PROOF THAT U.S. DISTRICT COURT JUDGE ALGENON MARBLEY'S DECISION WAS ILLEGALLY "FIXED" NOT MERELY TO COVER UP THE PERJURY AND LEGAL MALPRACTICE OF THE LAW FIRM OF FROST BROWN TODD, BUT ALSO TO FRAME ME — THE SON OF FROST BROWN TODD'S CLIENT — FOR FROST BROWN TODD'S OWN LEGAL MALPRACTICE

by Jonathan R. Zell, Attorney-at-Law

I. Judge Marbley's Findings of Fact

The district judge based his decision on two main findings of fact.

A. <u>The First Finding of Fact</u>

The first finding was that, throughout the entire trial-court proceedings in Eileen Zell's (my mother's) underlying case of *Michael Mindlin, et al. v. Eileen Zell*, none of the Frost Brown Todd (FBT) attorneys had supposedly been asked (by me) to research what was essentially the sole legal issue involved in my mother's underlying case — the statute of limitations applicable to the bad loan — and, therefore, that none of the FBT attorneys had researched this issue.

The district judge based this finding solely on four FBT attorneys' blatant, wholesale, perjurious, and obviously-coached testimony — testimony that was directly contradicted by the attorneys' own numerous e-mails (back and forth among themselves and with me), legal-research memos, billing statements, and pretrial pleadings as well as by the trial court's own previous pretrial rulings and the ***undisputed*** 8-hour testimony of my mother's expert witness.

B. <u>The Second Finding of Fact</u>

The second finding was based solely on the obviously-perjured testimony of only ***one*** of the defendant FBT attorneys. After almost four years of pretrial proceedings (including litigation directly involving my role as co-counsel with the FBT firm on my mother's case), this defendant claimed — with no documentation whatsoever and for the very first time — that, right before the briefing period on the statute-of-limitations issue in the underlying case, my mother and I had supposedly ***orally*** agreed that he and his associate would henceforth do no more legal research in my mother's ongoing litigation unless I specifically asked them to do so.

This completely undocumented claim was so obviously fabricated that it was an insult to the fact-finder's intelligence. For what "Am Law 200" law firm enters into an unwritten limited-representation agreement with a client in the middle of litigation without creating any personal notes, notes to the file, e-mails, or any other documentation to back up this supposed agreement — and then "forgets" to mention this agreement for almost four years' worth of pretrial proceedings, including litigation (i.e., on the third-party complaint) on the very issue involved in that supposed agreement?

II. These Findings of Fact Could Not Even Fool a Sixth-Grader

However, even if the claimed oral agreement truly existed, it would still not matter. This is because, during the briefing period on the statute-of-limitations issue, I had sent to this same FBT attorney e-mails specifically asking him and his associate to research the "statute of limitations" on my mother's bad loan; in response, this attorney and his associate then e-mailed to me legal memos on "the statute of limitations"; and, after that, the FBT law firm sent my mother billing statements for their research on the "statute of limitations."

A. <u>The FBT Attorneys' Perjurious Testimony</u>

Although this FBT attorney's perjurious testimony took me by surprise at the trial (and the district judge refused to allow me to recall this defendant to the witness stand the next day), I nevertheless was able to cross-examine him about some of those e-mails. Yet, even ***in the face*** of our e-mail correspondence clearly demonstrating that I had specifically asked him during the time period in question to research the statute of limitations, this FBT attorney just kept nonsensically repeating the mantra that I had never asked him to do such research. Consider the following excerpt taken from my *Motion for a New Trial*:

