

**FILED**

APR 17 2013  
COURT OF APPEALS  
STATE OF WASHINGTON

**DIVISION III COURT OF APPEALS  
STATE OF WASHINGTON**

**No. 332641**

**IN RE THE MARRIAGE OF:  
TRACY L. CORNEIL AND CORY S. CORNEIL**

**APPELLANT'S BRIEF**

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Table of Contents

**I. STATEMENT OF FACTS .....1**

**II. IDENTIFICATION OF JUDICIAL ERROR.....2**

**III. STANDARD OF REVIEW .....2**

**IV. LAW & ARGUMENT.....2**

**A. RCW 6.17.020 DOES NOT GRANT THE COURT AUTHORITY TO EXTEND  
A STATUTORY JUDGMENT BEYOND THE INITIAL TEN YEAR PERIOD  
WHEN IT IS REQUESTED THREE YEARS AFTER IT HAS ALREADY  
EXPIRED.....2**

**1. THE TEN YEAR STATUTORY JUDGMENT COMMENCES UPON THE  
ENTRY OF JUDGMENT AND CEASES WITHIN TEN YEARS UNLESS  
EXTENDED WITHIN 90 DAYS OF THE EXPIRATION OF THE FIRST  
TEN YEAR PERIOD.....3**

**2. ANY GARNISHMENT JUDGMENT OBTAINED AFTER NOVEMBER 15,  
2014 ARE VOID UNDER CR 60 BECAUSE THERE IS NO VALID  
JUDGMENT UPON WHICH TO COLLECT AGAINST MS.  
CORNEIL.....5**

**3. GARNISHMENT JUDGMENTS MUST BE OBTAINED PRIOR TO THE  
EXPIRATION OF THE COLLECTION PERIOD.....7**

**B. MS. CORNEIL IS ENTITLED TO ATTORNEY FEES AND COSTS BECAUSE  
MR. CORNEIL HAS OBTAINED “OTHER PROCEEDINGS” TO  
WRONGFULLY EXTEND THE STATUTORY JUDGMENT PERIOD  
UNDER RCW 4.56.210(1) AND FOR CONTROVERSION UNDER RCW  
6.27.230.....7**

**V. CONCLUSION.....8**

**Table of Authorities**

**Washington Supreme Court**

*Hazel v. Van Beek*, 135 Wn.2d 47, 60, 954 P.2d 1301 (1998)..... 4, 5, 6, 8  
*Erwin v. Cotter Health Centers*, 161 Wn.2d 676, 687, 167 P.3d 1112, (2007).....2

**Washington Appeals Court**

*Allstate Ins. Co. v. Khani*, 75 Wn.App 317, 329, 877 P.2d 724 (1994)..... 8  
*Camp Finance, LLC v. Brasington*, 133 Wn.App 156, 165, 135 P.3d 946 (2006)..... 8  
*In re Marriage of Wintermute*, 70 Wn.App. 741, 855 P.2d 1186 (1993) ..... 4  
*Ticor Title Ins. Co. of Cal., Inc. v. Nissell*, 73 Wn.App. 818, 871 P.2d 652 (1994)..... 4

**Rules of Civil Procedure**

CR 60 ..... 6, 7

**Washington Statutes**

RCW 4.56.190 ..... 5  
RCW 4.56.200 ..... 5  
RCW 4.56.210 ..... 5, 6, 8  
RCW 6.17.020 ..... 1, 2, 3, 5, 6  
RCW 6.27.230 .....8

**Rules of Appellate Procedure**

## I. STAMMENT OF THE CASE

On February 28, 2014, Commissioner Grovdahl entered an Order *equitably* extending a *real property lien* to November 15, 2014 which was originally granted in the divorce decree, effectively giving Mr. Corneil an additional three years and five months to collect. CP 45-47.

On August 29, 2014, Mr. Corneil sought and obtained an ex parte order from Commissioner pro tem Kammi M. Smith, which extended the time allowed to collect by granting an additional ten year collection period. CP 51-52 & CP 53-54. The order was allowed pursuant to RCW 6.17.020. CP 51-52 & CP 53-54.

On November 5, 2014, Mr. Corneil filed Writ “E” of Garnishment Continuing Lien on Earnings and served the documents on Costco Wholesale Corporation, Ms. Corneil’s employer. CP 55-58.

On November 25, 2014 Mr. Corneil obtained a judgment on writ “D” in the amount of \$2,532.67 plus \$345.00 cost. CP 61-62.

On March 4, 2015 Mr. Corneil obtained a judgment on writ “E” in the amount of \$934.14 plus \$345.00 cost. CP 80-81.

On April 6, 2015 Ms. Corneil filed an appeal with this court.

