89507-4

Court of Appeal Cause No. 68979 -7- I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE ATTORNEY GENERAL ET AL, [Respondent]

v.

JOHN WORTHINGTON, [Petitioner or Appellant]

PETITION FOR REVIEW

John Worthington
4500 SE 2ND PL.
Renton WA.98059
425-917-2235

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A. Identity of Petitioner

Appellant John Worthington respectfully asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. Court of Appeals Decision

Worthington respectfully requests review of the Washington State Court of Appeals for Division I opinion dated September 23, 2013. Worthington also respectfully requests review of the Washington State Court of Appeals for Division I order denying his motion to reconsider entered on October 3, 2013. Worthington also requests review of the Washington State Court of Appeals for Division I order denying Worthington's motion to publish also entered on October 3, 2013.

A copy of the September 23, 2013 decision is in the Appendix A pages 1-7. A copy of the order denying petitioner's motion for reconsideration is in the Appendix B at pages 1-3. A copy of the order denying petitioner's motion to publish is in Appendix C pages 1-2.

C. Issues Presented for Review

1. Whether the Washington State Court of Appeals for Division I erred in upholding the trial court's ruling that Respondents motion for Summary Judgment should be granted for statute of limitations.

2. Whether the Discovery Rule applied.

3. Whether Equitable Estoppel or Equitable Tolling applied.

4. Whether the decision should have been published.

D. Statement of the Case

In August 2006, after receiving an email from U.S. Attorney Janet Freeman requesting "any dirt" on Steve Sarich and John Worthington, CP Bremerton police Detective Roy Alloway began an investigation on suspicion of a Violation of the Uniform Controlled Substances Act.

On January 12, 2007, Detective Alloway, along with his West Sound Narcotics Enforcement Team (Heretofore WEST NET) colleagues, executed a search warrant on Steve Sarich. WEST NET detectives located nearly one thousand growing marijuana plants at 1604 Cedar Street, Everett, Washington.

Due to the large amount of marijuana plants, Detective Alloway allegedly contacted the United States Drug Enforcement Administration ("DEA") to assist in the investigation. Public disclosure documents reveal that the "DEA" was actually another Multi-jurisdictional drug task force Tacoma Narcotics Enforcement Team (Heretofore TNET) CP 492.

Alloway claimed he had probable cause for a telephonic search warrant because he was told Sarichs' partner was some guy named John. Alloway failed to inform the court he had already asked TNET to conduct a knock and talk at Worthington's house. CP 492. Alloway's timeline to the Superior court was not supported by West Net reports. Absent a factual timeline and other facts the Kitsap County Superior Court granted Alloway's request for a warrant.

Once at Worthington's residence, WEST NET eventually stated they were leaving the plants and grow light because Worthington was a legitimate medical cannabis patient. WEST NET picked up their documentation and left. (CP 501) Fred Bjornberg of TNET claimed he was seizing the stuff for the DEA. CP 490. However, Bjornberg did not leave a DEA property seizure report. Later the TNET Executive Board documented assisting on the WEST NET raid (CP 626) and documented the seizure. Neither WEST NET nor TNET filed a 15 day notice to seize pursuant to RCW 69.50.505 (3).

In December 2009, Worthington filed a suit challenging the state funded federal preemption and seizing of his medical marijuana by Fred Bjornberg, a federally cross designated member of TNET. That complaint was removed to and dismissed in federal court for lack of standing because Worthington did not meet the constitutional requirements for the federal court to take jurisdiction of the case. CP 516.

In August and January of 2012, Worthington received public disclosure documents from Kitsap County and the City of Bonney Lake showing that the DEA did not conduct the raid and confiscate his property as he was told, CP 494-495.

In January of 2012, Worthington filed a new complaint with the King County Superior court alleging new facts showing that WEST NET and Roy

Alloway actually seized his property instead of Fred Bjornberg of the DEA/TNET as he was told for years.

Worthington and the respondents filed motions for summary judgment and on April 15, 2012, the respondents were able to obtain an order granting dismissal of Worthington's claims for collateral estoppel, res judicata, and statute of limitations. On June 4, 2012, Worthington filed a timely motion to reconsider which was denied on June 5, 2012.

