

IN THE SUPREME COURT FOR THE STATE OF OREGON

MAX ZWEIZIG,
Plaintiff-Cross-Appellant

vs.

TIMOTHY C. ROTE
Defendant-Cross-Appellee.

9TH Circuit Case No.:
18-36060 and 18-35991
USDC OR 3:15-cv-2401
S067820

CROSS-APPELLEE'S MOTION TO SUPPLEMENT THE RECORD

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I. MOTION

By this motion, Plaintiff-Appellant Timothy Rote seeks to supplement the appellate record with a transcript of the deposition of Max Zweizig taken on December 21, 2020. The transcript was completed and produced to Appellant Rote on December 29, 2020.

Max Zweizig confirmed in his deposition that former attorney Williams Kastner resigned only recently not wanting to be associated with Zweizig's child pornography business and/or his history of downloading and disseminating child pornography, which has been documented in multiple lawsuits with the filing of computer forensic reports by independent consultants and law enforcement. Those forensic reports are in the record in this case.

Max Zweizig also confirmed that he has not at any time filed a malpractice claim against any of his former attorneys. Zweizig confirmed that the Oregon State Bar Professional Liability Fund ("PLF") provided free representation to him in multiple cases for reasons he would not or could not confirm.

Because there was no known attachment of Zweizig's free representation to either malpractice or repair, said representation implicates aiding and abetting criminal conduct. Counsel for Zweizig Joel Christiansen provides legal services under a contingent fee contract and was motivated to suborn perjury in the case leading the judgment now before this court. Shenoa Payne, counsel for Zweizig in this appeal, also provided legal services under the same contingent fee contract and was motivated to suborn perjury. That perjury includes false testimony before the jury and 9th Circuit.

The deposition transcript is provided herein as Appendix 1.

II. ARGUMENT

Appellant Rote acknowledges the “basic tenant of appellate jurisprudence...that parties may not unilaterally supplement the record on appeal with evidence not reviewed by the court below.” Citing 9th Federal Circuits, *Tonry v. Security Experts*, 20 F.3d 967, 974 (9th Cir. 1994) (citing *Dickerson v. Alabama*, 667 F.2d 1364, 1367 (11th Cir. 1982) (italics removed)). But appellate courts may “exercise the inherent authority to supplement the record...proceed[ing] by motion...so that the court and opposing counsel are properly apprised of the status of the documents in question.” *Lowry v. Barnhart*, 329 F.3d 1019, 1024-25 (9th Cir. 2003) (citing *Dickerson*, 667 F.2d at 1366-68 & n. 5); *Dickerson*, 667 F.2d at 1367 (“it is clear that the authority to do so exists...[and] is a matter left to discretion of the federal courts of appeals”). In short, appellate courts have “inherent equitable powers to supplement the record as justice requires.” *Dickerson*, 667 F.2d at 1368, n. 5 (citations omitted).

The *Dickerson* Court explained why that authority might be exercised. For instance, remand “for the sole purpose of allowing district court to review [] several additional facts” may, at times, “be contrary to both the interest of justice and the efficient use of judicial resources.” *Dickerson*, 667 F.2d at 1367. Such is the case here, where a remand after briefing and argument, for the sole purpose of reviewing the deposition transcript, would squander the resources of this Court.

Zweizig refuses to explain why the PLF represents him in Clackamas County Oregon and Oregon Court of Appeal cases. Current OSBPLF CEO Nena Cook also refuses to answer that question of why Zweizig has been represented free of charge.

On information and belief, Carol Bernick (former PLF CEO), acting on behalf of the PLF, traded representation of Zweizig in Clackamas County case

19cv14552 and Oregon Court of Appeals for a release from any obligation against defendant Brandsness and the PLF arising in federal case 3:15-cv-2401, and more specifically this appeal.

Zweizig has not for example pursued the PLF for the collection of his \$500,000 judgment against Rote and NDT in this case. The only plausible reason to not do so is by agreement. That agreement however is an Oregon RICO predicate act, especially in light of Zweizig's recent deposition, which in relevant parts was tantamount to an admission that he is or was engaged in the dissemination of child pornography and lied to the jury about that fact. The suppression of the forensic reports aided in the subornation of perjury.

