

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

NO. 98755-6

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL GOODMAN,

Petitioner,

vs.

EDWARD M. GOODMAN AND BERNICE GOODMAN,

Respondents.

RESPONDENTS EDWARD M. GOODMAN
AND BERNICE GOODMAN'S ANSWER TO PETITION FOR
REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ISSUES PRESENTED..... 4

III. STATEMENT OF THE CASE..... 4

IV. ARGUMENT 8

 A. The Petition Fails to Meet the Criteria for Review Under RAP
 13.4(b)..... 8

 B. The Petition Is Untimely and Beyond the Scope of Review. .. 10

 C. Review of the Affidavit of Prejudice Against Judge Cook is
 Barred as it has already been Reviewed by this Court numerous
 times..... 12

 D. Michael Goodman’s Reliance on RCW 2.28.030(2) is
 Erroneous. 14

 E. Motion for Attorney’s Fees..... 16

V. CONCLUSION..... 16

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Buckner, Inc. v. Berkey Irrigation Supply</i> , 89 Wn. App. 906, 951 P.2d 338 (1998).....	11
<i>Foster v. Giliam</i> , 165 Wn. App. 33, 268 P.3d 945 (2011).....	12
<i>In re Jaime v. Rhay</i> , 59 Wn.2d 58, 365 P.2d 772 (1961).....	15
<i>State v. Hudson</i> , 124 Wn.2d 107, 874 P.2d 160 (1994).....	9, 10
<i>State v. Lindsey</i> , 194 Wn. 129, 77 P.2d 596 (1938).....	14, 15
<i>Wood v. Postelthwaite</i> , 82 Wn.2d 387, 510 P.2d 1109 (1973).....	10

STATUTES

RCW 2.28.030	15
RCW 2.28.030(2).....	3, 14, 15

RULES

RAP 13.4(b)	1, 4, 8, 9, 10, 16
RAP 13.5(b)	13
RAP 18.1(j).....	4, 16, 17
RAP 18.9(a)	2, 8, 16
RAP 5.2(a)	2, 10, 11, 12
RAP 5.3(a)	12

APPENDIX

Resp. Appendix A	Skagit County Superior Court, Order Denying Affidavit of Prejudice Against Judge Susan K. Cook
Resp. Appendix B	Washington State Supreme Court, Cause Number 96030-5, Ruling Denying Review, August 24, 2018
Resp. Appendix C	Skagit County Press Release, Judge Susan K. Cook to retire, February 11, 2016
Resp. Appendix D	Washington State Supreme Court, Cause Number 88811-6, Ruling Denying Review, June 25, 2013
Resp. Appendix E	Washington State Supreme Court, Cause Number 90025-6, Order, June 4, 2014
Resp. Appendix F	Washington State Supreme Court, Cause Number 90025-6, Ruling Denying Review, July 2, 2015

I. INTRODUCTION

This Court should decline to review the Court of Appeals, Division One's unpublished decision affirming the trial court's order clearing the easement. None of the requisite criteria under RAP 13.4(b) have been established by Michael Goodman. Moreover, the issues raised in the Petition to Review are not the issues/assignment of errors raised by Michael on appeal and decided by the Court of Appeals. Michael Goodman's Petition for Review is simply another frivolous attempt to drag out this long-decided case and to harass Edward and Bernice Goodman.

The underlying litigation was completed in 2011 by bench trial in Skagit County Superior Court. Final orders were entered in January 2012. The trial court found that Edward and Bernice Goodman's property benefited from both an implied easement and an express easement. Following the final orders being entered, Michael Goodman and his family members filed numerous frivolous and meritless appeals. In fact, this is the sixth time Michael Goodman has filed an appeal to the Supreme Court in this matter.

The present appeal involves an attempt by Michael Goodman to argue that Edward and Bernice Goodman's property cannot benefit from both an implied easement and an express easement. This is an argument

that Michael has unsuccessfully argued over and over again on one frivolous appeal after another. On April 13, 2020, the Court of Appeals filed its unanimous Opinion. The Court affirmed the trial court's decision and found that Michael was once again attempting to re-litigate the land dispute that was resolved almost ten (10) years ago. In addition, the Court of Appeals found that Michael's appeal was frivolous pursuant to RAP 18.9(a) and awarded sanctions against Michael.

Petitioner Michael Goodman now seeks review of the Appellate Court's decision. However, Michael is raising issues in this Petition for Review that were not raised by the Petitioner as an assignment of error in the Brief in the Court of Appeals. Specifically, he is asking this Court to review an order denying an Affidavit of Prejudice against the trial judge Susan K. Cook (ret.) and an order denying an Affidavit of Disqualification against Judge Brian Stiles. Those issues were not raised as assignments of error and are not even mentioned in Michael Goodman's Brief to the Court of Appeals. As such, the Unpublished Opinion of the Court of Appeals does not address these issues.

