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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 81966-6-I

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

JOHN JOSEPH COX,

Respondent,

v.

KATHRYN M. COX,

Appellant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Court should deny petitioner Kathryn Cox's latest attempt to seek court approval of her blatant and repeated violations of a divorce decree entered more than four years ago. On October 10, 2017, the trial court entered a final decree of dissolution, ordering Ms. Cox and respondent John Cox to sell the family home within 90 days of entry of the order. For the past four years, Ms. Cox has staunchly refused to vacate the marital home, despite Division One affirming the dissolution decree; the trial court finding her in violation of the decree, granting Mr. Cox's motion to enforce the decree, and ordering arbitration to effectuate the sale of the home; and an arbitrator issuing three confirmed arbitration awards (1) ordering Ms. Cox to cooperate with the prompt listing of the home, (2) appointing a Special Master to oversee the sale in light of Ms. Cox's refusal to do so, and (3) ordering Ms. Cox to vacate the home, awarding Mr. Cox possession of the residence, and authorizing the use of law enforcement to forcibly remove Ms. Cox from the property.

Ms. Cox has willfully disregarded each and every one of these orders. With no other recourse available, Mr. Cox sought a writ of restitution in October 2020 to evict Ms. Cox from the

home that she was required to vacate three years earlier. The trial court invoked its equitable authority to enforce its own orders and issued a writ of restitution. Ms. Cox appealed the writ, which was never executed on and expired on December 29, 2020. Ms. Cox remains in the family home to this day.

Washington law is clear that a trial court has authority to enforce its prior orders to ensure that this very situation does not arise. Indeed, "[i]t is inconceivable that a court in a divorce proceeding can divide the property between the parties and yet have no power to make that division effective if the parties are recalcitrant." *Robinson v. Robinson*, 37 Wn.2d 511, 516, 225 P.2d 411 (1950). Division One correctly held in its December 21, 2021 opinion that, under these circumstances, the trial court properly exercised its equitable discretion in issuing a writ of restitution "to effectuate its order using a process familiar both to the court as well as the sheriff's office serving and enforcing the writ." (Op. 5)[1] This Court should deny review of the Court of Appeals' decision.

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[1] The Court of Appeals' December 21, 2021 opinion is attached as Appendix A to Ms. Cox's petition and is cited herein as "Op." Ms. Cox's petition is cited herein as "Pet."

II. RESTATEMENT OF ISSUE

The issue presented by the Court of Appeals' decision is properly framed as:

Whether the Court of Appeals properly affirmed the trial court's equitable discretion to issue a writ of restitution as a remedy to enforce its dissolution decree where one party has refused to vacate the marital home for over four years, in violation of the dissolution decree, an appellate decision affirming the decree, and three confirmed arbitration awards again ordering the prompt sale of the home?

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Court of Appeals correctly affirmed the trial court's authority to issue a writ of restitution as an equitable remedy to enforce its October 2017 dissolution decree in light of Ms. Cox's repeated and continued violation of numerous court orders. The record is replete with evidence of Ms. Cox's blatant intransigence. (*See* Op. 6 n.4: "The record offers ample bases to find Kathryn in contempt.") To this very day, Ms. Cox "remains in the home in direct disobedience of the trial court's order." (Op. 5) Division One correctly held that the trial court had

authority to issue a writ of restitution as an equitable remedy to effectuate its prior orders. (Op. 5)

Ms. Cox fails to identify any grounds warranting review under RAP 13.4(b) (2), (3), or (4). (*See* Pet. 3-4) Division One's decision does not conflict with any existing law or raise any issue of "substantial public interest" so as to warrant review by this Court. Rather, the Court of Appeals' decision merely reaffirms a basic and fundamental principle of Washington law: that a trial court has the inherent authority to fashion equitable remedies to enforce its prior orders. Ms. Cox's actions underscore why the trial court *must* have such authority; "[i]f a court in equity could not enforce its decrees, obviously the court would be rendered impotent and we would have neither law nor order but every one could do as he or she pleased." (Op. 5, quoting *Robinson*, 37 Wn.2d at 516)

The Court should deny review of the Court of Appeal's December 21, 2021 opinion.

