No. 102020-1

SUPREME COURT
OF THE STATE OF WASHINGTON

P. KOICHI YAGI,

Petitioner,

v.

ESTATE OF CHARLES CANNON,

Respondent.

ANSWER TO PETITION FOR REVIEW

SMITH GOODFRIEND, P.S.

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A. Introduction.

Henry Cannon Jr. is the sole surviving heir of his deceased brother, Robert Cannon, and personal representative of his estate. The main asset of the Estate is a house in Renton, Washington. When Henry tried to sell the house, he discovered that appellant and petitioner P. Koichi Yagi had recorded a deed of trust against the house securing a $45,000 promissory note. Although full repayment on the note became due in September 2008, no payments had been made, and Mr. Yagi never took action to enforce it. Accordingly, the trial court held Mr. Yagi's promissory note is time-barred and unenforceable.

Mr. Yagi appealed that decision, arguing that King County Superior Court lacked subject matter jurisdiction because he attempted to initiate competing probate proceedings in Thurston County Superior Court first. Division One correctly rejected this argument, emphasizing that on the same day Mr. Yagi filed a request

for letters of administration in Thurston County, King County granted letters of administration to Henry, thereby appointing him personal representative and establishing King County as the exclusive venue under the Trust and Estate Dispute Resolution Act, RCW 11.96A.050(5).

This Court should deny Mr. Yagi's petition for review. Division One correctly held that Mr. Yagi never initiated any proceedings in Thurston County, and that even if he had, such proceedings would not have impacted King County's subject matter jurisdiction regarding the Estate. Further, the statute of limitations expired on Mr. Yagi's promissory note; he presented no credible evidence of any partial payments tolling the statute of limitations and failed to provide any explanation as to why additional discovery was necessary.

Moreover, Mr. Yagi's amended petition for review wastes the Court's time. It is a conspiratorial screed that baselessly accuses Division One's judges of engaging in

"corruption" and "perpetuat[ing] a fraud" against him, characterizing them as "parasites masquerading as guardians of the law . . . who are willing to place countless innocents on their sacrificial alter [sic] of greed, abuse of power, and self-interest." (Am. Pet. 12-14)[1]

Mr. Yagi cannot show Division One's decision conflicts with any authority from this Court or the Court of Appeals, nor can he show it violated any constitutional provision or that it involves an issue of substantial public interest. *See* RAP 13.4(b).

B. Restatement of the case.

Henry Cannon Jr. is the sole surviving heir of his deceased brother, Robert Cannon, who died intestate. (CP 1, 29, 40) On November 10, 2021, Henry was appointed as

[1] This answer cites to Mr. Yagi's initial May 25 petition for review as "Pet." and to the amended July 3 petition for review as "Am. Pet."

the personal representative for his brother's estate in King County Superior Court. (Op. 1)[2]

That same day, petitioner P. Koichi Yagi attempted to initiate competing probate proceedings by filing a petition for letters of administration in Thurston County Superior Court. (Op. 1-2; CP 29-39)[3] Thurston County Superior Court did not enter any orders or take any action on Mr. Yagi's petition. (Op. 2)

The Estate's main asset is a house located in Renton, Washington. (CP 177) When Henry tried to sell the house, he discovered Mr. Yagi had recorded a deed of trust against it securing a $45,000 promissory note, which required payment in full by September 10, 2008. (Op. 2; CP 3, 9-10, 16-18)

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[2] The Court of Appeals decision is cited as "Op. ___."