## II. IDENTIFICATION OF JUDICIAL ERRORS

The court in this matter made the following errors in this case:

1. The superior court commissioner extended the underlying judgment for an additional ten years, when the request was made three years after the judgment had expired.
2. The superior court granted two garnishment judgments after the equitable period to collect had expired based upon the court granting a new ten year period to collect.

## III. STANDARD OF REVIEW

The process of determining the applicable law and applying it to the facts is a question of law that is reviewed de novo. *Erwin v. Cotter Health Centers*, 161 Wn.2d 676, 687, 167 P.3d 1112 (2007). Here we question whether the garnishment judgment is valid when the ten year statute was not extended in a timely fashion prior to June 6, 2011.

## IV. LAW & ARGUMENT

### **A. RCW 6.17.020 DOES NOT GRANT THE COURT AUTHORITY TO EXTEND A STATUTORY JUDGMENT BEYOND THE INITIAL TEN YEAR PERIOD WHEN IT IS REQUESTED THREE YEARS AFTER IT HAS ALREADY EXPIRED.**

Mr. Corneil was successful in obtaining an *equitable* extension of his real property lien beyond the statutory

judgment period, but the commissioner's decision did not extend the underlying *judgment* beyond the initial ten year period, therefore the ability to collect against Ms. Corneil's wages is void after November 15, 2014. The equitable lien extension provided Mr. Corneil the ability to collect until the collection period expired on November 15, 2014. Because Mr. Corneil failed to obtain an extension of the statutory judgment within 90 days of its expiration (June 6, 2011) the courts ex parte order extending the judgment period for an additional ten year period is void and any garnishment judgment obtained after the expiration of the equitably extended period is also void.

**1. THE TEN YEAR STATUTORY  
JUDGMENT COMMENCES UPON THE  
ENTRY OF JUDGMENT AND CEASES  
WITHIN TEN YEARS UNLESS  
EXTENDED WITHIN 90 DAYS OF THE  
EXPIRATION OF THE FIRST TEN YEAR  
PERIOD.**

Execution upon a statutory judgment is only authorized within ten years of the entry of the judgment. RCW 6.17.020. A judgment against an individual may be extended if within 90 days prior to expiration of the original ten-year period the judgment debtor applies for an additional ten years for collection. RCW 6.17.020(3).

Mr. Corneil argued two cases as support for his claim to *equitably extend the lien*; both cases involved equitable liens that arose out of divorce settlements, similar to what we see in our case. See *In re Marriage of Wintermute*, 70 Wn.App. 741, 855 P.2d 1186 (1993) and *Ticor Title Ins. Co. of Cal., Inc. v. Nissell*, 73 Wn.App. 818, 871 P.2d 652 (1994).

In *Wintermute*, the divorce settlement entitled the husband to a payment of \$12,000 from the wife, due eight years after entry of the settlement. The wife was awarded the family house. The Husband was given a lien on the house to secure the \$12,000 payment. *Wintermute* at 742. In *Ticor*, the wife again retained the house, and the husband received a lien for \$8,000 against the house, payable approximately six years after entry of the divorce decree. *Ticor* at 819.

Both cases held the life of the equitable liens given to the husbands did not begin to run until the liens could be enforced. *Wintermute* at 742 and *Ticor* at 819. The lien's life-spans were tolled between their creation and their dates of enforceability. *Id.*

*Wintermute* and *Ticor* involved *equitable liens*; however, equitable liens are distinct from a statutory judgment. *Hazel v. Van Beek*, 135 Wn.2d 47, 60, 954 P.2d 1301 (1998). The divorce decree is a statutory judgment; the judgment creates a lien right for a definite length of time. *Id.* at 59 and see RCW

4.56.190 , RCW 4.56.200, & RCW 4.56.210. As stated in *Van Beek*,

“A statute creating a lien right for a definite length of time only, is something that is in addition to the cause of action or substantive right in question and is not a statute of limitations, because it does not exist outside the period during which it is conferred.” at 60.

The judgment created by the entry of the divorce decree may not be invoked outside of the period during which it is conferred by the statute. *Id.* This is because outside of the terms of the statute creating the judgment and judgment lien, no judgment or lien exists. *Id.* at. 60-61. A judgment and judgment lien is born by statute, and dies by statute. See RCW 4.56.190 & RCW 4.56.210. *Id.* at. 61.

Commissioner Grovdahl's ruling only extending the equitable lien and, by his order, expired on November 15, 2015, which order was never appealed. CP 45-47. Conversely, the original judgment extension was not sought until August 29, 2014, over three years late. CP 51-52 & CP 53-54. RCW 6.17.020 does not provide an exception to extend judgments for an additional ten year collection period if a party obtains an equitable lien extension after initial expiration.

Therefore, it was improper for Commissioner pro tem Kammi M. Smith to sign an order extending the time period to collect the statutory judgment when it was requested in August

2014 or 90 days prior to the *equitable lien* expiring and not prior to June 6, 2011.

