74326-1

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No. 74326-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

LARRY SPOKOINY,

Appellant,

v.

THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION,
a Washington non-profit corporation,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE SAMUEL CHUNG

BRIEF OF RESPONDENT THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION

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I. INTRODUCTION

This case involves a dispute over the enforceability of a judgment granted on September 29, 2006, which amended and increased the amount of a prior judgment from 2004. Appellant Larry Spokoiny ("Spokoiny") contends that the ten (10) year period for enforcement of the WSYSA judgment expired in 2014 and that the 2006 judgment does not have an independent ten (10) year life.

Spokoiny improvidently initiated a lawsuit against the Washington State Youth Soccer Association ("WSYSA") to forestall certain administrative disciplinary action, instead of pursuing available administrative appeal remedies that were available to him, in violation of WSYSA bylaws. Superior Court Judge Mary Yu ultimately dismissed the Spokoiny lawsuit and, in so doing, granted an award of attorneys' fees and costs to WSYSA.

That was not the end of the matter. Spokoiny then appealed Judge Yu's decision to this Court. In *Spokoiny v. Wash. State Youth Soccer Ass'n*, 128 Wn. App. 794, 117 P.3d 1141 (2005), this Court denied the Spokoiny appeal, granted an award of fees and costs, and remanded the case back to Judge Yu for further proceedings.

Spokoiny petitioned unsuccessfully for review to the Washington State Supreme Court and then also tried unsuccessfully to avoid the initial

2004 judgment in a Chapter 13 bankruptcy proceeding. All of this legal posturing cost WSYSA scarce dollars better spent on youth soccer programs.

On September 15, 2006, WSYSA filed a Motion for Entry of Amended Judgment and Second Request for Attorneys' Fees and Costs. CP 1-6. Not surprisingly, Spokoiny opposed this motion. CP 59-61; 74-79. Judge Yu issued an order in favor of WSYSA for attorneys' fees and costs on September 29, 2006. CP 88-90. She further granted an Amended Judgment, dated September 29, 2006. CP 85-87. Spokoiny did not appeal the Amended Judgment. Ten years have not yet elapsed since the entry of the Amended Judgment.

It is this judgment that WSYSA seeks to enforce. CP 131-249. It is this judgment which Spokoiny resists. CP 117-120; 131.

II. ISSUES ON APPEAL

WSYSA believes the core issue here is the enforceability of its September 29, 2006 Amended Judgment, in the context of RCW 6.17.020(1). WSYSA will respond to the four arguments raised in the Brief of Appellant.

III. STATEMENT OF THE CASE

The WSYSA is an umbrella organization for over 120,000 boys and girls playing soccer in the State of Washington. Its members include

geographical associations, and their clubs. It offers soccer activities for the elite player, the "up and coming" development player, the average recreational player, and the special needs player with its TopSoccer program. CP 250. It offers training programs for coaches, players, and parent volunteers. It runs risk management programs to keep children safe from predatory adults. It runs a disciplinary program and educational programs and it offers administrative processes to resolve administrative disputes and avoid litigation. CP 250-251.

These activities cost money which is always scarce. CP 251. Litigation, like the Spokoiny litigation, hurts WSYSA financially and takes money out of programs for kids. CP 251. Initially WSYSA spent $16,353.83 in litigation getting the Spokoiny lawsuit dismissed in 2004. CP 39; 251. Then his appeals cost WSYSA an additional $22,604.41 between 2004 and 2006. CP 86, line items 2, 3, 4, 5, and 6. His failed attempt to avoid the judgment through a bogus Chapter 13 bankruptcy ploy cost WSYSA another $4,080 fee award. CP 155; 160.

After receiving the September 29, 2006 Amended Judgment, WSYSA initially took no collection action in the hope that (1) Spokoiny might come to WSYSA to work something out, or (2) Spokoiny might sell or refinance his house at which time WSYSA would be paid. CP 251. Unfortunately, neither of those events occurred. In the fall of 2013,

WSYSA reached out to Spokoiny about payment, including a payment plan. WSYSA's letter to him went unanswered. CP 251.

