

NO. 49023-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

David Arthur Darby
Defendant-Appellant,

v.

Clark County
Plaintiff-Respondent.

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO. 12-2-03432-3

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. INTRODUCTION 1

B. RESPONSE TO ASSIGNMENT OF ERRORS 2

 1. Whether the trial court properly denied Mr. Darby’s CR
 60(b)(5) motion to set aside the August 15, 2014 Judgment of
 Foreclosure when Mr. Darby did not present any relevant
 authority to support his motion 2

 2. Whether the trial court properly denied Mr. Darby’s CR
 60(b)(5) motion to set aside the August 15, 2014 Judgment of
 Foreclosure when the Washington State Constitution and RCW
 84.64 provided the trial court with original jurisdiction and
 when Mr. Darby was personally served in accordance with
 RCW 84.64.050..... 3

C. STATEMENT OF THE CASE..... 3

D. ARGUMENT6

E. MOTION FOR SANCTIONS..... 15

F. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

<i>Ahten v. Barnes</i> , 158 Wn.App. 343, 350, 242 P.3d 35 (2010).....	7
<i>Burlingame v. Consolidated Mines & Smelting Co.</i> 106 Wn.2d 328, 722 P.2d 67 (1986).....	8
<i>Estate of Treadwell v. Wright</i> , 115 Wn.App. 238, 249, 61 P.3d 1214 (2003).....	6
<i>Granville Condominium Homeowners Ass'n v. Kuehner</i> , 177 Wn.App.543, 557, 312 P.3d 702 (2013).....	15
<i>Homeowners Solutions, LLC v. Nguyen</i> , 148 Wn.App. 545, 550, 200 P.3d 743 (2009).....	14
<i>Kinney v. Cook</i> , 150 Wn.App. 187, 194, 208 P.3d 1 (2009).....	15
<i>Lutz Tile, Inc. v. Krech</i> , 136 Wn.App. 899, 906, 151 P.3d 219 (2007).....	15
<i>Marriage of Wherley</i> (1983) 34 Wn.App. 344, 661 P.2d 155.....	10
<i>Morcom v. Brunner</i> , 30 Wn.App. 532, 635 P.2d 778 (1981).....	14
<i>Morgan v. Burks</i> , 17 Wn.App 193, 198, 563 P.2d 1260 (1977).....	7
<i>Reese v. Thurston County</i> , 154 Wash. 617, 623, 283 P. 170 (1929).....	13
<i>Streater v. White</i> , 26 Wn.App. 430, 435, 613 P.2d 187 (1980).....	15
<i>Union Bank, N.A. v. Vanderhoek Associates, LLC</i> , 191 Wn.App. 836, 365 P.3d 223 (2015).....	6

Statutes

RCW 4.84.185	5
RCW 84.56.050	4
RCW 84.64	3, 11, 12, 14
RCW 84.64.050	12, 14
RCW 84.64.080	11
RCW 84.64.080(3).....	11

Rules

CR 11 5
CR 12(b)(6)..... 1, 5, 9
CR 60 5, 6
CR 60(b)..... 6, 7, 8, 10
CR 60(b)(1-11)..... 8
CR 60(b)(5)..... 1, 2, 3, 6, 7, 8, 12, 14, 16
CR 60(e)(1) 7, 8, 9
RAP 18.9..... 2, 15
RAP 5.1(a) 2
RAP 5.2(a) 2
RAP 5.2..... 9, 13

Constitutional Provisions

WA. St. Const. Art. IV Sec. VI..... 11

A. INTRODUCTION

This appeal arises from the trial court's denial of Defendant David Darby's CR 60(b)(5) motion to vacate a final judgment of foreclosure in a RCW 84.64 tax foreclosure proceeding. This proceeding followed Mr. Darby's refusal to pay more than \$15,000 in delinquent real property taxes, interest and penalties based upon his belief that his real property was not subject to the taxation laws of the State of Washington. This proceeding culminated in an August 15, 2014 *Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000* ("Judgment of Foreclosure"). This Judgment of Foreclosure was never appealed by Mr. Darby.¹

Mr. Darby is currently appealing the trial court's May 20, 2016, denial of his CR 60(b)(5) motion to set aside the trial court's August 15, 2014 Judgment of Foreclosure. As set forth herein, the trial court properly denied Mr. Darby's motion because he failed to set forth any legal or

