CASE NO. 94059-2

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 74326-1-I

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LARRY SPOKOINY,
an individual,

Petitioner,

v.

WASHINGTON STATE YOUTH SOCCER ASSOCIATION, LLC, a Washington limited liability company,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Washington State Youth Soccer Association ("WSYSA" or the "Association") submits this Answer to the Petition for Review of Larry Spokoiny.

II. COURT OF APPEALS DECISION

The Court of Appeals, Division One, decision is an unpublished decision ("the Opinion") dated October 31, 2016 in Case No. 74326-1-I.

III. INTRODUCTION

This is a case in which judgment debtor Spokoiny seeks to avoid an unsatisfied judgment issued on September 29, 2006. This judgment bears the title "Amended Judgment." The WSYSA initiated collection action (garnishment and supplemental proceedings) in the fall of 2015, within the ten year time period for enforcement of RCW 6.17.020(3). Spokoiny, however, contends the time for enforcement lapsed without timely renewal, based on a mythical pretext that the 2006 judgment is actually nothing more than a 2004 judgment (which was for a substantial lesser amount) and a fictional 2005 Court of Appeals judgment, both of which Spokoiny contends expired before renewal under RCW 6.17.020(3).

The Court of Appeals correctly held that the 2006 amended judgment had its own ten year limitation for enforcement. The opinion is consistent with RCW 4.16.020, RCW 6.17.020(1), RCW 4.56.190 and RCW 4.56.210. Spokoiny fails to identify any basis for review under RAP 13.4(b).

IV. RESTATEMENT OF THE CASE

The WSYSA is an umbrella organization for over 120,000 boys and girls playing soccer in the State of Washington. Its members include geographical associations, and their clubs. It offers soccer activities for the elite player, the "up and coming" development player, the average recreational player, and the special needs player with its TopSoccer program. CP 250. It offers training programs for coaches, players, and parent volunteers. It runs risk management programs to keep children safe from predatory adults. It runs a disciplinary program and educational programs and it offers administrative processes to resolve administrative disputes and avoid litigation. CP 250-251.

These activities cost money which is always scarce. CP 251. Litigation, like the Spokoiny litigation, hurts WSYSA financially and takes money out of programs for kids. CP 251. Initially WSYSA spent $16,353.83 in litigation getting the Spokoiny lawsuit

dismissed in 2004. CP 39; 251. Then his appeals cost WSYSA an additional $22,604.41 between 2004 and 2006. CP 86, line items 2, 3, 4, 5, and 6. His failed attempt to avoid the judgment through a bogus Chapter 13 bankruptcy ploy cost WSYSA another $4,080 fee award. CP 155; 160.

The origin of this case is told *in Spokoiny v. Wash. State Youth Soccer Ass'n*, 128 Wn. App. 794, 117 P.3d 1141 (2005). Spokoiny, a lawyer and member of the Washington State Bar Association, improvidently initiated a lawsuit against the WSYSA, to forestall certain administrative disciplinary action against him as a coach, instead of pursuing available administrative appeal remedies that were available to him. His lawsuit was a direct violation of WSYSA bylaws, which seek to keep litigation as a last resort in youth soccer disputes. Even after WSYSA granted Spokoiny additional administrative hearings and remedies, he refused to voluntarily dismissal his improper lawsuit. Upon a motion brought by WSYSA, then Superior Court Judge Mary Yu dismissed the Spokoiny lawsuit and, in so doing, granted an award of attorneys' fees and costs ($16,353.83) to WSYSA. CP 38-39.

That was not the end of the matter. Spokoiny then appealed Judge Yu's decision to the Court of Appeals, Division 1. In

Spokoiny v. Wash. State Youth Soccer Ass'n, 128 Wn. App. 794, 117 P.3d 1141 (2005), the Court of Appeals denied the Spokoiny appeal, granted an award of fees and costs on appeal under RAP 18.1, and remanded the case back to Judge Yu for further proceedings.

Spokoiny petitioned unsuccessfully for review to the Washington State Supreme Court. CP 49;55. He also tried unsuccessfully to avoid the initial 2004 judgment in a Chapter 13 bankruptcy proceeding. CP 156-157. All of this legal posturing cost WSYSA scarce dollars better spent on youth soccer programs.

