CASE NO. 102449-5

SUPREME COURT
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF ANDREI MEDVEDEV

ANDREI MEDVEDEV
Petitioner
v.
JUAN GATES
Respondent

APPEAL FROM THE SUPERIOR COURT OF
KING COUNTY, No. 21-0-00927-1 SEA

And

COURT OF APPEALS, DIVISION I
No. 84467-9

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Robert A. Bailey, WSBA No. 28472
Justin L. Jaena, WSBA No. 51495
LAGERLOF, LLP
701 5th Avenue, Suite 4200
Seattle, WA 98104
(206) 492-2300
rbailey@lagerlof.com
jjaena@lagerlof.com
Counsel for Respondent Juan Gates

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES

I. INTRODUCTION

Appellant Andrei Medvedev's ("Medvedev") Petition for Review fails to show the applicability of any of the grounds for Supreme Court Review mandated by the Rules of Appellate Procedure ("RAP"). This case involves a dismissal of an appeal due to mootness. Medvedev himself agreed the appeal was moot and should be dismissed. His petition for review of the decision he explicitly agreed with is frivolous.

Medvedev provides scant argument and no background by which the Court could evaluate his request for review. What he does provide, shows that review of the Court of Appeal's ruling is neither necessary nor appropriate. The order appealed from was not a final judgment; it was an order vacating a default for, inter alia, a lack of personal jurisdiction over respondent Juan Gates ("Gates"). The appeal later became moot because of the repeal of the statute upon which Medvedev was seeking relief. Medvedev contends the Court of Appeals erred in failing to apply the doctrine of *equitable vacatur* to vacate

the order setting aside the default and thereby revive his ill-gotten and invalid default judgment. He is, of course, wrong. There was no error and the circumstances at issue are unique to this case. There is no basis for Supreme Court review and the Petition should be denied.

II. IDENTITY OF ANSWERING PARTY

This Answer is by Respondent Juan Gates.

III. RESPONDENT'S STATEMENT OF THE CASES

Medvedev's perfunctory statement of the case fails to provide sufficient detail for this Court to properly evaluate his petition. From the scant material provided in his petition and the three pages of his appendix, the following information about the case can be gleaned.

In the underlying trial court litigation, Medvedev obtained a decree of registration of title under the Torrens Act, Former RCW 65.12, et seq. Appendix p. 3. He obtained that decree by default. *Id.* On May 31, 2022, Gates obtained an order from the trial court setting aside the default decree of

registration.[1] *Id.* Medvedev then initiated this appeal challenging the May 31, 2022 Order (The "5/31/22 Order") which did nothing more than set aside the default decree. *Id.*

In 2021 the Legislature repealed the Torrens Act, with some portions of the repeal becoming effective June 9, 2022.[2] See Laws 2022 Ch. 66,§ 1, Appendix at p. 3. On February 21, 2023, Gates filed a motion to dismiss the appeal as moot. Appendix at p.3. She argued that the repeal of the Torrens Act meant "review of the May 31, 2022, order vacating the default cannot offer Medvedev any relief." *Id.* Medvedev answered the motion by "agreeing that the appeal is moot and requesting dismissal of the appeal, an order vacating certain trial court orders, and an award of sanctions against Gates' counsel." *Id.* Because there was no dispute that the case was moot, the

[1] The trial court concluded the default was void due to a lack of personal jurisdiction over respondent and was procured via a material misrepresentation by Medvedev.

[2] Certain portions of the repeal did not take place until more than a year later on July 1, 2023. Laws 2022 Ch. 66,§ 1, Secs. 4-5.

commissioner granted the motion to dismiss the appeal. *Id.*

The Court of Appeals commissioner explicitly rejected Medvedev's request to vacate the 5/31/22 Order. *Id.* Medvedev then moved the Court of Appeals to modify the commissioner's ruling pursuant to RAP 17.7. Appendix at p.1. The full panel considered Medvedev's motion, Gates' opposition, and Medvedev's reply before denying the motion to modify. *Id.*

It is worth noting that Medvedev's own statement of the case mischaracterizes the scant record he provided. For instance, he characterizes his response to Gates' motion to dismiss as an "opposition" to Gates' "request to have the trial court decision summarily affirmed through the dismissal of the appeal as moot." Petition at "2." He did not file an opposition. Rather, as the commissioner's order makes clear, "Medvedev answered [the motion], agreeing that the appeal is moot and requesting dismissal of the appeal . . ." Appendix at p. 3. The Petition goes on to claim the Commissioner's ruling "summarily affirmed the trial court . . ." Petition at "2." This

too is false. The order merely dismissed the appeal as moot.