¹ Instead of appealing the August 15, 2014 Judgment of Foreclosure, Mr. Darby filed a *new* action in Clark County Superior Court seeking to invalidate the foreclosure by claiming that the trial court judge had erred by failing to account for his "sovereign state citizen" status. The Superior Court dismissed Mr. Darby's collateral action pursuant to CR 12(b)(6), found that it was frivolous, and imposed monetary sanctions upon Mr. Darby. This Court affirmed the Superior Court's dismissal of the collateral action and the imposition of sanctions in an un-published decision. (See Appendix A, Washington Court of Appeals Unpublished Slip Opinion in Case # 47285-6-II (2016)). Following this Court's decision affirming the dismissal of the collateral action, Mr. Darby filed the CR 60(b) motion that is the subject of this appeal.

factual basis to support vacating the underlying judgment of foreclosure. Specifically, Mr. Darby did not present any authority supporting his contention that the judgement was void and/or that the trial court somehow lacked jurisdiction to enter judgment in the foreclosure proceedings. Instead, Mr. Darby merely re-stated his long-standing claim that he is a “sovereign state citizen” and vaguely asserted that the trial court committed a legal error when it entered the underlying August 15, 2014 Judgment of Foreclosure.²

Ultimately, the trial court correctly rejected Mr. Darby’s totally unsupported and procedurally improper arguments and correctly denied his CR 60(b)(5) motion to vacate the August 15, 2014 Judgment of Foreclosure. This Court should affirm the trial court’s decision. Moreover, this Court should find that Mr. Darby’s appeal is frivolous and impose an appropriate sanction pursuant to RAP 18.9.

B. RESPONSE TO ASSIGNMENT OF ERRORS

Clark County rejects Mr. Darby’s statement of the issues and presents the following in lieu thereof:

1. Whether the trial court properly denied Mr. Darby’s CR 60(b)(5) motion to set aside the August 15, 2014 Judgment of Foreclosure when Mr. Darby did not present any relevant authority to support his motion.

² Pursuant to RAP 5.1(a) and 5.2(a), the deadline to appeal the August 15, 2014 Judgment of Foreclosure expired 30 days after the entry of judgment, on September 14, 2014.

2. Whether the trial court properly denied Mr. Darby's CR 60(b)(5) motion to set aside the August 15, 2014 Judgment of Foreclosure when the Washington State Constitution and RCW 84.64 provided the trial court with original jurisdiction and when Mr. Darby was personally served in accordance with RCW 84.64.050.

C. STATEMENT OF THE CASE

1. Tax Foreclosure Proceedings and Judgment of Foreclosure

On January 7, 2012, pursuant to RCW 84.64.050.080, the Clark County Treasurer filed a Certificate of Delinquency in Clark County Superior Court, which initiated tax foreclosure proceedings against Mr. Darby and other defendants whom had not paid real property taxes in more than three years. (CP 615-703). On October 16, 2012, the Clark County Treasurer filed an Amended Certificate of Delinquency along with a Notice and Summons of Intention to File for Judgement Foreclosing Tax Liens. (CP 710-1002; 704-708). With respect to Mr. Darby, the certificates of delinquency document the undisputed fact that he failed to pay more than three years of real property taxes between, interest and penalties assessed and owing upon real property that he owned in Clark County. (CP 701; 993). Throughout the tax foreclosure proceedings, Mr. Darby argued, without any controlling legal authority, that his alleged

possession of a federal land patent and claimed status as a “sovereign state citizen” meant that he was not subject to the real property taxation laws of the State of Washington. (CP 476; 554-558).

On June 23, 2014, Clark County moved for summary judgment against Mr. Darby in this case and sought a Judgment of Foreclosure authorizing the Clark County Treasurer to foreclose upon and auction Mr. Darby’s property pursuant to RCW 84.56.050. (CP 1109-1117). Neither Mr. Darby’s response to this motion or his cross motion for summary judgment disputed any of the material facts of the case. (CP 472-475; 476-477; 554-558). Specifically, Mr. Darby did not dispute that there were more than three years of delinquent real property taxes, interest, and penalties owing on the subject property that he owned in Clark County Washington. (CP 472-475; 476-477; 554-558).