A. This Dissolution Proceeding Does Not Involve an Issue of "Substantial Public Interest." (RAP 13.4(b)(4))

Ms. Cox fails to articulate how this case "involves an issue of substantial public interest" warranting review under RAP

13.4(b)(4), aside from a passing assertion that this case "presents a significant issue of first impression." (Pet. 3) *See Brownfield v. City of Yakima*, 178 Wn. App. 850, 876, 316 P.3d 520 (2014) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.").

Despite Ms. Cox's attempts to paint this issue as one of first impression, Division One's opinion merely reiterates well-established law that a court has a broad and implied inherent authority to enforce its own orders. (Op. 4-5 (citing ch. 2.28 RCW and *Robinson*, 37 Wn.2d at 516); *see also* Resp. Br. 17-18) Division One correctly recognized that a writ of restitution was an appropriate equitable remedy in light of Ms. Cox's "direct disobedience of the trial court's order." (Op. 5)

Far from involving an issue of substantial public interest, Decision One's opinion underscores the inherently fact-specific nature of this case and the trial court's equitable remedy:

> The trial court ordered the sale of the marital home within 90 days of the entry of its dissolution order. Over four years later and after three arbitrations, the appointment of a special master, and potential threat of removal by sheriff, Kathryn remains in the home in direct disobedience of the trial court's order. As such, the trial court selected what, within is

> equitable discretion, it believed to be a suitable process for enforcing its order: a writ of restitution.

(Op. 5) Division One correctly held that, *under these circumstances*, the trial court did not abuse its equitable discretion in issuing a writ of restitution to enforce the dissolution decree that Ms. Cox continues to blatantly violate more than four years later. This case does not raise any issue of substantial public interest under RAP 13.4(b)(4).

B. This Case Does Not Involve "Significant Questions of Law" Under the State or Federal Constitutions. (RAP 13.4(b)(3))

This case does not, as Ms. Cox claims, involve "significant questions of law" under the state or federal constitutions so as to warrant review under RAP 13.4(b)(3). (Pet. 4)

1. Division One Adhered to Well-Established Law That a Trial Court Has Broad Inherent Authority to Fashion Equitable Remedies and Enforce its Prior Orders.

Division One did not apply an "overly broad analysis" of inherent authority. (Pet. 5) "Dissolution proceedings invoke the court's equitable jurisdiction." *Farmer v. Farmer*, 172 Wn.2d 616, 624, 259 P.3d 256 (2011). As noted previously, it is well established in Washington that "the trial court has inherent

authority to interpret and enforce its order[s]." *Bero v. Name Intel., Inc.*, 195 Wn. App. 170, 179, 381 P.3d 71 (2016). (Resp. Br. 17-18) This Court has repeatedly affirmed this inherent authority. *See, e.g.*, *Farmer*, 172 Wn.2d at 624 ("a trial court enjoys broad discretion to grant relief to parties in a dissolution based on what it considers to be 'just and equitable'"); *Allen v. Am. Land Rsch.*, 95 Wn.2d 841, 852, 631 P.2d 930 (1981) (trial court has "inherent authority to enforce orders and fashion judgments"); *Robinson* 37 Wn.2d at 516.

In addition, as Division One correctly noted, "[a] court's authority to enforce its orders is well settled by Washington statute." (Op. 4) Under RCW 2.28.010(4), "every court of justice has power . . . to compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein." (*See* Op. 4) *See also* RCW 2.28.060(2) ("Every judicial officer has power . . . to compel obedience to his or her lawful orders as provided by law.").

Nothing in the Court of Appeals' decision states, or even insinuates, that the trial court's equitable discretion is "unlimited." (*See* Pet. 8-9) To the contrary, Division One

carefully reviewed the record, which "offers ample bases to find Kathryn in contempt" of the trial court's prior orders. (Op. 6 n.4; *see, e.g.*, CP 250-338, 165, 369) It is undisputed that Ms. Cox has violated and continues to violate: (1) the October 10, 2017 dissolution decree ordering the sale of the family home within 90 days (CP 193-94, 204); (2) the June 10, 2019 Court of Appeals decision affirming the dissolution decree (CP 214-35); (3) the March 4, 2020 trial court order finding Ms. Cox in violation of the dissolution decree, granting Mr. Cox's motion to enforce the final decree, and compelling arbitration (CP 363-65); (4) the March 13, 2020 arbitration award ordering Ms. Cox to place the home on the market by May 1, 2020 (CP 367-39); (5) the April 18, 2020 arbitration award appointing a Special Master to effectuate the sale in light of Ms. Cox's categorical refusal to do so (CP 372-73); and (6) the June 17, 2020 arbitration award ordering Ms. Cox to vacate the home, awarding Mr. Cox possession of the residence, and authorizing the use of law enforcement to forcibly remove Ms. Cox from the property if she fails to vacate as ordered (CP 382-83). (*See* Resp. Br. 4-7)