The current issues raised by Michael Goodman are not timely pursuant RAP 5.2(a). In addition, because Michael failed to raise these issues in his notice of appeal or as an assignment of error, these issues are beyond the scope of review of this Court. Moreover, Michael Goodman

has failed to establish that Judge Stiles should have been disqualified under RCW 2.28.030(2).

Finally, it is an absolute abuse of the appellate system that Michael, is asking this Court to review the Affidavit of Prejudice against Judge Cook. This is the sixth time Michael has asked this Court to review this issue. This Court has repeatedly declined to review this issue and to continue to request review by this Court is purely harassment.

Michael Goodman's Petition for Review is just another example of his systematic abuse of the appellate system. This Court has characterized Michael's continued litigation of this matter as "vexatious litigation". The sole purpose of Michael Goodman's frivolous appeals has been to force Edward and Bernice Goodman to continue to litigate a case that has been long decided and to make them incur hundreds of thousands of dollars in attorneys' fees and costs. Time and time again, Michael's appeals have been deemed frivolous and Edward and Bernice Goodman have been awarded thousands of dollars in attorneys' fees. However, Michael is not deterred because he continues to not pay the attorneys' fees awards and continues to abuse the appellate system by filing frivolous appeals and motions. This has to stop.

Michael Goodman's Petition for Review must be denied because it does not meet the necessary standard required for review under RAP

13.4(b), lacks any legal merit, and is frivolous. Pursuant to RAP 18.1(j), Edward and Bernice Goodman also request an award of reasonable attorneys' fees for having to respond to this frivolous Petition.

II. ISSUES PRESENTED

1. Affidavit of Prejudice against trial Judge Susan K. Cook.
2. Affidavit of Disqualification against Judge Brian Stiles.

III. STATEMENT OF THE CASE

This matter involves a dispute between brothers Edward Goodman and Michael Goodman over property located at Lake Campbell in Skagit County. CP 71. Edward and Bernice Goodman filed the quiet title suit against Michael and Mary Goodman on March 26, 2010. CP 8-13. On June 1, 2010, Tyson Goodman (Tyson Goodman was a named defendant at the time of filing) filed an Affidavit of Prejudice against Judge Susan K. Cook (ret).¹ On June 3, 2010, Judge Cook entered an order denying Tyson Goodman's Affidavit of Prejudice. Resp. Appendix A. Judge Cook denied the affidavit on grounds that she had earlier entered a discretionary ruling in the case, making the motion untimely. *Id.*

¹ Michael Goodman's Petition for Review, Appendix A-1.

The case proceeded to trial on March 28, 2011 in front of Judge Cook. CP 71. The main issues at trial were whether Edward and Bernice Goodman had an easement for the shared driveway and septic system over Lot 2 (Michael's Lot). CP 70-85. Michael Goodman argued at trial that Edward and Bernice Goodman did not need the easement over Lot 2 because they had a different access point to their property, the 20-foot express easement over Lot 4. CP 228-232.

On January 18, 2012, Judge Cook entered Findings of Facts, Conclusion of Law and Order. CP 70-84. Judge Cook found that Edward and Bernice Goodman's property benefited from both an implied easement (over Lot 2 for the benefit of Lot 3) and an express easement (over Lot 4 for the benefit of Lot 3). CP 76-77. From 2012 until 2018, Michael Goodman and his family filed numerous appeals of Judge Cook's order with the Court of Appeals (Cause Nos. 68416-7; 77381-0; 70093-6; 72711-7; 73115-7) and this Court (Cause Nos. 90025-6; 91287-4; 96030-5; 92835-5; 88811-6). All appeals filed by Michael Goodman and his family were unsuccessful. Moreover, this Court has characterized Michael Goodman's continued litigation of this case as "vexatious litigation". Resp. Appendix B.

Over six and half years after the trial court issued its final judgment and after multiple unsuccessful appeals of that final judgment by

Michael Goodman and his family, Michael decided to disregard the trial court's final judgment by blocking access to the 20-foot express easement to the northern portion of Edward and Bernice Goodman's property. CP 97-103. On July 6, 2018, Edward Goodman discovered that the gate on the common property line between Lots 3 and 4 had been locked with a cable and key padlock by Michael Goodman. CP 135. Later that day the cable and lock were changed out for a locked chain. *Id.* Eventually Michael Goodman also parked a large orange dump truck at the gate blocking access on the easement to Lot 3. CP 136.

Edward and Bernice Goodman were forced to file a motion under the original cause number with the trial court to clear the 20-foot express easement. CP 97-103. By this time, Judge Cook had retired from the bench. Resp. Appendix C. The motion was heard by Judge Brian Stiles. On December 4, 2018, Judge Stiles entered an order enforcing Judge Cook's 2012 final order and ordered Michael Goodman to clear the 20-foot express easement. CP 286-288. In addition, Michael Goodman filed a Motion/Affidavit of Disqualification against Judge Stiles on December 4, 2018.² Michael failed to file this motion in a timely manner and failed to provide counsel for Edward and Bernice Goodman notice of the motion.

