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~~No. 858390~~

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

KARL WOOLERY,

Petitioner,

v.

STATE OF WASHINGTON and COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Respondents.

REPLY BRIEF OF ~~PETITIONER~~ ^{APPELLANT}

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ORIGINAL

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I. ARGUMENT IN REPLY

A. **Woolery's Constitutional Claim should not be dismissed as moot.**

While it is true that Woolery's tort case has now finally been tried to a verdict, this does not mean that his claim should be dismissed. "It is a general rule that, where only moot questions or abstract propositions are involved, or where the substantial questions involved in the trial court no longer exist, the appeal, or writ of error, should be dismissed." *Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P. 2d 512 (1972). However, this Court "may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved." *Id.*

First, Woolery contends that his claim is not moot. The constitutional violations he alleges have not been redressed. The superior courts remain underfunded, understaffed and unable to fulfill their constitutional mandates under Article 1, Section 10. The Court can still order the funding he requested since the issue of court funding is not moot. CP 51. The Court can still enter the findings he requested regarding the violations of his rights and the unconstitutionality of Defendants' conduct. *Id.* The Court can still award him damages for his increased costs associated with unnecessary delay. CP 50.

However, even if Woolery's claim is technically moot, this Court can and should still decide the issue because it is a matter of continuing and substantial public interest. *Id.* The factors this Court considers in determining whether to hear an otherwise moot case under the substantial public interest exception is whether the issue is of a public or private nature; whether an authoritative determination is desirable to provide future guidance to public officers; and whether the issue is likely to recur. *Paxton v. City of Bellingham*, 129 Wn. App. 439, 444, 119 P.3d 373 (2005). All of these factors favor hearing Woolery's claim.

This crisis of court congestion in the judiciary due to inadequate court funding is well known to this Court (*see* Hon. Barbra Madsen, Chief Justice of the Wa St. Sup. Ct., 2011 State of the Judiciary Address (Jan 12, 2011)). Even though Woolery's claim is limited to the question of court funding in Spokane County, this Court's ruling in this case will affect every civil litigant in this state. Court congestion is not unique to Spokane County. King, Pierce, Cowlitz, Yakima and Lewis Counties have dire problems with court funding and more cases of this type will inevitably appear on this Court's docket in the coming months and years. Woolery's claim, therefore, is a public, not a private issue. Since the funding situation is not improving, but rather getting worse, it is a certainty that civil litigants will continue to suffer greater and greater unnecessarily delay in

our state courts. Thus, this issue is certain to recur. And since legislature has not shown any inclination to take sufficient steps to remedy the court congestion crisis, the duty to preserve the constitutional integrity of the judicial system falls to this Court.

This Court should also use this opportunity to decide whether the legislature's refusal to fully fund new judicial offices in Spokanc County violates Initiative 61, since there is a conflict between the legislature's position of refusing to approve superior court positions without an agreement that the county in question will fund all expenses of new judicial opinions beyond the State's one half share of the salary, and the opinion of the attorney general. (See AG Opinion No. 3, 1980)

Woolery does not agree that Defendants contention RCW 2.08.061 creating thirteen judicial offices in the County of Spokane is discretionary, not mandatory. That statute provides "Thcre shall be in the county of King no more than fifty-eight judges of the superior court; in the county of Spokane thirteen judges of the superior court; and in the county of Pierce twenty-four judges of the superior court." *Id.* Woolery contends that the phrase "no more than" only applies to King County. Woolery contends the statute requires that Spokane County "shall" have thirteen judges, which is a mandatory rather than permissive statement.

This case is an ideal vehicle for this Court to address these substantial public concerns. There has clearly been excessive delay—five continuances and nearly three years. Further, it is a citizen plaintiff independently requesting the relief for his own constitutional violations, rather than the judicial system seeking relief for itself, thereby removing the concerns articulated by the Court in *In re Juvenile Director*, 87 Wn.2d 232, 252, 247-48, 552 P.2d 163 (1976), relating to negative perceptions of the judiciary. Given the growing problem of court funding and how it is directly affecting the rights of private citizens, this case is merely the first of many where citizens take steps to protect their own constitutional right to justice without unnecessary delay as a fundamental right to live and exist in a free democratic society. If the judiciary should have to take the steps articulated in *In re Juvenile Director*, they should be steps of last resort when the citizens themselves cannot stand up to protect their access to justice because the executive or legislative branches slowly suffocate the judiciary through lack of funding.

Defendants cite *Sorenson v. Bellingham*, for the proposition that the substantial public interest exception is not available to Woolery. However, this exception is available when “where the real merits of the controversy are unsettled *and* a continuing question of great public importance exists.” 80 Wn.2d at 558 (emphasis added). Clearly, the

controversy raised by Woolery remains—whether the Spokane Superior Court is unable to fulfill its constitutionally mandated duties due to inadequate funding. Additionally, this controversy is plainly a matter of great public importance, as evidenced by the substantial efforts already taken to remedy the problem. *See, e.g., Justice in Jeopardy*, <http://www.courts.wa.gov/justiceinjeopardy>. The Court should exercise its discretion and invoke the substantial public interest exception.