Because Ms. Cox *still* "remains in the home in direct disobedience of the trial court's order" (and the three arbitration

awards), the Court of Appeals correctly concluded that a writ of restitution was an appropriate equitable remedy that would allow the trial court "to effectuate its order using a process familiar both to the court as well as the sheriff's office serving and enforcing the writ." (Op. 5-6)

2. The Court of Appeals' Decision Does Not Conflict with RCW 2.28.150.

The Court of Appeals' decision is not in conflict with ch. 2.28 RCW. (Pet. 9-12) RCW 2.28.150 provides that, when a court has proper jurisdiction, "all the means to carry it into effect are also given." Moreover, "in the exercise of jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws." RCW 2.28.150.

Here, there is no statute that "specifically point[s] out" the appropriate "course of proceeding" when a former spouse refuses, for years on end, to vacate the marital home as required by a dissolution decree and three separate arbitration awards. Moreover, Mr. Cox *did* follow the standard "course of proceeding" for enforcing a dissolution decree: he sought and

obtained an order from the trial court to enforce the decree and order arbitration, and then he obtained three arbitration awards (which the trial court confirmed) again ordering Ms. Cox to vacate the property and cooperate with the sale of the home. In light of Ms. Cox's unabashed refusal to comply with any court order, Mr. Cox was left with no "course of proceeding" other than invoking the trial court's inherent equitable authority.

Ms. Cox incorrectly contends that the Court of Appeals' decision ignores "specifically pointed out procedures" for an unlawful detainer action under Title 59 RCW. (Pet. 9-11) But as the Court of Appeals recognized: "Title 59 RCW addresses landlord and tenant rights. Here, until the family home is sold, the Coxes own the property as tenants in common. As such, John is not Kathryn's landlord and cannot bring an unlawful detainer action under ch. 59.12 RCW." (Op. 5) Division One correctly held that the trial court's equitable remedy was the only means through which it could ensure Ms. Cox's compliance with the dissolution decree.

In so doing, the trial court gave effect to the "spirit of the laws." (Pet. 12-15) "The emotional and financial interests affected by such decisions [in a dissolution action] are best

served by finality." *Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). The "spirit" of dissolution proceedings, and the entry of a final dissolution decree in particular, is thus *finality*. Final dissolution decrees are designed to allow the parties to move forward. By refusing to vacate the marital home, *Ms. Cox*—not Mr. Cox or the trial court or the Court of Appeals—has failed to adhere to the "spirit of the laws"

Similarly, the purpose of Title 59 RCW is to "provide an *expedited* method of resolving the right to possession of property." *Burgess v. Crossan*, 189 Wn. App. 97, 102, 358 P.3d 416 (2015) (emphasis added). Ms. Cox has gone to extreme lengths to ensure that the sale of the home has not been, and will not be, "expedited." In response, the trial court had no choice but to invoke its inherent authority to issue a writ of restitution whereby the sheriff could actually remove Ms. Cox from the marital home. In so doing, the trial court gave effect to the "spirit" of Title 59 by enabling Mr. Cox to secure a more expedited means of enforcing the dissolution decree and selling the home.