On September 15, 2006, WSYSA filed a Motion for Entry of Amended Judgment and Second Request for Attorneys' Fees and Costs. CP 1-6. Not surprisingly, Spokoiny opposed this motion. CP 59-61; 74-79. Judge Yu issued an order in favor of WSYSA for attorneys' fees and costs on September 29, 2006. CP 88-90. She further granted an Amended Judgment, dated September 29, 2006. CP 85-87. This included a fee award and cost award from the appellate proceedings, additional fees incurred in Spokoiny's litigation tactics, and accrued interest. CP 86.

Spokoiny did not appeal the 2006 Amended Judgment. Ten years had not yet elapsed since the entry of the 2006 Amended Judgment, when WSYSA initiated garnishment and supplemental

proceedings, (CP 253; 259-275), in which all relevant judicial procedures were followed.

It is the 2006 judgment that WSYSA seeks to enforce. CP 131-249. It is this judgment which Spokoiny resists. CP 117-120; 131.[1]

V. ARGUMENT WHY REVIEWED SHOULD NOT BE ACCEPTED

A. The Court of Appeals Decision Is Consistent with Washington Statutory Law.

The Opinion analyzes four statutes that come into play in the enforcement of judgments: RCW 4.16.020, RCW 6.17. 020(1), RCW 4.56.020(1), and RCW 4.56.190. In reviewing these statutes, the Opinion concludes, on page 5, that "...taken together, these statutes establish that the time to enforce a judgment begins on the entry of *any* judgment." [Original emphasis.]

Spokoiny makes the unfounded assertion that the time period runs from something called an "original judgment" which here would be the first judgment in 2004. The Opinion notes on page 6 that there is no merit to the contention that some "original

judgment" is controlling the ten year clock for enforcement, for later judgments.

Spokoiny incorrectly characterizes the 2006 judgment as "merely a bookkeeping entry combining the separate and independent judgments of July 8 2004 and September 2, 2005 (by the Court of Appeals)." Petition for Review at pages 5- 6. If this 2006 judgment was a mere bookkeeping entry, why was it contested by Spokoiny? CP 59-73; 74-79. Indeed, in his opposition to this bookkeeping entry, Spokoiny again sought to undermine the Court's decision and overturn the Court's prior rulings. *See* CP 78, Section Heading D. ("This Court's original decision should be reconsidered or vacated, where the decision of WSYSA's own Ethics Committee directly contradicted this Court's ruling regarding the application of WSYSA Bylaw XXL.") There is simply no legal or factual basis for this assertion that the 2006 judgment was a "mere bookkeeping entry."

B. The Court of Appeals Decision is Not in Conflict with Washington Common Law.

Spokoiny cites numerous cases in support of his position.

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[1] WSYSA did renew the 2006 judgment in July of 2016, as Spokoiny notes in his Petition for Review at page 4. However, that renewal is not

The Opinion thinks so little of those cases that these cases are summarily disposed of as irrelevant in Footnote 1 of the Opinion, on page 3. The Opinion is correct.

Mr. Spokoiny cites to *North St. Ass'n v. Olympia*, 96 Wn.App. 359, 635 P.2d 721 (1981), for a "relation back" argument, the gist of which is that the amended judgment of 2006 relates back to the initial judgment of 2004, for the purpose of its ten year life. The fatal flaw in his argument is that the *North St. Ass'n* case involves a relation back theory for complaints and causes of action under CR 3(a), CR 15(a) and RCW 4.16.170. We further note that portions of *North St. Ass'n* have been overruled, as to RCW 4.16.170

Spokoiny cites to *TCAP Corp. v. Gervin*, 163 Wn. 2d 654, 185 P.3d 589 (2008), another case that is not remotely on point. The underlying question in *TCAP Corp* is the effect of the expiration of a foreign judgment (Texas) in Washington. The answer is fairly simple – if the foreign judgment expires in its home state, it expires in Washington. The Washington registration of a foreign judgment does not create an independent status in Washington. What does a foreign judgment have to do with anything here?

