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United States Bankruptcy Court
Eastern District Of Washington

In Re:)
)
DAVID WALLACE BAYS,) Main Case Number: 01-05127
)
)
)

Debtor(s))
LINDA BAYS; KELLY CASE ,) Adversary Number: A03-00237
)
)
)

Plaintiff(s))

vs.
DAVID BAYS; DOUG LAMBARTH
and JANE DOE LAMBARTH;
JOE ESPOSITO and JANE DOE
ESPOSITO; GARY STENZEL
and JANE DOE STENZEL;
PAUL BASTINE and JANE DOE
BASTINE; JOE WITTSTOCK
and JANE DOE WITTSTOCK;
DAVID HARDY and JANE DOE
HARDY; SPOKANE COUNTY
COURT,

Defendant(s))

DECISION RE: LINDA BAYS' AND KELLY
CASE'S CAUSES OF ACTION FOR OUTRAGE
(INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS) AGAINST PAUL
BASTINE, INDIVIDUALLY AND HIS
MARITAL COMMUNITY, JOE WITTSTOCK,
INDIVIDUALLY AND HIS MARTIAL
COMMUNITY, DAVID HARDY,
INDIVIDUALLY AND HIS MARTIAL
COMMUNITY AND SPOKANE COUNTY
SUPERIOR COURT

FILED
SEP 08 2008

U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

The plaintiffs Linda Bays and Kelly Case are suing the defendants
Bastine, Wittstock, Hardy and the Spokane County Superior Court for
the tort of outrage. This matter comes before the court upon motions

1 for summary judgment relating to the tort of outrage filed by Linda
2 Bays [AP #557], Kelly Case [AP #570] and the defendants Bastine,
3 Wittstock, Hardy and Spokane County Superior Court. [AP #549].
4

5 **PROCEDURAL HISTORY**

6
7 Paul Bastine, individually and his marital community, were
8 among the original defendants named in Linda Bays' "Complaint for
9 Damages and for Injunctive Relief" filed in Stevens County Superior
10 Court. [AP #1, pg 7-20]. Ms. Bays complained about Judge Paul
11 Bastine's alleged misconduct while presiding over her dissolution
12 case with David Bays. Her state court lawsuit was removed to
13 bankruptcy court and became this adversary proceeding. [AP #1].

14 Linda Bays filed an amended complaint in this adversary
15 proceeding. [AP #104]. This amended complaint added Kelly Case as
16 a plaintiff, and Wittstock, Hardy and Spokane Superior Court as
17 defendants. The new complaint included numerous causes of action
18 against the original state defendants and the added other
19 defendants.

20 Defendants Bastine, Wittstock, Hardy and Spokane County moved
21 to dismiss the lawsuit for failure to state a claim. [AP #153].
22 This court granted this motion in part. The court remanded to
23 Stevens County Superior Court plaintiffs' claims against defendants
24 Bastine, Wittstock, Hardy and Spokane County, for civil rights
25 violations, official misconduct, and for injunctive and declaratory
26 relief. [AP #s 195, 193, 194 & 192; ¶s 3, 5 & 10 respectively].
27 This court dismissed plaintiffs' claims for slander of title, Quiet

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1 Title, abuse of the bankruptcy laws, offset, malpractice and breach
2 of contract. [AP #s 195, 193, 194 & 192; ¶ 4, 6 & 9 respectively].
3 The only cause of action against defendants Bastine, Wittstock,
4 Hardy and Spokane County Superior Court that this court did not
5 either dismiss or remand was for outrage, the cause of action
6 currently before this court for summary judgment. [AP #s 195, 193,
7 194 & 192; ¶ 8 respectively].¹

8 On May 30, 2008, this court dismissed Kelly Case's claim for
9 outrage against David Hardy and Joe Wittstock on Kelly Case's oral
10 motion. [AP #631].

11 As a result of this procedural history, Linda Bays still has
12 outrage causes of action against Paul Bastine, Joe Wittstock, David
13 Hardy and Spokane County Superior Court. Kelly Case still has
14 outrage causes of action against Paul Bastine and Spokane County
15 Superior Court. It is these remaining outrage claims that are
16 before the court for summary judgment. [AP #s 549, 557 and 570].

