

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/6/2023  
BY ERIN L. LENNON  
CLERK

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Court of Appeals  
Division I  
State of Washington  
10/5/2023 2:39 PM

102449-5

**IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON**

<p>In the Matter of the Application of Andrei Medvedev...,  Andrei Medvedev, Appellant.</p>	<p><b>Court of Appeals Case No. 84467-9</b></p> <p><b>PETITION FOR REVIEW</b></p>
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### **A. IDENTITY OF PETITIONER**

Andrei Medvedev, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

### **B. STATEMENT OF RELIEF SOUGHT**

September 5, 2023 Court of Appeals decision, which refused to modify a ruling by the Commissioner of this Court that dismissed the appeal as moot. A copy of the decision is in the Appendix at pages A-1 through A-3

### **C. ISSUES PRESENTED FOR REVIEW**

Whether equitable vacatur should be utilized by the appellate court when a case becomes moot during the pendency of the appeal because of the repeal of the underlying statute?

### **C. STATEMENT OF THE CASE**

This appeal is of a May 31, 2022 decision by a King County Superior Court commissioner, which vacated a previously entered Decree of Registration in a land title registration (Torrens Act) action. On June 9, 2022, repeal of the Torrens Act (RCW 65.12) became effective. On February 21, 2023, the respondent in this case filed a Motion to Dismiss the Appeal as Moot (“Dismissal Motion”), to which the appellant filed a timely response in opposition to the request contained therein, namely to have the trial court decision summarily affirmed through dismissal of the appeal as moot. On June 6, 2023, a Commissioner of the Court of Appeals issued a ruling that summarily affirmed the trial court by dismissing this appeal as moot due to the repeal of the Torrens Act. On September 5, 2023, the Court of Appeals denied a motion to modify the Commissioner’s ruling.

#### D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court of Appeals terminated review as moot in a case where it could fashion effective relief. Although the May 31, 2022 trial court judgment is moot, in Washington, as in the federal courts, a judgment in a cause that has subsequently become moot may be preclusive if left of record”. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 264, 956 P.2d 312 (1998); cf. *Sutton v. Hirvonen*, 113 Wn.2d 1, 9-10, 775 P.2d 448 (1989). Thus, the trial court judgment that is under appeal, if left in place, may have negative preclusive effects on the appellant’s legal and equitable rights to the real property in question. To prevent such consequences, equitable vacatur of judgments that have become moot but which may nonetheless have claim or issue preclusive effects is a common practice in the federal courts. See *Ctr. for Biological Diversity v. Lohn*, 511 F.3d 960, 965 (9th Cir. 2007) (vacating trial court’s judgment in moot case “‘is commonly utilized ... to prevent a judgment, unreviewable because of mootness, from spawning any legal consequences’” (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41, 71 S. Ct. 104, 95 L. Ed. 36 (1950))).

Notably, equitable vacatur is also a practice recognized by, and utilized in Washington state appellate courts. See *Harbor Lands, LP v. City of Blaine*, 146 Wn. App. 589, 191 P.3d 1282, 2008 Wash. App. LEXIS 2147, 146 Wn. App. 589, 191 P.3d 1282, 2008 Wash. App. LEXIS 2147; *Federal Way Sch. Dist. No. 210 v. Vinson*, 154 Wn. App. 220, 225 P.3d 379, 2010 Wash. App. LEXIS 177, 154 Wn. App. 220, 225 P.3d 379, 2010 Wash. App. LEXIS 177. Accordingly, the Court of Appeals’ refusal to grant or even consider equitable vacatur by allowing the case to be heard on the merits went against both the Washington State Supreme Court and published Court of Appeals decisions.

There is also significant public interest in resolving this matter on the merits, as the issue of whether equitable vacatur should be granted in Washington for cases that became moot while the appeal is pending through no fault of the appellant are very likely to be numerous and capable of significant repetition.

## E. CONCLUSION

The petitioner is asking that the case be remanded to the Court of Appeals, with direction to allow its review on the merits, including whether equitable vacatur should be granted in this case.

## G. WORD COUNT

Pursuant to RAP 18.17, and based on the software used to prepare the brief's word count feature, the undersigned certifies that this document contains 767 words. A request is made to dispose with the requirements of RAP 13.4 as they pertain to the Table of Contents and Table of Authorities, given brevity of this Petition.

**Dated this 5th day of October, 2023, in Bothell, Washington**

**By -s- \_\_\_\_\_**

**Andrei Medvedev**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In the Matter of the Application of:

ANDREI MEDVEDEV,

Appellant.

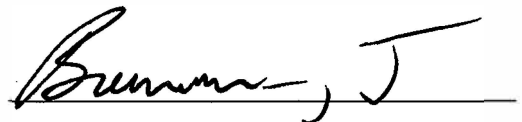
No. 84467-9-I

ORDER ON MOTION TO  
MODIFY

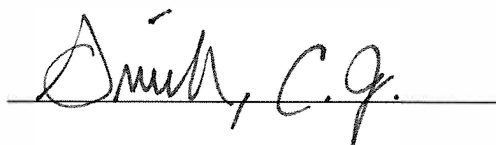
Appellant Andrei Medvedev has filed a motion to modify the commissioner's June 6, 2023 ruling dismissing this appeal as moot.<sup>1</sup> Respondent Juan Gates has filed a response,<sup>2</sup> and Medvedev has filed a reply. We have considered the motion under RAP 17.7 and determined that it should be denied.