On August 1, 2014, Clark County’s motion for summary judgment was heard by the trial court. (CP 1109-1117). Mr. Darby did not attend this hearing, but instead sent an unidentified person who claimed to be “The Grand Jury Foreman” of Clark County to read a statement to the Court from the gallery.³ (CP 1124; CP 1134-1135; 5/20/2016 Report of Proceedings, p. 5 ll. 19-24). The trial court ordered this person not to

³ The self-proclaimed “Grand Jury Foreman” of Clark County subsequently identified himself to the Court as Lowell Miller in an August 11, 2014 letter to the Court demanding a copy of the trial court judges surety bond (CP 563).

approach the bench and to leave the courtroom after they would not stop disrupting the proceedings. (CP 1124) Following this disruption, the trial court granted Clark County's motion for summary judgment. (CP 1129-1130). On August 15, 2014, the trial court entered a Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000 (Mr. Darby's property). (CP 1133-1135).

2. Mr. Darby's frivolous collateral civil action seeking to invalidate foreclosure proceedings

On September 11, 2014, Mr. Darby filed a new civil action ("collateral case") in Clark County Superior Court which reiterated his claimed "sovereign citizen" status and sought to invalidate the trial court's judgment of foreclosure pursuant to CR 60. (CP 1145-1151; *See also* Appendix A, *Darby v. Clark County*, Washington Court of Appeals Unpublished Slip Opinion in Case # 47285-6-II (2016). On Clark County's CR 12(b)(6) motion, the trial court dismissed this collateral action and found that it was frivolous pursuant to CR 11 and RCW 4.84.185. *Id.* Mr. Darby appealed and on March 8, 2016 this Court affirmed the trial court's decision. *Id.*

3. Mr. Darby's CR 60(b)(5) motion to vacate the August 15, 2014 Judgment of Foreclosure

On May 2, 2016, Mr. Darby filed a "Collateral Attack to Vacate a Void Order and Judgment of Foreclosure" in this case seeking to vacate the August 15, 2014 Judgment of Foreclosure pursuant to CR 60(b)(5). (CP 590-605) Clark County filed a response to this motion on May 17, 2016. (CP 1137-1141).

On May 20, 2016, the trial court heard Mr. Darby's CR 60(b)(5) motion. (CP 606; *See also* 5/20/16 Report of Proceedings). Mr. Darby was given the opportunity to present his argument and he stated that he would prefer to rest on his brief. *Id.* Subsequently, the trial court denied Mr. Darby's CR 60(b)(5) motion to vacate the August 15, 2014 Judgment of Foreclosure. *Id.*

D. ARGUMENT

1. Standard of Review

Generally, the denial of a CR 60(b) motion for relief from a judgement is reviewed under an abuse of discretion standard. *Union Bank, N.A. v. Vanderhoek Associates, LLC*, 191 Wn.App. 836, 365 P.3d 223 (2015), citing *Estate of Treadwell v. Wright*, 115 Wn.App. 238, 249, 61 P.3d 1214 (2003) ("Generally, we review a trial court's order to grant or deny a motion to vacate under CR 60(b) for an abuse of discretion.").

An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court. *Morgan v. Burks*, 17 Wn.App 193, 198, 563 P.2d 1260 (1977). However, Washington appellate courts have held that a trial court's denial of a CR 60(b)(5) motion based upon a claim that a judgment is void for lack of jurisdiction is reviewed *de novo*. *Ahten v. Barnes*, 158 Wn.App. 343, 350, 242 P.3d 35 (2010).

In this case, Mr. Darby's CR 60(b) motion does not state a specific jurisdictional challenge or provide any supporting factual basis. However, the *de novo* standard of review likely applies due to Mr. Darby's vague and conclusory contention that the judgment is void, presumably for lack of jurisdiction. Regardless, of the standard of review that is applied, the trial court's decision should be affirmed because Mr. Darby's CR 60(b)(5) motion did not set forth any factual or legal basis to support its contention that the trial court lacked jurisdiction or the relief requested as required by CR 60(b) and CR 60(e)(1). Additionally, both Washington law and the trial court record confirm that the trial court had jurisdiction when it entered the August 15, 2014 Judgment of Foreclosure.

2. The trial court properly denied Mr. Darby's CR 60(b)(5) motion because it did not set forth any relevant facts or legal authority to support its contention that the August 15, 2014 Judgment of Foreclosure was void.

A party is only entitled to relief from a judgment pursuant to CR 60(b) under certain limited circumstances. *See* CR 60(b)(1-11) The party seeking relief from a judgment must do so by motion and must therefore set forth a factual and legal basis to support the relief requested. CR 60(e)(1). In particular, CR 60(e)(1) addresses the procedure for vacating a judgment and provides in relevant part that:

“Application [to vacate a judgment] shall be made by motion filed in the cause **stating the grounds upon which relief is asked, and supported by affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based**, and if the moving party be a defendant, the facts constituting a defense.”