18 **FACTS**

20 I. LINDA BAYS OUTRAGE CLAIMS

21
22 ¹On May 29, 2008, Linda Bays orally moved to dismiss her set off
23 claims against David Hardy, Joe Wittstock, and Paul Bastine. This
24 court entered an order granting that motion on May 30, 2008. [AP
25 #633]. Also on May 29, 2008, Kelly Case orally moved to dismiss his
26 set off claims against David Hardy and Joe Wittstock. This court
27 entered an order granting that motion on May 30, 2008. [AP # 630].
The court notes that these set off claims had previously been
28 dismissed with prejudice as to Joe Wittstock [AP #193 ¶ 7], David
Hardy [AP #194 ¶ 7], and Paul Bastine [AP #195]. The May 30, 2008 set
off orders are redundant, the claims of set off they refer to having
been dismissed with prejudice on November 8, 2004.

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1 A. Against Paul Bastine

2 Paul Bastine at all times relevant to the facts in the
3 complaint was a Spokane County Superior Court judge. Pursuant to a
4 procedure which Linda Bays challenged, Judge Bastine was assigned
5 to sit as a visiting judge in Pend Oreille County Superior Court on
6 the Bays dissolution case. Ms. Bays had appeared before Judge
7 Bastine in the past. [AP #566 pgs. 13-14]. When he appeared as the
8 judge in the dissolution case she was concerned about bias against
9 her and unsuccessfully attempted to have him removed from hearing
10 her dissolution case. [AP #566 pgs. 15-18]. Judge Bastine rejected
11 her jurisdictional arguments [AP #566 pg 18] and allowed her lawyer
12 to withdraw over her objection with trial date eminent. [AP #566 pg
13 19]. Despite letters from her doctors Judge Bastine denied her
14 request for a continuance. [AP #566 pgs. 25-27]. Judge Bastine
15 conducted the dissolution trial in her absence and without legal
16 representation for Linda. He ruled in favor of David Bays on the
17 contested issues of fact and conclusion of law and entered a decree
18 which was very unfavorable to her. [AP #61 & 62]. Judge Bastine
19 subsequently denied her post trial motions and the decree became
20 final.

21 In this process, Ms. Bays alleges that Judge Bastine conspired
22 with Joe Wittstock, his court reporter, to provide an inaccurate
23 transcript of the proceeding and with David Hardy the Spokane
24 County administrator to be assigned the case.

25 Ms. Bays relies on this conduct to support her claim of
26 outrage against Judge Bastine.

27 B. Against Joe Wittstock

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1 Joe Wittstock was the court reporter during Judge Bastine's
2 handling of the Bays' dissolution case. Ms. Bays alleged that Mr.
3 Wittstock conspired with Judge Bastine in altering the transcript
4 of the court proceeding by omitting material that was favorable to
5 Ms. Bays. [AP #566 pgs. 3-6]. Evidence of the alleged omitted
6 material was filed with the Pend Oreille Superior Court on April
7 27, 2004. [AP #567 pgs. 10-22]. But that court apparently declined
8 to correct the transcript. [AP #566 pg. 4].

9 Ms. Bays bases her outrage claim against Joe Wittstock on
10 these allegations.

11 C. Against David Hardy

12 David Hardy is a Spokane County court administrator. He
13 participated in assigning Judge Bastine as a visiting judge to hear
14 the Bays dissolution in Pend Oreille Superior Court. Ms. Bays
15 contends he had no authority to make this assignment. [AP #566
16 pgs. 1-3]. She contends this is part of a conspiracy against her.

17 Ms. Bays bases her outrage claim against David Hardy on these
18 allegations.

19 D. Against Spokane County Superior Court

20 Ms. Bays bases her outrage claim against Spokane County on the
21 fact that it employed Judge Bastine, Mr. Wittstock and Mr. Hardy
22 and is allegedly liable for its employees' conduct.

