

FILED**NOT FOR PUBLICATION**

FEB 17 2015

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORWOOD PRICE,

Plaintiff - Appellant,

v.

LOS ANGELES COUNTY; et al.,

Defendants - Appellees,

And

LOS ANGELES COUNTY SOCIAL
SERVICES DEPARTMENT; et al.,

Defendants.

No. 13-55359

D.C. No. 2:10-cv-05754-GAF-JC

MEMORANDUM*

MARGARET PRICE,

Plaintiff,

And

NORWOOD PRICE,

Plaintiff - Appellant,

No. 13-55829

D.C. No. 2:10-cv-05754-GAF-JC

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

v.

LOS ANGELES COUNTY SOCIAL
SERVICES DEPARTMENT,

Defendant,

And

LOS ANGELES COUNTY; et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted February 12, 2015**
Pasadena, California

Before: CALLAHAN, WATFORD, and OWENS, Circuit Judges.

Norwood Price, a retired attorney proceeding pro se, lived with and took care of his elderly mother, Margaret Price. When Margaret was hospitalized in June 2009, her frailty, dementia, and bedsores raised concerns as to the adequacy of Norwood's care. Sasha Lala, a social worker, was assigned her case. Through meetings with Margaret's caregivers and officials, Lala prompted the issuance of an emergency protective order prohibiting Norwood from removing Margaret from

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

her nursing facility. Over Norwood's objection a conservator was appointed. Eventually Norwood regained conservatorship of Margaret on the condition that he not remove her from the nursing home. Norwood then sued Lala and the other officials involved with the care of his mother, claiming that they had violated his constitutional rights. After some discovery, the district court granted summary judgment for the defendants. Norwood eventually appealed from the denial of his untimely Rule 59 motion and from the denial of his motion to re-tax costs. We affirm, as Norwood has failed to show that the district court abused its discretion in denying his untimely Rule 59 motion or in denying the motion to re-tax costs.¹

1. A motion for a new trial pursuant to Federal Rule of Civil Procedure 59 “must be filed no later than 28 days after the entry of judgment.” Fed. R. Civ. P. 59(b). Norwood's Rule 59 motion was one day late. The 28-day filing period is mandatory and jurisdictional. 12 James Wm. Moore et al., *Moore's Federal Practice*, ¶ 59.11[1][a] (3d ed. 2014). An untimely Rule 59 motion may be treated as a motion under Rule 60, but it does not stay the time for appealing the underlying judgment. Fed. R. Civ. P. 60(c)(2) (“The motion does not affect the judgment's finality or suspend its operation.”). Accordingly, Norwood's notice of

¹ We have fully considered Norwood's motion to unseal documents and the materials attached to the motion. The motion to unseal documents is denied.

appeal filed after the district court denied his untimely Rule 59 motion as a Rule 60 motion does not challenge the district court's prior final judgment.

2. We review the denial of a Rule 60 motion for reconsideration for abuse of discretion. *United Nat'l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). Here, the district court reasonably determined that regardless of Norwood's claims of restricted discovery and misstatements by Lala and others, Margaret's medical condition and the contemporary records show that Lala and others were reasonably concerned with Norwood's care of Margaret. Even if we accept Norwood's assertions that there are some questions as to what some individuals said to Lala on particular occasions, the evidence clearly rebuts his assertion that she committed the tort of interfering with his familial relationship. The untimely Rule 59 motion was properly denied.

3. We recognize a presumption in favor of awarding costs to the prevailing party, and the standard for reviewing an award is abuse of discretion. *See Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1247 (9th Cir. 2014). As Norwood's motion to re-tax was based on claims of restricted discovery and misstatements by the defendants that the district court had previously rejected, the district court's denial of the motion to re-tax costs was not an abuse of discretion.

The district court's denial of Norwood's untimely Rule 59 motion and its denial of his motion to re-tax costs are **AFFIRMED**.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Opening Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Answering Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Other**	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
TOTAL:				\$ <input type="text"/>	TOTAL: \$ <input type="text"/>			

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By:

, Deputy Clerk