CR 60(e)(1). (emphasis added).

The Washington Supreme Court has explicitly held that “CR 60(b) does not authorize vacation of judgments except for reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings; thus, errors of law are not correctable through CR 60(b) but, rather, direct appeal is the proper means of remedying legal errors.” *Burlingame v. Consolidated Mines & Smelting Co.* 106 Wn.2d 328, 722 P.2d 67 (1986).

Contrary to CR 60, Mr. Darby initially filed a *new* collateral cause of action that attempted to vacate the judgment of foreclosure. The trial court dismissed this cause of action pursuant to CR 12(b)(6) and this Court affirmed, holding in relevant part that it was improper for Mr. Darby to have filed a new cause of action to seek this relief. (*See* Appendix A, Washington Court of Appeals Unpublished Slip Opinion in Case # 47285-6-II (2016).

Following this Court's decision, Mr. Darby filed a document entitled "Collateral Attack to Vacate a Void Order and Judgment of Foreclosure" in this case. (CP 590-605). This document contains a declaration of Mr. Darby's claimed status as a "Sovereign State Citizen," unsupported claims that the trial court treated him unfairly and/or committed a legal error in granting Clark County's motion for summary judgment, which Washington courts have repeatedly held is properly addressed through appeal and is not a basis to vacate a judgment pursuant to CR 60.⁴ (CP 590-605). In addition, Mr. Darby's pleading does not set forth any factual basis to support his apparent claim that the trial court lacked jurisdiction in the present case, which is required by CR 60(e)(1). Specifically, Mr. Darby's pleading did not set forth any relevant evidence, or a coherent argument, to support his contention that the trial court lacked

⁴ Mr. Darby did not appeal the trial court's August 15, 2014 Judgment of Foreclosure and, pursuant to RAP 5.2, the deadline to do so expired on September 14, 2014.

jurisdiction. Finally, as set forth below, there were no facts in the trial court record from which the court could conclude that it lacked jurisdiction in the case.⁵ For these reasons, the trial court properly denied Mr. Darby's motion to vacate the judgment of foreclosure and this Court should affirm.

3. The record demonstrates that the trial court had jurisdiction in the tax foreclosure proceeding.

Notwithstanding the insufficiency of Mr. Darby's vague and unsupported challenges to the trial court's jurisdiction, which independently serve as a basis for denial, the record demonstrates that the trial court had jurisdiction over the tax foreclosure proceedings.

a. The superior court had original jurisdiction over the subject tax foreclosure proceedings.

Washington Superior Courts have original jurisdiction over all cases involving the title or possession of real property in the State of Washington, the assessment and collection of taxes, as well as any other case or proceeding where jurisdiction has not vested in some other court.

⁵ It is unclear from Mr. Darby's Opening Brief whether he has cited any additional grounds for vacating the August 15, 2014 Final Order and Judgment of Foreclosure, however the Washington Court of Appeals has held that a ground for vacating a judgment under CR 60(b) may not be raised for the first time on appeal. *Marriage of Wherley* (1983) 34 Wn.App. 344, 661 P.2d 155.

See WA. St. Const. Art. IV Sec. VI. In particular, the Washington State Constitution provides in relevant part:

“The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, [...] and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law [...]. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court [...].”

Id. (emphasis added)..

Consistent with the Washington State Constitution’s grant of original jurisdiction, RCW 84.64.080 explicitly vests exclusive jurisdiction over foreclosure proceedings with the superior court:

“(3) The [superior] court must give judgment for the taxes, interest, and costs that appear to be due upon the several lots or tracts described in the notice of application for judgment. The judgment must be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs. The court must order and direct the clerk to make and enter an order for the sale of the real property against which judgment is made, or vacate and set aside the certificate of delinquency, or make such other order or judgment as in law or equity may be just. **The order must be signed by the judge of the superior court** and delivered to the county treasurer. The order is full and sufficient authority for the treasurer to proceed to sell the property for the sum set forth in the order and to take further steps provided by law.”

RCW 84.64.080(3). (emphasis added).

Moreover, RCW 84.64.050 proscribes the precise language of the notice that shall be issued in connection with foreclosure proceedings, which also specifies that jurisdiction of the action shall rest in the superior court. RCW 84.64.050.