² Petition for Review, Appendix A-2.

RP 57-58. Judge Stiles called a short recess to review the motion and authority cited therein. RP 58. Judge Stiles denied the motion³ and stated:

I went back and looked at – I read the statute and then read the case that you cited, Wilson v. Kay. And in that particular case, one judge heard a case, heard all the evidence, and before written findings could be made – he had or entered in the case, the judge died and another judge stepped in and entered finding in that particular case. I think that’s different than this case. Everything in this case has already been determined, I believe, by Judge Cook and her findings. And the motions and arguments we’ve heard on this matter have been involving those matters and determinations previously already had by Judge Cook.

RP 58-59.

Michael Goodman appealed Judge Stiles December 4, 2018 order clearing the easement. CP 289-292. In the Notice of Appeal, Michael Goodman sought review of:

The defendants seeks review by the designated appellate court of the Judgement entered on December 4, 2018.

Id.

In his Appellate Brief, Michael raised the following assignments of error:

1. The trial court erred in entering the order of December 4, 2018, finding that the parties’ original intent was to have two easements to Lot 3 because of the land topography and ordering Michael

³ Petition for Review, Appendix A-3.

Goodman to reopen the express easement across Lot 4;

2. The trial court erred in entering the order of December 4, 2018, finding that the easement across Lot 4 was not extinguished by grant of the implied easement across Lot 2.⁴

Michael Goodman did not include the Affidavit of Prejudice against Judge Cook or the Affidavit of Disqualification against Judge Stiles in the Notice of Appeal or in his assignment of errors. As such, these issues were not before the Court of Appeals in the present appeal.

On April 13, 2020, the Court of Appeals filed a unanimous unpublished opinion.⁵ The Court of Appeals stated that Michael Goodman's contentions had no merit and affirmed the trial court's decision.⁶ Further, the Court of Appeals awarded sanctions under RAP 18.9(a) in that the court found that Michael's appeal was frivolous.⁷

IV. ARGUMENT

A. The Petition Fails to Meet the Criteria for Review Under RAP 13.4(b).

Michael Goodman's appeal arises out of an egregious attempt to relitigate property right issues that have long been determined by the trial

⁴Appellant's Opening Brief, pg. 2-3.

⁵ Unpublished Opinion, dated April 13, 2020.

⁶ *Id.* at 1-2.

⁷ *Id.* at 9-10.

court, and upheld by both the Court of Appeals and this Court. The current petition is frivolous and is just another example of Michael's systematic approach to abuse the appellate system in order to harass Edward and Bernice Goodman. Michael Goodman fails to provide authority in support of the Petition, except to argue that the Judge Cook and Judge Stiles should have been disqualified. The considerations governing Supreme Court review are outlined in RAP 13.4(b), which is not even cited by Petitioner. None of the four considerations are applicable to this Petition.

There is no conflict among the Courts of Appeal or with the Supreme Court, the Constitutional issue presented by Petitioner is meritless, and there are no issues of substantial public interest. Michael does raise Constitutional issues, but fails to apply them to the facts in the case or to provide any legal authority to support his argument. Moreover, Michael failed to raise the constitutional issues in the trial court and in his Brief to the Court of Appeals. This Court has held that such tactics will not be tolerated. In *State v. Hudson*, 124 Wn.2d 107, 874 P.2d 160 (1994), the Appellant defendant raised state constitutional issues in a supplemental brief for the first time. In rejecting that issue, the Court stated:

To allow Hudson to engage in a full *Gunwall* analysis so late in the appeal would encourage parties to save their state constitutional claims for

the reply brief and would lead to unbalance and incomplete development of the issues for review. *See Wood v. Postlethwaite*, 82 Wn.2d 387, 389, 510 P.2d 1109 (1973)(To allow the petition to raise issues not addressed in his petition would be an injustice to the party opposing the petition and inconsistent with the rules on appeal.”).

Hudson, 124 Wn.2d at 120.

This Court should reject the untimely and unsupported allegation that Petitioner’s constitutional rights were violated by either the trial court or the Court of Appeals.

Pursuant to RAP 13.4(b), Michael Goodman has failed to meet his burden for review by this Court.

B. The Petition Is Untimely and Beyond the Scope of Review.

Michael Goodman’s Petition should be denied as it is untimely and this court lacks jurisdiction under RAP 5.2(a). In addition, the Petition is beyond the scope of review for this Court as the issues raised in the Petition were not raised by Michael in the Court of Appeals.

Michael’s appeal is untimely and thus barred under RAP 5.2(a). Under RAP 5.2(a), an appellant generally has 30 days from the entry of judgment to file its appeal. RAP 5.2(a). A necessary prerequisite to appellate jurisdiction is the timely filing of the notice of appeal. *Buckner*,

Inc. v. Berkey Irrigation Supply, 89 Wn. App. 906, 911, 951 P.2d 338 (1998).