[3] Mr. Yagi wrongly claims he filed his petition on November 8, 2021. (Pet. 4) Although Mr. Yagi dated the petition on November 8, he admitted it was not filed that day due to an unspecified "clerical error." (CP 26) The petition was not filed in Thurston County until November 10. (CP 26, 29)

On March 2, 2022, Mr. Yagi responded to an information request from the title company for the Estate and claimed the principal amount owed on his note was $45,000—confirming that no payments have ever been made on the note. (CP 3, 14) Mr. Yagi claimed the total amount due—including unpaid principal, accrued interest since September 2008, and attorney and collection costs—was $428,954.59. (Op. 3; CP 14)

On March 3, 2022, the Estate filed a petition under the Trust and Estate Dispute Resolution Act (TEDRA), RCW ch. 11.96A, seeking an order finding that any creditor's claim by Mr. Yagi based on his promissory note and deed of trust from 2008 was time-barred under the six-year statute of limitations. (Op. 2-3; CP 1-5) The Estate asked that these issues be resolved at the initial hearing on the petition, as allowed by RCW 11.96A.100(8). (CP 5) On March 16, Mr. Yagi recorded a lis pendens on the property

based on the promissory note and deed of trust. (Op. 3; CP 135)

On March 28, Mr. Yagi answered the Estate's petition and moved to dismiss, arguing that King County Superior Court lacked subject matter jurisdiction and was not the proper venue because he had commenced probate proceedings in Thurston County Superior Court first. (Op. 3; CP 68-69) Mr. Yagi also argued that because Henry is a former King County employee—Henry retired from the King County Department of Adult and Juvenile Detention in 2010 (CP 93)—King County Superior Court would be biased in Henry's favor. (Op. 3; CP 70) Finally, Mr. Yagi claimed that Robert made partial payments on the promissory note while he was still alive, but submitted only his own declaration to support the allegation. (Op. 3; CP 64-66, 71)

On April 1, Commissioner Mark Hillman granted the Estate's TEDRA petition, holding that Mr. Yagi's

promissory note and deed of trust were unenforceable because the statute of limitations had expired. (Op. 4; CP 104) Commissioner Hillman further held that Mr. Yagi provided no evidence of bias due to Henry's former employment with the County or that Robert made payments tolling the statute of limitations. (Op. 4; RP 7: "THE COURT: Have you shown me any bank records or anything else? . . . So it's just your declaration? MR. YAGI: Yes.")

Commissioner Hillman awarded the Estate attorney fees,[4] concluding that Mr. Yagi "demonstrates bad faith . . . in not only attempting to enforce a Promissory Note and Deed of Trust that are clearly time barred, but he vastly overstates the amount due thereby causing [the Estate] to incur attorney fees and costs." (CP 105)

[4] The Commissioner's order contains a scrivener's error, stating it awarded attorney fees under "RCW 11.96A.250" rather than RCW 11.96A.150. (CP 105; Op. 9-10)

On April 11, Mr. Yagi filed a motion to revise Commissioner Hillman's order, which was denied on May 6. (CP 106-15) The Estate then filed a motion to cancel the lis pendens Mr. Yagi had recorded. (CP 116-19)

On May 26, Mr. Yagi filed a notice of appeal, seeking review of the Commissioner's April 1 order and the trial court's May 6 order denying revision. (CP 137) On June 15, Mr. Yagi filed a motion to stay all rulings, including cancelation of the lis pendens, until his appeal was resolved. (CP 165-67)

On July 1, the trial court agreed to stay cancellation of the lis pendens on the condition that he post a supersedeas bond in the amount of $237,000 on or before July 20, 2022. (Op. 4; CP 184-87) The trial court ruled that, if Mr. Yagi failed to timely deposit the supersedeas bond, his motion to stay would be denied and the Estate would be able to sell the property free and clear of Mr. Yagi's deed of trust and the lis pendens. (Op. 4-5; CP 184-85)

Mr. Yagi failed to post a supersedeas bond and did not amend his Notice of Appeal to include the trial court's July order conditioning a stay of removing the lis pendens on posting a supersedeas bond. (Op. 4-5)

On April 24, 2023, the Court of Appeals affirmed the trial court in all respects in an unpublished decision.