Worthington filed a timely appeal with the Washington State Court of Appeals for Division I. The Washington State Court of Appeals for Division I affirmed the trial court's ruling determining Worthington's claims were barred by statute of limitations on September 23, 2013.

Worthington filed a timely motion to reconsider on September 25, 2013 and timely amended that motion on September 30, 2013. Worthington also filed a timely motion to publish on September 26, 2013. On October 3, 2012, the Washington State Court of Appeals for Division I. denied both motions.

E. Argument Why Review Should Be Accepted

RAP 13.4 (b) governs acceptance of review by the Washington State Supreme Court as shown below:

> (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 another 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.

Worthington respectfully argues review should be accepted because the decision meets the criteria in RAP 13.4 (b) (1), because it conflicts with the Washington State Supreme Court En Banc ruling in Washington Mut. Sav. Bank v. Hedreen, 125 Wn.2d 521, 526, 886 P.2d 1 121 (1994). (Citing Oates v. Taylor, 31 Wn.2d 898, 904, 199 P.2d 924 (1948)

Worthington also respectfully argues review should be accepted because the foundation of the respondents arguments that they could seize and forfeit Worthington's property without receipt or notice because it was contraband and because Worthington only had an affirmative defense "if he was charged with a crime" has been found to be inconsistent with State v. Kurtz, No. 87078–1., September 19, 2013. Worthington also had a common law defense of medical necessity which now serves as a complete bar to prosecution.

Worthington also respectfully argues review should also be accepted because the decision meets the criteria in RAP 13.4 (b) (2), because it conflicts

with the Washington State Court of Appeals for Division I decision in Snohomish Regional Drug Task Force v. Real Property Known as 20803 Poplar Way, 150 Wash.App.387, 208 P.3d 1189 (2009). The Washington State Court of Appeals for Division I has previously determined the legislative intent of RCW 69.50.505 (3-5) was the right to get notice and be heard, The two panel members in Worthington's case referred to those rights as the "bedrock principles" of the statute.

Worthington also respectfully argues the discovery rule and fraud statute in RCW 4.16.080 (4) (6) should have been invoked because WEST NET and TNET had the statutory duty to disclose who seized his property. "In addition, where a party has a duty to disclose a fact, the suppression of that fact is tantamount to an affirmative misrepresentation." Crisman v. Crisman, 85 Wn. App. 15, 22, 931 P.2d 163 (1997); Washington Mut. Sav. Bank v. Hedreen, 125 Wn.2d 521, 526, 886 P.2d 1121 (1994). " It is well settled that the suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation. Where the law imposes a duty on one party to disclose all material facts known to him and not known to the other, silence or concealment in violation of this duty with intent to deceive will amount to fraud as being a deliberate suppression of the truth and equivalent to the assertion of a falsehood." Oates v. Taylor, 31 Wn.2d 898, 902-03, 199 P.2d 924 (1948) (quoting 37 C.J.S. 244, Fraud, sec. 16a)

Worthington also respectfully argues the decision did not give effect to the plain meaning of RCW69.50.505 or RCW 4.16.080 sections 4 and 6."In the absence of ambiguity, we will give effect to the plain meaning of the statutory language." In re Marriage of Schneider, 173 Wash.2d 353, 363, 268 P.3d 215 (2011). Clearly, the decision not properly give effect to the "plain meaning" of RCW 69.50.505 (3) or RCW 4.16.080 sections 4 and 6 and carry out their legislative intent.

Worthington also respectfully argues review should also be accepted because the decision meets the criteria in RAP 13.4 (b) (3), because it conflicts with the Washington State Constitution Article I Section 3. "No person shall be deprived of life, liberty, or property, without due process of law."