IV. ARGUMENT

A. The Petition Fails to Articulate a Basis for Review Under RAP 13.4(b)

Because this matter involves an order terminating review, the basis for granting review is governed by RAP 13.4(b). Although Medvedev does not cite or reference RAP 13.4(b), he seems to be relying on subsections (1-2) (the Court of Appeals' ruling is in conflict with published opinions of this Court or the Court of Appeals) and (4) (involving an issue of significant public interest) as the basis for his petition. Petition at "3." He fails to meaningfully develop either argument.[3]

1. The Opinion Is Not Inconsistent with Other Published Opinions

[3] In addition to failing to specifically state why review should be granted under the reasons set forth in paragraph (b) as required by RAP 13.4(c)(7), the Petition also violates several other provisions of RAP 13.4. For example, 1) does not include any tables (RAP 13.4(c)(2), 2) the statement of the case presents little or no fact or procedures and includes no references to the record (13.4(c)(6)), and 3) fails to include the statute, i.e., the Torrens Act and repealing statute, relevant to the issues presented (13.4(c)(9)).

Medvedev claims the Court of Appeals ruling dismissing the appeal as moot is inconsistent with other opinions. Other than providing a brief and simplistic discussion of the doctrine of equitable vacatur, Medvedev fails to say why the Court of Appeals ruling here is inconsistent with any other case.

Medvedev starts his argument by mischaracterizing the 5/31/22 Order setting aside the default decree as a judgment. Petition at "3." It was not. It was an order setting aside a default. That such an order is immediately appealable under RAP 2.2(a)(10), does not render it a judgment. To the contrary, the order setting aside the default merely reinstates the action so the matter could be decided on the merits and a judgment on the merits eventually entered. This distinction appears to be lost on Medvedev.

Gates' research, as well as all the cases discussing equitable vacatur cited by Medvedev, reveals that the doctrine applies to vacate a *judgment*. None of the cases Medvedev cites and none of the authorities Gates located applied the doctrine to

an order setting aside a default. Thus, Medvedev is simply wrong when he claims the Court of Appeals' refusal to grant equitable vacatur in these circumstances went against published decisions. All those decisions involved final judgments and the Court of Appeals' refusal to extend the doctrine to orders setting aside a default is not contrary to any authority.

The reason the equitable vacatur does not extend to orders such as those setting aside a default are obvious. An order setting aside a default does not determine the merits of an action. The doctrine of equitable vacatur applies when a *judgment* will have claim or issue preclusive effect.

Further, Medvedev makes no effort to carry his burden to show how the Court of Appeals ruling is inconsistent with any of the cases he cites. To carry that burden, he would have to describe a sufficiently detailed discussion of the factual and procedural posture of the cases he cited and then show that the facts and posture of those cases were similar enough to that involved here as to render the current ruling "inconsistent" with

prior published opinions. He made no attempt to carry that burden and the petition should be denied as a result.

Finally, it is worth noting that the authorities Medvedev does cite, do not stand for the propositions he claims. For example, *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 956 P.2d 312 (1998), had nothing to do with equitable vacatur or the potential consequences of moot judgments. Similarly, *Sutton v. Hirvonen*, 113 Wn.2d 1, 775 P.2d 448 (1989), did not involve equitable vacatur and merely discussed mechanisms by which a judgment could be vacated.