In the present case, the Clark County Superior Court (also the “trial court”) obtained jurisdiction when the Clark County Treasurer commenced foreclosure proceedings pursuant to RCW 84.64.050 by filing a Certificate of Delinquency with the Clerk of the Clark County Superior Court on September 7, 2012. (CP 615-703). The Clark County Treasurer subsequently filed an Amended Certificate of Delinquency and Notice and Summons on October 17, 2012. (CP 704-1002). Pursuant to RCW 84.64.050, each of these certificates of delinquency identified and described Mr. Darby’s property (tax parcel 264614000), which is located in Clark County, Washington, and details the delinquent taxes, interest and penalties owing at the time of filing. (CP 615-1002; 701; 993). As set forth below, it is undisputed that Mr. Darby owned tax parcel 264614000 and that he was personally served with a copy of the Notice and Summons and the Amended Certificate of Delinquency at 11:15am on November 30, 2012. (CP 1107-1108).

Contrary to Mr. Darby’s vague jurisdictional claims in his CR 60(b)(5) motion and now on appeal, the superior court properly exercised

its constitutional and statutory jurisdiction when it granted summary judgment in favor of Clark County on August 1, 2014 and subsequently entered a Judgment of Foreclosure on August 15, 2014 after affording Mr. Darby a full and fair opportunity to be heard.⁶ (CP CP 1124; CP 1134-1135; 5/20/2016 Report of Proceedings, p. 5 ll. 19-24). Mr. Darby did not appeal the trial court's August 15, 2014 Judgment of Foreclosure and, pursuant to RAP 5.2, the deadline to do so expired on September 14, 2014.

b. The superior court had *in rem* jurisdiction over the subject property Mr. Darby was personally served pursuant to RCW 84.64.050

A superior court exercising its constitutional and statutory jurisdiction in a foreclosure proceeding has *in rem* jurisdiction. *Reese v. Thurston County*, 154 Wn. 617, 623, 283 P. 170 (1929). (“these are [tax foreclosure] proceedings in rem and regulations attending the collection of public revenue. [...]. He [the citizen] must take notice that by law his property is assessed every year; that the tax is due and delinquent at a fixed time, is a lien upon his land, and, if not paid, that the lien shall be enforced by foreclosure proceedings and in the manner provided by

⁶ Mr. Darby filed a response to Clark County's Motion for Summary Judgment but did not appear at the August 1, 2014 hearing when the motion was noted for oral argument, instead sending the self-proclaimed “Grand Jury Foreman” of Clark County to read a statement on his behalf.

statute.”) Moreover, a superior court presiding over a tax foreclosure proceeding obtains jurisdiction if the Clark County Treasurer complies with the statutory notice procedures set forth in RCW 84.64.050. *Homeowners Solutions, LLC v. Nguyen*, 148 Wn.App. 545, 550, 200 P.3d 743 (2009); *Morcom v. Brunner*, 30 Wn.App. 532, 635 P.2d 778 (1981). This statute authorizes both personal and alternative forms of service in order to notify interested parties of the tax foreclosure proceedings. *See* RCW 84.64.050.

In the present case, it is undisputed that Mr. Darby’s former property (tax lot 264614000), which was the subject of the foreclosure proceedings, was located in Clark County, Washington. (CP 701-793, 553-562). Moreover, it is undisputed that, pursuant to RCW 84.64.050, Mr. Darby was personally served with a copy of the Notice, Summons and Certificate of Delinquency on November 30, 2012 at 11:15am. (CP 1107-1108). Mr. Darby’s CR 60(b)(5) motion did not challenge or refute any of these, or any other, jurisdictional facts and does not otherwise set forth a coherent argument supporting his apparent claim that the court lacked jurisdiction or that the August 15, 2014 judgment of foreclosure is void. (CP 590-605). Accordingly, the trial court properly denied Mr. Darby’s CR 60(b)(5) motion. This Court should affirm the trial court’s decision.

E. MOTION FOR SANCTIONS

This Court should impose an appropriate monetary sanction upon Mr. Darby and award Clark County its attorney's fees and costs in connection with this frivolous appeal. RAP 18.9(a) provides that the Court may impose sanctions against a party that files a frivolous appeal.

This rule provides in relevant part that:

“The appellate court on its own initiative or on the motion of a party may order a party [...] who uses these rules for the purpose of delay, **files a frivolous appeal**, or fails to comply with these rules **to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.** [...]”

RAP 18.9 (emphasis added).

