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No. 51506-7-II

(Thurston County Cause No. 17-2-06110-34)

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

BRENNAN HEATING AND AIR CONDITIONING LLC, a Washington
limited liability company,

Appellee,

v.

JEFFREY MARK McMEEL aka "The McMeel Estate,"

Appellant.

BRIEF OF APPELLEE

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TABLE OF CONTENTS

Table of Authorities	ii
I. Introduction	1
II. Statement of the Case.....	1
III. Argument	2
A. The trial court properly exercised its subject matter jurisdiction by hearing the underlying matter.....	2
B. The trial court properly exercised personal jurisdiction over Mr. McMeel.....	4
C. The trial court’s judgment and award of attorney fees and costs is supported by substantial evidence.....	6
D. Mr. McMeel’s other scatter-shot arguments do not warrant reversal.	8
IV. McMeel’s request to supplement the record	9
V. Oral Argument	9
VI. Request for Attorney Fees and Costs	9
VII. Conclusion.....	10

TABLE OF AUTHORITIES

Cases

<i>Barrett v. Weyerhaeuser Co. Severance Pay Plan</i> , 50 Wn. App. 630, 700 P.2d 338 (1985).....	8
<i>Cole v. Harveyland, LLC</i> , 163 Wn. App. 199, 258 P.3d 70 (2011).....	2, 3
<i>Daimler AG v. Bauman</i> , 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014).....	4
<i>Dougherty v. Dep't of Labor & Indus.</i> , 150 Wn.2d 310, 76 P.3d 1183 (2003).....	2
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).....	4
<i>In re Marriage of McDermott</i> , 175 Wn. App. 467, 307 P.3d 717, review denied, 179 Wn.2d 1004 (2013).....	3
<i>In re Welfare of Todd</i> , 68 Wn.2d 587, 414 P.2d 605 (1966).....	6
<i>Keever & Assocs., Inc. v. Randall</i> , 129 Wn. App. 733, 119 P.3d 926 (2005), review denied, 157 Wn.2d 1009 (2006).....	6
<i>McDonald v. Parker</i> , 70 Wn.2d 987, 425 P.2d 910 (1967).....	6
<i>Randy Reynolds & Assocs., Inc. v. Harmon</i> , 1 Wn. App. 239, 404 P.3d 602 (2017), review granted, 418 P.3d 802 (2018).....	5
<i>Rhinevault v. Rhinevault</i> , 91 Wn. App. 688, 959 P.2d 687 (1998), review denied, 137 Wn.2d 1017 (2017).....	6
<i>Scott's Excavating Vancouver, LLC v. Winlock Props., LLC</i> , 176 Wn. App. 335, 308 P.3d 791 (2013) review denied, 179 Wn.2d 1011 (2014).....	6
<i>State v. LG Elecs., Inc.</i> , 186 Wn.2d 169, 375 P.3d 1035 (2016), cert. denied, 137 S. Ct. 648 (2017).....	4

<i>Streater v. White</i> , 16 Wn. App. 430, 613 P.2d 187 (1980), <i>review denied</i> , 94 Wn.2d 1014 (1980).....	9
<i>White v. Kent Med. Ctr., Inc. P.S.</i> , 61 Wn. App. 163, 810 P.2d 4 (1991).....	5

Statutes

RCW 60.70.020	8
RCW 60.70.060(1).....	1, 3
RCW 60.70.060(4).....	3, 9

Other Authorities

14 Karl B. Tegland, Wash. Prac., Civil Procedure § 3.11 (2d ed. 2009).....	4
14 Karl B. Tegland, Wash. Prac., Civil Procedure § 3.13 (2d ed. 2009).....	5

Rules

CR 52	6
RAP 18.1.....	9
RAP 18.9(a).....	9

I. INTRODUCTION

Appellant Jeffrey Mark McMeel appeals from a judgment striking a fraudulent lien he recorded against the personal and real property of his former employer, its affiliate, and their attorneys, as well as an award of attorney fees and costs. Mr. McMeel claims the judgment and fee and cost award should be reversed because the trial court's rulings are void for want of subject matter and personal jurisdiction and for want of substantial evidence. The appeal is without merit because Mr. McMeel seeks to have this Court misapply the law and asks this Court to look beyond the trial court record. Appellee Brennan Heating and Air Conditioning respectfully requests that this Court affirm without oral argument.

