NO. 96093-3

(Court of Appeals No. 76605-8-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

OMARI TAHIR-GARRETT,

Appellant,

v.

MIDTOWN LIMITED PARTNERSHIP,

Respondent.

RESPONDENT MIDTOWN LIMITED PARTNERSHIP'S ANSWER TO REVISED PETITION FOR REVIEW

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I. INTRODUCTION

Appellant Omari Tahir-Garrett lived rent-free in a house on property owned by respondent MidTown Limited Partnership ("MidTown"). He allowed an illegal homeless encampment onto the property, subjecting MidTown to fines from the City. He allowed mountains of trash to pile up, causing neighbors to complain. He refused to allow MidTown's principals access to the property. While refusing to talk to them, he followed them around with a videorecorder when they were near the property.

After giving proper notice, MidTown brought this action for unlawful detainer. MidTown alleged nuisance, waste and unlawful business under RCW 59.18.130 and 59.12.030(5). Mr. Tahir-Garrett resisted with every delay tactic he could muster, including: (1) avoiding service of process; (2) frivolously removing the matter to Federal District Court three times; (3) claiming without any supporting evidence that he was unable to appear at hearings for medical reasons; and (4) contemptuous courtroom behavior.

Because of Mr. Tahir-Garrett's delay tactics, it took MidTown nine months to obtain a writ of restitution through what is supposed to be a speedy unlawful detainer remedy. *See* CP 444-450 (the trial court's "Judgment and Order"). Even after his eviction, Mr. Tahir-Garrett continued to resist the legal process. He refused to leave the property he

had been ordered to vacate. Once removed, he snuck back onto the property in defiance of the trial court's Judgment and Order. MidTown was forced to return to court to enforce the Order through a contempt citation.

The Court of Appeals affirmed on all grounds in its April 23, 2018 unpublished opinion (the "COA Opinion").

Mr. Tahir-Garrett's Statement of Case cites nothing in the record. In fact, most of his Statement is contrary to the record. In particular, the medical records he attached as an appendix to his Revised Petition were not part of the record before the trial court or on appeal, but even if they had been, they do not say what he claims they say or support his position.

He does not explain how the eviction or contempt orders violated any law or constitutional provision. He does not explain why MidTown's appropriate responses to his illegal activities and his contemptuous behavior in Judge Parisien's court raise issues of substantial public interest. His Revised Petition should be denied.

II. IDENTITY OF RESPONDENT

Respondent MidTown Limited Partnership, a Washington limited partnership, was plaintiff in the trial court and respondent in the Court of Appeals below.

III. STATEMENT OF THE CASE

A. MR. TAHIR-GARRETT MAINTAINED A NUISANCE, COMMITTED WASTE, AND MAINTAINED AN ILLEGAL BUSINESS ON THE PREMISES

MidTown owned[1] one square block of real estate in Seattle (the "Property"). Mr. Tahir-Garrett occupied a house located on the Property's southeast corner. He had no lease and paid no rent. RP 26:11.[2]

In anticipation of demolishing the house and selling the Property, MidTown served Mr. Tahir-Garrett with a Notice of Application for Tenant Relocation License, and offered to compensate him for moving. Mr. Tahir-Garrett then filed two separate lawsuits against MidTown and its general partner in federal district court. In those lawsuits he claimed, among other things, an ownership interest in the Property through adverse possession, and filed lis pendenses on the Property in both actions. RP 33:23–34:18; 49:10–50:10; CP 407-411.

Subsequently, Mr. Tahir-Garrett, without MidTown's permission, invited an unpermitted transitional encampment onto the Property. As a result, the City of Seattle served both MidTown and Mr. Tahir-Garrett with

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[1] MidTown sold the Property in May 2017, shortly after Mr. Tahir-Garrett was evicted.