In the fall of 2015, WSYSA discovered that Mr. Spokoiny was employed at a law firm in Pierce County. It instituted garnishment proceedings and other steps to enforce the judgment. CP 251. The Amended Judgment will expire in September 2016, unless renewed before then.

Mr. Spokoiny is a Washington attorney, with WSBA No. 20274 (Admitted 11/26/1990). CP 139. This case and the judgment at issue here arose because, when faced with potential disciplinary proceedings for his conduct during a soccer game, Mr. Spokoiny instituted a lawsuit against the WSYSA instead of exercising administrative remedies, in express violation of WSYSA bylaws designed to resolve disputes administratively, rather than through formal litigation. The details of this are spelled out in *Spokoiny v. The Washington State Youth Soccer Association,* 128 Wn. App. 794, 117 P.3d 1141 (Wash. App. 2005), *review denied* 156 Wn. 2d 1036, 134 P.3d 1170 (2006).

Although a lawyer and presumably familiar with Washington state laws and procedures, Mr. Spokoiny faxed a complaint and a preliminary injunction motion to WSYSA as his form of service of the commencement of a lawsuit. CP 21-32. Meanwhile, WSYSA allowed Mr. Spokoiny the

opportunity to continue to coach while his current situation was reviewed administratively, at the highest level of WSYSA, its Executive Board. He was given a three game suspension, with probationary conditions, and a right to a further administrative appeal to a national appeals committee. As stated in the Court of Appeals decision, Mr. Spokoiny accepted the WSYSA decision and stated he did not plan to appeal, although he disagreed with the decision. *Spokoiny* at 798.

Mr. Spokoiny was then asked multiple times to voluntarily dismiss his lawsuit to avoid a fee claim, but he refused to do so. Ultimately, the WSYSA filed a motion to dismiss, which he actively resisted, causing further expense. CP 44; *Spokoiny* at 799. In granting an order of dismissal with prejudice, Judge Yu awarded legal fees and costs of $16,353.83. This award is reflected in the July 8, 2004 Judgment. CP 38-39.

Spokoiny next appealed both the dismissal and the award of legal fees. On appeal, he argued, on one hand, that he had certain rights under the WSYSA administrative handbook and rules, but on the other hand, he was not subject to WSYSA rules and bylaws that triggered liability for attorneys' fees for pursuing a lawsuit without first exhausting administrative remedies. *Spokoiny* at 797-798. In its published decision, this Court affirmed Judge Yu's dismissal of the Spokoiny complaint and

her award of attorneys' fees and costs. This Court also granted attorneys' fees under RAP 18.1. The Court of Appeals, Division One, Commissioner issued a ruling on attorneys' fees and costs on September 2, 2005. CP 51-53.

Spokoiny then pursued reconsideration with this Court and when unsuccessful, he then petitioned for review by the State Supreme Court, which denied his petition for review. CP 49; 55. The Mandate from the Court of Appeals was issued on July 11, 2006. CP 55-56.

All of these proceedings may have cost him little out of pocket because he represented himself, but they added to the unwarranted and otherwise unnecessary expenses of a non-profit organization which would rather spend money on programs for children.

There is more. Mr. Spokoiny attempted early on to avoid his judgment obligation by filing a self-generated "Stay in Bankruptcy and Declaration in Support Thereof" on September 15, 2004. CP 156-157. He subsequently contended that a Chapter 13 proceeding he had initiated before the July 8, 2004 Judgment somehow protected him from the judgment. CP 156-157. Once more WSYSA had to hire another lawyer, bankruptcy specialist Mike Klein, to unwind this maneuver. CP 154-155. U.S. Bankruptcy Judge Karen A. Overstreet ruled against Spokoiny. CP

161-166. This exercise cost WSYSA another $4,080 in legal fees. CP 155;160.

