Court of Appeals No. 370330-III
Supreme Court No. 99540-1

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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JEFFREY P. JONES, et al.,

Respondent,

vs.

RUSSELL K. JONES,

Appellant.

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# RESPONSE TO PETITION FOR REVIEW OF APPELLANT

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## I. INTRODUCTION

Respondent Jeffrey Jones, by and through his undersigned attorneys, respectfully requests this Court to affirm the decision of the Court of Appeals, Division III, which denied Appellant's Motion for Reconsideration. Appellant brings this Petition for Review, apparently pursuant to RAP 13.3 and RAP 13.4, though he makes no reference to those rules in his Petition. Appellant's Petition for Review should be denied as it does not meet the requirements of RAP 13.4(b), which only grants review under limited circumstances. The Petition for Review also violates RAP 18.9, as it is clearly frivolous and without merit for the reasons set forth below.

## II. STATEMENT OF THE CASE

This fourth appeal by Russell Jones (hereinafter "Russell" given that the parties all share the same last name) is the latest in a series of vexatious and frivolous litigation involving the Estate of Marcella Jones that began over 20 years ago. Russell has been sanctioned numerous times by the trial court, Court of Appeals, and the Washington State Supreme Court, and was ultimately disbarred from the Washington State Bar due to his conduct in this matter. *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 24, 338 P.3d 842, 846 (2014).

Marcella Jones died testate on September 2, 1995, leaving her estate to be divided in four equal shares to her sons, David, Russell, Jeffrey and Peter. *Jones*, 182 Wn.2d at 25, 338 P.3d 842; CP 46-53. The Will was admitted into probate on September 25, 1995, and Russell was appointed personal representative. *Id*. Jeffrey and Peter filed a Complaint to remove Russell as personal representative. *Jones*, 182 Wn.2d at 26, 338 P.3d 842; CP 46-53. After a trial on all issues raised in the case, the trial court removed Russell as personal representative, made other findings of fact and conclusions of law, and granted judgment in favor of Jeffrey and Peter. *Id*.

Russell appealed the trial court's decision and the Court of Appeals overturned the trial court, reinstating Russell as personal representative. *In re Estate of Jones*, 116 Wn. App. 353, 67 P.3d 1113 (2003). On appeal to the Washington State Supreme Court, the Court of Appeals' decision was reversed and the decision of the trial court affirmed. *In Re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004).

The Supreme Court remanded the case for a "final accounting" and a calculation of attorney fees. *Id*. The State Supreme Court decision was the culmination of six years of litigation up to that point. Following the

issuance of the mandate from the Supreme Court, Russell began a course of egregious and frivolous conduct attempting to relitigate the issues concerning the Estate of Marcella Jones that were decided by both the trial court in 2001 and the Washington State Supreme Court in 2004. *See In re Disciplinary Proceeding Against Jones,* 182 Wn.2d 17, 338 P.3d 842; CP 46-53. Those motions were rightfully denied by the trial court, and the Court of Appeals upheld the trial court's decision in Russell's second appeal. In an unpublished opinion dated August 30, 2007, the Court of Appeals affirmed the decision of the trial court and awarded attorney fees pursuant to RAP 18.9 to Jeffrey and Peter, finding the appeal was frivolous and amounted to a re-litigation of the issues decided in the 2001 trial and affirmed by the Supreme Court in 2004. *In re Estate of Jones,* 140 Wn. App. 1022, 2007 WL 2452725 (2007).

Russell continued litigation following the second appeal, including filing a third and fourth appeal. *In re Disciplinary Proceeding Against Jones,* 182 Wn.2d at 32-33, 338 P.3d 842. In May 2011, Division III granted Jeffrey and Peter's motion on the merits affirming the Superior Court's orders, holding that Russell's appeal was frivolous, and imposed sanctions. *Id.* "Jones made a motion to modify the ruling, and when it was denied he

petitioned for review, which was also denied." *Id.* Russell then filed a new lawsuit naming Peter and Jeffrey as defendants, asking for relief from the 2001 judgment and asserted the same arguments made in previous motions. *Id.* at 33. That action was dismissed by the Court.

Throughout the litigation about Marcella Jones' estate, Russell was sanctioned multiple times, totaling over $138,000. *In re Disciplinary Proceeding Against Jones,* 182 Wn.2d at 33, 338 P.3d 842. Russell was held in contempt several times for failing to provide access to and documentation of his assets, including one contempt contained in the underlying appeal and subsequent petition for review. *Id.* Judgments for these sanctions were entered and properly extended as their 10-year expirations approached. CP 1-24.