As stated above, Michael Goodman assigned two errors on appeal.⁸ Michael did not assign error to either the Affidavit of Prejudice against Judge Cook or the Affidavit of Disqualification of Judge Stiles. These issues were not before the Court of Appeals when it issued its Unpublished Opinion affirming the trial court's ruling. With regard to the Affidavit of Prejudice against Judge Cook, a request for review by the Court of Appeals of that order would have been required many years ago.⁹ With regard to the Affidavit of Disqualification of Judge Stiles, Michael Goodman would have had to file his notice of appeal within 30 days of that order being entered. RAP 5.2(a). Michael failed to timely appeal either the Affidavit of Prejudice or the Affidavit of Disqualification. As such, under RAP 5.2(a), this Court lacks jurisdiction.

Further, the affidavits are beyond the scope of review by this Court because Michael failed to properly note the issues in his notice of appeal

⁸

⁹ In Michael Goodman's first appeal (Cause No. 68416-7) of trial court's final order, he only assigned error to one of the trial court's 89 numbered findings of fact (assigned error to finding 36 that the trial court abused its discretion in finding that the road was built in 1979).

and to assign error to these issues.¹⁰ CP 289-292. Under RAP 5.3(a), the notice of appeal must designate the decision or part of the decision which the party wants reviewed. RAP 5.3(a); *Foster v. Giliam*, 165 Wn. App. 33, 268 P.3d 945 (2011), *reviewed denied*, 173 Wn.2d 1032, 277 P.3d 668 (2012). Michael has failed to properly appeal the orders denying the Affidavit of Prejudice against Judge Cook and the Affidavit of Disqualification against Judge Stiles.

Michael Goodman's Petition for Review must be denied as it is untimely under RAP 5.2(a) and review is beyond the scope of this Court.

C. Review of the Affidavit of Prejudice Against Judge Cook is Barred as it has already been Reviewed by this Court Numerous Times.

The Affidavit of Prejudice against Judge Cook has long been decided by the Court of Appeals, and review of this issue is prohibited. Michael has brought the issue of the Affidavit of Prejudice against Judge Cook to this Court on five (5) prior occasions (Cause Nos. 88811-6; 90025-6; 91287-4; 96030-5; one case which was never assigned a cause number).

This Court has consistently denied review of this issue.

¹⁰ Appellant's Opening Brief, pg. 2-3.

Michael first sought review of the order denying the Affidavit of Prejudice under Cause No. 888110-6. In denying Michael's Petition for Review, this Court stated:

The Court of Appeals did not err or depart from accepted practice by denying the motion to reverse. RAP 13.5(b)(considerations governing acceptance of review).

Resp. Appendix D.

Michael once again sought review by this Court of the order denying the Affidavit of Prejudice against Judge Cook under Cause Nos. 90025-6 and 91287-4. This Court once again denied review of this issue. Resp. Appendix E; F.

In the most recent (prior to the case at hand) request by Michael for review by this Court of the order denying the Affidavit of Prejudice, this Court (under Cause No. 96030-5) once again denied review. Resp. Appendix B. In addition, this Court described Michael Goodman as a vexatious litigant:

The record in the present matter and the long history of the underlying dispute tend to show that petitioner is a vexatious litigant in relation to the long-final quiet title action.

Id. at 4.

The order denying the Affidavit of Prejudice has long been decided in this matter. Michael Goodman's attempts to continue to litigate this

issue are done so in bad faith and once again review of this issue must be denied.

D. Michael Goodman's Reliance on RCW 2.28.030(2) is Erroneous.

Michael Goodman argues that Judge Stiles did not have jurisdiction to enter the December 4, 2018 order clearing the easement. Despite failing to properly provide notice and assign error to this issue, Michael believes he can circumvent the appellate rules by alleging that Judge Stiles should have been disqualified under RCW 2.28.030(2):

A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases...(2) When he was not present and sitting as a member of the court at the hearing of a matter submitted for decision.

RCW 2.28.030(2).

This argument is meritless.

With regard to the motion to clear the easement, Judge Stiles was the judge at the hearing on these issues and was the judge that issued the order clearing the easement. It appears that Michael is trying argue that Judge Stiles was prohibited from enforcing Judge Cook's 2012 final order because he was not the trial judge. This argument is erroneous. In *State v. Lindsey*, 194 Wn. 129, 77 P.2d 596 (1938), the judge who heard the testimony imposed an improper sentence. On remand, the new sentence

was imposed by a different judge. *Id.* at 131. The Washington Supreme Court held that this was proper and stated that the judicial personnel may change, but the court remains. *Id.* at 132.