After the conclusion of the appellate litigation and the bankruptcy proceedings, then WSYSA lawyer Michael Walters subsequently filed a motion for an award of legal fees and costs. CP 1-6. His supporting declaration itemized the amounts owed ($30,702.59) for dealing with the Spokoiny matter. CP 169-206. It should be noted that Mr. Walters and his firm billed WSYSA at extremely low and favorable rates: $140 for Mr. Walters and $130 for other lawyers in his firm. CP 170; 203. Mr. Spokoiny is the beneficiary of these low rates.

Not surprisingly, Spokoiny opposed this motion. CP 59-61; 74-79. Judge Yu issued an order in favor of WSYSA for attorneys' fees and costs on September 29, 2006. CP 88-90. She further granted an Amended Judgment, dated September 29, 2006. CP 85-87. The Amended Judgment included fees assessed by the Court of Appeals ($16,994.00); costs Assessed by the Court of Appeals ($1,825.59); fees accrued since the Court of Appeals Decision ($3,197.00) and accrued interest. CP 86.

Spokoiny did not appeal the Amended Judgment. Ten years have not yet elapsed since the entry of the Amended Judgment. In the fall of 2015, WSYSA commenced garnishment and supplemental proceedings

against Spokoiny. All relevant procedures were followed. CP 253; 259-275.

IV. ARGUMENT

A. Summary.

Spokoiny argues this is a simple case. WSYSA failed to renew their judgment in a timely manner pursuant to RCW 6.17.020, and such judgment has now expired. Brief of Appellant, at Page 4, Summary of Argument. This case is only that simple if the "judgment" is the initial 2004 judgment. Spokoiny otherwise chooses to ignore that on September 29, 2006, the Court granted an Amended Judgment, which increases Mr. Spokoiny's financial liability to WSYSA in a very substantive way, an increase of over $30,000 in compensatory damages for attorneys' fees and court costs for Spokoiny's ongoing efforts to resist the consequences of his willful breach of WSYSA bylaws.

B. WSYSA has not failed to timely renew its judgment under RCW 6.17.020, and such judgment has not expired.

In his first argument, Spokoiny invokes the ten year judgment life of RCW 6.17.020(3) as to (1) the July 8, 2004 judgment of Judge Mary Yu and (2) a Court of Appeals "judgment" (Spokoiny's wording) of September 2, 2005. The problem with this argument is that WSYSA seeks to enforce a September 29, 2006 judgment from Judge Yu. The 2004

judgment was subsequently amended. The effect of that amendment is the crux of this matter. The 2005 Court of Appeals "judgment" simply does not exist, other than in Spokoiny's imagination.

Spokoiny glibly and incorrectly characterizes the 2006 judgment as "merely a bookkeeping entry combining the separate and independent judgments of July 8 2004 and September 2, 2005 (by the Court of Appeals)." Brief of Appellant at page 6. If this 2006 judgment was a mere bookkeeping entry, why was it contested by Spokoiny? CP 59-73; 74-79. Indeed, in his opposition to this bookkeeping entry, Spokoiny again sought to undermine the Court's decision and overturn the Court's prior rulings. *See* CP 78, Section Heading D. ("This Court's original decision should be reconsidered or vacated, where the decision of WSYSA's own Ethics Committee directly contradicted this Court's ruling regarding the application of WSYSA Bylaw XXL.")

Spokoiny's current contention that the 2006 judgment is simply a bookkeeping entry combining the separate and independent judgments of July 8 2004 and September 2, 2005 (by the Court of Appeals) is contradicted by his own analysis and argument in September 2006, where he argues that WSYSA's additional judgment amount should be limited only to the Court's Judgment of July 7, 2004 and the Court of Appeals' Mandate of July 11, 2006. CP 78. Judge Yu found otherwise. The

Amended Judgment of 2006 contains eight (8) line items, only the first three of which reflect the initial 2004 judgment amount and the amounts relating to the Court of Appeals proceedings. In sum, Spokoiny's characterization of the 2006 Amended Judgment is just wrong.

Mr. Spokoiny correctly cites to RCW 6.17.020(3) for the proposition that grants to a judgment creditor the option to apply to renew a judgment within ninety days of its expiration. That ninety day period has not yet accrued for the 2006 Amended Judgment.