On May 25, Mr. Yagi filed a "motion for discretionary review" in this Court, which the Court treated as a petition for review under RAP 13.3. On July 3, 2023, Mr. Yagi filed an amended petition for review. On July 5, Supreme Court Deputy Clerk Sarah Pendleton informed the parties that "[t]here are no provisions in the Rules of Appellate Procedure for filing an amended petition for review" and that "the corrected petition for review is rejected for filing." On July 11, Mr. Yagi filed a motion for the Court to consider his amended petition and, on July 12, the Deputy Clerk informed the parties that Mr. Yagi's motion would be set

for consideration "at the same time as the Court considers the petition for review."

C. Why review should be denied.

In urging this Court to accept review, Mr. Yagi raises the same arguments Division One correctly rejected: (1) that King County Superior Court lacked subject matter jurisdiction and was the improper venue because he initiated probate proceedings in Thurston County first (Pet. 8-11), (2) that Robert made payments toward the promissory note before he died thus tolling the statute of limitations (Pet. 12-14), (3) that the trial court should have permitted discovery (Pet. 14-16), and (4) that the trial court should not have awarded attorney fees under "RCW 11.96A.250." (Pet. 16-17)

But Mr. Yagi fails to identify any authority from this Court or the Court of Appeals contradicting Division One's well-reasoned decision, and his vague references to due process and broad public concern do not support review.

See RAP 13.4(b)(1)-(b)(4). Further, while the Court should not even consider Mr. Yagi's amended petition filed July 3, the amended petition adds nothing of substance and likewise provides no grounds for review. The Court should deny Mr. Yagi's petition.

1. Mr. Yagi's attempt to initiate probate proceedings in Thurston County had no effect on the validity of the trial court's orders.

Mr. Yagi argues that the trial court's orders are void because it improperly "usurp[ed]" jurisdiction from Thurston County Superior Court. (Pet. 9) Division One correctly rejected this argument.

First, as Division One recognized, Mr. Yagi "filed a request for letters of administration in Thurston County" "[o]n the same day that Henry was appointed as personal representative of the Estate in the King County action," and thus "the record establishes that probate proceedings of the Estate were first commenced in King County." (Op. 6-7; CP 1, 29, 93, 104). This fact *alone* defeats Mr. Yagi's claim that

the trial court lacked subject matter jurisdiction or was the improper venue—simply put, Mr. Yagi did not file the Thurston County action "first," nor did any competing proceedings actually commence.

Indeed, probate proceedings cannot commence until a personal representative has been appointed. *See* RCW 11.40.010 ("A person having a claim against the decedent may not maintain an action on the claim *unless a personal representative has been appointed*[.]") (emphasis added). Because Thurston County took no action on Mr. Yagi's request for letters of administration, no probate proceedings commenced there, and thus Division One correctly held that Thurston County never "obtained jurisdiction over the Estate first and at the exclusion of the King County Superior Court." (Op. 6) Further, once King County granted letters of administration to Henry, it became the exclusive venue under TEDRA. RCW 11.96A.050(5).

Moreover, as Division One explained, any Thurston County "proceedings" could not deprive subject matter jurisdiction from King County. (s*ee* Op. 5: "The term 'subject matter jurisdiction' is often confused with a court's 'authority' to rule in a particular matter.") (quoting *Marriage of Major*, 71 Wn. App. 531, 534, 859 P.2d 1262 (1993)); *see also Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315-16, 76 P.3d 1183 (2003) ("A court may acquire jurisdiction even though it is not the court of proper venue" because venue "has to do with the place of a proceeding" and "is a procedural, rather than jurisdictional, issue.") (quoted source omitted)

All superior courts in Washington "have original jurisdiction" in "all matters of probate." (Op. 6, quoting Wash. const. art. IV, § 6); *see also* RCW 11.96A.040(1) (The "superior court of every county has original subject matter jurisdiction over . . . the administration of estates," and they may "appoint personal representatives.") TEDRA

expressly provides that the trial court's subject matter jurisdiction "applies without regard to venue," and "[a] proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action." RCW 11.96A.040(4).