Now, therefore, it is hereby

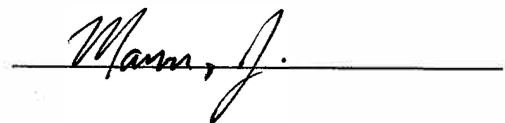
ORDERED that the motion to modify is DENIED.



Brennan, J.



Smith, C.J.



Mann, J.

<sup>1</sup> Medvedev's motion to extend the time for filing his motion to modify is hereby granted.

<sup>2</sup> Gates's request for judicial notice under ER 201 is hereby denied.

LEA ENNIS  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
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June 6, 2023

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Case #: 84467-9  
In the Matter of the Application of Andrei Medvedev.., Appellant  
King County Superior Court No. 21-0-00927-1

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on June 6, 2023, regarding the parties' pending motions including Respondent Juan Gates' Motion to Dismiss Appeal as Moot:

On December 30, 2022, Appellant Andrei Medvedev filed a motion for an order directing the King County Superior Court Clerk to "recognize" a stay based on his filing of a \$30,000 supersedeas bond on December 20, 2022. Respondent Juan Gates filed an answer, pointing out, among other things, that the trial court had not entered any order regarding Medvedev's filing, Gates had filed an objection in the trial court, and the trial court had set a hearing for January 17, 2023. In reply, Medvedev argues that the trial court has a duty to honor a stay based on a supersedeas bond and lacks authority under RAP 7.2(c) to enforce stayed judgments.

On January 18, 2023, Gates filed a copy of the trial court's January 17, 2023 order granting her motion objecting to Medvedev's bond and denying Medvedev's bond. On January 19, 2023, Medvedev filed a RAP 8.1(h) motion to vacate the trial court's January 17 order as void, pointing to the lack of "a deficiency declaration or finding" in the order. Gates filed an answer, describing her arguments before the trial court as (1) Medvedev's filing did not satisfy court rules and statutes for bonds; (2) the amount was insufficient; and (3) the identified surety was not qualified. Gates contends the trial court held a hearing on the objection and Medvedev did not appear. Gates argues that Medvedev has not shown that the January 17 order is void or voidable - a judgment is void if the court lacks personal or subject matter jurisdiction, but merely voidable if resulting from a procedural irregularity where the court has jurisdiction, *Rabbage v. Lorella*, 5 Wn. App. 2d 289, 298, 426 P.3d 768 (2018) - or otherwise established error justifying relief under RAP 8.1(h). Medvedev has filed a reply, claiming that the trial court treated his filing as bond by calling it a bond; did not grant relief requested in the objection; and lacked subject matter jurisdiction to review a bond under RAP 8.1.

Because the trial court has authority and discretion to approve of a supersedeas bond, see RAP 8.1, and Medvedev has identified no basis to suspect that the trial court lacked jurisdiction to enter the January 17, 2023 order, he fails to show that the order is void or voidable. He also fails to show any abuse of discretion in the trial court's consideration of his filing and Gates's objection. Based on the materials presented, it appears that trial court considered the objection at a hearing and entered a written order agreeing with Gates's arguments justifying the refusal to approve Medvedev's filing as a supersedeas bond. Medvedev identifies no authority showing any procedural irregularity or abuse of discretion. And, nothing in the order prevents Medvedev from filing a proper bond or seeking further orders in the trial court. Accordingly, Medvedev's motion to vacate the January 17 order is denied.

On February 21, 2023, Gates filed a motion to dismiss this appeal as moot. On March 3, 2023, Medvedev answered, agreeing that the appeal is moot and requesting dismissal of the appeal, an order vacating certain trial court orders, and an award of sanctions against Gates's counsel. Gates filed a reply and Medvedev filed an objection or surreply.

Gates's motion to dismiss is based on, among other things, the repeal of the Torrens Act, the land registration system for adjudicating the validity of titles to land invoked by Medvedev in the underlying trial court action. See, e.g., *Larson v. Snohomish County*, 20 Wn. App. 2d 243, 261-62, 499 P.3d 957 (2021); CP 1-10. Gates points out that the May 31, 2022 order challenged in this appeal granted Gates's motion to vacate a default decree on Medvedev's petition under the Torrens Act. As the Torrens Act has since been repealed, Gates points out that review of the May 31, 2022 order vacating the default cannot offer Medvedev any relief. Because Medvedev agrees that the matter is moot, based on the repeal of the Torrens Act, dismissal of this appeal is appropriate. Although both parties request some additional relief beyond dismissal - Gates requests an award of costs under RAP 18.2 in her reply and Medvedev requests an order vacating the trial court order and sanctions against Gates's counsel - neither party identifies authority requiring any analysis or decision on the merits of any moot claim and neither party has established grounds for monetary sanctions in this case.

This matter is hereby dismissed as moot.

Please be advised a ruling by a Commissioner "is not subject to review by the Supreme Court."  
RAP 13.3(e)

Should counsel choose to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served... and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,



Lea Ennis  
Court Administrator/Clerk  
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**ANDREI MEDVEDEV - FILING PRO SE**

**October 05, 2023 - 2:39 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 84467-9  
**Appellate Court Case Title:** In the Matter of the Application of Andrei Medvedev., Appellant

**The following documents have been uploaded:**

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- amedvid@yahoo.com
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**Comments:**

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