C. WSYSA is not seeking "overtime" beyond the statutory time periods of RCW 6.17.020 and RCW 4.56.210.

Spokoiny next argues that WSYSA is seeking impermissible "overtime" for its two expired judgments. Brief of Appellant at page 8. He contends that all of the prior Washington court decisions, statutory language, and court rules support his position. Brief of Appellant at page 8. His analysis contains only case citations, none of which are applicable.

Mr. Spokoiny cites to *North St. Ass'n v. Olympia*, 96 Wn.App. 359, 635 P.2d 721 (1981), for a "relation back" argument, the gist of which is that the amended judgment of 2006 relates back to the initial judgment of 2004, for the purpose of its ten year life. The fatal flaw in his argument is that the *North St. Ass'n* case involves a relation back theory for complaints and causes of action under CR 3(a), CR 15(a), and RCW

4.16.170. The case has nothing to do with judgments under CR 54, CR 60 or RCW 6.17.020. We also note that portions of *North St. Ass'n* have been overruled, as to RCW 4.16.170.

Spokoiny cites to *TCAP Corp. v. Gervin*, 163 Wn. 2d 654, 185 P.3d 589 (2008), another case that is not remotely on point. The underlying question in *TCAP Corp* is the effect of the expiration of a foreign judgment (Texas) in Washington. The answer is fairly simple – if the foreign judgment expires in its home state, it expires in Washington. The Washington registration of a foreign judgment does not create an independent status in Washington. What does a foreign judgment have to do with anything here?

Spokoiny cites *Wlasiuk v. Whirlpool*, 76 Wn. App. 250, 884 P.2d 13 (1994) as "directly on point." Brief of Appellant at page 9. It is not. Just as *TCAP Corp.* involves the relation back theory for amended pleadings, the *Wlasiuk* case relates to a different set of issues, namely determining when an order (or judgment) is final for the purpose of the thirty day appeal period. When a judgment for damages, including an award for an unstated amount of attorneys' fees, is later amended to include the amount of the attorneys' fees, is the thirty day time period for filing an appeal altered or extended? The Court said no:

> This case addresses the effect of a pending determination of attorneys' fees upon the finality of a judgment against Whirlpool Corporation. Whirlpool filed its appeal in this case 31 days after the court entered an order denying Whirlpool's motion for a new trial, but only 28 days after the court entered an "Amended Judgment" specifying the amount of attorney fees awarded to Wlasiuk, the plaintiff below. Wlasiuk asks this court to dismiss Whirlpool's appeal on the merits as untimely filed.
>
> Dismissal has predictably been the remedy when a notice of appeal is filed beyond the 30-day limit. We are persuaded that a pending determination as to an award of attorney fees does not postpone the finality of a judgment on the merits. We are further persuaded that Whirlpool missed the 30-day deadline for appealing the final judgment in this case.

Since the *Wlasiuk* decision, this discrete issue has been addressed by RAP 2.4(g). There is no case authority extending this rule to judgments and their expiration dates under RCW 6.17.020(3).

Spokoiny cites *BNC Mortgage, Inc. v. Tax Pros Inc.*, 111 Wn. App. 238, 46 P.3d 812 (2002) as supporting authority for his relation back theory. *BNC Mortgage, Inc.* involves a series of questions about competing lien priorities between a judgment lien and a deed of trust. One question in *BNC Mortgage, Inc.* was the operation of RCW 6.25.020, the attachment statute. RCW 6.25.020 allows a procedure for a writ of attachment at the commencement of lawsuit as a security device for a judgment that a plaintiff may recover. If the procedure is utilized and a judgment is obtained, the judgment lien relates back in time to the

issuance of the writ of attachment. What does that have to do with this case? RCW 6.25.020 is not a factor or issue in this case.

What is lacking in the Brief of Appellant is any analysis or jurisprudence on the effect of amending a judgment after the appeal process has run its course and the Court has granted additional relief, here the imposition of important financial sanctions against Spokoiny. What law or public policy is served by a rule that would shorten the time for the recovery of those additional sums? None. Debtors get a windfall.