[2] The Court of Appeals reviewed two transcripts with overlapping page numbers. We refer to the transcript from the February 23, 2017 trial as "RP," and the transcript from the First Contempt Order on February 21, 2017, as "RP (Feb. 21)."

a notice that the unpermitted encampment was illegal, and threatened fines of up to $500 per day. RP 46:3-25; Ex. 20. On May 16, 2016, after serving Mr. Tahir-Garrett with a three-day notice to vacate for waste, nuisance, and unlawful business, MidTown filed an unlawful detainer action. Because of Mr. Tahir-Garrett's delay tactics, described below, the case did not go to trial until February 23, 2017.

At trial, the court found that Mr. Tahir-Garrett had committed and caused waste, created and maintained a nuisance, and operated an unpermitted illegal encampment in violation of City ordinance. CP 448-449. Because the appellate court cites the substantial evidence supporting those findings, we do not recite that evidence here. *See* COA Opinion, at 18-22.

B. MIDTOWN'S EFFORTS TO EVICT MR. TAHIR-GARRETT, AND HIS DELAY TACTICS

1. The Original Complaint, Show Cause Hearing, and First Removal

MidTown filed its original Complaint on May 16, 2016. CP 360. The initial show cause hearing was scheduled for May 20, 2016, but had to be rescheduled because Mr. Tahir-Garrett avoided the process server. CP 363, 113. The court approved service by mail. The show cause hearing was rescheduled to June 1, 2016. CP 115. However, on May 20, 2016, Mr. Tahir-Garrett filed a notice of removal to the Federal District Court.

This prevented any further state court action in this unlawful detainer matter. Ex. 26; CP 366. The Federal Court remanded on August 22, 2016, noting that it lacked jurisdiction over an unlawful detainer action. CP 126-129. Mr. Tahir-Garrett twice moved unsuccessfully for reconsideration. RP 53; CP 212-217.

2. The Amended Complaint, Second Show Cause Hearing, and Second Removal

On November 2, 2016, after the matter had been remanded from Federal District Court, MidTown again served Mr. Tahir-Garrett with a three-day notice to vacate due to waste, nuisance, or unlawful business. Exs. 16, 17. He again failed to vacate.

On November 15, 2016, MidTown amended its complaint and scheduled a show cause hearing for November 30 before a King County Commissioner. CP 373, 176. On November 29, 2016, however, Mr. Tahir-Garrett filed his second notice of removal to Federal Court. CP 184. The Commissioner declined to hold the show cause hearing because the matter had once again been removed. CP 187.

3. MidTown's Motion for Revision of Commissioner's Order, and Mr. Tahir-Garrett's Resistance

Because the Federal Court had already ruled that it had no jurisdiction over the unlawful detainer action, MidTown moved for a revision of the commissioner's ruling. CP 188-225. The motion was

assigned to Honorable Hollis Hill. MidTown sought a December 23, 2016 hearing on its motion, the earliest date available for Judge Hill. CP 228-239. In response, Mr. Tahir-Garrett claimed that PTSD prevented him from appearing before January 20, 2017, even though his claimed disability had not prevented him from appearing before the Commissioner on November 29. *Id*. The court set the hearing for December 23. CP 243.

Mr. Tahir-Garrett appeared in court on December 23. He told the court that he did not intend to argue his case that day and that he had PTSD. He became unruly. Judge Hill advised him several times to sit down if he chose to remain in the courtroom. She warned him if he did not comply, she would have to call the deputies. He then slumped to the floor, and an aid car was called. Judge Hill continued the hearing to December 30, 2016. RP 55:22–56:20; CP 385, ¶¶9-10.

Mr. Tahir-Garrett emailed the court on December 28, 2016, urging that for medical reasons, the earliest date he could be available was January 27, 2017. *Id.,* ¶11. Judge Hill reset the motion for January 10, and advised Mr. Tahir-Garrett that if he was unable to appear on that date, he must provide verification from a qualified care provider. CP 386. No such verification was ever provided. Meanwhile, the Federal District Court again remanded, finding his second notice of removal "frivolous." CP 333.

Judge Hill heard MidTown's motion on January 10, 2017. She: (1) declared that Mr. Tahir-Garrett's Notice of Removal was a nullity; (2) found that the second notice of removal was "not made in good faith, but in an effort to further delay" the unlawful detainer action; (3) enjoined him from filing any further notices of removal without judicial approval; and (4) referred the matter to the Chief Civil Department to set a trial within thirty days. CP 295-297.

