No. 97058-1

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON
(Formerly Court of Appeals No. 77544-8-I)

HELEN YANKEE and DAVID EARL YANKEE, as individuals and as part of the marital community comprised thereof,

Petitioners,

v.

FRANTZ PIERRE-JEROME, M.D., and "JANE DOE", PIERRE-JEROME, M.D., husband and wife, an individual and as part of the marital community comprised thereof; TIM SCEARCE, M.D. and "JANE DOE" SCEARCE, husband and wife, and the marital community comprised thereof; GROUP HEALTH COOPERATIVE, a Washington Corporation; and OVERLAKE HOSPITAL MEDICAL CENTER, a Washington Corporation,

Respondents,

RESPONDENTS GROUP HEALTH COOPERATIVE AND DR. SCEARCE'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

I. IDENTITY OF RESPONDENTS

Group Health Cooperative and Tim Scearce, M.D. (collectively "Group Health") are two of four respondents answering the Yankees' petition for discretionary review. Group Health also adopts by reference all arguments submitted by Co-Respondents as if fully set forth herein.

II. COURT OF APPEALS DECISION

The Court of Appeals filed its unpublished decision affirming the trial court's denial of the Yankees' CR 60(b) motion to vacate orders of judgment on March 11, 2019. No party moved for reconsideration.

III. COUNTERSTATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Should the Supreme Court deny the petition discretionary review because none of the RAP 13.4(b) tests has been satisfied, and even if it had, the Court of Appeals properly affirmed—under the abuse of discretion standard—the trial court's ruling denying the Yankees' CR 60(b) motion to vacate orders of judgment.

IV. RESTATEMENT OF THE CASE

Group Health adopts and incorporates the statement of facts set forth in the Court of Appeals' March 11, 2019 decision. *See* Slip Op. at 2-3.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Review Should Be Denied Because None of RAP 13.4(b) Criteria Is Satisfied.

Rule of Appellate Procedure (RAP) 13.4(b)(1)-(4) sets forth four independent tests governing acceptance of review by the Supreme Court. Notably, RAP 13.4(b) states that the four tests are the "only" ones that apply.

Here, the Yankees' petition does not reference, much less satisfy, any of the four tests. See RAP 13.4(c)(7) ("Argument. A direct and concise statement of the reason why review should be under one or more of the tests established in section (b), with argument.") Nor do the Yankees focus on the Court of Appeals' decision, but instead concentrate solely on the trial court's rulings.

The Yankees' failure to apply one of the four tests under RAP 13.4(b)(1)-(4) renders their petition toothless. Here, as in the Court of Appeals, the Yankees are *pro se*, however the Court holds "self-represented litigants to the same standards as attorneys." Slip Op. at 2 n.1, citing *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367 (2017). Discretionary review should be denied on this basis alone.

B. The Court of Appeals Applied the Correct Standard of Review.

The Court of Appeals properly applied the abuse of discretion standard of review to the trial court's denial of the Yankees' motion to vacate. *See* Slip Op. at 3, stating that "[w]e review a trial court's denial of a motion to vacate for abuse of discretion," citing *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). Likewise, the Court of Appeals properly limited its review "to the decision on the motion, not the underlying judgment." Slip Op. at 4, citing *Bjurstrom v. Campbell*, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980); RAP 2.4(c) (appeal from a CR 60 ruling does not bring the judgment up for review).

Here, the Yankees previously appealed the jury verdict and resultant judgments. They filed a notice of appeal, but later voluntarily abandoned it. Clerk's Papers (CP) at 129:18-130:1; CP at 151. *That appeal would have been the time and vehicle to raise errors regarding the underlying judgments and trial court rulings*. Three years after the jury verdict – and nine years after the care in question – these respondents must be able to place confidence in the integrity of the judgments. The Yankees are not entitled to relitigate the underlying issues considered by the trial court and jury,

then abandoned on appeal.

C. The Court of Appeals Properly Affirmed the Trial Court's Denial of Vacation Based on CR 60(b)(4).

The Court of Appeals correctly affirmed the trial court's denial of vacation based on CR 60(b)(4). The appellate court, interpreting CR 60(b)(4) (vacation of a judgment for fraud, misrepresentation, or other conduct of an adverse party), stated that '"[t]he rule does not, however, permit a party to assert an underlying cause of action for fraud that does not relate to the procurement of the judgment."' Slip Op. at 4-5 (quoting *Lindgren v. Lindgren*, 58 Wn. App. 588, 596, 794 P.2d 526 (1990)). The Court of Appeals correctly determined that "the Yankees' allegations are not of the type that serve as a basis for vacation of orders pursuant to CR 60(b)(4)." Slip Op. at 4.

D. The Court of Appeals Properly Affirmed the Trial Court's Denial of Vacation Based on CR 60(b)(11).

The Court of Appeals correctly affirmed the trial court's denial of vacation based on CR 60(b)(11). The appellate court acknowledged that CR 60(b)(11) "is 'not a blanket provision authorizing reconsideration for all conceivable reasons.'" Slip Op. at 5 (quoting *State v. Keller*, 32 Wn. App. 135, 141, 647 P.2d 35 (1982)). Instead, CR 60(b)(11) is confined to '"situations involving extraordinary circumstances not covered by any other section of the

rule.'" Slip Op. at 5 (quoting *In re Marriage of Thurston*, 92 Wn. App. 494, 499, 963 P.2d 947 (1998)).

The Court of Appeals properly determined that the trial court did not abuse its discretion in denying the Yankees' motion to vacate under CR 60(b)(11) because they failed to demonstrate extraordinary circumstances.

VI. CONCLUSION

Justice has been served. The Court of Appeals correctly determined that the trial court did not abuse its discretion, and thus affirmed the trial court's denial of the Yankees' motion to vacate the judgments. The Supreme Court should deny the Yankees' petition for discretionary review.

Respectfully submitted this 6th day of May, 2019.

FLOYD, PFLUEGER & RINGER, P.S.

/s/ Amber L. Pearce

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the date noted below, a true and correct copy of the foregoing was delivered and/or transmitted in the manner noted below:

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May 06, 2019 - 1:35 PM

Transmittal Information

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Comments:

Respondents Group Health Cooperative and Dr. Scearce's Answer to Petition for Discretionary Review

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