Russell's attempts to change the results on the first three appeals failed, so he took a new approach and sought to challenge the extended judgments in 2018, at least two years after the final judgment was extended. The trial court heard argument and denied his requested relief. Russell moved for reconsideration, which was denied. Russell then sought his fourth appeal stemming from his mother's estate case to continue to avoid payment and collection on the valid judgments entered against him

throughout this lengthy court process. The Court of Appeals dismissed Russell's appeal, finding that his arguments on appeal lacked merit, presenting no possibility of reversal. The Court also awarded reasonable attorney fees and costs incurred by Jeffrey. Russell then filed a motion for reconsideration, which was likewise denied. Now, Russell seeks review by the Supreme Court.

## III. ARGUMENT

### A. The Petition For Review Does Not Meet The RAP 13.4(b) Standard

RAP 13.4(b) states:

> A petition for review will be accepted by the Supreme Court only: (1) If the decisions 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.

Russell has identified none of the criteria required in RAP 13.4(b), principally because he cannot do so. There is no Supreme Court decision, or any Court of Appeals decision, which Russell can point to as conflicting with the Court of Appeals' decision in this case.

Russell has also failed to point to any constitutional provisions, either state or federal, which are violated by the Court of Appeals' decision in this case. In fact, there is nothing unconstitutional about the decision of the Court of Appeals.

Finally, this case does not raise any issues of "substantial public interest." At this point, the only person who has any interest in this case is the Appellant, Russell Jones, and his interest is only motivated by a desire to avoid the consequences of his case for as long as he can, including the collection of hundreds of thousands of dollars in valid judgments that are still outstanding against him. He wishes only to torment Jeffrey and Peter and build up their attorney fees and waste as much of their time and money as possible. Such an interest does not amount to the type of interest contemplated by RAP 13.4(b)(4).

B. The Appellant's Arguments Have No Merit

1. Russell Jones Has Been Afforded More Than Sufficient Process

Russel has received every opportunity and notice to be heard available to a litigant. Not only was there a full trial on the merits of the original case, but Russell exhausted his appeals, as both the Court of Appeals and Washington State Supreme Court reviewed the case on

several occasions over the past 23 years, each time determining Russell acted inappropriately and that Jeffrey and Peter Jones were entitled to attorney fees. *See In re Disciplinary Proceeding Against Jones,* 182 Wn.2d 17, 338 P.3d 842; CP 46-53. Russell has been involved at every level and had the opportunity to present his case and seek review as necessary. Valid judgments were entered against Russell throughout the proceedings.

While under RCW 4.56.210 and RCW 6.17.020, the life of a judgment is ten years, it may be extended another ten years on motion of the judgment creditor. RCW 6.17.020 allows for a holder of a judgment to apply for "an order granting an additional ten years during which an execution may be issued." A 2002 amendment to the statute specified, "[t]he application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts." RCW 6.17.020(3).

Here, per RCW 6.17.020, the applications for the extensions of the judgments were properly granted as a matter of right and orders extending the judgments were entered. CP 1-24. Russell does not suggest any factual issues regarding full or partial satisfaction or errors in calculating the judgment amounts and points only to the timeliness.

Contrary to what Russell claims, following the entry of valid judgments he is not entitled to additional due process, nor do the cases he cites stand for said proposition. Most notably, *Connecticut v. Doehr* arose out of an appeal regarding a Connecticut statute authorizing a judge to allow for prejudgment attachment of real estate without prior notice or a hearing. 501 U.S. 1, 2, 111 S. Ct. 2105, 2107, 115 L. Ed. 2d 1 (1991). The court laid out the analysis by which a court is to determine what process must be afforded by a statute that enables an individual "to enlist the state's aid to deprive another of his or her property by means of a *prejudgment attachment*." *Id*. (emphasis added). In fact, all cases cited by Russell involve due process rights *ahead* of the entry of final orders or prejudgment attachment on real property. *See Inman v. Sandvig,* 170 Wash. 112, 119, 15 P.2d 696 (1932)(administrative rule change without prior notice or hearing); *Esmieu v. Schrag*, 88 Wn.2d 490, 498, 563 P.2d 203, 207 (1977)(fiduciary duties of trustees and due process rights ahead of entry of final orders); *Van Blaricom v. Kronenberg*, 112 Wn. App. 501, 503, 50 P.3d 266, 267 (2002)(prejudgment attachment on real property).

This case does not involve prejudgment attachment or due process rights ahead of the entry of final orders. Russell had ample opportunity to

present evidence at trial, through post-trial motions, and via appeals to the Court of Appeals and Washington State Supreme Court. After all previous attempts were denied, as a last-ditch effort Russell now seeks to avoid the continuing judgments. Russell cannot be allowed to have a fourth opportunity to avoid these obligations based on a disingenuous recitation of law that clearly does not apply to the present situation. These baseless claims have resulted in additional costs and expenses to Jeffrey and Peter Jones that continue to accrue as the result of this appeal.