In *In re Jaime v. Rhay*, 59 Wn.2d 58, 365 P.2d 772 (1961), one judge imposed probation, and three years later the probation was revoked and a sentence was imposed by a different judge. *Id.* at 61. The Washington Supreme Court held this was not a violation of RCW 2.28.030 and stated:

There is always judicial business unfinished at the end of every judge's tenure of office, whether termination be by expiration, retirement, or death. It is only necessary, under the statute, that the particular matter disposed of by a judge shall have been submitted to him according to law; otherwise, no litigation pending before a judge could be concluded after his separation from office. The statute means no more than that a judge may not pass upon a matter that was never properly submitted to him.

In re Jaime, 59 Wn.2d at 61.

In the present matter, Judge Cook retired in 2016. Resp. Appendix C. Under Michael's flawed reasoning, no judge could enforce the 2012 final judgment after Judge Cook's retirement. In broader terms, Michael's argument would mean that once a judge retires or dies, no subsequent judge can enforce the prior judge's final ruling. Clearly, under *In re Jaime* and public policy, that is not the purpose of RCW 2.28.030(2). The matter of clearing the easement was properly in front of Judge Stiles. Judge

Stiles conducted a hearing and each party submitted briefing. By ordering the easement cleared, Judge Stiles simply enforced the 2012 final judgment. There is no jurisdiction issue to be considered in this matter.

E. Motion for Attorney's Fees.

The final judgment in this case has long been decided. The Petition for Review is just another in a long series of frivolous appeals filed by Michael Goodman. Edward and Bernice Goodman ask this Court to deny the Petition for Review and award reasonable attorneys' fees for this continuing series of appeals filed by Michael Goodman. This request is made pursuant to RAP 18.1(j). It should be noted that in this case, the Court of Appeals has awarded sanctions against Michael Goodman under RAP 18.9(a) for filing a frivolous appeal. This Petition is also a frivolous appeal by Michael Goodman under RAP 18.9(a).

V. CONCLUSION

Edward and Bernice Goodman request that this Court deny Michael Goodman's Petition for Review. Michael has failed to establish the criteria for review under RAP 13.4(b). In addition, this Petition is untimely and beyond the scope of review for this Court. Moreover, Michael's arguments are meritless and this is just another attempt by Michael to abuse the appellate system in order to harass Edward and

Bernice Goodman. Finally, Edward and Bernice Goodman request attorneys' fees pursuant to RAP 18.1(j).

DATED this 7th day of August, 2020.



Kelly M. Madigan, WSBA #40024
Attorney for Respondents Edward M.
Goodman and Bernice Goodman

FILED
SKAGIT COUNTY CLERK
IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON, WA
FOR SKAGIT COUNTY
2010 JUN -3 AM 9:44

Edward Goodman
Bernice Goodman
vs.

NO. 10-2-587-3

() Clerk's Action Required

ORDER ON:

Michael Goodman
Mary Goodman

Civil [] Criminal
[] Domestic [] Other

~~Chane Goodman Tyson Goodman~~

THIS MATTER having come on regularly and the Court having heard the motion(s) re
affidavit of prejudice filed by Tyson Goodman

THIS COURT FINDS that discretionary ruling was previously
made by Judge Cook on 4/23/10 after
all four defendants were served

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that affidavit of
prejudice is not timely and is⁰⁰therefore
denied.

DATED: 6/3/10

Susan K Cook
JUDGE/Commissioner

Presented by: _____

Approved: _____

Attorney for _____

Attorney for _____

cc: _____

APPENDIX A

emailed to clients 6/2/10

E FILED

AUG 24 2018

WASHINGTON STATE
SUPREME COURT

KMS

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN and
BERNICE S. GOODMAN,

Respondents,

v.

MICHAEL GOODMAN,

Petitioner.

No. 96030-5

Court of Appeals No. 77381-0-I

RULING DENYING REVIEW

Pro se petitioner Michael Goodman seeks discretionary review of a decision by Division One of the Court of Appeals denying discretionary review of a superior court order barring him from filing motions and other papers in relation to a previously final judgment in favor of respondents Edward and Bernice Goodman in a quiet title action. In addition to opposing review, respondents request attorney fees incurred in responding to what they assert to be petitioner's frivolous motion for discretionary review. The motion for discretionary review is ~~denied~~ and the request for attorney fees is ~~granted~~, as explained below.

After a bench trial, the Skagit County Superior Court quieted title in respondents to non-exclusive easements on petitioner's property for a shared driveway and a septic system and drain field. The Court of Appeals affirmed the superior court in an unpublished opinion. Petitioner filed a petition for review in which the only issue presented was whether petitioner filed a timely affidavit of

APPENDIX B

prejudice such that the superior court judge should have been disqualified from hearing the matter. This court denied review and awarded respondents attorney fees and expenses pursuant to RAP 18.1. The Court of Appeals issued the mandate in September 2014.

In December 2014, petitioner filed in the Court of Appeals a motion to recall the mandate, which that court denied. Supreme Court Commissioner Narda Pierce denied petitioner's motion for discretionary review and awarded respondents attorney fees because the motion for discretionary review was frivolous under RAP 18.9(a). No. 91287-4. This court denied petitioner's motion to modify Commissioner Pierce's ruling and awarded respondents additional attorney fees for responding to the frivolous motion to modify.

