

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Patrick Jensen, [REDACTED] and
[REDACTED]Case Type: Civil-Other
Court File No.: 62-CV-20-5599
Judge: Leonardo Castro

Petitioners/Contestants,

v.

ORDERSteve Simon, in his capacity as
Minnesota Secretary of State, and
Angie Craig, Congressional candidate,

Respondents/Contestees.

The above-entitled matter came before the Honorable Leonardo Castro, Chief Judge of the Second Judicial District, on June 16, 2021, following the May 4, 2021 Order for Submissions issued by this Court. Attorney Susan Shogren Smith and all three above-named contestants made written submissions to the court. No appearances were made by or on behalf of the contestees. The matter was taken under advisement on written submissions without a hearing.

Based upon all the files, records, and proceedings herein, and on all submissions and arguments presented,

IT IS HEREBY ORDERED THAT:

1. [REDACTED] and [REDACTED] are **DISMISSED** from this action.
2. All original court filings in this case shall be sealed and shall not be disclosed without court order. Any request to view or obtain copies of the original pleadings by any party, including any removed individuals named therein, will be subject to prior review and approval by the undersigned or his designee.

3. Court Administration is directed to create and file public versions of the filings in this case with [REDACTED] and [REDACTED] names redacted.

4. Court Administration is directed to remove the [REDACTED] and [REDACTED] from the court record and caption. The caption of this proceeding is hereby **AMENDED** to read: “Patrick Jensen vs. Steven Simon, in his capacity as Minnesota Secretary of State, and Angie Craig, Congressional candidate”.

5. The Judgment originally entered in this case on December 19, 2020, including any costs and disbursements associated with said judgment, is hereby **VACATED** and removed from the court record.

6. Court Administration is hereby directed to reenter judgment with Patrick Jensen listed as the sole judgment debtor in this case. The judgement shall contain all original dates and amounts, including costs and disbursements, as stated in the original judgment and shall be effective as of the original date of entry, December 19, 2020. Pursuant to court records, the judgment shall be satisfied.

7. The attached memorandum is incorporated as though fully set forth herein.

**THERE BEING NO JUST REASON FOR DELAY, LET JUDGEMENT
BE ENTERED FORTH WITH.**

BY THE COURT:



Castro, Leonardo (Judge)
Sep 14 2021 9:27 PM

Leonardo Castro
Chief Judge
Second Judicial District

Dated: September 14, 2021

Judgment
I hereby certify the foregoing orders
Constitutes the Judgment of the Court
Patricia Johnston, Court Operations Associate

MEMORANDUM

Procedural History

On December 1, 2020, attorney Susan Shogren Smith (“Shogren Smith”) filed a notice of election contest pursuant to Minn. Stat. § 209.02 naming Patrick Jensen (“Jensen”), [REDACTED] (“[REDACTED]” and [REDACTED] (“[REDACTED]” as contestants, and United States Congresswoman Angie Craig and Minnesota Secretary of State Steve Simon as contestees. The contestees moved to dismiss the action. To avoid unnecessary cost and delay, the matter was consolidated for hearing with three other election contests filed by Shogren Smith in Ramsey County District Court on the same date all involving common questions of law and fact. *See* Court File Nos. 62-CV-20-5600, 62-CV-20-5601, 62-CV-20-5602.

Following a hearing held on December 18, 2020, the court issued an order dismissing the contest with prejudice. The court entered judgment and, after the contestees applied for taxation of costs and disbursements, money judgments were entered against the contestants in the total amount of \$3,873.72.

Request for Removal in Consolidated Case

On or around March 1, 2021, this Court received a signed letter from a named contestant in one of the other election contests that had been filed by Shogren Smith and heard on December 18, 2020. In the letter, the individual requested to be removed from the case, alleging, in pertinent part, that the individual: (1) had been fraudulently listed as a party on the contest without their knowledge or consent; (2) did not sign a retainer agreement; (3) had never heard of Shogren Smith; and (4) had not been notified in connection with the case or its filings. The court allowed written submissions and set the matter for hearing on March 26, 2021.

All three contestants appeared at the hearing, requested their removal from the case, and confirmed the allegations as applied to them on the record. Based upon the record and testimony taken at the hearing, this Court held that in 62-CV-20-5602 Shogren Smith had filed the election contest without the knowledge or consent of the named parties she purported to represent, and that in doing so and subsequently appearing before the court on their behalf, she had “perpetrated a fraud upon this Court, the originally-named petitioners, the respondents, and the people of the State of Minnesota.” Dist. Court Case No. 62-CV-20-5602, Index No. 92 (“Memorandum”) at 5. As a result, this Court ordered all three originally-named contestants be removed from the case and the court record.