Defendants argue that Woolery's claim should be dismissed to avoid the danger of litigating an important issue in which petitioner no longer has an existing interest. However, Woolery's interest in this case from the start has been out of concern for the integrity of the judicial system and his ability to get justice. He does not stand to gain monetarily, apart from possibly recouping some of his costs in the Spokane case that were caused by the unnecessary delays. His interest in litigating this case is as strong as it was when he filed it, even though his tort case in Spokane has already been heard. Thus, this important issue will have a passionate advocate, even though a portion of his claims for relief are now moot. This Court should rule the Woolery's case is not moot, or in the alternative invoke the substantial public interest exception.

B. Woolery's Thurston County action is a freestanding constitutional claim against Defendants, not a "collateral attack" on a ruling of the Spokane Superior Court.

Defendants have completely misstated the nature of this case. Woolery's Thurston County action is a constitutional claim against Defendants State of Washington and Spokane County for violating his right to justice without unnecessary delay. It is *not* a collateral attack on a ruling or judgment of the Spokane County Superior Court, as Defendants have characterized this case. (*State's Resp. Br.* 1.) "A collateral attack is an attempt to impeach the judgment by matters outside the record, in an action other than that in which it was rendered." *Sears v. Rusden*, 39 Wn.2d 412, 419, 235 P.2d 819 (1951). This case is not a collateral attack because Woolery has not attacked the judgments or ruling of the Spokane Superior Court, as Defendants contend. (*State's Resp. Br.* 14.) He does not assert that the Spokane County Superior Court erred by ordering the five continuances. Nor has he requested a specific trial date, as Defendants contend. *Id.* at 9. Nor has he challenged any ruling or judgment of the Spokane County Superior Court. On the contrary, he wishes to address the underlying cause of the five continuances. The Thurston County action is not, therefore, a "collateral attack" on a discretionary ruling by the Spokane County Superior Court.

The central thrust of Woolery’s Thurston County action is and has always been his constitutional claim. Defendants’ arguments regarding the impropriety of collateral attacks, “good faith compliance” with the civil rules, etc., are therefore irrelevant. Moreover, since Woolery is not challenging a ruling of the trial court, he was not required to follow the procedure set out in RAP 2.2, 2.3, as Defendants assert. *Id.* at 15. Nor was Woolery required to somehow bring his constitutional claims against the State and County within his Spokane case—to which the Defendants in this case were *not* parties.¹ This Court should therefore confine itself to deciding whether Woolery’s constitutional claim states a claim for relief, and not be diverted by Defendants’ attempt to confuse and reframe the issues.

C. Woolery alleges that he has a right to justice without unnecessary delay; he does not allege a right to a “speedy civil trial.”

Woolery’s Amended Complaint alleges that he is entitled to “justice without unnecessary” delay pursuant to Article 1, Section 10. *E.g.* CP 46. The Amended Complaint cites this phrase no less than seventeen

¹ This issue has been addressed in Woolery’s opening brief. However, the fact that the underlying trial has been heard, independent of Woolery’s constitutional complaints, leaving this Court to rule on those violations independent of the underlying tort action is a testament to the efficiency and legitimacy of these actions being brought separately. In this manner, this Court can resolve the issue in this case in a manner that speaks to all litigants and the legislature rather than forcing superior courts to deal with this issue on a piecemeal basis.

times. CP 43, 45, 46, 47, 49, 50, 51. He also alleges that his right to due process and access to justice have been violated. CP 45, 48, 50, 51. He does *not* allege that that he is entitled to a “speedy civil trial,” as Defendants contend. (*State’s Resp. Br. 1.*) That phrase *never* appears in his Amended Complaint. Nor does he ever reference Article 1, Section 22 in his Amended Complaint or allege that applies to him. This is another attempt by the State to reframe the issues into something this case is not about.

Woolery already clarified these points once in his response brief to Defendants’ 12(b)(6) motion to dismiss. CP ____.² Yet in what can only be described a “straw man” argument, both the State and County devote a considerable portion of their briefs arguing that Woolery is not entitled to a “speedy civil trial.” The State actually “quotes” Woolery as alleging a right to a “speedy civil trial” going so far as to include multiple *pin cites* to Woolery’s Amended Complaint—*which do not contain the quoted text.* (*State’s Resp. Br. 1.*) The State and County’s attempt to re-frame Woolery’s Article 1, Section 10 argument into a fear based idea that every civil litigant is entitled to speedy trial within an absolute timeframe

² For some unknown reason this brief was not included in the Clerk’s Papers, even though Woolery included it in his Designation of Clerk’s Papers. Woolery is bringing an unopposed Motion to Supplement the Record to correct this. While he is not able at this time to provide the Court with a pin cite to the Clerk’s Papers, the support for this assertion may be found on page 9 on Plaintiff’s Response Brief to State of Washington’s 12(b)(6) Motion to Dismiss.

ignores Woolery's acknowledgement of the "unnecessary delay" portion of Article 1, Section 10.