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part of the appeal he filed.

Spokoiny cites *Wlasiuk v. Whirlpool*, 76 Wn. App. 250, 884 P.2d 13 (1994) which relates to a different set of issues, namely determining when an order (or judgment) is final for the purpose of the thirty day appeal period. When a judgment for damages, including an award for an unstated amount of attorneys' fees, is later amended to include the amount of the attorneys' fees, is the thirty day time period for filing an appeal altered or extended? The Court said no. Since the *Wlasiuk* decision, this discrete issue has been addressed by RAP 2.4(g). There is no case authority extending this rule to judgments and their expiration dates under RCW 6.17.020(3).

Spokoiny wrongly cites *BNC Mortgage, Inc. v. Tax Pros Inc.*, 111 Wn. App. 238, 46 P.3d 812 (2002) as supporting authority for his relation back theory. *BNC Mortgage, Inc.* involves a series of questions about competing lien priorities between a judgment lien and a deed of trust. One question in *BNC Mortgage, Inc.* was the operation of RCW 6.25.020, the attachment statute, which allows a procedure for a writ of attachment at the commencement of lawsuit as a security device for a judgment that a plaintiff may recover. If the procedure is utilized and a judgment is obtained, the judgment lien relates back in time to the issuance of the writ of attachment.

What does that have to do with this case?

Spokoiny further contends that the Vermont case of *Ayers v. Hemingway,* 2013 VT 37, 73 A.3d 673 (2013) ruled on the precise issue in this case, i.e. that an amended judgment does not extend the timeframe for the enforcement of an existing judgment. Spokoiny misreads or mischaracterizes *Ayers*.

In Vermont, actions on judgments and actions for the renewal or revival of judgments are to be brought by filing a new and independent action on the judgment within eight years after the rendition of the judgment. 12 V.S.A. § 506. In *Ayers,* the Vermont Supreme Court analyzed whether a stipulated amended order in 2006 extended the life of a default judgment taken in 2001. The 2006 stipulated amended order was not a new final judgment which brought an end to litigation. *Ayers* at 676. Instead, the 2006 stipulated amended order "merely set forth an agreed-upon payment plan for the 2001 debt." *Ayers* at 676. In comparison, the 2006 Amended Judgment in this case established new judgment amounts based on Spokoiny's continuing efforts to avoid financial liability to WSYSA. The 2006 Amended Judgment granted new relief of over $30,000 to WSYSA. The 2006 Amended Judgment became a final order under CR 54 which was appealable

if Spokoiny objected to the imposition of a new judgment amount. In sum, Spokoiny's Petition for Review does not explain why the Opinion is incorrect in disregarding these cases.

C. The Case Does Not Meet the Requirements for Review under RAP 13.4(b).

Without explanation or analysis, the Spokoiny Petition for Review nakedly asserts in its Conclusion on page 15 that: "The decision of the Court of Appeals is in conflict with other published decisions of the Court of Appeals, is a significant question of law in the State of Washington, and involves an issue of substantial pubic interest that should be determined by the Court." The Petition does not meet any of these standards.

The Court of Appeals decision is not in conflict with a published decision of Appeals under RAP 13.4(b)(2). As the Opinion notes in its Footnote 1: "Spokoiny cites numerous cases from Washington – and one case from Vermont – in claimed support for his arguments. [Citations omitted.] None of these cases bear directly upon the matter before us and we need not address them further." Although Spokoiny again cites these cases in his Petition for Review, he advances no argument or explanation as to why the Court of Appeals erred in rejecting and ignoring these cases

as irrelevant. Nor does the Petition provide any analysis of the necessary conflict with a published decision of the Court of Appeals.

The Court of Appeals decision does not involve a significant question of law under the Constitution of the State of Washington or of the United States under RAP 13.4(b)(3). Spokoiny makes no effort to satisfy this standard. Instead, he asserts, without explanation, that the case "is a significant question of law in the "...State of Washington...." This is not even the proper standard under RAP 13.4(b)(3).