23 II. KELLY CASE OUTRAGE CLAIMS

24 A. Against Paul Bastine

25 Judge Bastine's findings of facts, conclusion of law and
26 decree in the dissolution case appear to adjudicate Kelly Case's
27 rights in various parcels of property. Kelly Case was not a party

1 to the Bays dissolution. Mr. Case challenged Judge Bastine's
2 attempt to adjudicate Case's property interests as outrageous
3 conduct. The balance of Mr. Case's complaints of outrage are based
4 on the judge's conduct in dealing with his mother, Linda Bays, in
5 the dissolution litigation.

6 B. Against Spokane County

7 Kelly Case's outrage claims against Spokane County are
8 presumably based upon the fact the county employed Judge Bastine,
9 Mr. Wittstock and Mr. Hardy at the time of the alleged tortious
10 acts and are thus responsible for the acts of its employees.

11
12 **DISCUSSION**

13
14 I. LINDA BAYS VS. JUDGE BASTINE

15 A. Immunity

16 All Linda Bays' complaints against Paul Bastine arise out of
17 his conduct as Superior Court Judge presiding over her dissolution
18 case with David Bays. The actions complained of are all judicial
19 in nature. Judge Bastine is entitled to absolute immunity from
20 damages arising out of his judicial acts. Forrester v. White, 484
21 U.S. 219, at 225-226 (1988). As a result judicial immunity bars
22 Linda Bays' claim of outrage against Judge Paul Bastine.

23 B. Claim Preclusion/Issue Preclusion

24 Even if Ms. Bays' claim of outrage against Judge Bastine was
25 not barred by judicial immunity, she would be barred from asserting
26 it under the doctrines of claim preclusion/issue preclusion.

27 Linda Bays bases her outrage claim against Judge Paul Bastine

1 on the premise that he was wrong when he rejected her version of
2 the facts and decided the dissolution case against her. It is also
3 based on the premise that the decisions in the Bays v. Bays
4 dissolution at the appellate levels were wrong. The fatal flaw
5 with her argument is that Ms. Bays is bound by those decisions, as
6 is this court. State v. Mullin-Coston, 152 Wash.2d 107 at 113 95
7 P.3d 321 at 324 (2004); In re Harmon, 250 F.3d 1240 at 1246 (9th
8 Cir. 2001). [See also AP #515 at pg 3]. She is precluded from
9 making that claim and this court is precluded from accepting it.

10 The issue presently before this court is not one of claim
11 preclusion (res adjudicata). Rather it is one of issue preclusion
12 (collateral estoppel). Linda Bays is suing Judge Bastine for
13 outrage because he wrongfully ruled against her in the dissolution.
14 The fundamental premise of her outrage claim against Judge Bastine
15 is that the dissolution judgment is unjust, resulting in emotional
16 distress, for which he is partly responsible.

17 Ms. Bays' collateral attack upon the dissolution decree
18 necessarily implicates the doctrine of issue preclusion.

19 This court has discretion in regard to the application of
20 issue preclusion. In re Lopez, 367 B.R. 99 at 107 (9th Cir. BAP
21 2007). The Full Faith and Credit Act (28 U.S. C. § 1738) requires
22 that this court give state court judgments the same preclusion
23 effect such judgment would enjoy under state law. In re Lopez, 367
24 B.R. at 106.

25 The elements of issue preclusion under Washington law were
26 stated in the case of State v. Mullin-Coston, where the court said:

27 The party seeking to enforce the rule must show that:

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1 "(1) the issue decided in the prior adjudication must be
2 identical with the one presented in the second; (2) the
3 prior adjudication must have ended in a final judgment on
4 the merits; (3) the party against whom the plea of
5 collateral estoppel is asserted must have been a party or
6 in privity with a party to the prior litigation; and (4)
7 application of [the] doctrine must not work an
8 injustice."

9 152 Wash.2d 107, 114 95 P.3d 321, 324 (2004) (citing State v.
10 Bryant, 146 Wash.2d 90, 98-99, 42 P.3d 1278 (2002)).

11 The court will analyze how these elements would apply to Linda
12 Bays' claim of outrage against Judge Bastine.

13 1. Identical Issue

14 Linda Bays seeks to challenge the correctness of the final
15 judgment entered in the dissolution. The issues are identical.

