

IN THE COURT OF APPEALS OF  
THE STATE OF KANSAS

Appellate Court of Kansas  
Kansas Judicial Center, Room 374  
301 S.W. 10<sup>th</sup> Avenue  
Kansas 66612-1507

**FILED**

APR 21 2003

CAROL G. GREEN  
CLERK OF APPELLATE COURTS

JAMES L. BOLDEN,

Appellant,

v.

Case No: Case No. 0390087 A



THE CITY OF TOPEKA

Appellee,

MOTION FOR VOLUNTARY WITHDRAW  
AND DISCLOSURE OF COSTS

The appellant James L. Bolden appears through his attorney Bret D. Landrith, Esq. and makes this motion to voluntarily withdraw his appeal before this court due to the Appellee's bad faith demolition of the homes Mr. Bolden's appeal sought to protect and the Clerk of the Appellate Court's bad faith prosecution of the appeal. Mr. Bolden through this motion also discloses the costs and attorney's fees lost to him when these state agencies denied him his Due process rights during this appeal and over which jurisdiction is now appropriate in the District of Kansas federal court under fee and cost shifting statutes including 42 USC § 1988. Mr. Bolden has with reluctance been forced to choose withdraw over the threatened dismissal or continued bad faith prosecution of this appeal for the following reasons:

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6lv~~~. IhL ct-re.v.\_Q\_ lè; dismissed.

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EXHIBIT

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1. The Judicial branch employees including Shawnee District Court file clerk and her immediate supervisor in the court records department obstructed justice by repeatedly denying Mr. Bolden's counsel access to the case file. The Shawnee District Court file clerk and her immediate supervisor told Mr. Bolden's counsel the case file was not a public record and even though he had been asked by Mr. Bolden to represent him in this appeal and was an attorney admitted to the Kansas bar, he would not be permitted to see the file. ¶ This issue was resolved in favor of Mr. Bolden when after an Ex Parte meeting with the trial court judge, the Shawnee District Court records custodian was directed to let Mr. Bolden's counsel have access to the records.

2. The Shawnee Court clerk's office refused to provide the record for the appeal docketing statement. The request was referred to a senior employee who stated the record would not be provided and he should give up his expectation of receiving it, even though he had driven from Pittsburg, KS for that purpose. Counsel stated he would return at 4:15pm regardless for the purpose of obtaining the record. When he returned, the record was available.

3. Mr. Bolden and his counsel met great resistance to filing the docketing statement. Once Mr. Bolden had entered the clerk's office, the Judicial Branch employee checking the certified records accompanying the docketing statement called over her supervisor. The supervisor refused to accept the docketing statement because although it contained the required records, two cases had been consolidated at the district court level. Mr.

¶ Ms. Carol Green, Clerk of the Appellate Court sought to justify this denial of access to a public record by the judicial branch in a conversation on April 15<sup>th</sup>, 2003 with the explanation courts could refuse access to files by attorneys who had not maintained them appropriately, the counsel had never sought a file for copying in Shawnee County or otherwise obtained a court file before.

Bolden's counsel explained that a certified copy of each appearance record with entries notating the consolidation and referencing the consolidation orders were also part of the record and were the appellant counsel's documentation and argument for the Appellate court jurisdiction over this appeal. Mr. Bolden's counsel was repeatedly told to return to Shawnee County court and try to obtain other documents and to file the docketing statement on another day. Counsel stated that it was at great expense to drive to Topeka and that the Shawnee County Clerk's office had denied access to the case files and refused to provide the record on appeal. Counsel offered to seek any further documents the clerk may require, but this offer was rejected. Counsel then informed the supervisor that the outcome of the Clerk of Appellate court in refusing to accept the docketing statement would not be an attempt to re-file it on another day but instead an action in mandamus seeking to have the clerk perform this duty. At this point, the supervisor acquiesced and accepted the docketing statement.

4. The appellant counsel's assistants presented the brief in the above captioned case on March 17, 2003. Employees of the Clerk of the Appellant Court objected to receipt of the brief because they stated in error that the brief did not contain a Statement of Facts. One assistant called the counsel in Pittsburg, KS to relay this objection and the line was left open until the Clerk's office employee recanted his objection to accepting the brief.

S. An employee of the Clerk of the Appellant Court then objected to the Statement of Facts because it was not keyed the record with citations and objected to accepting the brief for filing. The brief however, contained a jurisdictional statement explaining the exception under Kansas law K.S.A. 77-617 (d) entitling the appellant to raise issues

regarding the administrative agency's actions after the hearing and the facts not previously before the trial court were included for the purposes of these new issues.

6. The appellate court ruled *sua sponte* that the brief would have to be rewritten and refilled. This order added great expense to Mr. Bolden while the facts in his brief revealed the City of Topeka had demolished his properties instead of waiting for the appeal and had retaliated against him by canceling his soul source of income, a janitorial contract with the city. This ruling aggravated Mr. Bolden's hardship and threatens to cause his appeal not to be heard.

7. The appellant filed a motion for reconsideration of this ruling. The motion also requested a determination of fees and costs for the motion so that the City of Topeka would not be charged for the appellant's response motion to the *sua sponte* action of the court. No special determination or signed order was received, instead an unsigned note from the Clerk of the Court of Appeals was sent stating the motion had been denied.