Washington appellate courts have repeatedly held that an appeal is “frivolous” and subject to sanction under RAP 18.9 if “there are no debatable issues upon which reasonable minds might differ, and it [the appeal] is so totally devoid of merit there was no reasonable possibility of reversal.” *Granville Condominium Homeowners Ass'n v. Kuehner*, 177 Wn.App.543, 557, 312 P.3d 702 (2013); *Streater v. White*, 26 Wn.App. 430, 435, 613 P.2d 187 (1980); *Lutz Tile, Inc. v. Krech*, 136 Wn.App. 899, 906, 151 P.3d 219 (2007); *Kinney v. Cook*, 150 Wn.App. 187, 194, 208 P.3d 1 (2009).

In the present case, Mr. Darby has not presented any relevant legal authority, evidence, or even coherent argument supporting his apparent claim that the trial court lacked jurisdiction in the foreclosure proceedings and/or erred in denying his CR 60(b)(5) motion. Accordingly, Mr. Darby has not presented a debatable issue upon which reasonable minds might differ or which could give rise to a reasonable possibility of reversal. Clark County respectfully requests that this Court impose an appropriate monetary sanction upon Mr. Darby and award Clark County its reasonable attorney fees and costs in connection with this frivolous appeal.

F. CONCLUSION

The record in this case conclusively demonstrates that the trial court acted pursuant to its constitutional and statutory jurisdiction in the underlying subject tax foreclosure proceedings. Mr. Darby's CR 60(b)(5) motion does not set forth any facts or authority to support the contention that the judgment of foreclosure is void or that the trial court lacked the necessary jurisdiction. This Court should affirm the trial court's denial of Mr. Darby's CR 60(b)(5) motion, award Clark County its reasonable attorney fees and costs in connection with this appeal, and impose an appropriate monetary sanction upon Mr. Darby pursuant to RAP 18.9.

Respectfully submitted this 22nd day of December, 2016.

RESPECTFULLY SUBMITTED:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington



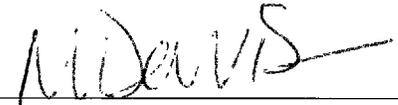
~~Taylor Hallyik~~, WSBA #44963
Deputy Prosecuting Attorney
Of Attorneys for Respondent Clark County

CERTIFICATE OF SERVICE

I, Nicole Davis, hereby certify that on this 23rd day of December, 2016, I served by mail and email a copy of the foregoing *Brief of Respondent Clark County, Washington*, to Plaintiff, Pro Se, as follows:

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Nicole Davis

APPENDIX A

March 8, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID A. DARBY, Sovereign State Citizen
pursuant to Article 2, Section 3 of 1878
Constitution of the State of Washington,

Appellant,

v.

CLARK COUNTY, a political subdivision of
the State of Washington, including the
following officials acting for the County:

Grey Kimsey, Clark County Auditor
Doug Lasher, Clark County Treasure
Peter Van Nortwick, Clark County Assessor
David Madore, Clark County Commissioner
Anthony Golik, Clark County Prosecutor
Taylor R. Hallvik, Clark County Deputy
Prosecutor
Garry Lucas, Sheriff Clark County,

Respondents.

No. 47285-6-II

UNPUBLISHED OPINION

LEE, J. — David Darby appeals the superior court’s dismissal of his claims against Clark County, arguing that the superior court erred because it did not consider his claimed status as a “private sovereign free man” and “sovereign state citizen.” We disagree and hold that the superior court did not err because (1) Darby’s attempt to vacate an order and judgment filed under a separate cause number failed to comply with the requirements of CR 60(e)(1); and (2) Darby’s complaint failed to allege a cause of action upon which relief could be granted. We affirm.

FACTS

On September 11, 2014, Darby filed two documents in the Clark County Superior Court and the case was assigned cause number 14-2-02637-8.¹ The filing attempted to enter civil complaints against Clark County and several named county officials.² The filing also contained a CR 60(b)(5) motion to vacate an “Order and Judgment for Foreclosure” entered on August 15, 2014 in cause number 12-2-03432-3,³ alleging that the foreclosure was void for lack of jurisdiction because Darby was a “private sovereign free man” and a “Sovereign State Citizen.” Br. of Appellant at 18; Clerk’s Papers (CP) at 1, 8. The filing stated the requested relief was:

1. Plaintiff moves that the court vacate the void order and judgment for foreclosure in case number 12-2-03432-3.
2. Restore all rights to the property to the plaintiff and remove the property from the county [t]ax rolls.
3. Plaintiff moves this court to seal this case for private and personal reasons and safety.