2. The Language of RCW 6.17.020 is Clear on its Face and the Judgments at Issue Were Properly Extended

This motion turns on the correct meaning of RCW 6.17.020, which indicates, "the party in whose favor a judgment of a court has been or may be filed... may have an execution, garnishment or other legal process issued for the collection or enforcement of the judgment *at any time within ten years from the entry of the judgment*" (emphasis added). Subsection (3) indicates the current holder of the judgment may, "*within ninety days before the expiration* of the original ten-year period," apply for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. RCW 6.17.020(3)

(emphasis added). This is an ordinary and uncomplicated matter that can be easily ascertained with documentary proof ex parte. Russell does not argue that the judgments at issue were not extended within the 90-day period before the judgments' expiration, but rather that the word "within" means the opposite.

Russell Jones' argument is inconsistent with the plain language of the statute and judicial precedent. Absent ambiguity, the court is to rely solely on the plain language of the statute. *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000). The very nature of the word "within" is self-explanatory, however, Russell seems to need clarification. The *Merriam-Webster Dictionary* indicates that "within" as a preposition is "used as a function word to indicate a situation or circumstance in the limits of: such as... not beyond the quantity" and "indicating a specified difference or margin." The *Cambridge English Dictionary* likewise defines "within" as being "inside or not further than an area or period of time." Using these definitions together with the understood plain meaning, the language "within ninety days" contained in the statute, clearly refers to the specific period during which the application for the extension of a judgment should be brought. The language indicates that both premature applications

(made before the 90-day period begins) and late applications (made after the end of the 90-day period) should be denied.

Russell provides no Washington authority to support his contention that the statutory language "within 90 days" requires the filing of the extension of the judgment to occur outside the 90-day period. The Washington cases he cites are easily distinguished as they do not require this interpretation and do not relate to this statute, but rather laws addressing 10-day periods for notices of appeal. In both *Adams* and *Tacoma*, courts addressed time periods that commenced after a judgment was entered, and the courts noted in those instances that the use of the word "within" fixed the termination of the named period. *Adams v. Ingalls Packing Co.*, 30 Wn.2d 282, 285, 191 P.2d 699, 701 (1948); *In re Cliff Ave. Improvement, The Hotel Co. of Tacoma v. City of Tacoma,* 122 Wash. 335, 339, 210 P. 676, 677 (1922). These cannot be considered case in point here, as the present question was not involved.

Russell ignores Washington cases addressing both the statute and language at issue. In *State v. Morgan*, while the focus was on another issue, the court affirmed the extension of a judgment entered August 17, 1990, and extended another 10 years on May 31, 2010. 107 Wn. App. 153,

158, 26 P.3d 965 (2001). The judgment was extended 78 days prior to the expiration of the judgment, clearly *within* 90 days before the expiration of the original 10-year period. Likewise, in *Sessom v. Mentor*, the plaintiff extended a judgment on June 24, 1999, 88 days before the September 20, 1999, expiration date. Nine years later, while the defendant moved to vacate the extension as void on different grounds, the court affirmed the trial court's denial of the motion to void the extension. *Sessom*, 155 Wn. App. at 191.

There are also several Washington statutes that use the identical timing language "within ninety days." RCW 2.08.240 addresses the court's time limit for rendering a decision and states it must be done "within ninety days." The statute defines "within ninety days" to mean the rendering of a decision must be done "within said period of ninety days." RCW 2.08.240. In RCW 4.16.170, the "within ninety days" language is used to address the tolling of a statute of limitations. The statute is clear that for the purpose of tolling, service must be made personally or service by publication must be commenced "within 90 days of filing the complaint." RCW 4.16.170. In *Adkison v. Digby, Inc.*, the Supreme Court found that

under RCW 4.16.170, service made after the 90-day period had passed was not timely. 99 Wn.2d 206, 660 P.2d 756 (1983).

The language of the current statute and several comparable statutes with identical language are unambiguous. They are not susceptible to more than one reasonable interpretation, so this Court must consider their plain meaning. If Russell's argument is given merit and the term "within" is deemed to mean outside the prescribed time period, the statues detailed herein and a vast number of other statutes containing similar time periods would be meaningless. Russell's argument is nothing more than an attempt to confuse the semantics of the statute to avoid his lasting obligations.