Worthington also respectfully argues review should also be accepted because the decision meets the criteria in RAP 13.4 (b) (4), because the passage of Initiative I-502 has now invited the public to legally possesses 1 ounce of cannabis, and grow up to 10,000 square feet of cannabis. Law enforcement can now do everything they did to Worthington on a larger scale creating an issue of substantial public interest,

Now hundreds of cannabis plants and grow lights can be confiscated and auctioned off without property seizure receipts or without a 15 day notice of intent to seize for the same reasons Worthington's cannabis plants and grow light were

seized and forfeited without due process. The multi-jurisdictional drug task forces can simply claim neither participating agency made a seizure and wait out the three year statute of limitations. If cannabis and property can be seized and forfeited without any due process whatsoever, that is an issue of substantial public interest.

Worthington respectfully argues the decision in this case should have been published so the legislature could be informed of the potential effect on those citizens that are planning to participate in the I-502 process of possessing, growing, processing and retailing contraband which remains illegal just like medical cannabis.

Worthington also respectfully requests the Washington State Supreme Court treat this decision as if it were a published opinion, because law enforcement will be able to use this decision in the trial courts enabling them to make an end run around RCW 69.50.505 (3). (See Oltman v. Holland America Line USA, Inc., 163 Wn.2d 236, 178 P.3d 981 (2008).

The King County prosecutor's office used the same no charges- no rights to an affirmative defense argument that the respondents used in a second cannabis seizure involving Worthington at the King County courthouse in 2010, which was also made without a property seizure report or 15 day notice as required under RCW 69.50.505 (3). If cannabis and property can be seized and forfeited without any due process whatsoever, that is an issue of substantial public interest.

F. CONCLUSION

Worthington respectfully requests review be granted because the request meets all of the criteria in outlined in RAP 13.4 (b).

Respectfully submitted, this 28th day of October, 2013.

By: _____

John Worthington
4500 SE 2ND PL.
Renton WA.98059
425-917-2235

Certificate of Service

I certify that on the date and time indicated below, I caused to be served via email, a true and complete copy of the Petition for Review, to the attorneys of record in this case.

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I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Respectfully executed on this 28th day of October, 2013

BY John Worthington

John Worthington
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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN WORTHINGTON, Appellant, v. CITY OF BREMERTON; CITY OF POULSBO; CITY OF PORT ORCHARD; CITY OF AUBURN; STATE OF WASHINGTON; ROBERT MCKENNA; CHRISTINE GREGOIRE; CARLOS RODRIGUEZ; FRED BJORNBERG; and MIKE POSTON, individually and in their official capacity, Respondents.	)	No. 68979-7-I DIVISION ONE UNPUBLISHED FILED: September 23, 2013

Cox, J. – John Worthington appeals the summary judgment dismissal of his lawsuit against several municipal and state defendants. Because Worthington's claims are barred by the statute of limitations, we affirm.

On January 12, 2007, the Kitsap County Superior Court issued a warrant to search Worthington's home for marijuana, drug paraphernalia, and other specified items. The warrant was executed later that day by law enforcement officers from several different jurisdictions. Detective Roy Alloway of the Bremerton Police Department and Agent Fred Bjornberg, a Washington State Patrol (WSP) officer cross-deputized with the federal Drug Enforcement Agency (DEA) were among these officers. Six marijuana plants and a grow light were discovered in Worthington's home. According to Worthington, Detective Alloway

stated he did not plan to seize the marijuana plants due to Worthington's status as a medical marijuana patient. But Agent Bjornberg stated he would confiscate the plants. The marijuana plants were ultimately placed into evidence at the Kitsap County Sheriff's Office. Worthington was never charged with a crime.

At the time of the search and seizure, Detective Alloway was assigned to the West Sound Narcotics Enforcement Team (WestNET), a regional task force created to combat drug trafficking. Members of WestNET include Mason and Kitsap Counties, WSP, and the cities of Poulsbo, Port Orchard, and Bremerton. Agent Bjornberg was assigned to another regional drug task force, the Tahoma Narcotics Enforcement Team (TNET), whose members include Pierce County, the cities of Tacoma and Auburn, WSP and the DEA. .