CP at 8.

¹ Darby filed a document titled “Plaintiff Moves the Court for a Complaint for a Collateral attack to vacate a void Order and Judgment of Foreclosure” and a document titled “Plaintiff’s Mandatory Judicial Notice.” CP at 1-18. The “Order and Judgment of Foreclosure” that Darby sought to vacate was a “Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000” entered in Clark County Superior Court under cause number 12-2-03432-3. CP at 22-23.

² Those named officials are: Greg Kimsey, Clark County Auditor; Doug Lasher, Clark County Treasurer; Peter Van Nortwick, Clark County Assessor; David Madore, Clark County Commissioner; Edward L. Barnes, Clark County Commissioner; Anthony Golik, Clark County Prosecutor; Taylor R. Hallvik, Clark County Deputy Prosecutor; and Garry Lucas, Clark County Sheriff.

³ The order and judgment entered under cause number 12-2-03432-3 was not appealed.

The referenced “Order and Judgment of Foreclosure” is the “Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000” entered by Clark County Superior Court in August 2014 under cause number 12-2-03432-3. CP at 22. That order and judgment authorized the Clark County Treasurer “to conduct an online tax foreclosure sale of Tax Parcel No. 264614000 to collect delinquent real property taxes, interest, penalties and fees in the amount of \$22,988.71.” CP at 23. Tax Parcel 264614000 is a real property parcel Darby had owned, but refused to pay taxes on, in Clark County. Darby refused to pay taxes because he believes his claimed status as a “private sovereign free man” meant that the county did not have a right to collect taxes on his property. CP at 2; Reply Br. of Appellant at 4.

In response to Darby’s filing, the County filed “Defendants’ Motion to Dismiss Plaintiff’s Complaint Pursuant to CR 12(b)(6) and Defendants’ Motion for Sanctions Pursuant to CR 11 and RCW 4.84.185.” Suppl. CP at 61. Darby did not file a response to the County’s motions. After a hearing on the County’s motions, the superior court granted the County’s motions, dismissed Darby’s complaint without prejudice, imposed CR 11 sanctions against Darby, and awarded the County statutory attorney fees as the prevailing party. Darby appeals.

ANALYSIS

A. CR 60(b)(5) MOTION TO VACATE

Darby argues the superior court erred in dismissing his CR 60(b)(5) motion because the superior court did not consider the cases and constitutions⁴ he cited. We hold that Darby’s CR

⁴ Darby cites to the “1787 Constitution for the United States” and the “1878 Constitution of the State of Washington.” Br. of Appellant at 17-19.

No. 47285-6-II

60(b)(5) motion could not be granted because it sought to vacate an order from a different case. Therefore, the superior court did not err in dismissing Darby's CR 60(b)(5) motion.

CR 60(b)(5) states: "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) The judgment is void." CR 60(e)(1) provides the procedure for vacating a judgment under CR 60, and requires that the "Application [to vacate the judgment] shall be made by motion filed in the cause."

The "Final Order and Judgment of Foreclosure Authorizing the Sale of Tax Parcel 264614000" was filed under cause number 12-2-03432-3. CP at 22-23. That order, and the associated order granting Clark County's motion for summary judgment, authorized Clark County to conduct an "online tax foreclosure sale of tax parcel 264614000 to collect delinquent real property taxes that are owed to date in connection with this parcel by David A. Darby." CP at 21. Darby did not appeal either order. Instead, Darby filed a CR 60(b)(5) motion under a *new* cause number, 14-2-02637-8, and argued that the order from cause number 12-2-03432-3 is void for lack of jurisdiction.

Darby's CR 60(b)(5) motion could not be granted by the superior court because, contrary to the requirements of CR 60(e)(1), the motion was not "filed in the cause" (i.e. filed under the cause number that the challenged order and judgment was filed). CR 60(e)(1). Darby filed his motion under cause number 14-2-02637-8, but his motion sought to vacate an order entered in cause number 12-2-03432-3. Thus, Darby's motion cannot be granted because it did not comply with CR 60(e)(1). The superior court did not err in dismissing Darby's CR 60(b)(5) motion.