II. STATEMENT OF THE CASE

Jeffrey Mark McMeel demanded severance pay after Brennan Heating and Air Conditioning terminated his at-will employment. CP 9-10. When Brennan rejected that demand, Mr. McMeel responded by filing a lien for severance pay in the Office of the Thurston County Recorder. *Id.* The lien lists Brennan, a Brennan business affiliate, and their respective lawyers as debtors and grantors for a sum which exceeds \$10 Million. *Id.* Brennan initiated these proceedings under RCW 60.70.060(1) after Mr. McMeel resorted to extortionate activities in an attempt to collect under the lien. *Id. See also* CP 3-7. Brennan argued

the lien was frivolous (CP 3-7), noted that Mr. McMeel has a history of filing documents which are meritless, vexatious, fraudulent, and serve no proper or legitimate purpose (CP 10; *see also* CP 22-28, 30-31, 33-34), and pointed out that Mr. McMeel had his filing privileges revoked by at least one federal judge (CP 40). The trial court considered the evidence of record, and the argument of the parties, struck the lien, and awarded Brennan its costs and attorney fees. CP 49-50. Mr. McMeel appeals.

III. ARGUMENT

Mr. McMeel contends he should be afforded relief because the trial court's orders and judgment are void for want of subject matter jurisdiction (Appellant's Opening Brief (OB) at 9-13, 15-16, 18, 20-22, 24-29), personal jurisdiction (OB at 14, 17, 23, 26-27), and substantial evidence (OB at 21, 30-32). The appeal fails because it is not supported by the facts or the law.

A. The trial court properly exercised its subject matter jurisdiction by hearing the underlying matter.

Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy. *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 209, 258 P.3d 70 (2011). Superior Courts (and each of their divisions) are granted broad subject matter

jurisdiction under the Washington constitution and exceptions to their broad jurisdictional grant are to be narrowly construed. As one court put it: Superior Courts have jurisdiction over *all cases* in which jurisdiction shall not by law have been vested exclusively in some other court. *In re Marriage of McDermott*, 175 Wn. App. 467, 481, 307 P.3d 717, *review denied*, 179 Wn.2d 1004 (2013).

Suits involving lien-based assertions over real and personal property are not reserved for any specific court and, in fact, Washington law explicitly empowers Washington Superior Courts to hear such matters. RCW 60.70.060(1), for example, permits an individual or entity against whom a nonconsensual common-law lien has been recorded to strike the lien by way of summary proceeding at a hearing in the Superior Court upon an order to show cause. *Id.* If a lien claimant fails to appear or if the trial court determines a lien is invalid, the court shall strike the lien and award costs and attorney fees against the lien claimant. RCW 60.70.060(4). This is what happened in the court below. CP 41-42, 49-50. *See also* 1/26/18 Verbatim Report of Proceedings (VRP) at 3:3-9:10. The argument that the trial court's actions were not supported by subject matter jurisdiction is therefore not persuasive. *Compare* RCW 60.70.060(1) (authorizing summary proceeding) *with* *Cole*, 163 Wn. App. at 209 ("If the type of controversy is within the subject matter

jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.”). *See also, e.g.*, 14 Karl B. Tegland, Wash. Prac., Civil Procedure § 3.11 (2d ed. 2009) (discussing the breadth of the Superior Court’s subject matter jurisdiction).