4. Assignment of the Case for Trial

On January 13, 2017, the Chief Civil Judge referred the matter to Honorable Timothy Bradshaw for trial. CP 420. MidTown promptly noted the matter for trial before Judge Bradshaw, but on January 24, 2017, Judge Bradshaw recused himself. CP 310 and 431.

On January 25, 2017, the matter was reassigned to the Honorable Suzanne Parisien. CP 433. Judge Parisien set trial for February 21, 2017, but rescheduled to February 23, 2017, because of a courthouse closure. CP 434, 437. MidTown filed and served a trial memorandum and witness and exhibit lists seven days before trial. CP 338. Mr. Tahir-Garrett neither filed nor served anything.

5. The First Contempt Order

On February 21, 2017, Mr. Tahir-Garrett entered Judge Parisien's courtroom. He disrupted another trial that was in progress, forcing the court

to recess.[3] The transcript of what was said during that recess reveals that over the course of twenty minutes, Mr. Tahir-Garrett: (1) repeatedly interrupted and talked over the court, RP (Feb. 21) 4:7-25, 5:5–16:17-21, 6:5-25; and (2) threatened and insulted the court ("You're going to see what PTSD is"); *id.*, 5:24-15 ("you racist courts"); *id.*, 6:7-8. The court had also heard him yelling at the bailiff in the hallway several hours before the transcribed colloquy occurred. *Id.*, 5:17-18, 7:24–8:4. The court warned him that if he did not cease his disruptions, it would place him in contempt. *Id.*, 5:1-5. He was instructed several times to leave the courtroom. *Id.*, 6:20, 8:8-9. He stated that he refused to leave unless he was arrested. RP (Feb. 21) 5:8-9 ("unless they arrest me, I'm not leaving the court"); 7:6 (same).

The court signed a contempt order ("First Contempt Order"). CP 439. Still, Mr. Tahir-Garrett refused to leave, requiring the courtroom officers to pick him up and put him in a wheelchair to remove him from the courtroom. RP (Feb. 21) 21:19-20.

6. The Second Contempt Order

This unlawful detainer matter was finally called for trial on February 23, 2017. Mr. Tahir-Garrett appeared and immediately resumed

[3] Neither MidTown nor its attorneys were in court that day.

his disruptive behavior, repeatedly interrupting the court. RP 3:21–4:17, 5:25–6:15, 7:6-21, 10:16–11:4. He insulted Judge Parisien, RP 4:12 ("stupid decision that you made"), 8:1 ("are you crazy?"), 8:20 ("you must have lost your mind"), 9:19-20 ("you don't even know your own law"), 14:6 ("crooked judge"). He also insulted opposing counsel and parties, RP 9:13 ("these albinos"), 12:10 ("these fools").

Mr. Tahir-Garrett asserted: "I have posttraumatic stress … I can do what I want to do." RP 13:5-8. He claimed he could not go forward without his paperwork. RP 5:6-7. When the court offered to call to find out where his paperwork was, he increased his disruptive behavior. RP 10:6-8.

Finally, when the court announced that it planned to go forward with the trial, Mr. Tahir-Garrett began banging on the table, and insisted the plaque of George Washington be removed from the wall because he had owned slaves. RP 14:12-15:5.

At this point, the court announced it would enter another contempt order. RP 14:16. Mr. Tahir-Garrett, claiming his chest hurt, rose from his chair and propelled himself to the floor, giving the appearance of unconsciousness, although a court officer found him to be conscious. RP 17:24-25. An aid car was called, and he was carried out of the courtroom.

The court then issued its second contempt order against Mr. Tahir-Garrett (the "Second Contempt Order"), CP 443. Noting that in prior proceedings Mr. Tahir-Garrett had appeared to suddenly collapse when matters he contested were moving forward, the court went forward with trial. RP 16:14-22.[4]

After hearing the evidence and testimony recited in the appellate court's decision, the trial court entered the Judgment and Order, and issued a writ of restitution. CP 444-450; COA Opinion, at 18-22. Mr. Tahir-Garrett was also enjoined from possession of or entry upon the Property because, among other things, he had claimed a right of possession over it. CP 449.

