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No. 101740-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GREGORY TYREE BROWN,

Appellant,

vs.

LAWRENCE FREEDMAN,

Respondent.

**RESPONDENT'S ANSWER TO
PETITION FOR REVIEW**

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I. IDENTITY OF RESPONDENT

The Respondent is attorney Lawrence Freedman.

II. INTRODUCTION / RESTATEMENT OF ISSUES

Petitioner Gregory Tyree Brown was convicted of two counts of aggravated murder in 1983 and sentenced to two consecutive life terms. In 2015, Brown retained Respondent Lawrence Freedman, an attorney, to try to get a parole hearing. Freedman was unable to accomplish this goal and Brown sued him.

The trial court granted Freedman's first motion for summary judgment in 2019, dismissing all claims Brown asserted in his original complaint. In 2021, the trial court dismissed Brown's one remaining claim, which he asserted in an amended complaint.

The Court of Appeals affirmed the dismissal in a September 20, 2022, Unpublished Opinion because Brown (1) did not designate the 2019 order as an order he wanted the Court of Appeals to review pursuant to RAP 5.3(a), and

(2) Brown did not assign error to the 2021 order. The Court of Appeals ruling was correct and should be affirmed.

III. RESTATEMENT OF THE CASE

A. Freedman's Representation of Brown

In 1983, Brown was convicted of two counts of aggravated murder. He was sentenced to two consecutive life terms. CP 211-212. Brown believed he should have been eligible for presentation to the Indeterminate Sentence Review Board ("ISRB") in September 2009.

On June 11, 2015, Brown retained Freedman to attempt to convince the Washington State Department of Corrections to grant a parole hearing. CP 209.

On June 17, 2015, Freedman sent a letter to the ISRB requesting that Brown be presented to the Parole Board. CP 213-216.

On July 6, 2015, a little over a month after the representation began, Brown terminated Freedman's services. CP 217-221.

On March 30, 2016, long after Freedman’s representation ended, Jill Getty from the ISRB sent a letter to Freedman in response to his June 17, 2015, letter. CP 229. Getty advised that Brown would not be presented for parole consideration. She explained that “[ISRB] and DOC records staff have contacted the sentencing Court for clarification in Mr. Brown’s case, and have been notified that the Court intended for Mr. Brown to be sentenced to Life Without the Possibility of Parole.” Believing Brown was notified directly of the decision, Freedman did not forward the letter to Brown. CP 210.

B. Brown Sues ISRB in 2019 and Loses

On May 31, 2019, Brown filed a First Amended Civil Complaint for Negligence, State Law and Constitutional Violations against the ISRB in Thurston County Superior Court. CP 189-193. He alleged that the ISRB “failed to set [his] minimum term, failed to hold parole hearings for [him], and failed to inform [him] of the conditions he must meet in order to be considered for parole.” CP 190.

On June 3, 2019, the ISRB filed a motion for summary judgment. CP 195-202. It argued as follows:

Brown claims that the Board violated his state and federal rights when it failed to consider him for parole. He bases this claim on the theory that he was given an indeterminate, parolable life sentence in 1983 for his two counts of aggravated murder in the first degree. Since this theory is wrong as a matter of law, there is no evidence creating a genuine issue of material fact. CP 198.

...

[T]he Board lacked—and still lacks—the statutory authority to do what Brown now wants this Court to order the Board to do, that is, to treat his sentence as if it were indeterminate and he were parolable by the Board. Brown knows that his sentence is not parolable because he was present on April 13, 1983, when the sentencing judge stated that, under RCW 10.95.030, his sentence ‘must be life without the possibility of parole.’ CP 200.

On September 20, 2019, the court entered an order granting the ISRB’s Motion for Summary Judgment, dismissing Brown’s claims with prejudice. CP 207-208. Brown did not appeal the ruling.

C. The Trial Court in Brown's Lawsuit Against Freedman Dismisses All Claims Asserted in the Original Complaint

On May 14, 2018, Brown filed his original complaint against Freedman. CP 117-143.

On January 23, 2019, Freedman filed a motion for summary judgment dismissal of all claims asserted in the original complaint. CP 105-116. The original hearing date for the motion was February 22, 2019. CP 243. The trial court granted Brown's first motion to continue and re-set the hearing to March 22, 2019. CP 243. The trial court later denied Brown's second motion for a continuance. CP 013-014. Judge Keith Harper, a visiting judge from Jefferson County Superior Court, handled the case.

Under CR 56, the deadline for Brown to file his opposition to Freedman's summary judgment motion was March 11, 2019. Brown claims that on March 20, 2019, two days before the summary judgment hearing and nine days after his opposition materials were due, he delivered the materials and his amended complaint to prison officials to forward to the trial court. CP 015.

Brown's late opposition materials did not reach Judge Harper before the hearing and there is no indication Judge Harper was ever made aware they were filed. Brown did not file a motion for leave to file late summary judgment opposition materials.