The Court of Appeals decision does not involve an issue of substantial public interest that should be determined by the Supreme Court under RAP 13.4(b)(4). Other than trying to achieve a personal windfall in debt reduction, what is the important purpose of this Petition? What is the substantial public interest in making a judgment's period of enforcement less than the statutory period of ten years, on an artificial and unsubstantiated legal analysis that an amendment judgment relates back in time to the so-called "original judgment." Whose interests are served by shortening the time frame for the collection of debts? If this issue is so important, why did appellant Spokoiny not file a motion to publish under RAP 12.3(e)(3) – (6)?

D. The Petition for Review Raises New Issues.

Spokoiny's Petition for Review seeks to raise an issue that is not before the Court. His Section D.5 ("Argument") contends that Respondent WSYSA violated RAP 7.2(e) by failing to first seek permission from the appellate court prior to formal entry of its petition to extend the 2006 amended judgment, while seeking attorney's fees and costs for this appeal. This argument is flawed procedurally and substantively.

Procedurally, Spokoiny has raised a new issue, not adjudicated by the trial court or even the Court of Appeals. RAP 13.7(c) identifies limitations on the scope of review before the Supreme Court, by specifically cross referencing RAP 2.5. In turn, RAP 2.5(a) generally limits appellate review to issues raised in the trial court. RAP 2.5(a) does, however, grant three exceptions to this general rule: first, if an issue is raised for the time on review relating to trial court's jurisdiction under RAP 2.5(a)(1); second, if there is a failure to establish facts upon which relief can be granted under RAP 2.5(a)(2); and third, if there is a manifest error affecting a constitutional right under RAP 2.5(a)(3). None of these provisions

are asserted by Spokoiny and none of them apply. Respondent WSYSA hereby moves to strike Argument D.5 at pages 13 -14.

Substantively, Issue 5.D is nonsensical. This is an appeal of Judge Chungs' Order denying the Spokoiny Motion to Quash Writ of Garnishment and Order re Supplemental Proceedings (CP 282) and Judge Chung's subsequent Order denying the Spokoiny Motion for Reconsideration (CP 296-297). The appellate review is not of the 2006 judgment. The review pertains to Spokoiny's two motions. RAP 7.2(c) does not come into play here.

Further, no type of stay was sought under RAP 8.1 or RAP 8.3 that affects in any way the right of Respondent WSYSA to renew its judgment under RCW 6.17.020(3).

Finally Spokoiny completely mischaracterizes the renewed judgment. The Petition states, without foundation that "...while the instant appeal was still pending, WSYSA applied to the trial court and was awarded $20,471 in attorney's fees and $2,133.41 in costs alleged incurred on appeal." (Petition at page13). The Petition for Order Extending Judgment (attached as an "Appendix" to the Petition for Review) and signed by Court Commissioner Henry H. Judson only extends the judgment for ten years: "IT IS ORDERED that the life of the judgment is extended for an additional 10-year

period for all purposes permitted under RCW 6.17.020(3), RCW 4.16.020, RCW 4.56.190, and RCW 4.56.210." There is no request for an attorney fees award for any appellate work. Once again, Spokoiny's arguments are not tethered to reality.

IV. CONCLUSION

The Court should deny review.

DATED this 13th day of February, 2017.

JAMESON BABBITT STITES & LOMBARD, PLLC
Attorneys for Washington State Youth Soccer Association

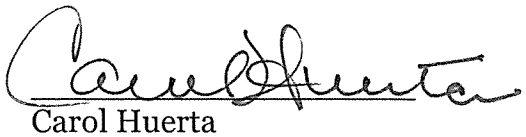
By: _____
Brian E. Lawler, WSBA #8149

CERTIFICATE OF SERVICE

I, Carol Huerta, declare that I am employed by the law firm of Jameson Babbitt Stites & Lombard, PLLC, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On February 13, 2017, I caused a true and correct copy of the foregoing document to be filed with the Court and to be served on the Petitioner Larry Spokoiny via email at larryspo@yahoo.com and via regular U.S. Mail at 4306 – 245th Avenue SE, Issaquah, WA 98029.

DATED this 13th day of February, 2017.



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