The two cases Petitioner string cites on the third page of the Petition are not inconsistent with the Court of Appeals ruling here. In *Harbor Lands LP v. City of Blaine*, 146 Wash. App. 589, 595, 191 P.3d 1282, 1285 (2008), the court held that equitable vacatur was appropriate because "the case was moot when the superior court entered judgment …". Here, the case was not moot at the time of the court's order setting aside the default. The other case he cites, *Fed. Way Sch. Dist. 210 v.*

Vinson, 154 Wash. App. 220, 225 P.3d 379 (2010), was reversed by this court in *Fed. Way Sch. Dist. No. 210 v. Vinson*, 172 Wash. 2d 756, 261 P.3d 145 (2011). His claim that the ruling in the present case is somehow inconsistent with an uncitable case that was reversed by this Court cannot serve grounds for review under RAP 13.4(b)(2).

The Petition fails to articulate any way in which the Court of Appeals ruling is inconsistent with any published case. Review pursuant to RAP 13.4(b)(1) or (2) is not available.

2. Medvedev's Offhand Claim that the Matter Is of Significant Public Interest Is Meritless

Medvedev concludes with the assertion that the matter raises issues of significant public interest. Petition at "3." But he provides no explanation as to why.

This case involves such a unique set of circumstances that it is hard to imagine the issues presented ever arising again. Medvedev used the archaic Torrens act to take title to Gates' property via an improper default judgment. Gates obtained an

order setting aside the default which Medvedev appealed. While the case was on appeal, the Legislature repealed the little used Torrens Act. These circumstances are unique. It is difficult to imagine that another petitioner used the Torrens Act to obtain a default judgment which another property owner had set aside shortly before the effective date of the repeal of the Act.

Nor is the applicability of the doctrine of equitable vacatur in these circumstances a matter of public interest. The scope and applicability of the doctrine is well established. *See Harbor Land, LP*, 146 Wn.App. 589; *United States v. Munsingwear, Inc.* 340 U.S. 36 (1950); and *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24-25 (1994). These are not new, unsettled, or controversial matters for which the public interest provision of RAP 13.4(b)(4) would apply.[4]

[4] Medvedev failed to cite or provide any portion of the appellate record. If he had, Gates would have pointed out that Medvedev's claim in support of his argument that the case became moot through no fault of his own was false. Gates' motion to dismiss for mootness was based on Medvedev's own act for voluntary withdrawal of the default certificate of title from the title registration system. Equitable vacatur will not

V. CONCLUSION

Medvedev fails to establish grounds for review under RAP 13.4(b) and the Petition should be denied.

VI. CERTIFICATE OF COMPLIANCE

Pursuant to RAP 18.17, I certify based on the word count function of the software used to prepare the document that the number of words contained in this Answer to Appellant's Petition for Review is 1,849.

Respectfully submitted this 20th day of November 2023.

LAGERLOF, LLP

s/ Robert A. Bailey
Robert A. Bailey, WSBA No. 28472
s/ Justin L. Jaena
Justin L. Jaena, WSBA No. 51495
701 5th Avenue, Suite 4200
Seattle, WA 98104
(206) 492-2300
rbailey@lagerlof.com
jjaena@lagerlof.com
Counsel for Respondent Juan Gates

---

apply when the mootness was created by the appellant's own action. *U.S. Bankcorp.*, 513 U.S. at 25.

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2023, I filed the foregoing *Respondent's Answer to Petition for Review* which was served on all parties by the Appellate Court's electronic case filling system.

Dated this 20th day of November 2023, in Seattle, Washington.

s/ Karrie L. Blevins
Karrie L. Blevins, Paralegal
Lagerlof LLP

LAGERLOF LLP

November 20, 2023 - 3:23 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,449-5
Appellate Court Case Title:	In the Matter of the Application of: Andrei Medvedev, Petitioner.

The following documents have been uploaded:

- 1024495_Answer_Reply_20231120151632SC663556_4288.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was WASC Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- amedvid4@gmail.com
- amedvid@yahoo.com
- jjaena@lagerlof.com

Comments:

Sender Name: Karrie Blevins - Email: kblevins@lagerlof.com
Filing on Behalf of: Robert A. Bailey - Email: rbailey@lagerlof.com (Alternate Email:)

Address:
701 Pike Street
Suite 1560
Seattle, WA, 98101
Phone: (206) 492-2302

Note: The Filing Id is 20231120151632SC663556