3. Ms. Cox's "Liberty Rights" Were Not "Affected" by the Trial Court's Equitable Remedy.

Ms. Cox contends for the first time in her petition for review that her "liberty rights were affected" by the trial court's issuance of a writ of restitution "outside of the guidelines adopted by the legislature" in Title 59 RCW. (Pet. 4) But, as noted previously, Title 59 RCW applies to landlord and tenants. (Op. 5-6; Resp. Br. 22-25) It is undisputed that the parties hold the property as tenants in common until the home is sold. (CP 193; Op. 5) Mr. Cox is not Ms. Cox's landlord, and therefore cannot bring an unlawful detainer action under RCW ch. 59.12. (Resp. Br. 22; Op. 5; *see also* App. Br. 13: Ms. Cox conceding that "RCW 59.12.030 requires the action be brought against a tenant for a 'term less than life,' which would arguably prevent an action against Ms. Cox due to her ownership interest in the home")

Moreover, as Division One correctly recognized, "[w]hile the unlawful detainer statute, RCW 59.12.090, does allow a plaintiff landlord to seek a writ of restitution to restore the property to the plaintiff, *there is no authority for the proposition that a writ of restitution is only available under ch. 59.12 RCW*."

(Op. 5-6, emphasis added) Nor does Ms. Cox cite to any such authority. To the contrary, Washington courts have recognized that a writ of restitution is a tool separate and distinct from a judgment in an unlawful detainer action. *See Excelsior Mortg. Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 341 n.3, 287 P.3d 21 (2012) (writ of restitution itself is not "essential to establishing the plaintiff's right of possession"; "a writ of restitution is a tool for securing compliance with the judgment," while "it is the judgment itself that grants legal possession to the landowner"). Here, legal possession is not at issue; both parties hold the property as tenants in common. The Court of Appeals properly affirmed the trial court's use of a writ of restitution as the tool for effectuating the dissolution decree.

In so doing, the trial court did not violate Ms. Cox's "liberty interests" under the Fourteenth Amendment of the U.S. Constitution or Article I, Section 3 of the Washington Constitution. (Pet. 10-11) The "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Gourley*, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)) (internal quotation

marks omitted)). Ms. Cox has had *numerous* opportunities over the past four years "to be heard at a meaningful time and in a meaningful manner." *Gourley*, 158 Wn.2d at 467.

Ms. Cox was well aware that she was required to vacate the marital house and that, by failing to do so, she was living there in direct violation of numerous court orders. Ms. Cox was also aware from the arbitrator's June 17, 2020 award that Mr. Cox "shall be entitled to a civil standby policy officer to forcibly remove the petitioner Kathryn M. Cox from the property" if she "fail[ed] to vacate the property as ordered." (CP 382) Moreover, it is undisputed that Mr. Cox provided timely notice to Ms. Cox of his motion for a writ of restitution, including the hearing date. (CP 8, 10; Resp. Br. 24-25) Ms. Cox filed an objection to the issuance of a writ and requested at stay or continuance; she also subsequently filed a voluminous motion for reconsideration or, in the alternative, a stay pending appeal. (CP 11-28, 52-161)

There is no evidence that Ms. Cox was deprived of her "liberty rights." Ms. Cox has failed to raise any "significant question[] of law" under the state or federal constitutions that would warrant review under RAP 13.4(b)(3).

C. The Court of Appeals' Decision is Not in Conflict with *Dzaman*. (RAP 13.4(b)(2))

Review is also not warranted under RAP 13.4(b)(2) because Division One did not "impermissibly" ignore the Governor's eviction moratorium, which expired months ago, and its opinion is not in conflict with Division Two's decision in *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 491 P.3d 1012 (2021).

In *Dzaman*, a landlord delivered to his tenant a 60-day notice of intent to sell during the eviction moratorium that the Governor established through Proclamation 20-19. The landlord brought an unlawful detainer action against the tenant on September 2, 2020, after 60 days had passed and the tenant had not vacated the property. After finding the tenant guilty of unlawful detainer, the trial court entered findings of fact and conclusions of law on October 16, 2020 that the notice of termination of the tenancy complied with the requirements of Proclamation 20-19.3.

However, on October 14, "the Governor had issued Proclamation 20-19.4, which modified aspects of Proclamation 20-19.3." 18 Wn. App. 2d at 475. Proclamation 20-19.4 required the 60-day notice of intent to sell to "be in the form of

an affidavit signed under penalty of perjury." 18 Wn. App. 2d at 475. Although the landlord's 60-day notice was not in the form of a sworn affidavit, the trial court denied the tenant's motion for reconsideration. The tenant was subsequently evicted. On appeal, Division Two held that the sworn affidavit requirement contained in Proclamation 20-19.4 prohibited the landlord from obtaining a writ of restitution against the tenant.

