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STATE OF WASHINGTON
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No. 97712-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ANDREW SATURN, Petitioner,

Vs.

OUR REVOLUTION WASHINGTON, et al., Respondents.

**ANSWER TO
PETITION FOR REVIEW**

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I. Introduction

Respondent Our Revolution Washington (“ORW”), by and through its Board members, Vivian Queija and Ryan Whitney, respectfully request that the Court deny Appellant’s Petition for Review.

II. Issues Presented for Review

Respondents do not present any issues for review.

III. Statement of the Case

Respondents commenced the underlying action on March 16, 2017 to regain control of a non-profit entity, ORW, and to enjoin Appellant, a former board member, from taking unauthorized actions on behalf of, and interfering with the business of, the non-profit entity. CP 29-83. Respondents’ Complaint and Amended Complaint both clearly and expressly stated Respondents’ claim for attorneys’ fees and costs. *Id.*

On September 29, 2017, Respondents filed a Motion for Summary Judgment, which sought, *inter alia*, an award of attorneys’ fees and costs. CP 84-213. The trial court granted Respondents’ request for injunctive relief and ordered Appellant to cease acting or purporting to act for or on behalf of ORW and interfering with the rightful directors' ability to govern and act on behalf of ORW. CP 229-231. The trial court requested a separate motion on the issue of attorneys’ fees and costs. *Id.*

On March 12, 2018, on the eve of trial and after several failed attempts to get Appellant to comply with the trial court's summary judgment order, Respondents presented Appellant with a stipulation allowing Respondents to recover the name, UBI Number, and U.S. Federal Tax ID Number for ORW. CP 1-3; 4-10; 18-23. In exchange for Appellant's stipulation, Respondents dismissed their claims to recover donations solicited by Appellant to fund his defense in the underlying case, in addition to Respondents' claims for defamation and tortious interference with business. *Id.* Respondents did not waive their right to pursue recovery of their costs and attorney fees incurred in this action. CP 4-10; 18-23. To the contrary, Respondents expressly reserved their right to file a motion to recover said attorney fees and costs. *Id.*

In accordance with the trial court's request, Respondents filed a motion seeking recovery of attorney fees and costs. CP 4-10. The motion was granted in full over Appellant's objection. CP 11-14. Appellant forced Respondents to incur additional attorney fees and costs in responding to a subsequent motion to vacate the award of attorney fees and costs. CP 15-17. Therefore, Respondents sought an additional award of attorney fees and costs for having to respond to Appellant's frivolous motion. CP 18-23. The trial court denied Appellant's motion to vacate and awarded an additional \$675 in attorney fees and costs to Respondents for having to respond to

Appellant's motion. CP 27-28.

IV. Argument

A. Appellant's Petition for Review Does Not Meet the Requirements of RAP 13.4(b).

As an initial matter, Appellant's Petition for Review should be denied because it does not satisfy the requirements of RAP 13.4(b). The July 22, 2019 opinion by Division I of the Court of Appeals does not conflict with a decision of the Supreme Court or Court of Appeals and does not involve a significant question of Constitutional law or an issue of substantial public interest.

B. Res Judicata Does Not Preclude an Award of Attorney Fees in this Case.

The Appellate Court properly upheld the trial court's award of attorney fees pursuant to CR 54(d). *See Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007) (an appellate court will uphold an award of attorneys' fees and costs unless it finds the trial court manifestly abused its discretion. As set forth in the July 22, 2019 opinion by Division I of the Court of Appeals, res judicata does not preclude an award of attorney fees in this instance. Neither issue preclusion nor claim preclusion apply.

Issue preclusion does not apply because the trial court did not make any rulings in the stipulated order of dismissal regarding an award of

attorney fees. CP 1-3, 230. See *Weaver v. City of Everett*, 4 Wn. App. 2d 303, 315, 320, 421 P.3d 1013 (2018), *review granted*, 192 Wn.2d 1001, 430 P.3d 251 (2018) (final judgment on the merits of an issue is required for issue preclusion). The stipulated order of dismissal was silent as to an award of attorney fees. CP 1-3.

Further, this matter does not involve relitigation of a claim that has already been litigated. Rather, it involves a subsequent stage of the same litigation. *Elliott Bay Adjustment Co., Inc. v. Dacumos*, 200 Wn. App. 208, 214, 218, 401 P.3d 473 (2017) (dismissal with prejudice bars the plaintiff from bringing the same claim against the defendant but does not preclude an award of attorney fees in a subsequent stage of the original action); see also *Weaver*, 4 Wn. App. 2d at 320 (“Generally, res judicata bars the relitigation of claims that were litigated, might have been litigated, or should have been litigated in a prior action.”)

Appellant’s Petition for Review should be denied because the Appellate Court properly held that res judicata does not bar an award of attorney fees in this case.

C. The Issue of the Timeliness of Respondents’ Motion for Attorney Fees is not Properly Before the Court.

Ironically, Appellant’s argument regarding the timeliness of Respondent’s motion for attorney fees in the underlying action is not

properly before the court as it was not timely raised in Appellant's initial brief to Division I of the Court of Appeals. Appellant did not raise the timeliness of Respondent's motion for fees pursuant to CR 54(d) in his appeal to Division I of the Court of Appeals. *See* Appellant's Brief at p. 3. He cannot bootstrap this argument into a reply by arguing that Respondents' timeliness somehow relates to whether Respondents were the prevailing party in the underlying action. These are two separate arguments.

Moreover, Appellant's contention that Respondents were not the "prevailing party" in the underlying litigation is simply disingenuous. The trial court entered summary judgment against the Appellant in favor of Respondents and requested a separate motion on Respondents' request for an award of attorney fees. CP 229-231. In accordance with the trial court's request, Respondents filed a motion seeking recovery of attorney fees and costs, which was granted in full over Appellant's objection. CP 11-14. Appellant forced Respondents to incur additional attorney fees and costs in responding to a subsequent motion to vacate the award of attorney fees and costs (CP 15-17) and continues to force Respondents to incur additional attorney fees and costs with each appeal and petition for review.

V. Conclusion

Respondents respectfully request that this Court deny Appellant Andrew Saturn's Petition for Review. This matter is not appropriate for

review by the State's highest court as it does not satisfy the requirements of RAP 13.4(b). Division I of the Court of Appeals properly held that res judicata does not bar an award of attorney fees in favor of Respondents as the trial court did not rule on the issue of attorney fees (rather, it specifically reserved ruling on that issue). Respondent's request for an award of attorney fees was not subsequent litigation; rather, it was a subsequent stage of the same litigation.

Appellant should not be rewarded for needlessly and repeatedly forcing Respondents to incur additional attorney fees and costs in this matter. Respondents request that the Court deny Appellant's Petition for Review and put this matter to rest once and for all.

Respectfully submitted this 28th day of October 2019.

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