The Court's "inherent equitable powers to supplement the record as justice requires" should also be exercised so that this Court may apprise itself of pending harm to Appellant Rote and the public at large. *Dickerson*, 667 F.2d at 1368, n. 5. For the PLF to take up the mantle of support without contractual mandate and for the benefit of a child predator, which Zweizig does not now deny in his deposition, raises serious constitutional and criminal questions.

The inferences drawn from Zweizig's deposition are tantamount to a voluntary admission by him that his former attorney, Williams Kastner, quit upon finding Zweizig did download child porn and that their association with him was untenable. Current counsel for Zweizig has even argued they want to keep that information from the public because it could taint a jury pool.

Zweizig engaged in perjury when he was asked during the 3:15-cv-2410 trial if he had downloaded and disseminated child pornography. The transcript is in the record of this case. Zweizig counsel Joel Christiansen successfully suppressed the forensic reports from the jury so that Zweizig could lie. Even appellant Rote admitting that he may not have been competent to represent himself, as Zweizig

alleges in his deposition, that acknowledged incompetence was not an invitation for Zweizig and counsel to engage in perjury before the jury or to continue that perjury in this appeal. Zweizig testified that he went in to the case asking for \$150,000 and left with a million dollar judgment. The context of his reveal must be to the forensic reports showing his criminal conduct.

The forensic reports are in the record of this case and clearly show Zweizig used a 120 gig hard drive to download and disseminate child porn, porn, music and videos using a peer to peer program registered in his name, all criminal acts. Further forensic reports showed that only Zweizig used the 120 gig hard drive. All of this is on the record.

III. CONCLUSION

Plaintiff-Appellant Rote requests Zweizig's deposition transcript supplement the record in this appeal to at a minimum inform the Court that Zweizig engaged in perjury in the very case referred to this court on appeal, that his current counsel in this case suborned and covered up that perjury and that Zweizig was represented by the PLF gratis in other related cases for reasons that Zweizig refuses to answer, reasons that likely implicate Oregon RICO and malpractice. Based on this free and ongoing representation in multiple lawsuits, the deposition transcript presents material evidence that the association with the PLF serves at least one purpose of aiding and abetting the dissemination of child pornography.

Shenoa Payne published on her website that the 9th Circuit found that Rote was not a party to the contract between NDT and Zweizig and could not therefore

compel arbitration. NDT was a party and Andrew Brandsness (counsel for NDT) failed to compel arbitration timely. Subsequently the lower court found that Rote and NDT waived its right to compel by engaging in the litigation. Although the ruling of the 9th Circuit court does not comply with Oregon law (and the employment agreement mandates the application of Oregon law), it is abundantly clear Zweizig and counsel secured not only the judgment in this case through perjury and subornation of perjury, but also continued those acts through briefing in this appeal.

Regardless, this court should be informed that Appellee Rote will seek to vacate the judgment.

Dated: January 5, 2021

s/ Timothy C. Rote

Timothy C. Rote

Pro Se Defendant-Cross-Appellee

CERTIFICATION OF COMPLIANCE

I certify that (1) this brief complies with the 10,000 word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this MOTION (as described in ORAP 5.05(2)(a)) is 1,250.

I certify that the size of the type in this Motion is not smaller than 14-point for both the text of the brief and footnotes as required by ORAP 5.05(2)(d)(ii) and 5.05(4)(g).

DATED: January 5, 2021

s/ Timothy C. Rote

Timothy C. Rote

Pro Se Defendant-Cross-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2021, I caused to be served by email and US mail, postage pre-paid, a true copy of the Motion and Appendix to the persons listed below, as follows:

Shenoa Payne
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s/ Timothy C. Rote

Timothy C. Rote

Pro Se Defendant-Cross-Appellee

CERTIFICATE OF FILING

I hereby certify that on the 5th day of January, 2021, I filed the original and of the foregoing Motion and Appendix with the State Court Administrator at this address:

State Court Administrator
Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

By Certified First Class Mail.

s/ Timothy C. Rote

Timothy C. Rote
Pro Se Defendant-Cross-Appellee