Meanwhile, petitioner persisted in filing motions in the superior court and Court of Appeals in relation to the underlying quiet title action. In January 2014, the superior court granted respondents' motion for sanctions and entered an order ~~barring petitioner from filing any further motions in the case without first submitting them to a superior court commissioner for approval. Petitioner did not appeal that order.~~

In January 2017, petitioner tried to revive the previously final quiet title action by seeking discovery from respondents and by filing a motion to compel. A superior court commissioner sent the parties a letter advising them that the matter had been decided to finality in the superior court and that petitioner's appeal was terminated and final. The commissioner further advised that all matters in the case had been decided and that no further action in the matter was appropriate.

Additionally, on January 6, 2017, the superior court commissioner entered an order stating that the matter had been finally decided in respondents' favor and that further interrogatories were neither permitted nor proper. The court further ordered

probable error that substantially alters the status quo or substantially limits his freedom to act, or that the Court of Appeals has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the superior court, to such an extent as to justify this court invoking its revisory jurisdiction. RAP 13.5(b). ~~Petitioner fails to cite any of these criteria, much less shows that any of them apply.~~

The record in the present matter and the long history of the underlying dispute tend to show that petitioner is a vexatious litigant in relation to the long-final quiet title action. As indicated, the quiet title judgment was affirmed on appeal, and that decision has been final for nearly four years. Petitioner's frivolous attempt to recall the mandate failed. Petitioner has cited no authority, and I am not aware of any that allows him to continue to file motions or other papers, or to propound discovery, in relation to a case that effectively no longer exists.

Furthermore, petitioner did not appeal the superior court orders entered January 6 and August 2, 2017, both of which plainly notified petitioner that the judgment was final, appellate review was exhausted, and further motion practice or discovery was not appropriate. In light of this record, the superior court did not err in entering an order intended to dissuade petitioner from frivolous and vexatious litigation of the now final quiet title matter. Further, petitioner failed to show a cognizable basis for discretionary review in the Court of Appeals under RAP 2.3, and thus Commissioner Kanazawa did not err in denying review. Petitioner shows no basis justifying discretionary review in this court.

As indicated, respondents request attorney fees for answering petitioner's motion for discretionary review pursuant to RAP 18.9(a). This rule allows an appellate court to order a party who uses the rules for the purpose of delay or who files frivolous appellate actions to pay terms or compensatory damages to any other party who has been harmed. *See Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370,

384-85, 46 P.3d 789 (2002); *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). An appellate action is frivolous if, considering the entire record, the court is convinced that it presents no debatable issues upon which reasonable minds might differ and is so devoid of merit that there is no possibility of reversal. ~~Here, the motion for discretionary review is plainly devoid of merit and is frivolous.~~

Accordingly, the motion for discretionary review is denied.¹ Pursuant to RAP 18.9(a), the respondents are awarded reasonable attorney fees and expenses for responding to the motion for discretionary review, to be paid by petitioner in an amount to be set in accordance with the procedures of RAP 18.1.


COMMISSIONER

August 24, 2018

¹ Petitioner's frivolous request to sanction respondents and their attorney is necessarily denied by this ruling.

February 11, 2016

Superior Court Judge Cook to retire March 1

MOUNT VERNON – After serving 20 years as Superior Court Judge for Skagit County, Judge Susan K. Cook will retire on March 1, 2016.

Judge Cook graduated from the University of Washington Law School in 1985 with highest honors. She subsequently joined the law office of Paul N. Luvera Jr. in Mount Vernon, where she practiced until 1992.

In 1992 Judge Cook was selected to serve as Superior Court Commissioner. During the next four years she was primarily responsible for hearing cases involving family law disputes and juvenile matters.

In 1996, Judge Cook ran unopposed for the judicial position vacated by the retirement of Judge George McIntosh. She became the first female Judge for Skagit County.

Judge Cook frequently contributes to legal publications and lectures on topics pertaining to the law. She has served on the Board of Directors for Skagit Pre-School and Resource Center (SPARC), on the Woman's Alliance and Network Board (SWAN), and was named as the 2000 Skagit County Business and Professional Woman of the year. She also served as secretary of the Skagit County Pioneer Association from 1995 – 2010.

In 2015, she was named Judge of the Year by the Washington State Association for Justice. This award is given to a judge who promotes the justice system through "exercise of outstanding judicial ruling or leadership." Additionally she was awarded the Lifetime Achievement Award by the Washington State Bar Association. This award is in recognition of the many years of service to attorneys and people of Skagit County by promoting fairness, demeanor, community service and mentoring leaving a lasting legacy and ideal to uphold for future lawyers and judges.

An open house celebration honoring Judge Cook will be held on Monday, February 29, 2016 at 3 p.m. in the Skagit County Courthouse, Courtroom Two.



APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN and
BERNICE S. GOODMAN, husband and
wife,

Respondents,

v.

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife,

Petitioners,

and

CHANCE GOODMAN, a single man;
and TYSON GOODMAN, a single man,

Defendants.

NO. 88811-6
RULING DENYING REVIEW

FILED
SUPERIOR COURT
CLATSOP COUNTY
2013 JUN 25 A 11:42
BY RONALD R. CARPENTER
CLERK

Michael Goodman seeks review of an order denying his motion to reverse a June 2010 trial court order.

This matter involves a dispute between brothers Edward and Michael Goodman over property located at Lake Campbell in Skagit County. Defendants Michael and Mary Goodman (Michael)¹ appealed Judge Susan Cook's January 2012 decision granting plaintiffs Edward and Bernice Goodman (Edward) the right to use a non-exclusive easement and shared driveway and the right to use a septic system area and permanently enjoining the defendants from hindering or blocking the plaintiffs' use of the easements. The appeal has been briefed and apparently awaits decision. Meanwhile, Michael has inundated the Court of Appeals with motions, including a

¹ First names will be used only for the sake of clarity.

6/25/13 8

February 4, 2013, "Motion to Reverse Trial Court Order Denying Affidavit of Prejudice." That motion challenged Judge Cook's June 3, 2010, order denying Tyson Goodman's affidavit of prejudice. (Michael's sons Chance and Tyson Goodman were named defendants at the time, but it appears that the claims against them were bifurcated and later dismissed.) Judge Cook denied the affidavit on grounds that she had earlier entered a discretionary ruling in the case, making Tyson's motion untimely. The Court of Appeals denied the motion to reverse by order dated April 23, 2013. Michael now seeks this court's review of that decision.

Michael argues that Judge Cook should have granted the affidavit of prejudice because she had only previously entered an agreed temporary restraining order involving no exercise of discretion. But it appears that prior to entry of the agreed order Judge Cook had issued a continuance order on April 9 keeping an earlier temporary restraining order in place and another temporary restraining order on April 13.² Michael suggests (without citation to the record) that those rulings came before the defendants had appeared in the case. But it is difficult to tell from the record when Tyson Goodman was served. More importantly, Michael does not explain why his motion challenging the denial of the affidavit of prejudice should be considered timely, since Judge Cook entered her order of denial on June 3, 2010. Review of a trial court decision not subject to appeal must be initiated by notice filed within 30 days. RAP 5.2(b). Perhaps it could be argued that the motion should be considered part of the ongoing appeal from the trial court's January 2012 decision. Michael likely could have assigned error to the June 3, 2010, order in his brief on

² Edward argues that Michael should not be permitted to challenge the June 3, 2010, order because only Tyson Goodman filed an affidavit of prejudice. But this court has held that the plaintiffs or defendants in a lawsuit may file only one such affidavit as a class. *LaMon v. Butler*, 112 Wn.2d 193, 201-204, 770 P.2d 1027, cert. denied, 493 U.S. 814 (1989). And in consolidated juvenile adjudicatory proceeding, the Court of Appeals held that an affidavit of prejudice filed by one juvenile respondent may properly be imputed to his or her correspondents. *State v. Detrick*, 90 Wn. App. 939, 954 P.2d 949 (1998).

appeal. *See* RAP 2.4(b) (appellate court will review trial court order not designated in notice of appeal if the order prejudicially affects the decision designated in notice). But error must be assigned in the brief, and the appellate court may decide the case only on the basis of issues raised in the briefs. RAP 10.3(a)(4), 12.1(a). A party simply cannot, as part of an ongoing appeal, file separate motions disputing trial court rulings not challenged by assignment of error on appeal.

The Court of Appeals did not err or depart from accepted practice by denying the motion to reverse. RAP 13.5(b) (considerations governing acceptance of review). Accordingly, the motion for discretionary review is denied.³


COMMISSIONER

June 25, 2013

³ Edward seeks reasonable attorney fees for Michael's "continuing series of appeals." But he fails to support this request with argument or citation to relevant authority. Accordingly, the request is denied.

THE SUPREME COURT OF WASHINGTON

EDWARD M. GOODMAN, et ux.,

Respondents,

v.

MICHAEL J. GOODMAN, et ux.,

Petitioners.

NO. 90025-6

ORDER

C/A NO. 68416-7-I

Filed
Washington State Supreme Court

JUN - 4 2014

Ronald R. Carpenter
Clerk

Department II of the Court, composed of Chief Justice Madsen and Justices Owens, Stephens, González and Yu, considered at its June 3, 2014, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied and the Respondent's request for attorney fees is granted. The Respondent is awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), Respondent should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington this 4th day of June, 2014.

For the Court


CHIEF JUSTICE

691/103

APPENDIX E

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN and
BERNICE S. GOODMAN,

Respondents,

v.

MICHAEL J. GOODMAN, Petitioner,

and

MARY GOODMAN, CHANCE
GOODMAN, TYSON GOODMAN,
Defendants.