[4] Mr. Tahir-Garrett engaged in similar tactics on at least two prior occasions: (1) in Judge Hill's courtroom on December 23, 2016 (CP 385); and (2) during his 2002 trial for assaulting former Seattle mayor Paul Schell. CP 289 (when the judge refused to delay trial, Mr. Tahir-Garrett claimed delayed stress syndrome, slumped in his chair and became unresponsive). *See State v. Tahir-Garrett*, 2004 Wn. App. LEXIS 571, *2-3 (Wn. App., March 29, 2004) (trial court denied further delay after Mr. Tahir-Garrett's lengthy delay tactics, and he became unwell "because of delayed stress triggered by racism"). *See also, Garrett v. City of Seattle*, 2010 U.S. Dist. LEXIS 111684, *14, 2010 WL 4236946 (W.D. Wash., Oct. 20, 2010) (when Mr. Tahir-Garrett's offensive, disruptive behavior at school board meetings forced police officers to remove him, he "dramatically lowered himself to the floor").

7. Execution of Writ, Third Contempt Order and Third Frivolous Removal to Federal Court

On March 2, 2017, the King County Sheriff served the writ of restitution on Mr. Tahir-Garrett. The writ required that he vacate within three days. Mr. Tahir-Garrett did not vacate. CP 66. On March 15, 2017, the Sheriff executed the writ. CP 67. Soon after Mr. Tahir-Garrett was evicted, however, he returned to the Property. He snuck into and occupied a recently-vacated commercial space on MidTown's Property, preventing MidTown from entering it. CP 506-510. He also interfered with MidTown's ability to carry out its business operations and harassed, stalked and attempted to intimidate MidTown's principals and contractors. He even followed them off the Property. *Id*.

MidTown moved for contempt on April 7, 2017. CP 500-510. Mr. Tahir-Garrett filed no response to the motion. Instead, on April 17, he again filed a notice of removal. On May 2, the federal court remanded the matter *sua sponte*, again finding the removal frivolous and a "flagrant abuse of the judicial process." CP 534-535. On April 14, 2017, he filed yet another federal lawsuit against MidTown and others. CP 487-493. The lawsuit was dismissed as frivolous. *Tahir v. Bangasser*, 2017 U.S. Dist. LEXIS 79716 (W.D. Wash., May 23, 2017) (reciting Mr. Tahir-Garrett's "extensive history of frivolous litigation in the Western District of

Washington"). On April 17, he also filed a "Motion and Declaration to Vacate Judgment and to Stay Enforcement" in the trial court.[5] CP 477-480.

The King County court entered a third contempt order on May 5, 2017 (the "Third Contempt Order"). CP 539-541.

8. Proceedings Before the Appellate Court

Mr. Tahir-Garrett appealed the Order and Judgment as well as all three contempt orders. The appeal before Division One was fully briefed by October 16, 2017. On December 19, 2017, Mr. Tahir-Garrett moved, pursuant to RAP 9.11, to place nearly 100 pages of medical records as additional evidence into the record on review. These are the same records that he includes in his appendix to his Revised Petition.

The appellate court commissioner denied the motion on January 11, 2018. Those records did not support his claim that he could not attend his trial because of a medical disability. The commissioner noted that the attending physician at the hospital where he was taken from the courtroom on February 23 concluded, he was "angry with the judge presiding over his case," and noted "possible malingering." *Id.*, at 2. The records also noted: "I doubt serious cause for his chest pain or [headache] since his main concern seems to be with the trial/judge," and "there appears to be a

[5] He did not note that motion for hearing.

volitional component to his presentation today." *See Ex. A* to Respondent's Opposition to Motion to Place Additional Evidence on Review, filed with the Court of Appeals December 29, 2017.

Mr. Tahir-Garrett moved to modify the commissioner's denial on April 5, 2018. The appellate panel denied the motion to modify as untimely on April 23. Mr. Tahir-Garrett does not appeal that denial. Nevertheless, he cites to those records generally, without pointing to any specific reference, in defending his courtroom behavior.

