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SEP 15 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

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

No. 32641-III

TRACY CORNEIL

Appellant

vs.

CORY CORNEIL

Respondent

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

A Decree of Dissolution was entered with Spokane County Superior Court on June 22, 2001, terminating the marriage between Appellant and Respondent (CP Pending). Paragraph 3.2 of the Decree of Dissolution ordered Appellant to pay to the Respondent as follows:

“The sum of \$11,250, representing his equity in the family home valued at \$102,000, payable upon sale/or refinance of the home or when Cody Corneil turns 18 years old or graduates high school, whichever occurs later” (CP at 14).

Cody Corneil did not graduate from high school until June of 2012. (CP at 14). On or about November 15, 2004, Appellant refinanced the home, but did not pay Respondent the monies due under the judgment. Respondent executed a release of lien for the purpose of allowing Appellant to refinance the home. (CP at 14). Consequently, the latter of the occurrence of the two events allowing execution of the judgment was not until June, 2012, or eleven years after the Decree was entered. On May 1, 2013, Respondent commenced collection of the judgment after numerous

attempts to resolve the matter with Appellant failed. (CP at 3-6, 14-15). Appellant objected to the issuance of the Writ of Garnishment based upon the fact that the ten-year period for executing on the judgment had expired on June 21, 2011. On December 5, 2013, Respondent filed a Motion (CP at 11-12) and Order to Show Cause (CP at 23-24) directed at Appellant to explain why the judgment should not be enforced and the garnishment continued. Appellant responded that the original judgment had expired on June 21, 2011, and was not valid pursuant to RCW 4.56.210. (CP at 34-38). After hearing oral argument and considering the evidence, Commissioner Steven Grovdahl issued an Order on February 28, 2014, allowing the garnishments to continue and setting the enforcement period for the judgment from November 16, 2004, through November 15, 2014. (CP at 45-47). Commissioner Grovdahl ruled that under the terms contained in the Decree, that the judgment was not enforceable until November 15, 2004 when Appellant refinanced the parties' home and Respondent executed a release of lien. (CP at 46).

Neither party appealed the Order of Commissioner Grovdahl entered on February 28, 2014.

Respondent recommenced garnishments on March 18, 2014, (CP Pending) after the applicable appeal period for entry of Commissioner Grovdahl's Order had expired. Respondent has continued to garnish the wages of Appellant through the date of the filing of this brief.

On August 29, 2014, an order was entered by Pro Tem Commissioner Kammi Mencke Smith extending the enforcement of the judgment for an additional ten years from November 15, 2014, through November 14, 2024. (CP at 51-52). No appeal was made from that order extending the judgment.

Respondent continued to proceed with garnishment when on January 6, 2015, Appellant filed a motion to reconsider the court's August 29, 2014, order and quash garnishments (CP Pending) and accompanying memorandum in support thereof (CP Pending). Appellant requested a hearing regarding the authority of Respondent to continue with garnishments on the judgment. Appellant's motion was specifically to reconsider the order

entered on August 29, 2014, extending the judgment, to quash the writ of garnishment executed on November 5, 2014, and to vacate judgments obtained on garnishments dated March 18, 2014, May 19, 2014, and August 7, 2014. (CP Pending). On January 3, 2015, a hearing on Appellant's Motion was heard before Judge Linda G. Tompkins. On February 20, 2015, Judge Tompkins entered finding of facts and conclusions of law and an order denying Appellant's Motion to Reconsider, to Vacate Judgments, and Quash Writs of Garnishments. (CP Pending). Judge Tompkins further confirmed that Respondent's judgment was enforceable and collectible through November 14, 2024. (CP Pending). No appeal of Judge Tompkins' decision was made. Respondent continued to proceed with the garnishments. On April 6, 2015, Appellant filed a Note of Appeal with Spokane County Superior Court. The Notice of Appeal concerned the Court's decision entered on March 4, 2015, granting Respondent's judgment on Answer and Order to pay Writ 'E' of garnishment continuing lien.

II. STANDARD OF REVIEW

The process of interpretation of Court Rules and Statutes and their applications to a specific set of facts is a question of law subject to de novo review by the appellate court. See *City of College Place v. Staudenmaier*, 110 Wn. App. 841, P.3d 43, review denied, 147 Wn.2d. 1024, 60 P.3d 92 (2002).

III. ARGUMENT

A. APPELLANT'S APPEAL IS UNTIMELY PURSUANT TO RAP 5.2(a).

RAP 5.2(a) states "Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed, or (2) the time provided in section (e)."

RAP 5.2(e) does not apply in this case, and as a result Appellant is required to file an appeal within 30 days of entry of the trial court's decision. Appellant, in her notice of appeal, has indicated that she is appealing a judgment obtain upon Writ 'E' of garnishment entered on March 4, 2015. Appellant did not file the appeal of that judgment

until April 6, 2015, which is more than 30 days after the entry of the judgment to which she is appealing. Failure to meet the requirements of RAP 5.2(a) are fatal to Appellants appeal. *Shaefco, Inc. v. Columbia River Gorge Commission*, 121 Wn.2d 366, 849 P.2d 1225 (1996); *City of Spokane v. Landgren*, 127 Wn. App 1001, 107 P.3d 114 (2015 Div 3).