Request for Submissions & Response

On May 4, 2021, this Court issued an order notifying the parties of the situation that occurred in 62-CV-20-5602 based on a reasonable belief that the same circumstances may exist in the other three matters. Shogren Smith was required to serve the Order on each of the named contestants, along with the included form. The named contestants had the option of returning (or not) the form, which served as a formal request for removal. Specifically, in filling out and signing the form, the individual states under penalty of perjury pursuant to Minn. Stat. § 358.116, that (1) they are a named petitioner in the case, (2) that the case was filed and litigated on their behalf without their knowledge or consent, and (3) that they request to be removed as a party and released from any financial liability.

Of the three originally-named contestants in this action, [REDACTED] and [REDACTED] returned completed forms requesting to be removed. The remaining contestant, Patrick Jensen, filed a response requesting to remain named.

Shogren Smith filed a written response with the court on June 16, 2021¹.

Discussion

Minnesota Rule of Civil Procedure 60.02 vests courts with the authority to relieve a party from final judgment or order and grant such relief as may be just upon a party's motion, specifically providing, however, that such rule "does not limit the power of a court to . . . set aside a judgment for fraud upon the court." In *Halloran v. Blue & White Liberty Cab Co.*, the Minnesota Supreme Court held that courts have the inherent power to set aside or modify a judgment at any time for after-discovered fraud upon the court "[w]here a court is misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair." 92 N.W.2d 794, 798 (Minn. 1958). "Courts are constituted to decide actual questions existing between real parties involved in a real controversy and the submission of anything but a real controversy," including where a party intentionally misleads or deceives the court as to the identity or existence of a litigant, "is recognized judicially as a fraud upon the court." *Id.* (citations omitted). "[f]raudulent intent is also present when a misrepresenter speaks positively and without qualification, but either is conscious of ignorance of the truth, or realizes that the information on which . . . she relies is not adequate or dependable enough to support such a positive, unqualified assertion." *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986). "A claim to an honest belief that what is false is true" does not preclude a finding of fraud "if that claim[ed belief] is, under the circumstances, completely improbable." *Id.* at 174.

¹ It is of note that Shogren Smith's submissions were filed after the June 15, 2021 deadline provided by this Court. However, taking into account the lack of hearing being held on this issue, this Court waives Shogren Smith's late filing and accepts all submissions for consideration in the interest of justice and fairness.

In her written response, Shogren Smith contends that affidavits disseminated and collected by the Minnesota Election Integrity Team (“MNEIT”) provided the basis for her proper representation of each of the contestants. She further argues that each contestants’ signing of such an affidavit in and of itself establishes that they understood the nature of the contest and agreed to be represented as a named contestant in the action. The affidavit in question states, in relevant part, “I am contesting the election of the candidate(s), listed below, for whom I had the right to vote on November 3, 2020” . . . “I understand I will be joining with other voters across MN to contest Minnesota election results.” Shogren Smith contends that any breakdown in communication was fault of MNEIT, as it was their responsibility to communicate with the contestees. Shogren Smith makes no claim that she spoke or met with any of the named contestants prior to filing or appearing before the court in these actions.

While Shogren Smith insists that she acted in good faith on affidavits that she contends were more than sufficient to establish a legitimate attorney-client relationship, the record here suggest otherwise. Nothing in the affidavit described what a voter contest actually entails, and nothing in the affidavit or correspondences from MNEIT indicated that those returning affidavits could or would be named as a party in a legal proceeding or that in doing so they were implicitly agreeing to legal representation by Shogren Smith or any other attorney. In fact, Shogren Smith does not even presume to allege, and the record does not establish, that she had any direct communication with any of the contestants prior to, during, or after the pendency of the election contest, nor after monetary judgment had been entered against them. Shogren Smith misled the court as to material circumstances regarding [REDACTED] and [REDACTED] status as parties, and abused the judicial process ultimately resulting in the rendition of a judgment against them.

Accordingly, it is appropriate to vacate judgment with respect to [REDACTED] and [REDACTED].
Further, both [REDACTED] and [REDACTED] shall be dismissed from this action and removed from the record,
with all original filings in this case to be sealed.



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