The only authority Mr. Yagi relies on to support his request for review is a 100-year-old federal case providing that a "court first acquiring jurisdiction shall proceed without interference from [another] court[.]" (Pet. 9) (quoting *Kline v. Burke Const. Co.*, 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226 (1922)). But *Kline* is irrelevant here. As discussed, Division One correctly held that Thurston County *never* acquired exclusive jurisdiction and authority over the Estate. (Op. 6-7)

More importantly, the rule articulated in *Kline*—known as the priority of action doctrine in Washington—does not support invalidating a final judgment from a court

of competent jurisdiction; rather, it is a discretionary rule used to promote comity between courts by preventing "unseemly, expensive, and dangerous conflicts of jurisdiction and of process." *State v. Stevens Cnty. Dist. Court Judge*, 194 Wn.2d 898, 903, ¶10, 453 P.3d 984 (2019). The priority of action rule has nothing to do with subject matter jurisdiction; it addresses *where* a claim will be resolved—in other words its venue. *See, e.g., Am. Mobile Homes of Wash., Inc., v. Seattle-First Nat. Bank*, 115 Wn.2d 307, 319-22, 796 P.2d 1276 (1990) (applying priority of action doctrine to determine proper venue on remand).

Moreover, while the priority of action rule might be relevant in resolving two competing lawsuits that proceed simultaneously, it is nevertheless the first lawsuit reaching a final judgment—not the first one filed—that controls resolution of a claim. *See Restatement (Second) of Judgments* § 14 cmt. a (1982) ("when two actions are

pending which are based on the same claim, or which involve the same issue, it is the final judgment first rendered in one of the actions which becomes conclusive in the other action," "regardless of which action was first brought"). Thus, even assuming Mr. Yagi filed suit in Thurston County first—which he did not—the King County action would still control because it was the first (and only) suit to reach judgment.

In short, Division One correctly held that the King County proceedings commenced before the alleged Thurston County proceedings. But even if Mr. Yagi timely commenced Thurston County proceedings, that would not deprive King County of subject matter jurisdiction and, once the trial court appointed Henry as the personal representative of the Estate, King County became the exclusive venue under RCW 11.96A.050(5). Moreover, the trial court's orders are valid irrespective of venue under RCW 11.96A.040(4), and neither the rule in *Kline* nor the

priority of action rule require invalidating the trial court's final orders. Mr. Yagi has therefore failed to cite to any authority contradicting Division One's decision.

2. Division One correctly held that the trial court acted within its discretion in accepting Commissioner Hillman's factual finding that Robert made no payments on the promissory note.

Next, Mr. Yagi claims that Division One wrongly affirmed the trial court's conclusion that the statute of limitations was never tolled because no payments were ever made on Mr. Yagi's promissory note. (Pet. 12-14); *see* RCW 4.16.270.

Mr. Yagi wrongly suggests that Division One should have treated the trial court's order as a summary judgment order by viewing the evidence and inferences in Mr. Yagi's favor and reversing if any genuine dispute as to a material fact remained. (Pet. 6-7)

But Mr. Yagi did not appeal from a summary judgment order—he appealed from the trial court's order

denying his motion for revision of the Commissioner's order granting the Estate's TEDRA petition entered after a hearing that resolved all factual and legal issues between the parties. *See Estate v. Hayes*, 185 Wn. App. 567, 597, ¶67, 342 P.3d 1161 (2015) (TEDRA authorizes superior courts "to resolve all issues of fact and all issues of law" based on "affidavits or declarations" submitted at an expedited initial hearing); *see also* RCW 11.96A.260 (The legislature enacted TEDRA to ensure "the prompt and early resolution of disputes in trust, estate, and probate matters"). Thus, Division One correctly reviewed the trial court's order denying revision for an abuse of discretion. (Op. 7)

In March 2022, Mr. Yagi completed an information request claiming that the unpaid principal balance Robert owed on the promissory note was $45,000—conceding that no payments had been made before September 10, 2008, when the amount became due. (Op. 7; CP 3, 14) Thus, the

six-year statute of limitations began to run on September 10, 2008, and it was Mr. Yagi's burden to show that Robert had made a voluntary payment thereby tolling the statute under RCW 4.16.270. *See Walker v. Sieg*, 23 Wn.2d 552, 561-62, 161 P.2d 542 (1945) ("[T]he burden of proving the payment within the statutory period rests upon the party asserting it.")