On December 21, 2009, Worthington filed suit against 50 separate defendants, including the State of Washington, the cities of Bonney Lake, Bremerton, Port Orchard, Poulsbo, Puyallup, and Tacoma as well as several elected state officials and law enforcement officers. The gist of Worthington's 70-page complaint was that the defendants engaged in a conspiracy to "undermine the state medical marijuana law, by using federal grant contracts, statement of assurances, regional task force agreements, interlocal agreements, interagency agreements, and federally cross designated state law enforcement personnel, to by-pass the affirmative defense in RCW 69.51A.040, and seize Worthington's medical marijuana on behalf of the DEA and refer cases to the federal courts." In

addition to declaratory and injunctive relief, Worthington alleged federal causes of action for violations of 42 U.S.C. §§ 1983, 1985 and 1986, the Americans with Disabilities Act, and the Health Insurance Portability and Accountability Act (HIPAA). His state law claims included intentional infliction of emotional distress, negligence, and trespass to land under RCW 4.24.630. The defendants removed the case to federal district court, which dismissed the complaint for lack of standing.[1]

On January 17, 2012, Worthington filed this action against the state of Washington and the cities of Bremerton, Poulsbo, Port Orchard and Auburn as well as several elected state officials and law enforcement officers. The basis for Worthington's complaint was again the 2007 search of his home and seizure of his marijuana plants. Worthington sought compensatory damages for negligence, conversion, trespass to land, nuisance, and "breach of duty" under chapter 69.51 RCW. Worthington also sought declaratory and injunctive relief regarding "[t]he TNET policy to seize marijuana for the federal government" and "[t]he WEST NET Interlocal agreement to use the NCIS[2] in Washington State police actions."

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[1] Worthington v. Washington State Attorney General's Office, No. C10-0118JLR, 2010 WL 1576717 (W.D. Wash. April 20, 2010) (unpublished).

[2] NCIS stands for Naval Criminal Investigative Service; it is unclear from the record how the NCIS was involved in Worthington's case.

Worthington and the defendants made cross-motions for summary judgment. The trial court denied Worthington's motion and granted summary judgment in favor of the defendants "based on collateral estoppel, res judicata and a failure to comply with the statute of limitations."

Worthington appeals the order granting summary judgment and the denial of his motion for reconsideration.

STATUTE OF LIMITATIONS

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[3] The moving party must demonstrate the absence of any genuine issue of fact and entitlement to judgment as a matter of law; thereafter, the nonmoving party must show specific facts evidencing a genuine issue of material fact.[4] Our review of summary judgment is de novo, and we may affirm the order on any theory within the pleadings and the proof.[5] We review a motion for reconsideration for an abuse of discretion.[6]

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[3] CR 56(c).

[4] Magula v. Benton Franklin Title Co., Inc., 131 Wn.2d 171, 182, 930 P.2d 307 (1997).

[5] Potter v. Washington State Patrol, 165 Wn.2d 67, 78, 196 P.3d 691 (2008).

[6] Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004).

It is undisputed that the statute of limitations for each of Worthington's claims is three years.[7] Because Worthington filed the present suit more than five years after the 2007 search and seizure, it is untimely.

Citing the discovery rule, Worthington argues that the statute of limitations should be tolled due to "acts of fraud which were not discovered until 2011." Worthington claims that, based on the statement of Agent Bjornberg, he initially believed that his marijuana plants had been seized by the federal government and he had no recourse to pursue the recovery of his property in state court. Worthington asserts that it was not until 2011, in response to his public records requests, that he discovered that WestNET had actually taken the marijuana plants and placed them into evidence at the Kitsap County Sheriff's Office.

Under the discovery rule, when there is a delay between an injury and the plaintiff's discovery of it, a cause of action accrues for purposes of the statute of limitations when the plaintiff knew, or in the exercise of due diligence should have known, the essential elements of the cause of action.[8] Courts may apply the

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[7] RCW 4.16.080. While there is no explicit statute of limitations for claims brought under the Uniform Declaratory Judgments Act, chapter 7.24 RCW, the "right to declaratory relief should be barred when [the] right to coercive relief is barred." City of Federal Way v. King County, 62 Wn. App. 530, 537, 815 P.2d 790 (1991) (citing 15 L. Orland & K. Tegland, Wash. Prac., Trial Practice-Civil § 613 (4th ed. 1986)), superseded by statute on other grounds.