16 2. Final Judgment on the Merits

17 The decision in the dissolution court was appealed and
18 affirmed. It is final.

19 3. Against a Party or Person in Privity

20 Linda Bays was a party in the dissolution case.

21 4. Work as Injustice

22 Linda Bays contends that the dissolution trial should have
23 been continued because her medical condition kept her from
24 attending and representing herself. She sought a continuance but
25 that was denied and the trial proceeded in her absence. Post
26 trial, she challenged the court's jurisdiction, its findings and
27 its conclusions but these motions were denied as well. She
28 appealed the trial court's judgment to the Court of Appeals which
affirmed the decision. The Supreme Court denied review. During
that process Ms. Bays either raised or had the opportunity to raise

1 the same issues she complains of here.

2 Accordingly, it would not work an injustice to preclude Ms.
3 Bays' challenge to the dissolution court's findings conclusions and
4 decree as it relates to her claim of outrage against Judge Bastine.

5 C. Civil Conspiracy

6 Linda Bays has also alleged in support of her claim of outrage
7 that Judge Bastine engaged in a conspiracy against her.

8 A recent statement of what is required to prove civil
9 conspiracy is found in All Star Gas, Inc., Of Washington v.
10 Bechard, 100 Wash.App. 732, 998 P.2d 367 (2000). The court ruled:

11 To establish a civil conspiracy, All Star must prove
12 by clear, cogent, and convincing evidence that (1) two or
13 more people combined to accomplish an unlawful purpose,
14 or combined to accomplish a lawful purpose by unlawful
15 means; and (2) the conspirators entered into an agreement
16 to accomplish the conspiracy. *Wilson v. State*, 84
17 Wash.App. 332, 350-51, 929 P.2d 448 (1996), cert. denied,
18 522 U.S. 949, 118 S.Ct. 368, 139 L.Ed.2d 286 (1997).
"Mere suspicion or commonality of interests is
insufficient to prove a conspiracy." *Id.* "[When] the
facts and circumstances relied upon to establish a
conspiracy are as consistent with a lawful or honest
purpose as with an unlawful undertaking, they are
insufficient." *Lewis Pacific Dairymen's Ass'n v. Turner*,
50 Wash.2d 762, 772, 314 P.2d 625 (1957).

19 Ibid., 100 Wash.App. 740, 998 P.2d 372.

20 Ms. Bays claims that Judge Bastine conspired against her. The
21 acts about which she complains, took place during the course of a
22 hotly contested dissolution presided over by Judge Bastine.

23 Her allegations of conspiracy are conclusory and are not
24 supported by evidence. She has not presented evidence of any
25 agreement between Judge Bastine and any of the other alleged co-
26 conspirators. Discussions over lunch or in the course of preparing
27 and conducting litigation "are as consistent with a lawful or

1 honest purpose as with an unlawful undertaking..." Ibid.

2 Even if Judge Bastine was not protected by judicial immunity,
3 the evidence presented is insufficient to support a claim of
4 conspiracy against Judge Bastine under even the preponderance
5 standard much less the clear, cogent and convincing standard
6 applicable in Washington.

7 D. Outrage

8 Washington only allows recovery for outrage in the absence of
9 other tort remedies. Rice v. Janovich, 109 Wash.2d 48 at 62, 742
10 P.2d 1230 at 1239 (1987). The court has found that the evidence
11 presented by Ms. Bays against Judge Bastine is insufficient to
12 support claims of civil conspiracy. It remains to be seen whether
13 the actions of Judge Bastine complained of by Ms. Bays would
14 support a viable claim of outrage if he wasn't protected by
15 judicial immunity.

16 "'[O]utrage' and 'intentional infliction of emotional
17 distress' are synonyms for the same tort. Kloepfel v. Bokor, 149
18 Wash.2d 192 at 194 FN1, 66 P.3d 630 at 631 FN1 (2003). As outlined
19 by the Washington State Supreme Court:

20 The tort of outrage requires the proof of three elements:
21 (1) extreme and outrageous conduct, (2) intentional or
22 reckless infliction of emotional distress, and (3) actual
result to plaintiff of severe emotional distress.
(Citations omitted).

23 Ibid, 149 Wash.2d at 196, 66 P.3d at 633.

24 Ms. Bays presented evidence that Judge Bastine had knowledge
25 of Ms. Bays' mental and physical state. The plaintiffs' evidence
26 on the second and third of these elements of the tort of outrage is
27 at least arguable under the facts presently before the court.