**2. ANY GARNISHMENT JUDGMENT  
OBTAINED AFTER NOVEMBER 15, 2014  
ARE VOID UNDER CR 60 BECAUSE  
THERE IS NO VALID JUDGMENT UPON  
WHICH TO COLLECT AGAINST MS.  
CORNEIL.**

As recited above, the statutory judgment expired ten years after the entry of the judgment and was not extended pursuant to the statutory timeframe. See RCW 4.56.210 & 6.17.020 (1)&(3). CR 60 allows the court to provide relief from certain judgments when 1) the judgment is void, or when 2) there is irregularity in obtaining the judgment.

The judgment on the writs are void because the original judgment expired on June 6, 2011 and the equitable lien expired on November 15, 2014 with no extension granted prior to June 6, 2011. An equitable lien against the property does not extend the statutory judgment. See *Hazel v. Van Beek* at 60.

Mr. Corneil received an ex parte order extending the judgment period on August 29, 2014, which supplied him with the ability to continue collecting for a new ten year period. After receiving the extension he filed a new garnishment on

November 5, 2014 that wouldn't become perfected for three months, well after the expiration of his equitable lien.

When a judgment creditor files a writ of garnishment it assumes there is an existing and valid statutory judgment. RCW 6.27.020(1) "The clerks of the superior courts... may issue writs of garnishment... for the benefit of a judgment creditor who has a judgment unsatisfied". Here, the judgment period expired on June 6, 2011 and was not extended until August 2014. The basis for collection against Ms. Corneil individually died with the expiration of the judgment period. Therefore, any writ filed after the expiration of the judgment period and equitable lien period is based upon an "irregular" affidavit of garnishment stating that a judgment is valid and is owed.

Because there was not a valid judgment or valid equitable lien against Ms. Corneil, it was improper for Mr. Corneil to obtain a judgment garnishing her wages. Under CR 60 the court has the ability to void the collection judgments obtained in this matter after November 15, 2014 and order the return of funds to Ms. Corneil.

**3. GARNISHMENT JUDGMENTS MUST BE  
OBTAINED PRIOR TO THE  
EXPIRATION OF THE COLLECTION  
PERIOD.**

The garnishment must be perfected prior to the expiration of the collection period by obtaining a judgment otherwise the writ for garnishment is avoidable.

In *Van Beek*, the court considered a sheriff's sale of real property where the ten year period expired prior to the confirmation hearing. *Van Beek* at 54-59. The court held in that case confirmation was a necessary step of execution which must occur within the statutory duration of a judgment. *Id.* at 59. See also, *Camp Finance, LLC v. Brasington*, 133 Wn.App 156, 165, 135 P.3d 946 (2006).

Here any garnishment judgment must be obtained prior to November 15, 2015 to be valid and enforceable.

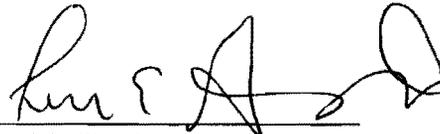
**B. MS. CORNEIL IS ENTITLED TO ATTORNEY FEES AND COSTS BECAUSE MR. CORNEIL HAS OBTAINED “OTHER PROCEEDINGS” TO WRONGFULLY EXTEND THE STATUTORY JUDGMENT PERIOD UNDER RCW 4.56.210(1) AND FOR CONTROVERSION UNDER RCW 6.27.230.**

Controversion of the garnishment proceeding extends to instances of attacking the void judgment and therefore attorney fees are allowed. RCW 6.27.230 and *Allstate Ins. Co. v. Khani*, 75 Wn.App 317, 329, 877 P.2d 724 (1994). RCW 4.56.210(1) disallows lawsuits, actions or other proceedings to extend the judgment lien period and provides for attorney fees and costs.

## V. CONCLUSION

Mr. Corneil obtained an extension of the *equitable lien* in the marital property, but he did not obtain an extension of the statutory judgment within 90 days of June 6, 2011. Therefore any collection judgment obtained after November 15, 2014 are void and the order dated August 29, 2014 renewing a ten year collection period should be vacated.

DATED this 17<sup>th</sup> day of August 2015.



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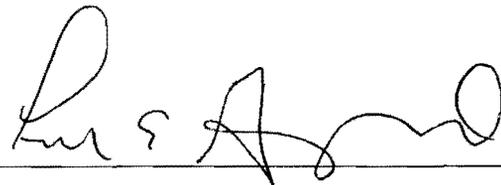
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th day August, 2015 I caused to be served the foregoing by  
3 the method indicated below, and addressed to the following:

4 **ONE COPY TO:**

5 Michael M. Parker  
6 Powell, Kuznetz & Parker  
7 316 W. Boone Ave., Suite 380  
8 Spokane, WA 99201  
9 Facsimile:  
Email:

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy (Facsimile)
- Electronic Transmission (Email)

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14 Robb E. Grangroth