B. The trial court properly exercised personal jurisdiction over Mr. McMeel.

Whether a court has personal jurisdiction is a question of law reviewed de novo. *See State v. LG Elecs., Inc.*, 186 Wn.2d 169, 1039, 375 P.3d 1035 (2016), *cert. denied*, 137 S. Ct. 648 (2017). General personal jurisdiction subjects a defendant to a suit for any reason within a particular forum. *See Daimler AG v. Bauman*, 571 U.S. 117, 126-27, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014). The ideal forum for asserting general jurisdiction over a defendant is the forum where the defendant is domiciled. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011). Mr. McMeel is domiciled in the State of Washington. *See* CP 36. He calls himself a “Washingtonian” (CP 51, 62), listed a Washington address on the lien at issue (CP 16, 18), and identified locations in Lacey (1/26/18 VRP at 2) and Bellevue, Washington (CP 46-47, 57, OB Cover Page) as his addresses of record. The analysis does not change because an ex parte commissioner (as opposed to a judge) (OB at 10-13) issued some

scheduling orders in this case. Commissioners have authority to perform “practically every judicial function except trial by jury,” Tegland, *supra* at § 3.13, and scheduling proceedings may occur ex parte especially if a litigant has yet to appear. *See Randy Reynolds & Assocs., Inc. v. Harmon*, 1 Wn. App. 239, 248, 404 P.3d 602 (2017), *review granted*, 418 P.3d 802 (2018). Moreover, that Brennan initiated these proceedings through a petition supported by a declaration as opposed to an affidavit (OB at 17-19) did not divest the trial court of personal jurisdiction. “An affidavit is a written declaration of facts, voluntarily made, and confirmed by the oath of the party making it.” The declaration submitted at the outset of this case substantively satisfies each of those requirements. CP 9-11. Finally, Mr. McMeel’s service-of-process arguments (OB at 22-23) do not provide a basis to find that he was not personally subject to the trial court’s jurisdiction. The arguments are raised for the first time on appeal (and are thus waived), *see White v. Kent Med. Ctr., Inc. P.S.*, 61 Wn. App. 163, 172 n.3, 810 P.2d 4 (1991), and Mr. McMeel has failed to designate appropriate portions of the record that would enable review of service-of-process issues (namely, the motion to serve him by certified mail, the trial court’s order granting that motion, and the certificate of service by mail). *See Rhinevault v. Rhinevault*, 91 Wn. App. 688, 692, 959 P.2d 687 (1998) (“[T]he appellant bears the burden of...perfecting his record on appeal so

the reviewing court has before it all the evidence relevant to deciding the issues before it.”), *review denied*, 137 Wn.2d 1017 (2017). The trial court properly exercised personal jurisdiction over Mr. McMeel.

C. The trial court’s judgment and award of attorney fees and costs is supported by substantial evidence.

Mr. McMeel asserts an entitlement to relief because the trial court’s findings of fact and conclusions of law do not comport with CR 52 (OB at 21) and because they are not supported by substantial evidence (OB at 30-23). A trial court complies with CR 52 when the oral and written record are sufficient to permit appellate review. *In re Welfare of Todd*, 68 Wn.2d 587, 608, 414 P.2d 605 (1966). Factual findings are reviewed to determine if they are supported by substantial evidence. *McDonald v. Parker*, 70 Wn.2d 987, 988, 425 P.2d 910 (1967). Substantial evidence is such evidence that would persuade a fair minded person the facts were actually proven. *Keever & Assocs., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005), *review denied*, 157 Wn.2d 1009 (2006). “The party challenging a finding of fact bears the burden of showing that the record does not support it.” *Scott’s Excavating Vancouver, LLC v. Winlock Props., LLC*, 176 Wn. App. 335, 342, 308 P.3d 791 (2013) *review denied*, 179 Wn.2d 1011 (2014).