1 Accordingly, the court will focus on whether the conduct complained
2 of here was "extreme and outrageous."

3 It is clear in Washington that the actions triggering a
4 finding of outrage must be very unusual.

5 ...It is the law of this state that liability can be
6 found only where the conduct had been so outrageous in
7 character and so extreme in degree, as to go beyond all
8 possible bounds of decency, and to be regarded as
9 atrocious and utterly intolerable in a civilized
10 community...

11 Woodward v. Steele, 32 Wash.App. 152, at 155-156, 646 P.2d 167, at
12 169-170 (1982).

13 Even if the conduct complained of is truly extreme and
14 outrageous it still might be privileged.

15 ...[T]he conduct although it would otherwise be extreme
16 and outrageous, may be privileged under the
17 circumstances. The actor is never liable, for example,
18 where he's done no more than insist upon his legal rights
19 in a permissible way, even though he is well aware that
20 such insistence is certain to cause emotional distress.

21 Ibid, 32 Wash.App. at 155-156, 646 P.2d at 170 (1982).

22 It is for the court to determine, in the first instance,
23 whether the defendant's conduct may reasonably be
24 regarded as so extreme and outrageous as to permit
25 recovery.

26 Restatement (Second) of Torts, Section 46, Comment h.

27 All the complained-of activities took place in the context of
28 the dissolution case. Those actions have been reviewed by the
state appellate courts. This court has reviewed them as well.
Judge Bastine's actions complained of here do not as a matter of
law reach the threshold of outrageous behavior, "atrocious and
intolerable in a civilized society." Even if Judge Bastine was not
entitled to judicial immunity Ms. Bays has not made a prima facie

1 case of outrage against Judge Bastine.

2 E. Conclusion: Linda Bays outrage claims against Judge
3 Bastine

4 The actions complained to do not rise to the level of
5 outrageous behavior. Even if they did, Judge Bastine is entitled
6 to judicial immunity. As the United States Supreme Court stated in
7 Forrester v. White, 484 U.S. 219 at 228 (1988):

8 Judicial immunity apparently originated in medieval
9 times, as a device for discouraging collateral attacks
10 and thereby helping to establish appellate procedures as
11 the standard system for correcting judicial error. See
12 Block, Stump v. Sparkman and the History of Judicial
13 Immunity, 1980 Duke L.J. 879. More recently, this Court
14 found that judicial immunity was "the settled doctrine of
15 the English courts for many centuries, and has never been
16 denied, that we are aware of, in the courts of this
17 country." Bradley v. Fisher, 13 Wall. 335, 347, 20 L.Ed
18 646 (1872). Besides protecting the finality of judgments
19 or discouraging inappropriate collateral attacks, the
20 Bradley Court concluded, judicial immunity also protected
21 judicial independence by insulating judges from vexatious
22 actions prosecuted by disgruntled litigants. *Id.*, at
23 348.

24 If Ms. Bays was aggrieved by Judge Bastine's conduct in her
25 dissolution case, her remedy was to appeal that decision. She did
26 and she lost. She can not now sue the judge for outrageous
27 conduct. That is an impermissible collateral attack on the
28 dissolution judgment.

II. OUTRAGE: LINDA BAYS VS. JOE WITTSTOCK

A. Immunity

Ms. Bays is suing Joe Wittstock for failure to provide an
accurate transcript of the proceedings in her dissolution case.
This appears to be a ministerial act and Mr. Wittstock is not
entitled to quasi judicial immunity. Antoine v. Byers & Anderson

1 Inc, 508 U.S. 429 (1993).

2 B. Claim Preclusion/Issue Preclusion

3 Ms. Bays' claims against Mr. Wittstock are based on the
4 premise that the Bays dissolution was wrongfully decided and that
5 her appeal of that decision was hampered by Mr. Wittstock's
6 inaccurate transcript.

7 As this court has concluded above, Ms. Bays is barred by the
8 doctrine of claim preclusion from challenging the final judgment in
9 the Bays dissolution.