Division One's opinion here is not in conflict with *Dzaman* for three key reasons: (1) the writ of restitution that Ms. Cox argues is void for lack of proper notice under Proclamation 20-19.4 expired nearly 13 months ago, on December 29, 2020; (2) the requirement that notice be in the form of a sworn affidavit expired on June 30, 2021; and (3) the eviction moratorium itself expired on October 31, 2021. Ms. Cox's assertions, even if true, are thus moot because no court can afford her any meaningful relief. *See State v. Cruz*, 189 Wn.2d 588, 404 P.3d 70 (2017) (an issue or case is moot if "a court can no longer provide effective relief") (quoted source omitted).

First, the writ, even if deficient, has expired. The eviction date under the November 12, 2020 amended writ of restitution was November 20, 2020. (CP 416) The sheriff served the writ

on Ms. Cox on November 17, 2020, but did not execute on the writ. (CP 407-10, 415) On January 7, 2021, a King County Sheriff filed the return of service on the writ. (CP 415) The return of service expressly states that the sheriff held the writ in his possession until December 29, 2020, and confirmed that "[s]aid writ has expired." (CP 415) The trial court denied Mr. Cox's subsequent motion to extend the writ. (CP 420-34) It is thus undisputed that (a) the writ was never executed and (b) the writ expired on December 29, 2020, a year prior to Division One's decision in this case. There is no basis for Ms. Cox's contention that deficiencies in the expired writ affected her "liberty rights." (Pet. 4)

Second, the requirement that the 60-day notice of intent to sell be in the form of a signed affidavit expired nearly eight months ago. Proclamation 20-19.4 required landlords to provide 60 days' written notice, including a signed affidavit, to tenants prior to serving an eviction order.[2] While in effect, that proclamation required a trial court to make a finding on an

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[2] Proclamation 20-19.4, "Evictions and Related Housing Practices" (Oct. 14, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.4.pdf.

eviction order that the proper notice was made. Proclamation 20-19.6 extended the notice requirements contained in the prior proclamations to June 30, 2021.[3] Although the Governor subsequently issued bridge proclamations extending the eviction moratorium beyond June 30, those bridge proclamations did not contain the notice requirements at issue here.[4] The notice requirements, including that of a sworn affidavit, thus expired on June 30, 2021.

Third, the eviction moratorium itself expired nearly four months ago, on November 1, 2021. Even if the writ at issue had not expired more than a year ago, the notice requirements still ended months ago. This issue is therefore moot and does not warrant grounds for review by this Court.[5]

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[3] Proclamation 20-19.4, "Evictions and Related Housing Practices" (Mar. 18, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.6.pdf.

[4] Proclamation 21-09, "COVID-19: Tenancy Preservation – A Bridge to E2SSB 5160" (June 29, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/proc_21-09.pdf.; Proclamation 21-09.2, "COVID-19: Tenancy Preservation – A Bridge to E2SSB 5160" (Sep. 30, 2021), https://www.governor.wa.gov/sites/default/files/proclamations/21-09.2%20%20-%20COVID-19%20Eviction%20bridge%20transition%20Ext%20%28tmp%29.pdf.

[5] By comparison, the eviction moratorium was still in place when Division Two issued its decision in *Dzaman*. The record on appeal was insufficient for Division Two to conclude whether the issue was moot due to the tenant having already been evicted. Regardless, the Court considered the merits of the appeal, even

IV. CONCLUSION

The Court should deny review of the Court of Appeals' December 20, 2021 opinion affirming the trial court's exercise of its equitable authority to enforce its dissolution decree.

DATED this 18th day of February, 2022.

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if "technically moot," in light of "a public question presented because the interpretation and application of the Governor's eviction moratorium affects landlords and tenants throughout the pandemic." 18 Wn. App. 2d at 477. But *Dzaman* was decided on July 20, 2021, while the eviction moratorium was still in effect. There was, at that time, still a possibility that the issue would reoccur if the Governor extended the eviction moratorium again (which he did, until October 31, 2021). The Governor then let the moratorium expire on November 1, 2021.

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record in the manner indicated below:

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DATED: February 18, 2022.

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February 18, 2022 - 12:00 PM

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