B. COMPLAINT

Darby argues the superior court erred in dismissing his complaint because the superior court did not consider his claimed status of a “private sovereign free man.” Br. of Appellant at 19. We disagree.⁵

1. Standard of Review

CR 12(b)(6) permits a trial court to dismiss a complaint when it fails to “state a claim upon which relief can be granted.” We review a trial court’s CR 12(b)(6) dismissal de novo. *Nissen v. Pierce County*, 183 Wn.2d 863, 872, 357 P.3d 45 (2015).

Dismissal under CR 12(b)(6) is appropriate only if the trial court concludes beyond a reasonable doubt that, on the face of the plaintiff’s complaint, he or she cannot prove any set of facts that would justify recovery. *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014). The trial court is to take all facts alleged in the complaint as true and may consider hypothetical facts that support the plaintiff’s claims. *FutureSelect*, 180 Wn.2d at 962. If a plaintiff’s claim remains legally insufficient, even under hypothetical facts, dismissal under CR 12(b)(6) is appropriate. *FutureSelect*, 180 Wn.2d at 963.

2. Complaint Failed to State a Claim Upon Which Relief Can Be Granted

Darby’s September 11 filing is titled as a complaint, names defendants, and has its own cause number. However, the filing does not allege a cause of action. Complaints failing to allege

⁵ To the extent Darby argues that the superior court should have allowed his claim because of his status as a “private sovereign free man,” this argument fails. A CR 12(b)(6) determination is not based solely on a party’s status. The validity of Darby’s claimed status alone does not create a cause of action and the relief he requested could not be provided by the court.

No. 47285-6-II

“a claim upon which relief can be granted” are properly dismissed. CR 12(b)(6); *Nissen*, 183 Wn.2d at 872.⁶

Moreover, the superior court cannot provide the relief Darby requested. Darby’s filing asked the court to: (1) vacate the order and judgment of foreclosure in a different case; (2) return property to him that had been foreclosed upon in a different case; (3) remove the returned property from Clark County tax rolls; and (4) seal the current case. First, as discussed above, Darby sought to vacate an order and judgment entered under a different cause number that was never appealed. CR 60(e)(1) sets forth the requirements to accomplish what Darby was requesting. Darby failed to comply with the requirements of CR 60(e)(1); therefore, the superior court could not provide the relief that Darby sought. Second, Darby sought to have returned to him property that had been foreclosed upon in a different case, and then have that property removed from the county tax rolls. These requests were premised on Darby’s contention that the order and judgment entered in cause number 12-2-03432-3 was void. The complaint provided no legal basis upon which a superior court could “undo” an order and judgment entered in a different cause number that was never appealed. Finally, Darby sought to seal the case he filed under cause number 14-2-02637-8. The complaint provides no facts or legal basis to support this request. There is merely the statement that “Plaintiff moves this court to seal this case for private and personal reasons and safety.” CP at 8. Thus, because there are no set of facts in the complaint that could justify sealing the case,

⁶ Darby also argues that there were unsworn declarations provided by and relied upon by the County in this case. To the extent unsworn declarations were provided or relied upon, such provision and reliance is immaterial in a CR 12(b)(6) analysis because the superior court takes all facts Darby alleges in his complaint as true when determining whether a cause of action is stated. *FutureSelect*, 180 Wn.2d at 962.

No. 47285-6-II

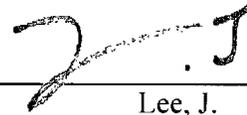
there is no relief the superior court could provide. The superior court's dismissal under CR 12(b)(6) was proper.

C. CR 11 SANCTIONS AND RCW 4.84.185 FEES

Darby does not assign error to or present argument regarding the superior court's imposition of CR 11 sanctions and RCW 4.84.185 fees. "Appellate courts will only review a claimed error if it is included in an assignment of error, or clearly disclosed in the associated issue included in the brief." *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 336, 798 P.2d 1155 (1990). Therefore, we do not consider whether the superior court abused its discretion in imposing CR 11 and RCW 4.84.185 fees against Darby.

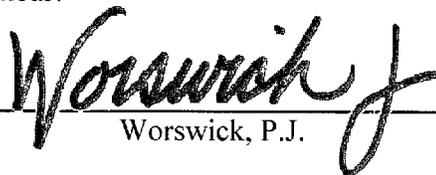
We affirm the trial court's dismissal of Darby's complaint.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Lee, J.

We concur:



Worswick, P.J.



Melnick, J.

CLARK COUNTY PROSECUTOR

December 23, 2016 - 2:14 PM

Transmittal Letter

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Court of Appeals Case Number: 49023-4

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