10 This outrage cause of action against Mr. Wittstock is not the
11 same claim, therefore it is not precluded under the doctrine of
12 claim preclusion. The outrage cause of action against Wittstock is
13 viable only if the Bays dissolution findings of fact, conclusions
14 of law and decree were wrongfully decided. This is vital to Ms.
15 Bays' claim of outrage. This challenge to the dissolution decree
16 necessarily implicates the doctrine of issue preclusion.

17 This court has previously referred to the elements considered
18 in application of the doctrine of issue preclusion in the State of
19 Washington.² State v. Mullin-Coston, 152 Wash.2d 107, 114 95 P.3d
20 321, 324 (2004).

21 The court will analyze how the elements apply to Linda Bays'
22 claim of outrage against Mr. Wittstock.

23 1. Identical Issue

24 Linda Bays seeks to challenge the correctness of the final
25 judgment entered in the dissolution. The issues are identical.

26

27 ² See the discussion at page 6-9

1 2. Final Judgment on the Merits

2 The decision in the dissolution court was appealed and
3 affirmed. It is final.

4 3. Against a Party or Person In Privity

5 Linda Bays was a party in the dissolution case.

6 4. Work as Injustice

7 It appears that Linda Bays raised the issue of an inaccurate
8 transcript before the state court. [AP #567 pg. 10-22]. It is not
9 clear in the record how this was done procedurally. [AP #566 pg.
10 4]. But that attempt to supplement the record evidently failed.
11 [AP #566 pg. 4]. The court concludes that the issue was at least
12 raised with state court.

13 This court's review of the "Amendments to Verbatim Report of
14 Proceedings dated August 15, 2002" [AP #567 pg. 10-22] which is the
15 alleged omitted language for the court hearing, does not reveal
16 anything which would be outcome determinative in the omitted
17 materials.

18 The court concludes that it would not work an injustice to
19 preclude Linda Bays from raising the issue of the correctness of
20 the Bays judgment in support of her claim of outrage against Joe
21 Wittstock.

22 C. Civil Conspiracy

23 Linda Bays has also alleged in support of her claim of outrage
24 that Mr. Wittstock engaged in a conspiracy against her. This court
25 has discussed in detail the elements required to prove civil
26 conspiracy in Washington at pages 9 and 10 of this decision. Ms.
27 Bays has failed to prove any of these elements in relation to her

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1 claim against Mr. Wittstock. Her allegations of conspiracy are
2 conclusory and are not supported by evidence. Ms. Bays has not
3 presented evidence of any agreement between Joe Wittstock, Judge
4 Bastine, or any of the other defendants. Her allegation of errors
5 in transcription of the August 15, 2002 hearing are as easily
6 explained by negligence as by unlawful conspiracy. The evidence
7 presented is insufficient to support a claim of conspiracy against
8 Mr. Wittstock under even the preponderance standard much less the
9 clear, cogent and convincing standard applicable in Washington.

10 D. Outrage

11 This court has discussed the elements of the tort of outrage
12 in this opinion at pages 10 and 11. The actions of Mr. Wittstock
13 complained of here by Ms. Bays do not as a matter of law reach the
14 threshold of outrageous behavior "atrocious and intolerable in a
15 civilized society.

16 E. Conclusion: Linda Bays' outrage claim vs. Wittstock

17 Ms. Bays has not made a prima facie case of outrage against
18 Joe Wittstock.

19 III. LINDA BAYS V. DAVID HARDY

20 A. Immunity

21 Linda Bays bases her outrage claim against David Hardy on the
22 allegation that he was responsible for assigning Judge Bastine to
23 hear the Bays dissolution. Case assignment is essentially a
24 judicial function. As such it is entitled to quasi-judicial
25 immunity even if it is exercised by a nonjudicial officer. In re
26 Castillo, 297 F.3d 940 at 947 (9th Cir. 2002); Forrester v. White.
27 484 U.S. 219 (1988). David Hardy is protected from Linda Bays'

1 claim of outrage by quasi-judicial immunity.

2 B. Claim Preclusion/Issue Preclusion

3 The state courts have decided that Judge Bastine's assignment
4 to hear the Bays dissolution was proper. In re Bays, 131 Wash.App
5 1032, 2006 WL 281143 (2006). Linda Bays is precluded from
6 attacking that ruling by raising the issue of the correctness of
7 that decision in her outrage claim against David Hardy.