Mr. Yagi failed to meet that burden, relying solely on his own declaration stating that five payments totaling $2,925 were made between 2010 and 2018. (Op. 8; CP 82-83) When asked for proof at the hearing on the TEDRA petition, Mr. Yagi was not able to produce "any bank records or anything else" to show that Robert made payments on the promissory note. (RP 7) Division One correctly held that the Commissioner was not required to accept the naked assertions in Mr. Yagi's declaration and that substantial evidence supported the finding that no payments had been made on the promissory note. (Op. 8,

"The weight accorded to competing evidence and credibility determinations are matters solely for the trier of fact and not subject to review.") (citing *Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003)).

The sole case Mr. Yagi cites to support his request for review—*Cullen v. Whitham*, 33 Wash. 366, 74 P. 581 (1903) (Pet. 13-14)—is irrelevant here. In *Cullen*, the parties to a promissory note disagreed as to how interest was to be calculated, but it was essentially undisputed that the debtors had made payments towards the debt. 33 Wash. at 367-68. Here, the trial court found that Mr. Yagi failed to show *any* partial payments were made *at all*.

Even though the promissory note here "states that all payments go first to the interest, not the principal" (Pet. 15), Mr. Yagi still had to present *credible* evidence that payments had been made in order to toll the statute of limitations. The trial court acted well within its discretion

in deciding that Mr. Yagi's own declaration—absent "bank statements" or "anything else"—was not sufficiently credible evidence to toll the statute of limitations. *See Ramos v. Dep't of Labor & Indus.*, 191 Wn. App. 36, 40, ¶12, 361 P.3d 165 (2015) ("Whether self-serving testimony should be discounted is a credibility issue for the trier of fact, and appellate courts will not review it.") (quoted source omitted).

3. Division One correctly held that the trial court did not abuse its discretion in denying Mr. Yagi's request for additional discovery.

Mr. Yagi also argues that Division One wrongly held the trial court acted within its discretion when it denied discovery and that discovery was required under RCW 11.96A.115, relying on *Estate of Fitzgerald*, 172 Wn. App. 437, 294 P.3d 720 (2012), *rev. denied*, 177 Wn.2d 1014 (2013), and *Lewis v. Bell*, 45 Wn. App. 192, 724 P.2d 425 (1986). (Pet. 14-16) But both *Fitzgerald* and *Lewis* confirm

that Division One correctly held that the trial court acted within its discretion in denying discovery.

In *Fitzgerald*, the appellant claimed its employee had called the personal representative of the estate but provided no evidence—such as an affidavit from the employee—to support that self-serving assertion. 172 Wn. App. at 450, ¶26. The court held that the appellant was not entitled to additional discovery, emphasizing that a trial court "properly denies a continuance request" to conduct discovery under RCW 11.96A.115 when "the requesting party does not offer a good reason for the delay in obtaining the desired evidence." 172 Wn. App. at 448, ¶22.

Similarly, in *Lewis*, the court held that the trial court acted within its discretion in denying a request for a continuance to conduct additional discovery when the requesting party provided "[n]o explanation . . . as to why" certain witnesses "had not been deposed during the 16

months the action was pending." *Lewis*, 45 Wn. App. at 196.

Here, Mr. Yagi claimed that two witnesses were present when Robert made payments on the promissory note, but he never submitted declarations from the witnesses despite having a month to produce them. Thus, Division One correctly held that Mr. Yagi—just like the appellants in *Fitzgerald* and *Lewis*—"did not offer a good reason why he had not been able to obtain declarations from his witnesses" and "failed to inform the court what testimony the witnesses would offer in support of his claim" that Robert made partial payments. (Op. 9); *see Fitzgerald*, 172 Wn. App. at 450, ¶26 (Trial court properly denied additional discovery when "no affidavit by the [appellant's witness] was filed with the superior court").

