

MASSACHUSETTS Lawyers Weekly

Appeals Court: Probate judge justified in tiring of harpist's act

By: Kris Olson March 18, 2021



After more than three and a half years, an Appeals Court panel has confirmed that a Probate & Family Court judge was justified in dismissing a case brought by an incorrigible litigant after a Facebook video came to light showing her playing the harp the day after experiencing an apparent medical emergency at the courthouse.

"Based on the totality of the plaintiff's behavior, the judge was well warranted in concluding that she had engaged in a 'scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter,'" the court wrote.

The defendant's attorney, Boston's Joseph D. Lipchitz, says that obtaining a rare appellate affirmance of a trial court's dismissal based upon a fraud on the court is particularly satisfying coming as the COVID-19 pandemic brings into starker relief the system-wide cost of such antics.

"The judicial system is the victim, and the parties to the underlying litigation are the victim," the Saul, Ewing, Arnstein & Lehr partner says. "It's a good reminder this kind of behavior cannot be tolerated."

He adds that it is also a reminder of the importance of establishing a factual record of a litigant's behavior, even if it does not succeed at first in getting a case dismissed.

But to the plaintiff's co-counsel, William J. Pudlo of Wilbraham, the Appeals Court's decision perpetuates an unfair misperception of his client as a malingerer that Lipchitz and his colleague, Jeffrey S. Robbins, had fostered prior to his entry into the case.

The Probate Court "bought into a narrative painted by our opponents, and she hasn't been able to get out from under it," he says.

Pudlo says he and co-counsel John McHugh of New York City are evaluating whether to seek further review from the Supreme Judicial Court.

Sheldon "Shelli" Manuel's suit, filed in November 2014, claimed that trustee Daniel B. Ford had breached his fiduciary duty to make disbursements to Manuel from a family trust.

A steady stream of what the Appeals Court described as "dilatatory tactics designed to avoid the proceedings" and disobedience of court orders ensued, which Manuel attributed to health issues.

Manuel was indeed diagnosed with breast cancer in 2015 and underwent surgery later that year. But on Sept. 11, 2015, Manuel described herself as "cancer free" while being interviewed on the Christian Broadcasting Network to promote an event at the Lincoln Memorial in Washington, D.C., for Sing It America, a nonprofit organization focused



on celebrating the national anthem, with which she is heavily involved.

Despite being aware of the interview, Barnstable Probate & Family Court Judge Arthur C. Ryley gave Manuel an extra six weeks to respond to outstanding discovery requests.

"Throughout the litigation, [Ryley] was exceptionally patient, accommodating, and lenient with the plaintiff," the Appeals Court panel wrote in its Rule 23.0 summary decision.

That patience held through the trustee's six attempts to dismiss Manuel's claim by arguing that Manuel was fabricating the severity of her medical condition to try to delay the proceedings and dodge compliance with discovery requests.

In support of one of his motions, the trustee submitted a video recording of Manuel interviewing people at the Republican National Convention in Cleveland during the same time period she claimed to be too ill to sit for a deposition.

Two days before the scheduled trial date on April 25, 2017, Manuel again moved to continue the proceedings, this time on the basis that she had recently retained new counsel. But Ryley denied the motion and awarded the trustee attorneys' fees, finding the motion to have been frivolous.

Two days later, as the trustee and several subpoenaed witnesses were waiting for the trial to begin, a court officer entered the courtroom to inform Ryley that Manuel was experiencing a medical emergency at the courthouse door. While Manuel complained of chest pains, no issues with her blood pressure or heart rate were detected.

Manuel was "very agitated and uncooperative" and refused to go to the hospital until she received confirmation that Ryley would grant her a continuance, according to fire department records.

The trustee again asked for the case to be dismissed, but Ryley decided he first needed to see how legitimate Manuel's medical crisis was. But by the time her attorney reached the hospital, she had already been discharged, which temporarily helped thwart the effort to obtain her medical records.

Pudlo continues to stress that Manuel's medical emergency was very much real, pointing to the three surgeries she had endured after her breast cancer diagnosis.

Shortly thereafter, the trustee's counsel learned that Manuel had posted to Facebook a video of herself playing harp on stage the day after her alleged medical episode. That was the last straw for Ryley.

He dismissed the complaint and then — after confirming his suspicions that the medical emergency had been illegitimate — made that dismissal with prejudice, later tacking on the trustee's attorneys' fees.

Now, the Appeals Court has said that Ryley did not abuse his discretion.

The Appeals Court's decision is the latest victory for Lipchitz and Robbins in a case involving Manuel. Two years ago, they convinced a Barnstable Superior Court jury to award \$100,000 to their client, Orleans attorney Christopher W. Kanaga, for defamation.

Kanaga's claim was based on Manuel's Facebook post commenting on Probate Court proceedings related to the estate of her late husband, which baselessly alleged that Kanaga had attempted to pay off Manuel's lawyers and unnamed judges.

Manuel denied authoring the post, and also denied sending faxes to judges — which falsely accused Kanaga of being a "potential murderer," "running [a] 'brain-washing torture group,'" and chasing her with "his team of thugs" — even though the faxes bore what appeared to be her handwriting.

Whether Kanaga will ever receive his judgment — or Lipchitz his fees — is up in the air. Manuel has filed for bankruptcy protection in Oklahoma, where she now lives, but judgments resulting from torts involving intentional wrongdoing such as defamation are nondischargeable in bankruptcy, Lipchitz notes.

Pudlo says that the Kanaga decision is under appeal, as is a third case emanating from Norfolk Probate & Family Court related to the estate of Manuel's late husband, David, a bestselling author of more than 20 books on history and the Bible.

Pudlo says the cases are all intertwined in a "Gordian knot," which also involves the Community of Jesus, a controversial Orleans-based Christian community from which David Manuel broke away, in the process leaving his former wife and disinheriting his estranged daughter, who remained with the community.

Pudlo says that he has thus far been unable to convince the courts to engage in the daunting task of untying that



knot, but he plans to keep trying.

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