3. The Production of Documents is Permitted Within a Supplemental Proceeding, and a Finding of Contempt Against Russell Jones for Failure to do so was Appropriate

Washington Courts have consistently adhered to the position that "supplemental proceedings are not a new and independent action but are merely a continuation of the original or main action and are auxiliary thereto." *Arnold v. Nat'l Union of Marine Cooks & Stewards Ass'n*, 42 Wn.2d 648, 652, 257 P.2d 629, 632 (1953), aff'd sub nom. *Nat'l Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 75 S. Ct. 92, 99 L. Ed. 46

(1954)(citing *Field v. Greiner*, 11 Wash. 8, 39 P. 259 (1895); *Flood v. Libby*, 38 Wash. 366, 80 P. 533 (1905); *State ex rel. McDowall v. Superior Court*, 52 Wash. 323, 277 P. 850 (1929); *Junkin v. Anderson*, 12 Wn.2d 58, 120 P.2d 548 and 123 P.2d 759 (1942). For this reason, "[s]tatutes providing for supplemental proceedings are remedial in nature. They are intended to aid in the enforcement of judgments previously obtained to make them effective as a practical matter... to make them worth more than the paper on which they are written." *Id.*

CR 69(b) provides, "[i]n aid of the judgment or execution, the judgment creditor or successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by RCW 6.32." This allows a judgment creditor to employ methods provided in the Washington Court Rules. The Court Rules allow for an examination of the judgment debtor via a deposition, which may include examination of documents per a subpoena duces tecum. CR 30(b)(5). RCW 6.32.015 also allows judgment creditors to apply to the court for an order compelling the judgment debtor to answer interrogatories. CR 34 further permits a party to request another party to

produce designated documents from which information can be obtained and which are in the possession, custody, or control of the responding party. *See also* CR 26(a).

While case law on CR 69 and RCW 6.32 is limited, this Court has addressed the issue of a judgment creditor being compelled to produce documents. In *Arnold,* the Supreme Court of Washington affirmed the trial court's finding of contempt by a judgment debtor who refused to appear and produce documents as part of supplemental proceedings. 42 Wn.2d at 654, 257 P.2d at 633.

Limiting supplemental proceedings to include only an "examination" without the ability to use other discovery devices, as Russell suggests, would defeat the clear purpose of supplemental proceedings which exist to assist judgment creditors in collecting amounts awarded to them. Russell can be compelled to produce documents in a supplemental proceeding, and his failure to do so is a willful violation of the Court's order, punishable by contempt. The trial court's order in this regard should not be disturbed.

C. Attorney Fees and Costs

Jeffrey Jones requests an award of attorney fees and costs on this Petition for Review. Under RCW 11.96A.150, a party may be awarded

attorney fees and costs in probate and trust matters. *Estate of Jones*, 152 Wn.2d at 20-21. RAP 14.2 allows the Court to award attorney fees to the party who substantially prevails on appeal. As such, the Court should award Jeffrey Jones attorney fees and costs against Russell Jones regarding this appeal.

Jeffrey Jones is also entitled to attorney fees and costs under RAP 18.9. In this case, no reasonable attorney would have filed the motions that Russell Jones filed in this matter and pursued on this appeal. This appeal is not factually or legally justified. Russell Jones' purpose in filing and pursuing this appeal is to cause Jeffrey Jones and Peter Jones to incur additional costs and expenses. The Court should impose sanctions on Russell Jones under RAP 18.9, just as the Court of Appeals has done already.

## IV. CONCLUSION

The Appellant's Petition for Review does not meet the criteria of RAP 13.4(b); it does not conflict with an existing opinion of the Supreme Court or the Court of Appeals, it does not raise any constitutional issues, and it does not involve an issue of substantial public interest. Furthermore, the Court of Appeals' decision was well reasoned and has substantial legal

basis. The Court of Appeals did not abuse its discretion when it refused to allow Russell Jones to avoid valid judgments entered against him for his inappropriate behavior at every level of these judicial proceedings. All issues were fully litigated, tried, and decided by the trial court in September 2001. The trial court's Findings of Fact, Conclusions of Law, and Judgment on all issues were affirmed by the Supreme Court. The judgments resulting therefrom were then appropriately extended. Russell Jones received more than sufficient process, yet refuses to abide by valid court orders and continues to do everything he can to avoid collection on the judgments entered against him. Jeffrey Jones therefore respectfully requests that the Petition for Review be denied, and the Court award attorney fees and costs incurred in responding to the Petition.

DATED this 27th day of March 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March 2020, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

| | |
|---|---|
| Russell K. Jones<br>PO Box 4766<br>Spokane, WA 99220 | [X] U.S. Mail<br>[ ] Hand Delivery<br>[ ] Overnight Courier<br>[ ] Fax<br>[ ] Email |
| Peter Jones<br>3246 62nd Avenue SW<br>Seattle, WA 98116<br>alkitax@aol.com | [ ] U.S. Mail<br>[ ] Hand Delivery<br>[ ] Overnight Courier<br>[ ] Fax<br>[X] Email |

KILEY ANDERSON

**FELTMAN EWING, P.S.**

**March 29, 2021 - 6:24 PM**

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