The summary judgment hearing took place on March 22, 2019. CP 13. At the conclusion of the hearing, Judge Harper orally granted the motion and dismissed all claims Brown asserted in his original complaint. CP 013-014. The order was entered with the Clallam County Superior Court on March 28, 2019. *Id.* Judge Harper did not consider Brown's summary judgment opposition brief and declaration, which were filed with the court three days after the summary judgment hearing and 61 days after Freedman filed his summary judgment motion. CP 083-102.

Brown did not file a motion for reconsideration of the 2019 summary judgment order or take any other action in the trial court to reverse or vacate the order. Brown made no effort to raise with the trial court the issues he raises on appeal.

D. Brown’s Amended Complaint - One New Claim

On March 25, 2019, Brown filed an amended complaint. CP 016-045. He added one new allegation of wrongdoing against Freedman. CP 043-044 (¶¶ 157-159). The amended complaint was otherwise identical to the original complaint. Brown’s lone remaining claim after entry of the first summary judgment order was that Freedman allegedly committed malpractice by not sending Brown the March 30, 2016, letter from the ISRB. *Id.* Brown alleged that he lost the opportunity to file a personal restraint petition under RCW 10.73.090 because he did not know about the letter. *Id.*

E. The Trial Court Grants Freedman’s Motion for Summary Judgment Dismissal of the Remaining Claim

On April 5, 2021, Freedman filed a motion for summary judgment dismissal of Brown’s one remaining claim. CP 230-242. Freedman clearly argued that “[t]he only remaining claim is the allegation Mr. Brown makes in his Amended Complaint that Mr. Freedman committed malpractice by not forwarding a March

2016 letter from the Washington Department of Corrections Indeterminate Sentencing Review Board (“ISRB”) to Mr. Brown.” CP 230-231. Freedman’s primary argument was that Brown was collaterally estopped from arguing that his sentence was indeterminate and he was eligible for parole because the court in Brown’s 2019 lawsuit against the ISRB determined just the opposite. CP 230-242.

In responding to Freedman’s motion in July 2021, Brown did not argue that the claims in the original complaint were still at issue or should still be at issue. To the contrary, he expressed a clear understanding of the status of the case:

Mr. Freedman filed a motion for summary judgment, and Brown filed an amended complaint. The Court granted Defendant summary judgment against the original complaint.

Defendant now files a motion for summary judgment against claims remaining in the amended complaint.

CP 168.

The hearing on the motion was held on June 25, 2021. CP Judge Harper granted the motion on July 16, 2021. CP 009-012.

F. Brown’s Notice of Appeal and Briefing in the Court of Appeals

Brown filed a Notice of Appeal related to the 2021 summary judgment order only. CP 008. He did not designate the trial court’s 2019 summary judgment order in the Notice of Appeal. *Id.*

G. Court of Appeals Decision

On September 20, 2022, the Court of Appeals affirmed the trial court’s 2021 summary judgment order because Brown “did not appeal the 2019 order” and did not “argue any error with regard to [the 2021] order.” *Brown v. Freedman*, Unpub. No. 52025-9-II, at 3.

IV. ARGUMENT

A. Standard for Accepting Review

Brown’s Petition for Review is based on RAP 13.4(b), which states as follows:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

B. There is No Reason to Accept Review

The Court of Appeals did not reach Brown’s arguments regarding the trial court’s 2019 summary judgment order because Brown did not designate the order for review pursuant to RAP 5.3(a). The Court of Appeals affirmed the trial court’s 2021 summary judgment order because Brown did “not argue any error with regard to this order.”

1. The Court of Appeals Decision Does Not Conflict with Washington Appellate Authority

Brown does not cite any Washington Supreme Court or Court of Appeals decision that conflicts with the Court of

Appeals rulings in this case that (1) Brown's failure to designate the 2019 summary judgment order for review pursuant to RAP 5.3(a) precludes review of the decision, and (2) Brown's failure to identify any error by the trial court in connection with the 2021 summary judgment order doomed his appeal of that order. Brown simply fails to address the Court of Appeals' rationale for its decision.

2. There is No Significant Constitutional Issue

Brown argues without explanation that the Court of Appeals' decision somehow implicates Article I, § 4 of the Washington State Constitution, which grants the right to petition and the freedom to assemble for the common good. That constitutional provision has nothing to do with this case.

3. There Is No Issue of Significant Public Interest

Brown's failure to comply with RAP 5.3(a) with respect to the 2019 summary judgment order and his failure to argue that the trial court erred in connection with the 2021 summary

judgment order are particular to this case and do not implicate any significant public interest.

V. CONCLUSION

The Court of Appeals correctly affirmed the trial court's summary judgment dismissal of Brown's claims. There are no grounds under RAP 13.4(b) to accept review. Brown's petition should be denied.

I certify that this ***RESPONDENT'S ANSWER TO PETITION FOR REVIEW*** contains **1,834** words (excluding words contained in appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images) in compliance with RAP 18.17.

DATED this 10th day of April, 2023.

FORSBERG & UMLAUF, P.S.



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