D. WSYSA's Motion to Amend was not untimely under CR 59(h).

Spokoiny next seeks to collaterally attack the 2006 Amended Judgment, contending that WSYSA made an untimely motion under CR 59(h). This argument is flawed for so many reasons. First, the time to challenge the 2006 Amended Judgment is the one time frame in this case that has most certainly expired. Spokoiny had thirty (3o) days to appeal Judge Yu's September 29, 2006 Order and Amended Judgment. RAP 5.2(a). He filed no appeal.

Next, his contention that RAP 17.6(a), RAP 18.1(h), and RAP 12.7(c) deprive a Superior Court Judge of the right or ability to enter an award or judgment for fees is nonsensical. RAP 18.1(h) expressly allows a trial court to enforce a ruling on attorneys' fees and costs. An amended judgment that contains the statutory judgment summary may be the only

way to ensure that fees and costs awarded in the mandate "will be placed on the judgment docket under RCW 4.64.030." WSBA, Wash. Appellate Practice Deskbook, § 17.5(5) (4th Ed. 2016).

Regardless, this argument should have been made in September 2006. A judgment debtor may not await enforcement of a judgment to raise non-jurisdictional defenses. *Petition of City of Seattle,* 18 Wn.2d 167, 169, 138 P.2d 667 (1943).

E. The Vermont case of *Ayer v. Hemingway* is neither dispositive nor even helpful to Spokoiny.

Spokoiny contends that the Vermont case of *Ayers v. Hemingway,* 2013 VT 37, 73 A.3d 673 (2013) ruled on the precise issue in this case, i.e. that an amended judgment does not extend the timeframe for the enforcement of an existing judgment. Spokoiny misread *Ayers.*

In Vermont, actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment, and not after 12 V.S.A. § 506. In *Ayers,* the Vermont Supreme Court analyzed whether a stipulated amended order in 2006 extended the life of a default judgment taken in 2001. The 2006 stipulated amended order was not a new final judgment which brought an end to litigation.

Ayers at 676. Instead, the 2006 stipulated amended order "merely set forth an agreed-upon payment plan for the 2001 debt." *Ayers* at 676.

Regardless whether the Vermont rule would be followed under RCW 6.17.020(3), the 2006 Amended Judgment in this case established new judgment amounts based on Spokoiny's continuing efforts to avoid financial liability to WSYSA. The 2006 Amended Judgment granted new relief of over $30,000 to WSYSA. The 2006 Amended Judgment became a final order under CR 54, which was appealable if Spokoiny objected to the imposition of a new judgment amount. RAP 2.2(a)(1).

Judge Yu's Amended Judgment in 2006 was not a routine "post judgment order identifying payments made," so the concern raised by the Vermont Supreme Court – that "a party could extend the life of a judgment lien indefinitely by filing motions" related to the existing judgment – has no bearing in this case. *Ayers* at 677-678. There were no payments to identify. Judge Yu's Amended Judgment in 2006 added over $20,000 of new compensatory damages to WSYSA. CP 86.

In raising the relevance of the *Ayers* case, Spokoiny makes reference to certain California and Hawaii cases which he then neglects to name or provide a citation to. Brief of Appellant at page 12. He then attempts to explain away those unidentified cases. Brief of Appellant at page 13. For the benefit of the Court, those cases are *In re Marriage of*

Wilcox, 124 Cal. App. 4th 492 (2004), *Iliff v. Dustrud,* 107 Call. App. 4th 1202 (2003), and *Estate of Roxas v. Marcos,* 121 Haw. 59 (2009), all of which are found at CP 214-249. These cases were cited in passing in WSYSA's Response in Opposition to Motion to Quash Writ of Garnishment and Order Re Supplemental Proceedings:

> Mr. Spokoiny cites not a single relevant or dispositive case and his argument that a judgment (or amended judgment) in 2006 need to be renewed in 2014 makes no sense. Meanwhile, we have provided Mr. Spokoiny with case decisions from two other jurisdictions (Californian and Hawaii) where this issue has been decided. The decisions support the WSYSA position, not the Spokoiny position. Consistent with LCR 7(b)(b)(v), the cases *In re Marriage of Wilcox*, 124 Call. App 4th 492 (2004), *Iliff v. Dustrud*, 107 Cal. App 4th 1202 (2003), and *Estate of Roxasv. Marcos,* 121 Haw. 59 (2009), are attached hereto as *Attachments F, G, and H.*

CP 135. It is not known to the extent to which, if at all, Judge Chung relied on these cases. CP 282. Regardless, these cases support WSYSA's position that the 2006 Amended Judgment remains enforceable.

F. RAP 18.9 Sanctions and fees are due to WSYSA, not Spokoiny.

With virtually no analysis, Spokoiny requests sanctions under RAP 18.9 for having to spend "considerable time and resources fighting off WSYSA's continuing enforcement actions upon a clearly expired judgment." Brief of Appellant at page 14, Section F. As noted in the Editorial Commentary to Rule 18.9, Courts view motions to strike and

motions for sanctions unfavorably, citing to *Estate of Lundy v. Lundy,* 187 Wn. App. 948, 961, 352 P.3d 209 (2015).

By its own terms, RAP 18.9 applies to the possible sanction for a party who uses the RAP for the purpose of delay, for filing a frivolous appeal, or who fails to follow the RAP. WSYSA has not used the RAP for the purpose of delay, filed a frivolous appeal, or failed to follow the RAP – Spokoiny has. WSYSA should be awarded its attorneys' fees and costs, under RAP 18.9 for, paraphrasing Spokoiny, having to spend "considerable time and resources fighting off" Spokoiny's continuing efforts to avoid his financial obligations to WSYSA and the soccer playing children of Washington State.

V. CONCLUSION

This Court should deny the Spokoiny appeal. Ten years has not elapsed on the 2006 Amended Judgment. Why should an obstinate judgment debtor like Spokoiny get a windfall?

Dated this 21st day of April, 2016.

JAMESON BABBITT STITES
& LOMBARD PLLC

By: _____
Brian Lawler, WSBA No.8149
Attorneys for Appellants

CERTIFICATE OF SERVICE

I, Kelli Huerta, declare that I am employed by the law firm of Jameson Babbitt Stites & Lombard, PLLC, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On April 21, 2016, I caused a true and correct copy of the foregoing document to be served on the Appellant Larry Spokoiny via email at larryspo@yahoo.com and via regular U.S. Mail at 4306 – 245th Avenue SE, Issaquah, WA 98029.

DATED this 21st day of April, 2016.

Kelli Huerta
Legal Assistant
khuerta@jbsl.com

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ERRATA TO BRIEF OF RESPONDENT THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION

JAMESON BABBITT STITES
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Attorneys for Respondent

Respondent The Washington State Youth Soccer Association ("WSYSA") submits the following Errata to its Brief of Respondent, filed on April 21, 2016.

The last second in the second paragraph of page 3 should state the following, "His failed attempt to avoid the judgment through a bogus Chapter 13 bankruptcy ploy cost WSYSA another $4,080 in fees." Errata No. 1.

The first sentence in the last paragraph of page 14 should have a period before the citation of 12 V.S.A § 506. Errata No. 2.

Dated this 21st day of April, 2016.

JAMESON BABBITT STITES
& LOMBARD PLLC

By: _____
Brian Lawler, WSBA No.8149
Attorneys for Respondent

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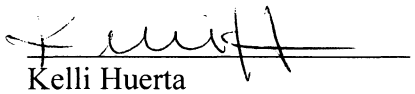

Kelli Huerta
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ERRATA NO. 1

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ERRATA NO. 2

way to ensure that fees and costs awarded in the mandate "will be placed on the judgment docket under RCW 4.64.030." WSBA, Wash. Appellate Practice Deskbook, § 17.5(5) (4th Ed. 2016).

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