4. The trial court's attorney fee award is moot, and Division One correctly exercised its authority to award appellate attorney fees.

Mr. Yagi argues the trial court wrongly awarded attorney fees under "RCW 11.96A.250." (Pet. 16) But this issue is moot and does not warrant this Court's review.

Division One correctly recognized that the trial court clearly intended to award attorney fees under RCW 11.96A.150(1) and simply cited the wrong statute due to a scrivener's error. (Op. 9-10) Nevertheless, Division One is correct that the Estate "forfeited its right to attorney fees in the trial court." (Op. 10); (*see also* Resp. Br. 59 n.9, conceding that "the Estate did not enforce the award . . . hoping (mistakenly) that the decision to forgo fees would encourage Mr. Yagi not to appeal the trial court's decision.") Thus, the trial court's attorney fee award was never and can no longer be enforced. Mr. Yagi's objection to the specific statute cited therein presents no issue for this Court to review.

It is not entirely clear from Mr. Yagi's petition if he also seeks review of Division One's award of appellate fees under RCW 11.96A.150(1) and RAP 18.1(a). (Op. 10-11) In any event, RCW 11.96A.150(1) expressly permits "any court on appeal" to award "reasonable attorneys' fees" "in such amount and in such manner as the court determines to be equitable," with consideration of "any and all factors that it deems relevant and appropriate[.]" Mr. Yagi does not cite any authority undermining Division One's award of appellate attorney fees, nor does he explain why the award was improper or beyond Division One's authority.

5. Mr. Yagi's amended petition does not raise any issue warranting this Court's review.

The Court should deny Mr. Yagi's motion to consider his amended petition review.[5] Regardless, if the Court considers the amended petition, it should deny it.

a. Mr. Yagi's amended petition should be denied insofar as it raises the same issues as his initial petition for review.

To the extent Mr. Yagi's amended petition raises substantive issues, they are the same issues—relying on the same authority—from his initial petition. (*Compare* Am. Pet. 15-20, 23-31, *with* Pet. 8-17) Thus, because it raises the

[5] Under RAP 13.4(a) a petition for review, such as Mr. Yagi's May 25 petition, filed while a motion to publish is pending is the petition this Court considers. RAP 13.4(a) ("If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions."). Nothing in RAP 13.4(a), or any other RAP, authorizes an amended petition.

same issues, the amended petition must be denied for the same reasons discussed above. *See* §§C.1-C.4, *supra*.

b. The trial court's order lifting the lis pendens is not part of this appeal.

The only unique issue Mr. Yagi raises in his amended petition for review is his claim that the trial court lacked the authority to require that he post a supersedeas bond before granting his motion to stay lifting the lis pendens Mr. Yagi recorded on the property. (Am. Pet. 21-23) But the trial court's order regarding the lis pendens was not within the scope of review and Division One correctly ignored it. (Op. 10)

On May 26, 2022, Mr. Yagi filed his notice of appeal, designating only Commissioner Hillman's order granting the Estate's TEDRA petition and the trial court's order denying Mr. Yagi's motion for revision. (CP 137) On June 15, Mr. Yagi filed a motion to stay an order removing the lis pendens. (CP 165-67) On July 1, the trial court entered an order stating it would stay lifting the lis pendens if Mr. Yagi

posted a supersedeas bond and, if he failed to do so, it would remove the lis pendens. (CP 184-86) Mr. Yagi failed to post a supersedeas bond.

The Court of Appeals will review a trial court order not designated in a notice of appeal only if "(1) the order or ruling prejudicially affects the decision designated in the notice, *and* (2) the order is entered, or the ruling is made, *before* the appellate court accepts review." RAP 2.4(b) (emphasis added).

The trial court entered its order conditioning a stay of the lis pendens on the posting of a supersedeas bond *after* Division One accepted Mr. Yagi's May 26 notice of appeal. To seek review of that order, Mr. Yagi had to either (1) move to amend his May 26 notice of appeal under RAP 5.3(h), or (2) seek review of the order via a separate notice of appeal or motion for discretionary review.