8. The appellant received a ruling dated April, 2001 that seems to contradict Supreme Court Rule 3.02 and requires the appellant to produce again certified Shawnee County Court documents showing the consolidation of the cases, even though the record is to be provided by the Shawnee County Court Clerk under the rule. The appellant understands this as retaliation for the motion for reconsideration. This ruling provides additional barriers and obstruction of Mr. Bolden's appeal consistent with that identified in the motion for reconsideration.

9. A voluntary withdraw of appeal by the plaintiff does not require an order. Mr. Bolden has determined his Due Process rights are being violated in this appeal by the agencies of the State of Kansas- Judicial Branch and the City of Topeka. Mr. Bolden will

raise his claims that were before this court in his current related federal action. Since the City of Topeka destroyed his homes before an appeal of the injunction to stop the demolition could be heard, Mr. Bolden has determined all of his remaining claims can now be raised in federal court without impacting the *Younger* Doctrine. *Ankenbrandt v. Richards*, 504 U.S. 689, 70S (1992)., *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1170-71 (10th Cir. 1998). If however the *Younger* doctrine is invoked, it is believed the above showing of bad faith prosecution experienced by Mr. Bolden to date would meet the exception for federal jurisdiction under the criteria stated in *Perez v. Ledesma*, 401 U.S. 82, 85 (1971).

10. No answer or ruling to the appellant's present April 7<sup>th</sup> motion for clarification has been made by April 21<sup>st</sup>, the Court of Appeals own show cause deadline.

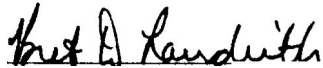
11. In having to forfeit his appeal to escape further bad faith prosecution and due process violations, the appellant has lost the filing fee of \$130 and the attorney's fees for preparing the brief and the motions in this case. This unpaid total is 81 hours at 130\$ an hour.

12. Since the issues of this appeal will now be raised in an ongoing federal civil rights case, where they will be heard for the first time in a state or federal court, and the issues are raised on the same conduct by the City of Topeka before the federal court, jurisdiction for award of fees and costs is now before the US District Court for the District of Kansas under the applicable fee shifting statutes including 42 USC § 1988 for civil rights, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Federal Act), Pub. L. No. 91-646, 42 U.S.C. § 4601 (1994) *et seq.* and K.S.A. 58-3S01. Should the appellee or Kansas Court of Appeals desire to attempt the award of

costs or fees, or otherwise assert concurrent jurisdiction, notice under Multi District Litigation rules will be required to be made in the matter of *JAMES L. BOLDEN v. THE CITY OF TOPEKA, MAYOR HARRY FELKER, JAY OYLER and MIKE McGEE* CASE NO.: 02-263S KHV.

Whereas the appellant now voluntarily withdraws his appeal, having suffered the demolition of his houses and property at the hands of his opponent in disregard of this appeal and raises the briefed issues in federal court for their first hearing, the appellant now takes leave of the courts of the State of Kansas.

Respectfully Submitted,



Bret D. Landrith

Attorney for James L. Bolden

**CERTIFICATE OF MAILING**

I certify that on April 21st, 2003, I deposited a copy of this document, postage paid in the US Mail addressed to the following:

Ms. Sherri Price  
Assistant City Attorney  
21S E. *r.* Street, Suite 3S3  
Topeka, Kansas 66603-3979

*ht@~*

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Kansas Supreme Court # 20380  
605 W. Kansas  
Pittsburg, KS 66762  
1-620.231-7636  
Fax 1-734-S49-649S

A true copy ATTEST

*Carol G. Green*

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Clerk Supreme Court

IN THE COURT OF APPEALS OF  
THE STATE OF KANSAS

Appellate Court of Kansas  
Kansas Judicial Center, Room 374  
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Case No: Case No. 03 90087 A

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THE CITY OF TOPEKA

Appellee,

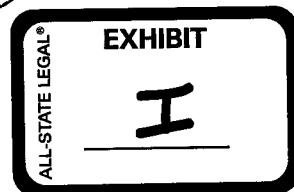
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Granted. The appeal is dismissed.

90087

ADP 5-5-03



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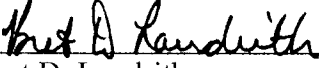
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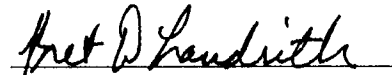
Respectfully Submitted,

  
\_\_\_\_\_  
Bret D. Landrith  
Attorney for James L. Bolden

**CERTIFICATE OF MAILING**


I certify that on April 21st, 2003, I deposited a copy of this document, postage paid in the US Mail addressed to the following:

Ms. Sherri Price  
Assistant City Attorney  
215 E. 7<sup>th</sup>, Street, Suite 353  
Topeka, Kansas 66603-3979



Bret D. Landrith  
Kansas Supreme Court # 20380  
605 W. Kansas  
Pittsburg, KS 66762  
1-620.231-7636  
Fax 1-734-549-6495

A true copy ATTEST



\_\_\_\_\_  
Clerk Supreme Court