> Defendant Rupert was asked by the Plaintiff's counsel (Mr. Zell) to read the following excerpt from the last paragraph of Mr. Zell's email to Defendant Rupert of July 11, 2011:
>
> > Please find enclosed below previous memos on the statute-of-limitations issue from FBT attorneys Patricia Laub and Douglas Bozell. However, if your research suggests that we might have a statute-of-limitations problem (i.e., that Ohio law applies), please let me know and my mother will then reconsider the idea of a settlement.
>
> Defendant Rupert then claimed that — despite the plain meaning of Mr. Zell's request to "research . . . [whether] we might have a statute-of-limitations problem (i.e., that Ohio law applies)" — Mr. Zell had instead asked Defendant Rupert only to research the 1954 *Standard Agencies* case and, therefore, that was what Defendant Rupert had researched.
>
> Then, in reference to the above-quoted July 11, 2011 email, the following question-and-answer exchanges took place between Plaintiff's counsel (Mr. Zell) and Defendant Rupert:
>
> (COUNSEL) Q: In response to this e-mail, not asking you to research one particular case, but asking you * * * to verify that the prior research of the firm was correct to the extent that Missouri's statute of limitations applied, did you do that in response to this e-mail? Yes or no?
>
> (RUPERT) A: As I told you, no, I did not because you told me to focus on the 1954 case [of *Standard Agencies*].
>
> (COUNSEL) Q: Thank you for answering. Do you believe that you were representing my mother's interest faithfully by limiting your research to one case when I specifically asked in this e-mail for you to research the entire issue?

(RUPERT) A: Yes. * * *

* * *

(COUNSEL) Q: You never told me that Ohio [statute-of-limitation] law applied during the trial phase, correct?

(RUPERT) A: Correct, because you didn't ask me to research that.

(COUNSEL) Q: Except in this e-mail that I'm bringing back * * * * You previously read the last paragraph. * * *

B. Our Expert Witness' Undisputed Testimony

At the trial, my mother's expert witness (James Leickly) provided several hours' worth of undisputed testimony proving that all four of the FBT attorneys were lying when they denied having researched the applicable statute of limitations on my mother's promissory note during the trial-court proceedings in the underlying case. This can be seen in the following short excerpt from Mr. Leickly's testimony, also taken from my *Motion for a New Trial*:

The issue before the Court — the issue before the Court [in Mrs. Zell's underlying case] was the statute of limitation* * * * [T]he major issue was whether or not this note was enforceable under the statute of limitations.

* * *

So, yes, it's procedural law. That was what the issue was. So Frost Brown, from everything I could tell, every clue I could see, what they said, how they argued, was researching the statute of limitations issue. That's what they were researching.

If they weren't researching that, that would be malpractice because that was the issue. They identified the problem. They just didn't identify the proper solution to the problem.

* * *

I — I was — actually, what I was referring to was a little more expansive than their bills. It shows up in their invoices, but it also shows up in emails as well. When you read those, it's clear what is meant by it.

I don't see how you can read it any other way, that they are trying to determine — as they do this research, they are trying to determine statute of limitations, which state's laws apply because we all agree, if Ohio applies, Mrs. Zell is out. If Missouri applies, it's a ten-year instead of a six, she's in * * * *

C. Judge Marbley's Pretrial Ruling

Finally, the district judge had ruled during the pretrial proceedings that the FBT attorneys — not me — were the ones who had conducted the allegedly-negligent research on the statute of limitations:

> On the statute of limitations issue, Mr. Zell presents evidence of correspondence between himself and the Defendants in which he questions Defendants' statute of limitations analysis and expresses doubt as to whether Defendants properly considered the issue. Moreover, Mr. Zell presents correspondence indicating that Plaintiff's . . . belief that the Missouri statute of limitations would apply was based on a review of Defendants' recommendation and reasoning, as opposed to any independent research or investigation conducted by Plaintiff or by Mr. Zell.

So, as even a sixth-grader could see, the district judge's credibility determinations in this case were themselves not credible. Accordingly, I would ***bet my life*** that both the district judge and any of the appellate judges who actually read my briefs knew this. Furthermore, I am convinced that the district judge denied my request for an oral hearing on my *Motion for a New Trial* and that the appellate panel denied my request for oral argument to protect their respective cover-ups of the FBT law firm's blatant, wholesale, and obvious perjury.

For the district judge purported to believe the FBT attorneys' testimony over all of the voluminous contradictory documentary evidence (most of which had been written by the defendant attorneys themselves) and over the ***undisputed*** testimony of my mother's expert witness, who discussed this documentary evidence — the FBT attorneys' e-mails, legal memos, and billing statements — in detail.

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