FILED

JUL - 2 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

NO. 91287-4

RULING DENYING REVIEW

After a bench trial, the Skagit County Superior Court quieted title in Edward and Bernice Goodman to non-exclusive easements on petitioner Michael Goodman's property for a shared driveway and a septic system and drain field. The Court of Appeals affirmed the superior court in an unpublished opinion. Michael¹ filed a petition for review in which the only issue presented for review was whether Michael filed a timely affidavit of prejudice and the superior court judge should have been disqualified from hearing the matter. This court denied review and awarded the

¹ First names are used where necessary for clarity. No disrespect is intended.

respondents attorney fees and expenses pursuant to RAP 18.1. The Court of Appeals issued the mandate on September 17, 2014. Michael filed a motion to recall the mandate on December 4, 2014. His motion observed that although the court's opinion addressed his assigned error to the superior court's conclusion that usage of these easements was reasonably necessary, the court's opinion did not explicitly mention the superior court's findings of fact that an easement on a different adjacent lot could be used to reach the northern part of the property of Edward and Bernice. Michael contended the Court of Appeals "missed trial court findings of fact 46 and 47, the useable easement to Ed's property," and that this was an inadvertent mistake under RAP 12.9(b). The Court of Appeals denied the motion, and Michael now seeks this court's discretionary review. Edward and Bernice seek an award of attorney fees incurred in answering the motion for discretionary review.

The appellate court may recall a mandate to correct an inadvertent mistake or to modify a decision obtained by the fraud of a party or counsel in the appellate court. RAP 12.9(b). The Court of Appeals does not have authority to recall a mandate for the purpose of reexamining a case on its merits. *See Shumway v. Payne*, 136 Wn.2d 383, 393, 964 P.2d 349 (1998). There is nothing to suggest that the Court of Appeals mistakenly overlooked the findings of fact that Michael now cites. The Court of Appeals noted Michael's challenge to the superior court's conclusion regarding reasonable necessity and his arguments regarding the relative costs of substitutes, and also noted the superior court's findings related to how the topography of the lot affected the feasibility of alternative access. The Court of Appeals then wrote, "Absolute necessity is not required to establish an implied easement," citing *Evich v. Kovacevich*, 33 Wn.2d 151, 157-58, 204 P.2d 839 (1949). Clearly, the opinion did not assume there were no conceivable substitutes. The Court of Appeals did not err or depart from accepted practice by denying the motion to recall the mandate, and this

court's review is not warranted under the criteria of RAP 13.5(b) (considerations governing acceptance of review).

Edward and Bernice have requested fees for answering Michael's motion for discretionary review pursuant to RAP 18.1(j). This rule allows attorney fees for answering a petition for review, not for answering a motion for discretionary review. See RAP 18.1(j) (attorney fees for answering a petition for review). Another rule, RAP 18.9, allows an appellate court to order a party who uses the rules for the purpose of delay or who files frivolous appellate actions to pay terms or compensatory damages to any other party who has been harmed. See *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 384-85, 46 P.3d 789 (2002); *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). An appellate action is frivolous if, considering the entire record, the court is convinced that it presents no debatable issues upon which reasonable minds might differ and is so devoid of merit that there is no possibility of reversal. Here, the motion for discretionary review is devoid of merit and is frivolous.

Accordingly, the motion for discretionary review is denied. Pursuant to RAP 18.9(a), the respondents Edward and Bernice are awarded reasonable attorney fees and expenses for responding to the motion for discretionary review, to be paid by Michael in an amount to be set in accordance with the procedures of RAP 18.1.


COMMISSIONER

July 2, 2015

FILED
SUPREME COURT
STATE OF WASHINGTON
8/7/2020 12:54 PM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL GOODMAN,

Petitioner,

v.

EDWARD M. GOODMAN and
BERNICE S. GOODMAN,

Respondents.

Supreme Court
No.98755-6

**DECLARATION OF
SERVICE**

The undersigned certifies that on the August 7, 2020, she caused to be filed with the Washington State Supreme Court, and served one copy on pro se Petitioner Michael Goodman at 13785 Goodman Lane, Anacortes, Washington 98221, the following:

- Respondent Edward M. Goodman and Bernice Goodman's Answer to Petition for Review
- Appendix documents to Respondent Edward M. Goodman and Bernice Goodman's Answer to Petition for Review

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct this 7th day of August, 2020.



Kelly Madigan
Madigan Law Firm, PLLC

MADIGAN LAW, PLLC

August 07, 2020 - 12:54 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98755-6
Appellate Court Case Title: Edward Goodman, et ux. v. Michael Goodman
Superior Court Case Number: 10-2-00587-3

The following documents have been uploaded:

- 987556_Affidavit_Declaration_20200807125343SC070164_3429.pdf
This File Contains:
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A copy of the uploaded files will be sent to:

- chancegoodman@msn.com

Comments:

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