

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MARCOS SANCHEZ, M.D., :  
:   
Appellee :  
:   
Vs. : No. 11-0247  
:   
MEHDI NIKPARVAR, M.D. and :  
INCARE, LLC, :  
Appellant :

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2018 AUG 23 AM 11:55  
CARBON COUNTY  
PROTHONOTARY

SUPPLEMENTAL MEMORANDUM OPINION

Matika, J. - August 23, 2018

Having granted the Motion of Mehdi Nikparvar, M.D., allowing him to file his Statement of Matters Complained of on Appeal<sup>1</sup> Nunc Pro Tunc, this Court files this supplemental memorandum opinion in support of our belief that the Appeal should be dismissed.

RECENT FACTUAL AND PROCEDURAL HISTORY

On March 24, 2017, the Appellee, Marcos Sanchez, M.D. (hereinafter "Sanchez") filed a petition to find the appellant, Mehdi Nikparvar, M.D. (hereinafter "Nikparvar") in contempt of court for failing to comply with this Court's Order of November 17, 2016. On March 27, 2017, an order was issued scheduling a hearing on Sanchez's petition for May 25, 2017. This scheduling

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<sup>1</sup> This statement was filed on August 16, 2018.

order also noted that "Counsel and/or Parties are attached for hearing on this date or any continued date." On April 17, 2017, Nikparvar filed a "Motion to Recuse Judge Matika." A hearing was scheduled for the same date as Sanchez's petition, that being May 25, 2017. This notice contained the exact same "attachment" language as well. Due to a scheduling conflict, the Court, *sua sponte*, moved both hearings to June 13, 2017 which was thereafter continued to August 10, 2017 at Nikparvar's request. All of the scheduling notices also contained attachment language, however, on continuance scheduling orders, the Court's computer system deletes the words "and/or parties" from these subsequent orders.<sup>2</sup> All of these notices were sent to Attorney Donald Moser as one of several counsel of record for Nikparvar.

On August 7, 2017, a "Motion to Object and Dismiss to hold the Defendant in Contempt of the Court" was filed by Nikparvar, pro se. Upon receipt, the Court immediately scheduled a hearing on that motion, also for August 10, 2017. Notice was likewise sent to Attorney Moser as counsel of record. At that hearing Attorney Donald Moser appeared on behalf of Nikparvar, but Nikparvar himself failed to appear. As a result, and without an evidentiary record being created to support Nikparvar's motions,

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<sup>2</sup> There appeared to be some type of glitch in the Civil Court System such that the form orders generated for court hearings such as these do not consistently print the same attachment verbiage.

the Court denied both. Nikparvar was found in contempt for violating the November, 2016 Order. Thereafter on August 17, 2017, Nikparvar filed a pro se Notice of Appeal. After a lengthy process of filing motions for extensions of time for a decision to be made on Nikparvar's "Motion to File Statement of Matters Complained of on Appeal Nunc Pro Tunc Pa.R.A.P. 1925(b)(2)", this Court granted Nikparvar's request allowing for this statement to be filed nunc pro tunc. On August 16, 2018, Nikparvar filed his statement. In that statement, Nikparvar raised five (5) issues for consideration. These issues are as follows:

1. The Court erred in assuming that Defendant should have been present at the hearing on August 10, 2017. Defendant was not subpoenaed nor Court ordered to be present. See scheduling order dated June 12, 2017. Wherein, it only requires Counsel to be attached on this date or any continued date. This order made no mention of the Defendant to be present.
2. The Court erred in not recusing itself due to Judge Matika's Memorandum and Opinion, with respect to Defendants Post-Trial Motions, dated April 13, 2013, under footnote one paragraph six, the Court states "Defendant's course of conduct throughout this case has been to ignore Court proceedings and orders." The court,

although having no doubts about Defendant Medhi Nikparvar's prodigious command of the English language, does not find him "credible" when he testified that he never received notice of any court proceedings or order after May 17, 2012.

3. The Court erred in ordering thirty (30) days of imprisonment for Defendant for not paying Plaintiffs (sic) Attorney fees despite overwhelming evidence that all the assets and bank accounts of Defendant were levied and/or liened on by the Internal Revenue Service and Defendant does not have the financial ability to pay the Plaintiffs (sic) Attorney fee's in the amount of \$74,000.00.
4. The Court erred in not allowing Defendant's lawyer to argue that the filed documents from the IRS regarding Liens and Levy's against the Defendant at the hearing on August 10, 2017. These Liens and Levy documents from the IRS are authentic and their authenticity should not be doubted by the court. Consequently, the Defendant has explained his lack of ability for making payment of the outstanding Attorney fees for this matter.
5. The Court erred in issuing an untimely Scheduling order,

dated August 7, 2017, docketed on August 8, 2017 and mailed to the Defendant on August 9, 2017, to attend a hearing scheduled for August 10, 2017. Therefore, said order was untimely when the earliest it could have arrived to inform the defendant would have been August 10, 2017 the same day as the hearing was scheduled.

