INFORMATION/EVIDENCE used to make the determination that he owe's money, and that he was never produced to hold a cost determination based on his ability to pay.

AT no time did or does Adams have the ability to pay any money(s) without causing an undue burden on him.

FURTHERMORE

Adams was charged with civil violations in conjunction with the felony criminal charges, and ,as part of a sentencing(s) agreements most of those civil add-on's/charges were dismissed by the circuit court. **THERE COULD NEVER HAVE BEEN ANY HEARINGS BASED ON MY ABILITY TO PAY.**

AGAIN Adams has no way to point to the records that may substantiate this claim because he was never served notice and/or with any of the records/evidence used to make the collection's determination.

A collections determination that was sent to COOPER POWER SYSTEMS, AND THEN SOME HOW RESENT TO Fox Lake Corr. Inst., to have them enforce an invalid order for collections by Cooper Power System.

STANDARD OF REVIEW

Some kind of hearing is required some time before a person is finally deprived of his property. *Memphis Light & Gas & Water Division v. Craft*, 436 U.S. 1,14-15 (1978).

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice and a reasonable opportunity to be heard. When notice is a person's due process which is a mere gesture is not due process. *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306(1950).

It is a violation of due process for a judgment to be binding on a litigant who was not a party or privy and therefore has never had an opportunity to be heard. *Teacher Ret. Sys. of Tex v. Badger* XVI Ltd Pishio, 205 Wis 2d 532, 556 N.W.2d 415 (Ct.App 199)

ARGUMENT

Adams is arguing that his fundamental rights to due process and a fundamentally fair hearing(s) were violated, and that there was never any cost determinations done in any of these cases. Adams was never provided with notice and any of the evidence used against him to make these cost determinations by anybody.

Adams also argues that most of these civil fines that may be the issue in the collection's action were dismissed in a sentencing agreement. These possible civil fines, were part of a felony arrest(s). Adams also argues, that if these are civil fines/faultures for his failure to appear in Municipal Court, while he was incarcerated in the Waukesha County jail, that he did in fact move the Municipal court to produce him for any hearings, or at least a phone/video hearing. At all times Adams did not inform the Municipal court that he was incarcerated in the county jail....assuming that that is the nature of these alleged money(s) owed. In any event there were never any cost determinations done based on Adams ability to pay.

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I. Adams was denied procedural due process and a fundamentally fair hearing(s) when he was denied notice and the evidence that was used to make the cost determination.

By way of an Inmate trust Account Statement I first became aware that Judge Maxwell, Waukesha County Circuit court did sign a collections order to withhold 25% of my incoming money(s).

I then wrote the business office and payed for a copy of this collection order. I then noticed that this notice is directed at COOPER POWER SYSTEMS, Waukesha County. This collections order was directed to the PAYROLL MANAGER AT COOPER POWER.

I deny that I owe 6,585.24 \$, and I have not been in hiding that proper notice could not be provided to me as required by law. Somehow, this collection order was shifted to Fox Lake Corr. Inst., to enforce upon me. I never received any notice(s) at any time that judgments had been rendered against me. It is a violation of due process for a judgment to be binding on a litigant who was not a party or privy and therefore has never had an opportunity to be heard. Teacher Ret. Sys. of Texas v. Badger XVI Ltd Piship, 205 Wis 2d 532 (Ct.App 1996).

II. Adams right to a hearing cost determination based on his ability to pay was violated.

At no time was Adams ever notified that a hearing would be held and or was he produced before a court for a cost determination based on his ability to pay these fine(s). A hearing determining a defendant's ability to pay a fine is necessary to avoid an unconstitutional application of the statute State v. Kuechler, 2003 WI App 245, 268 Wis.2d 192. Considering Adams was never provided with any of the documents used to determine the moneys allegedly owed, assuming these costs are from Municipal civil fines, it is a convenient way for a Municipal court to fail to produce a criminal defendant, who notified the Municipal court, that


he wished to appear to contest the civil charges, that he was in the county jail, literally 2 blocks away, that he was not guilty, that it is unconstitutional for a Municipal court to then benefit for failing to produce a defendant with a money judgment for failure to appeal. That is quite the money making system: arrest a person, charge them with criminal violations of the law and at the same time civil violations for the same course of conduct that initiated in the arrest, then lock them up in the local county jail where they are unable to bail out due to poverty, find them in default for failure to appear for these civil hearings in the Municipal court. The County of Waukesha must make millions of dollars this way considering the local jail population is around 800 people, that are the majority arrested for criminal violations, and at the same time charged with civil violations, then held unable to bail out, fined for failure to appear.

III. The December 11, 2015 collections order is fatally defective rendering the order void.

During the May 25, 2016 and attached to Adams motion for injunctive relief and remand for cost determination, Adams did attach the "plea and sentencing transcript for case no. 04CM940, and pointed to the fact Adams was sentenced to pay a fine of 2,674 \$ or in the alternative serve 54 days. Adams did the 54 days 12 years ago. See attached plea and sentencing transcript, case 04CM940 Tr. P. 20 lines 20 -25. That is just one of the cases in this collections issue that is factually inaccurate...that renders all the other cost suspect...and likely factually inaccurate. Evidence of why procedural due process, notice, and a fundamentally fair hearing must be ordered in this case...to give Adams his due and a fair opportunity to view and contest all the evidence, and to have a constitutionally sound hearing based on Adams' ability to pay, if in fact he owes any money(s) Adams so prays.

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November 23, 2016


Paul Adams

cc: atty general

APPENDIX OF EXIBITS