IV. ARGUMENT

A. THE FEBRUARY 21 AND 23 CONTEMPT ORDERS RAISE NO ISSUE FOR REVIEW BY THIS COURT (PETITIONER'S ISSUES 1 AND 2)

Trial courts have the power to maintain order and decorum in their courtrooms by holding a party in contempt and summarily imposing imprisonment for up to 30 days. RCW 7.21.050. Mr. Tahir-Garrett's courtroom behavior on both February 21 and 23 was extreme. The transcripts reveal that he repeatedly interrupted, insulted, and threatened the court on both occasions.

He claims he was denied a "right to elocution." Presumably, he refers to RCW 7.21.050(1) which gives the person committing the contempt "an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise." The court allowed Mr. Tahir-Garrett to

speak on both occasions, but he continued to interrupt and insult, and said nothing in mitigation.

On February 21, the trial court specifically gave Mr. Tahir-Garrett an opportunity to mitigate by leaving the courtroom. He refused. RP (Feb. 21) 5:8-9 ("unless they arrest me, I'm not leaving.") On February 23, Mr. Tahir-Garrett said nothing in mitigation. Instead, he argued, insulted and interrupted the court.

The Appellate Court properly affirmed both contempt orders. RCW 7.21.050 worked precisely in the manner it was intended. Mr. Tahir-Garrett raises no significant issue of law or substantial public interest requiring this Court's review.

B. THE FACT THAT TRIAL PROCEEDED WITHOUT MR. TAHIR-GARRETT PRESENTS NO ISSUE FOR REVIEW BY THIS COURT (PETITIONER'S ISSUES 3 AND 4)

Mr. Tahir-Garrett contests the judgment against him because he was not present at his trial. He succeeded for over nine months in delaying a hearing on an unlawful detainer action. *See above*, at 3-7. When the court announced that trial would finally began, he had one more delay tactic. He claimed his chest hurt, but continued to argue and bang on the table. When the court then again indicated it would hold him in contempt and go forward with the trial, he "put himself on the floor," although he remained conscious. RP 17:24-25. The trial court, aware of the several times in the past that he

had delayed proceedings by feigning medical conditions, proceeded to trial. As the appellate court properly held, citing *Odom v. Williams*, 74 Wn.2d 714, 718, 446 P.2d 335 (1968), trial may proceed when a party deliberately absents himself. COA Opinion, at 16.

Mr. Tahir-Garrett's claim that it was unfair to hold the trial in his absence is unsupported by the record. He claims he has high blood pressure and PTSD. He was given opportunities to provide evidence of a medical need to postpone trial, but he failed to provide any. The records that he untimely offered, even if they had been considered, did not show that he had any medical condition preventing trial. *See above* at 11-12.

He now claims he did not know what was happening when he appeared in court on February 23. Yet, it is clear from his statements in court two days earlier that he was well aware that the trial was rescheduled to Thursday, February 23. RP 4:9 ("my trial in front of you Thursday"); 17:7-8 ("You going to let me out in time to be in court on Thursday? I got to be in front of her Thursday at 1:00"); 19:17 ("You got to make sure I'm in … her court on Thursday").

When a litigant who has already successfully delayed trial for months uses as an excuse for further delay a medical condition that is not verified by any medical practitioner, the trial court violates no rights in proceeding to trial in the litigant's absence. There is no significant issue of

law or substantial public interest warranting this Court's review. A trial court is not obligated to endlessly delay an already-protracted proceeding because of a party's unruly and contumacious behavior.

C. THE JUDGMENT ENJOINING MR. TAHIR-GARRETT FROM FURTHER ENTERING THE PROPERTY AFTER EVICTION DOES NOT PRESENT AN ISSUE FOR REVIEW (PETITIONER'S ISSUES 5 AND 6)

The trial court's Judgment and Order enjoined Mr. Tahir-Garrett from "possession of or entry upon the [Property]." CP 499-500. He appears to claim that the injunction should have been limited to the parcel immediately surrounding the house where he resided. The appellate court properly affirmed the injunctive relief because: (a) the trial court was authorized to grant relief related to possession in an unlawful detainer action, RCW 59.12.030, and *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985); (b) Mr. Tahir-Garrett had claimed possessory rights over the entire Property; and (c) the injunctive relief was necessary to protect MidTown's right of possession. COA Opinion, at 23-24.