Mr. Yagi did neither. Thus, the trial court's order regarding the lis pendens was not within the scope of

review and Division One correctly ignored it. Mr. Yagi does not cite to any contrary authority requiring Division One to review a trial court order entered *after* it accepted review and not designated in any (amended or separate) notice of appeal. *See* RAP 13.4(b)(1), (b)(2) (Petitioner must show that "*the decision of the Court of Appeals*" conflicts with this Court's or other Court of Appeals' decisions) (emphasis added).

Regardless, the trial court had the discretion to condition the lis pendens on a supersedeas bond. *See Beers v. Ross*, 137 Wn. App. 566, 575, ¶¶22-25, 154 P.2d 277 (2007) (Trial court did not abuse its discretion when it canceled lis pendens while appeal was pending because appellant did not request a stay or post a supersedeas bond); *see also Guest v. Lange*, 195 Wn. App. 330, 340-41, ¶¶25-28, 381 P.3d 120 (2016) ("For a notice of lis pendens to protect the public as intended, it should remain in effect" while an appeal is pending, so long as "property owners are

amply protected by the trial court setting a supersedeas bond in the proper amount, which should be sufficient to compensate them for any damages they would incur during appeal with the notice of lis pendens in place."), *rev. denied*, 187 Wn.2d 1011 (2017).

Even if the issue was within the scope of this appeal, Mr. Yagi cannot show that the trial court's order regarding the lis pendens warrants this Court's review under RAP 13.4(b).

6. There are no due process issues that warrant this Court's review.

In both his initial petition for review and his amended petition, Mr. Yagi repeatedly claims the trial court and Division One deprived him of due process. (Pet. 7-8, 17; Am. Pet. 3-5, 12-14, 16, 25, 27, 31-33) But none of Mr. Yagi's vague accusations are accompanied with analysis or citation to authority. "[N]aked castings into the constitutional seas are not sufficient to command judicial consideration and discussion." *State v. Johnson*, 179

Wn.2d 534, 558, ¶50, 315 P.3d 1090, *cert. denied*, 574 U.S. 856, 135 S.Ct. 139 (2014) (quoted source omitted).

Moreover, Mr. Yagi's due process "arguments" are premised on his baseless allegations the Division One judges are "corrupt" "parasites masquerading as guardians of the law." (Am. Pet. 12-13) Mr. Yagi's conspiratorial allegations do not warrant review under RAP 13.4(b)(3).

7. The Court should award attorney fees to the Estate for answering Mr. Yagi's petition.

If the Court denies Mr. Yagi's petition for review, it should award attorney fees to the Estate for preparing and filing this answer to the petition: "If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review." RAP 18.1(j).

Here, Division One awarded appellate attorney fees to the Estate (Op. 10-11), and thus the Estate is entitled to an award for attorney fees under RAP 18.1(j) if the Court denies Mr. Yagi's petition.

This Court may independently award attorney fees to the Estate under RCW 11.96A.150, which permits "any court on an appeal" to award reasonable attorney fees "in such amount and in such manner as the court determines to be equitable," considering "any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate[.]" RCW 11.96A.150(1). Such an award is appropriate here given the baseless nature of Mr. Yagi's arguments and his conspiratorial accusations against the Court of Appeals' judges.

D. Conclusion.

This Court should deny review and award the Estate its attorney fees incurred answering Mr. Yagi's petitions for review.

I certify that this answer is in 14-point Georgia font and contains 4,987 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 6th day of September, 2023.

SMITH GOODFRIEND, P.S.

By: */s/ Ian C. Cairns*
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Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on September 6, 2023, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-File
P. Koichi Yagi 19473 Military Rd S Seatac WA 98188 peteyagi1@gmail.com	____ Facsimile ____ Messenger ____ U.S. Mail __X__ E-Mail

DATED at Everett, Washington this 6th day of September, 2023.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

September 06, 2023 - 12:07 PM

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