The Court will address each of these issues seriatim.

#### LEGAL DISCUSSION

##### 1. Nikparvar's Failure to Attend Hearing on his Pro Se Motions.

The first issue raised by Nikparvar on appeal appears to suggest that the Court erred in assuming Nikparvar would appear to prosecute his filings. The August 10, 2017 scheduling order was for a hearing on Nikparvar's Motions. The Court cannot fathom a reason how Nikparvar believed the Court could properly render a decision without some type of evidentiary record being created on the issues he raised in the motions. Instead of appearing personally, Nikparvar engaged Attorney Moser who appears in his stead. Without Nikparvar to substantiate the claims raised in his motions, the court had no alternative but to deny the motions. Attorney Moser, knowledgeable as to the basis for the hearing, had an obligation to explain to his client that it was important to attend to explain why the Court should grant the relief being

requested. To now argue that it is the Court's fault for not otherwise issuing a subpoena for Nikparvar or sending him some other type of order to be present beyond a scheduling order is utterly preposterous. The fault here clearly lies with Nikparvar and his counsel, not the Court.

2. Court's failure to recuse based on credibility finding.

Next, Nikparvar argues that the Court erred by failing to recuse itself from these proceedings because of a previous determination that Nikparvar was not credible when he testified at a hearing at which he did in fact appear. As noted above, the hearing on Nikparvar's one and only request for recusal of the undersigned occurred on August 10, 2017, the proceeding at which Nikparvar failed to appear to prosecute that motion. Accordingly, without an evidentiary record, this Court had no record upon which to grant this motion. Even if the Court could decide it solely based upon the filing of the motion by Nikparvar, absent that evidentiary record, refusing to do so would still be proper. Simply because a court makes a credibility determination adverse to a party does not, in and of itself, suggest or intimate bias or prejudice. If that were the case, no Judge would ever be able to continue to preside over a case in which they had previously made a credibility determination.

### 3. Imposition of Prison Sentence

Nikparvar next argues that the Court erred in imposing a thirty (30) day jail sentence as a sanction for not complying with a previous order to pay Sanchez's attorney fees. The claim is without merit as well.

As previously stated, Nikparvar presented no evidence to support his claim that "all of the assets and bank accounts" were levied or liened by the IRS as he failed to appear to pursue the motions he filed. The Court could not and would not simply rely upon the attachments to Nikparvar's motion especially in light of not only his failure to appear but also the objection from Sanchez's Counsel. It would be wholly improper to do so.

### 4. Refusal to Allow Nikparvar's Counsel to Offer and Argue the I.R.S. Liens.

Nikparvar next argues that this Court erred by not accepting copies of the I.R.S. liens as evidence that Nikparvar could not pay the monies owed to Sanchez because his assets were presumably frozen. Once again, Nikparvar's argument fails.

First of all, Nikparvar's Counsel tried to argue this point to the Court and simply introduce copies of these judgment notices/liens from the I.R.S. This attempt was met by objection from Sanchez's Counsel. Consequently, based upon rules of evidence, and the fact that those documents were not properly

authenticated, their admission into evidence was refused by the Court.

Secondly, even if admitted, these documents simply showed that Nikparvar owed a significant sum of money to the Federal Government, a creditor just like Sanchez, albeit with a greater lien priority. However, at no point in time did Nikparvar's Counsel ever argue that the I.R.S. had in fact "garnished" Nikparvar's assets preventing him from paying Sanchez.

Accordingly, the Court did not improperly exclude copies of these documents from being introduced, nor err in finding Nikparvar in contempt for not complying with a previously issued order of November 17, 2016.

##### 5. Untimeliness of Scheduling of August 10, 2017 Hearing.

Lastly, Nikparvar argues that the Court erred in its rulings of August 10, 2017 because it did not properly notice Nikparvar of that hearing. While to a certain extent Nikparvar may be correct that the mailed notice might not have reached him in time, Attorney Moser was obviously equipped with the documentation for Nikparvar to argue this motion which he attempted to do. How could it be said that Nikparvar could not have known about that hearing if he supplied his counsel with this information. Counsel obviously received notice in some way as Attorney Moser appeared on Nikparvar's behalf. Additionally, at no time at the August 10,



2017 hearing did Attorney Moser request a continuance because his client was not noticed nor unavailable due to short scheduling.

CONCLUSION

For the foregoing reasons, this Court would suggest to the Appellate Court that Nikparvar's Appeal once again be dismissed and our Orders of August 10, 2017 affirmed.

BY THE COURT:

  
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Joseph J. Matika, Judge