Noting his lack of analysis or citation to any authority, the appellate court rejected Mr. Tahir-Garrett's bald claim that the injunction was improper. His Revised Petition for Review does not remedy that defect – he cites no authority and provides no explanation of why the appellate court was wrong. Nor does he explain why excluding an individual from private property over which he claimed, without basis, a possessory interest and

after he had followed and harassed its owners, invokes a substantial public interest.

D. THE APPELLATE COURT APPROPRIATELY REVIEWED THE FINDINGS OF FACT FOR SUBSTANTIAL EVIDENCE; MR. TAHIR-GARRETT'S ISSUE 7 DOES NOT SUPPORT REVIEW BY THIS COURT

Mr. Tahir-Garrett claims the Court of Appeals violated an unspecified standard of review when it affirmed the superior court's findings, and petitions this Court's review. The Court of Appeals first correctly noted that Mr. Tahir-Garrett had failed to specifically assign error to any fact finding. COA Opinion, at 22. That alone justified its affirmance of the trial court decision. RAP 10.3(a)(4); 10.3(g). The appellate court then summarized the substantial evidence that supported the trial court's decision. COA Opinion, at 18-22. Mr. Tahir-Garrett does not identify any fact finding that was not supported by substantial evidence. He fails to raise any significant issue of law or substantial public interest in connection with the findings.

E. THE FACT THAT TRIAL PROCEEDED WITHOUT A SHOW CAUSE HEARING RAISES NO ISSUE FOR REVIEW

Mr. Tahir-Garrett does not specifically petition the Court to consider whether he had a "right" to a show cause hearing before the unlawful detainer trial. However, he argues (without support) that the appellate court "attempts to establish a radical new interpretation of Washington's landlord tenant act" by holding that he had no such right.

As the appellate court noted, RCW 59.18.370 allows, but does not require, the landlord to seek a writ of restitution at a pre-trial show cause hearing. COA Opinion, at 14. If a show cause hearing is held, the tenant is entitled under RCW 59.18.380 to appear, answer, and defend. *Id.* At the hearing, the tenant must show that there is a genuine issue as to the right of possession. If a tenant cannot make that showing, the writ of restitution issues at the conclusion of the show cause hearing, avoiding the need for further delay in the eviction process. Only if the tenant raises an issue on the right of possession, is the matter referred to trial. *Id.* In short, the show cause hearing provides the landlord with a way to avoid the delay and expense involved in going to trial.[6] Mr. Tahir-Garrett cites no authority, and provide no logical underpinning, for his claim that the tenant is ***entitled*** to a show cause hearing.

Even were he entitled to a show cause hearing, which he was not, Mr. Tahir-Garrett forfeited that entitlement. He prevented the show cause process from going forward. He did so by frivolously removing the case to

[6] Contrary to Mr. Tahir-Garrett's argument, there is nothing in the COA Opinion that would encourage landlords to bypass the show cause procedure. If he is arguing for some unexplained but major change in the show cause process, he should address his arguments to the legislature that created that process.

federal court on the eve of the show cause hearing. In short, he disabled himself from exercising the purported right he claims.

For all of these reasons, the appellate court got it right. COA Opinion, at 14-15. There is no issue for review.

V. CONCLUSION

For all the reasons stated above, Mr. Tahir-Garrett's Revised Petition for Review should be denied.

DATED: September 20, 2018.

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on September 20, 2018, I served a copy of the foregoing MIDTOWN LIMITED PARTNERSHIP'S ANSWER TO REVISED PETITION FOR REVIEW on all counsel of record as indicated below:

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DATED: September 20, 2018, at Seattle, Washington.

Stacy Hoffman
Legal Secretary

SIRIANNI YOUTZ SPOONEMORE HAMBURGER

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