[8] Crisman v. Crisman, 85 Wn. App. 15, 20, 931 P.2d 163 (1997).

discovery rule where the defendant fraudulently conceals a material fact from the plaintiff, thereby depriving the plaintiff of knowledge of the accrual of the action.[9]

But to invoke the discovery rule based on fraudulent concealment or misrepresentation, a plaintiff must either: (1) affirmatively plead and prove the nine elements of fraud, or (2) show that the defendants breached an affirmative duty to disclose a material fact.[10] Assuming without deciding that the discovery rule applies to Worthington's claims, we hold that he fails to meet this burden. As a result, he fails to identify any genuine issue of fact regarding the application of the discovery rule to toll the statute of limitations.

Worthington additionally argues that the doctrines of equitable estoppel and equitable tolling should apply to toll the statute of limitations because "the defendants pretended to be fully empowered DEA agents acting on behalf of the federal government" but "that was all a hoax which was purposely withheld for years." A defendant will be equitably estopped from asserting the statute of limitations when the defendant's actions have fraudulently, deceptively or in bad faith induced a plaintiff to delay commencing suit until the statute of limitations has run.[11] But Worthington's bald accusations that Agent Bjornberg

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[9] Id.
[10] Id.
[11] Del Guzzi Const. Co., Inc. v. Global Northwest, Ltd., Inc., 105 Wn.2d 878, 885, 719 P.2d 120, 124 (1986).

misrepresented himself as a federal agent are not supported by the record, and are consequently insufficient to satisfy the requirements of equitable estoppel.

Because the trial court properly dismissed Worthington's complaint as untimely, we need not address whether his complaint was also barred by the principles of res judicata or collateral estoppel.

Worthington also failed to establish any of the grounds under CR 59(a) justifying a reconsideration of the trial court's order. The court did not abuse its discretion in denying reconsideration.

We affirm the summary judgment order and the order denying reconsideration.

Cox, J.

WE CONCUR:

Leach, C.J.

Becker, J.

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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CASE #: 68979-7-I
John Worthington, Appellant v. State of Washington, Respondent

Counsel:

Enclosed please find a copy of the order denying motion to publish opinion entered by this court in the above case today.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

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

JOHN WORTHINGTON, Appellant, v. CITY OF BREMERTON; CITY OF POULSBO; CITY OF PORT ORCHARD; CITY OF AUBURN; STATE OF WASHINGTON; ROBERT MCKENNA; CHRISTINE GREGOIRE; CARLOS RODRIGUEZ; FRED BJORNBERG; and M POSTON, individually and in their official capacity, Respondents.	No. 68979-7-I ORDER DENYING MOTION TO PUBLISH OPINION

Appellant, John Worthington, has moved for publication of the opinion filed in this case on September 23, 2013. The panel hearing the case has considered the motion and has determined that the motion to publish should be denied. The court hereby

ORDERS that the motion to publish the opinion is denied.

Dated this 3rd day of October 2013.

FOR THE PANEL:

Cox, J.

Judge

APPENDIX C

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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CASE #: 68979-7-I
John Worthington, Appellant v. State of Washington, Respondent

Counsel:

Enclosed please find a copy of the order denying motion for reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

Enclosure

c: The Honorable Regina Cahan

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

JOHN WORTHINGTON, Appellant, v. CITY OF BREMERTON; CITY OF POULSBO; CITY OF PORT ORCHARD; CITY OF AUBURN; STATE OF WASHINGTON; ROBERT MCKENNA; CHRISTINE GREGOIRE; CARLOS RODRIGUEZ; FRED BJORNBERG; and M POSTON, individually and in their official capacity, Respondents.	No. 68979-7-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, John Worthington, has moved for reconsideration of the opinion filed in this case on September 23, 2013. The panel hearing the case has considered the motion and has determined that the motion for reconsideration should be denied. The court hereby

ORDERS that the motion for reconsideration is denied.

Dated this 3rd day of October 2013.

FOR THE PANEL:

Cox, J.

Judge