Here, the written and oral record are sufficient to permit appellate review and substantial evidence supports the trial court's decision to strike the improperly asserted lien and to tax Brennan's costs and attorney fees against Mr. McMeel. The record demonstrates that Brennan established the following through declaration testimony:

- Mr. McMeel was an at-will employee and the terms of his employment agreement did not provide for severance pay.
- Brennan terminated Mr. McMeel's employment after their relationship was no longer beneficial to Brennan.
- Mr. McMeel demanded severance pay, but Brennan rejected that demand.
- Mr. McMeel responded to that refusal by recording a "Claim of Lien for Severance Pay" against Brennan, a Brennan business affiliate, and their respective lawyers.
- The documents Mr. McMeel recorded cite the common law to support his assertion of a lien in an amount that exceeds \$10 Million.
- Mr. McMeel tried to collect under the lien by engaging in extortionate activity.

CP 9-10.

Mr. McMeel did not challenge the authenticity of that declaration testimony, nor did he object to its admission, or seek to controvert that

evidence with his own testimony or the testimony of other witnesses. 1/26/18 VRP at 3:3-9:10. He instead only challenged the Superior Court's authority to proceed with this matter (its subject matter jurisdiction). *See, e.g., id.* at 4:21-6:9. In fact, Mr. McMeel failed to put on evidence of his own *even after the trial judge encouraged him to do so.* *See id.* at 6:23-25. The trial court therefore entered judgment in Brennan's favor. *Id.* at 8:3-6. The judgment refers to the declaration testimony discussed above (CP 49), to the written and oral argument of Brennan's counsel (*id.*), and properly applied the law to the facts. *Compare id. with RCW 60.70.020* (abolishing common-law liens) *and Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 50 Wn. App. 630, 634-35, 700 P.2d 338 (1985) (the right to severance pay exists only as a creature of contract, not the common law). The judgment should be affirmed.

D. Mr. McMeel's other scatter-shot arguments do not warrant reversal.

Mr. McMeel argues reversal is warranted because he is the victim of several identify thefts (OB at 2, 4), because he was trying to attach Brennan's "error" and "omission" insurance (OB at 3), because Brennan's settlement terms were unreasonable (OB at 4), because he was acting in good faith when he first recorded the lien (OB at 5), because the issues presented in this appeal are "political" in nature (OB at 11), because the

State of Washington is an “imposter” state (OB at 16-17), and because the judgment contains a symbol followed by a set of numbers (OB at 31). Collectively these half-baked arguments fail to establish any error by the trial court let alone error that would warrant reversal.

IV. MCMEEL’S REQUEST TO SUPPLEMENT THE RECORD

To the extent Mr. McMeel seeks to supplement the record under RAP 2.4(b), the request (OB at 8-9) should be denied. RAP 2.4(b) does not address a party’s authority to supplement the record upon the filing of their opening brief.

V. ORAL ARGUMENT

Brennan requests that this appeal be set for decision without oral argument.

VI. REQUEST FOR ATTORNEY FEES AND COSTS

Brennan requests an award of attorney fees and costs on appeal. *See* RAP 18.1; RCW 60.70.060(4). Brennan alternatively asserts an entitlement to its costs an attorney fees associated with the proceedings before this Court for having to defend against a frivolous appeal. RAP 18.9(a). *See also Streater v. White*, 16 Wn. App. 430, 434-35, 613 P.2d 187 (1980), *review denied*, 94 Wn.2d 1014 (1980). That Mr. McMeel’s appeal is frivolous is made out by the fact that he has

presented no debatable issues on which reasonable minds may differ and his contentions are devoid of merit.

VII. CONCLUSION

The evidence of record and statutory authority demonstrate that the Superior Court was authorized to hear matters of this subject and demonstrate that the Superior Court was authorized to enter orders which affect Mr. McMeel's legal rights. The facts and the law also demonstrate that the trial court properly exercised that authority by dissolving the lien Mr. McMeel asserted against Brennan and by awarding Brennan its attorney fees and costs. The trial court's judgment should thus be affirmed and Brennan should be awarded the additional costs and attorney fees it incurred on appeal.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 22nd day of June, 2018, I caused a true and correct copy of the foregoing to be emailed and mailed by First Class and Certified Mail to the following:

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Dated this 22nd day of June, 2018, at Seattle, Washington.



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