8 C. Civil Conspiracy

9 Linda Bays has failed to provide evidence sufficient to make a
10 prima facie case of conspiracy against David Hardy under even the
11 preponderance of evidence standard, much less the clear cogent and
12 convincing standard applicable in the state of Washington.

13 D. Outrage

14 The actions of David Hardy complained of here by Ms. Bays do
15 not as a matter of law reach the threshold of outrageous behavior
16 "atrocious and intolerable in a civilized society."

17 E. Conclusion: Linda Bays' Outrage Claim vs. Hardy

18 Ms. Bays has not made a prima facie case of outrage against
19 David Hardy.

20 IV. OUTRAGE: LINDA BAYS VS. SPOKANE COUNTY

21 Linda Bays relies on the conduct of Judge Bastine, Joe
22 Wittstock, and David Hardy to prove her claim of outrage against
23 Spokane County. The court has found that none of these county
24 employees are liable for outrage to Ms. Bays. Since they are not
25 liable to Ms. Bays, neither is the County.

26 V. OUTRAGE: KELLY CASE VS. JUDGE BASTINE

27 A. Immunity

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1 All of Judge Bastine's actions complained of by Kelly Case in
2 support of his claim of outrage arise out of Judge Bastine's
3 conduct as a judge in the Bays dissolution. Judge Bastine is
4 immune from civil liability for conduct in a judicial capacity.
5 Forrester vs. White, 484 U.S. 219 (1988).

6 B. Outrage

7 Even if Judge Bastine was not protected by judicial immunity,
8 his actions in handling the Bays litigation were not outrageous.

9 VII OUTRAGE: KELLY CASE VS. SPOKANE COUNTY

10 Kelly Case has failed to prove a prima facie case of outrage.

11

12 **CONCLUSION**

13

14 Linda Bays has failed to make a prima facie case of outrage
15 against Judge Paul Bastine, individually or his martial community.

16 Linda Bays has failed to make a prima facie case of outrage
17 against Joe Wittstock, individually or his martial community.

18 Linda Bays has failed to make a prima facie case of outrage
19 against David Hardy, individually or his marital community.

20 Linda Bays has failed to make a prima facie case of outrage
21 against Spokane County.

22 Kelly Case failed to make a prima facie case of outrage
23 against Judge Bastine, individually or his martial community.

24 Kelly Case failed to make a prima facie case of outrage
25 against Spokane County.

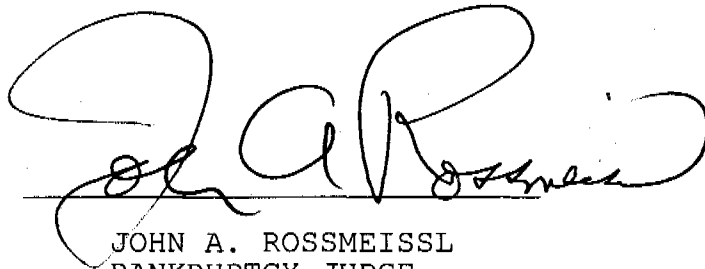
26 Linda Bays' claims of outrage against Judge Paul Bastine, Joe
27 Wittstock, David Hardy and Spokane County should be dismissed with

1 prejudice. These defendants' motions for summary judgment should
2 be granted and Linda Bays' motion for summary judgment denied.

3 Kelly Case's claims of outrage against Judge Paul Bastine and
4 Spokane County should be dismissed with prejudice. These
5 defendants' motions for summary judgment should be granted and
6 Kelly Case's motion for summary judgment denied.

7 With this decision there are no remaining claims in this
8 adversary proceeding against defendants Bastine, Wittstock, Hardy
9 and Spokane County. The court directs final judgment on Linda
10 Bays' and Kelly Case's claims against these defendants and finds
11 that there is no just reason for delay pursuant to F.R. Bkrtcy.
12 Proc. 7054, F.R. Civ. P 54(b).

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14 Done this 8th day of September, 2008.

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21 JOHN A. ROSSMEISL
22 BANKRUPTCY JUDGE