There is an obvious distinction between the right to a "speedy trial" and the right to justice without unnecessary delay. A criminal defendant enjoys the right to a speedy trial. Wa. Const. Art. 1, § 22. *All* litigants enjoy the right to justice without unnecessary delay. Wa. Const. Art. 1, § 10. Woolery does not allege that he is entitled to a "speedy civil trial" under Article 1, Section 22, as Defendants have disingenuously suggested. The Court should therefore disregard Defendants' argument concerning the right to a "speedy civil trial," and their reference to Article 1, Section 22 and case law interpreting that provision. The only relevant issue is whether Woolery has a right to justice without unnecessary delay under Article 1, Section 10, which Defendants do not actually contest in their briefing.

D. Five of the six continuances in Woolery's Spokane County case were due to inadequate judicial resources—Woolery did not request, desire, or consent to these continuances.

Woolery alleges in his Amended Complaint that there were at least five continuances in his case, which occurred due to lack of judicial resources and which constitute unnecessary delay. CP 45 ¶ 3.5; CP 49 ¶ 3.12. And in attempt to make the record absolutely clear, Woolery states in his Opening Brief that continuances 2 through 6 were not at the request of

a party but due to inadequate judicial resources and courtroom congestion. (*Petr. 's Br.* 6). Nevertheless, Defendants again misstate and re-frame the record and contend (without attribution) that “three of the five continuances were with [Woolery’s] consent.” (*State’s Resp. Br.* 4). None of these five continuances were with Woolery’s consent. Nor were they a part of his “litigation strategy,” as Defendants have also erroneously claimed. *Id.* It is unclear what basis Defendants have for these contentions, as there is absolutely no support in the record for these complete mischaracterizations. Even if Defendant claims were true, at this stage of the proceedings under the CR 12(b)(6) standard the Court must ignore them and take as true Woolery’s allegation that there were five continuances due to lack of judicial resources.

E. Woolery has standing to assert his own constitutional rights; he does not claim to have standing to assert the rights of the judicial branch or other civil litigants.

In yet another attempt to reframe the issues, Defendants argue that Woolery does not have standing to obtain relief on behalf of the Superior Court of Spokane County or of persons and entities. (*State’s Resp. Br.* 17.) Woolery has never asserted standing to assert the rights of other parties or obtain relief on their behalf. Instead, Woolery contends that when and if the trial court finds that Defendants funding of the Spokane County Superior Court is unconstitutionally inadequate on an institutional level, it

is obliged and empowered under *Zylstra v. Piva*, to remedy the full extent of the constitutional violation. 85 Wn.2d 743, 748, 539 P. 2d 823 (1975) (“In the unlikely event that the county refused adequate salary funds, the court would be both *obliged and empowered* to protect its proper functioning and see to the effective administration of justice.”) (emphasis added). Woolery only has standing to assert his own claim for relief. However, if in the course of hearing Woolery’s claims the trial court finds that Defendants conduct is unconstitutional on an institution wide level, the court must act accordingly. This is the nature of public interest litigation. If Defendants’ standing argument held water public litigation cases like *Brown v. Board of Education* and *Roe v. Wade* would not be possible.

F. Woolery’s case was dismissed on a constitutional question—the Court must reach the constitutional issue.

Defendants contend that the Court need not reach the constitutional question because the trial court dismissed Woolery’s claim on non-constitutional grounds. This too is incorrect. It is true that his claim for economic damages was dismissed on non-constitutional grounds. However Woolery asserted multiple claims. The basis for dismissing his constitutional claim, which was the central thrust of his case, was that ‘there is no constitutional right to have a civil trial heard within any

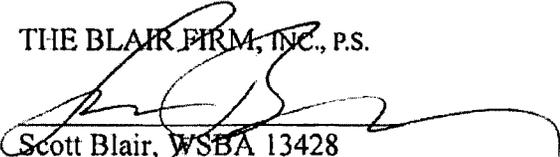
particular time frame.” RP 26. This dismissal was based on the trial court’s interpretation of Article 1, Section 10. The fact that one or more of his claims was dismissed on non-constitutional grounds is irrelevant, unless the dismissal of that claim was dispositive, which it was not. Therefore, Defendants are incorrect—the Court must reach the constitutional issue.

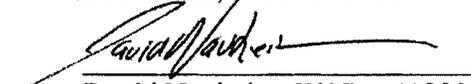
II. CONCLUSION

The Court should reverse the trial court and hold that Woolery does state a claim for relief and he has standing to obtain the relief requested so that this substantial and continuing public interest can be resolved and the integrity of the judicial system preserved.

RESPECTFULLY SUBMITTED this 14th day of September, 2011.

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**CERTIFICATE OF
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I certify that I served via legal messenger, a copy of the foregoing
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