Commissioner Grovdahl's ruling, dated February 28, 2014, finding the original judgment enforcement period was from November 15, 2004, to November 14, 2014, was not appealed. An Order extending the judgment pursuant to RCW 6.17.020(3) for an additional ten years from November 14, 2024, was timely entered with the trial court on August 29, 2014, and not appealed. CP 51-52

Appellant is requesting the garnishment be quashed and the order extending the judgment entered on August 29, 2014 be voided. Despite this fact, Appellant filed another motion labeled "Motion for Reconsideration" on January 6, 2015 in duplicate attempt to prevent enforcement of Respondent's judgment. (CP Pending). That motion is identical to the Appeal filed in this matter. On February 20, 2015, the trial court, after hearing these same

issues, entered findings of fact and conclusions of law and an order, denying Appellants motions in in their entirety. (CP Pending).

Appellant's appeal is based upon the March 4, 2015, Order granting Respondent a judgment on Answer and Order to Pay (Writ 'E' Continuing Lien). An appeal must be filed within 30 days of the trial courts' decision, RAP 5.2(a). *Seattle Police Officer's Guild v. City of Seattle*, 113 Wn. App. 431, 53 P.3d 1036 (2002). This means Appellant's appeal of the March 4, 2015, decision should have been filed no later than April 3, 2015. Appellant's appeal was filed 33 days after that court's decision. Furthermore, Appellant failed to timely file an appeal at all of the decisions of the trial court of February 28, 2014, August 29, 2014, and February 20, 2015, which addressed the same issues now before this Court. Appellant's Appeal should be dismissed summarily.

B. NO AUTHORITY EXISTS FOR THE APPEAL OF A JUDGMENT ON A WRIT OF GARNISHMENT.

Appellant has failed to cite any authority to appeal a judgment on an answer a writ of garnishment entered pursuant to RCW 6.27.250. The proper procedure is to controvert the answer of the garnishee defendant pursuant

to RCW 6.27.210. The answer was not controverted, and as such pursuant to RCW 6.27.250, the Respondent is entitled to the entry of judgment without further notice to the appellant.

The appellant is trying to circumvent previous orders of the trial court by appealing a garnishment judgment that arose out of an order allowing the very underlying judgment to be enforced. In order for a garnishment to be quashed, the underlying judgment must be vacated. See *Lindgren v. Lindgren*, 58 Wn. App. 588, 794 P.2d 526, reconsideration denied, 116 Wn.2d 1009, 805 P.2d 813 (1990). Appellant attempted to void the underlying judgment and extension thereof in her hearing before Judge Tompkins. Judge Tompkins denied the request and held both the underlying judgment and extension thereof were appropriate. (CP Pending).

C. THE DECISIONS OF THE TRIAL COURT ON FEBRUARY 28, 2014, AND FEBRUARY 20, 2015, WERE NOT APPEALED AND THEREFORE APPELLANT IS COLLATERALLY ESTOPPED FROM RAISING THESE ISSUES ON APPEAL.

Commissioner Grovdahl, in his decision, ruled that due to the language in the divorce decree the judgment

effectively was stayed and unenforceable until at least November 14, 2004. (CP at 45-47). Commissioner Grovdahl also ruled the original judgment was enforceable from November 14, 2004 to November 15, 2014. (CP at 45-47) Commissioner Grovdahl dismissed Appellant's argument that RCW 4.56.210 prohibited enforcing the judgment past June 21, 2011. (CP at 47-47). This is the same argument that Appellant is making in this appeal. Commissioner Grovdahl's order was not appealed and garnishments continued to issue based upon that Order. An Order extending the judgment was entered on August 29, 2014. Said Order extended the judgment for an additional ten years from November 15, 2014, to November 14, 2024. No appeal was made of that Order.

Appellant, on January 6, 2015, filed a motion to quash garnishment, void the order extending the enforcement of the judgment and to vacate garnishment judgments. (CP Pending). Appellant, in that motion, is making the very same arguments that are being made here. Judge Tompkins denied Appellant's motion in its entirety. Judge Tompkins ruled the Respondent's judgement was

enforceable through November 14, 2024. No appeal was ever made after that Order. Appellant is collaterally estopped from raising those same issues again on appeal. *Thompson v. Dept. of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999).

The elements of collateral estoppel are: 1) The issue decided in prior adjudication is identical with the one presented in the second action; 2) the prior adjudication must have ended in final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and 4) application of the doctrine does not work an injustice. *Nielson v. Spanaway General Medical Clinic Inc.*, 135 Wn.2d 255, 262-63, 956 P.2d 312 (1998).

Respondent has met all four requirements of collateral estoppel. The issues decided in the three prior rulings were: 1) The original judgment in the Decree was enforceable from November 15, 2004, to November 14, 2014; 2) the judgment was properly extended pursuant to RCW 6.17.020(3) on August 29, 2014; and 3) the underlying judgment is enforceable through November 14, 2024, and

all subsequent garnishments issued from that judgment are valid (which would include the garnishment judgment on Writ 'E'). Those issues are identical to the issues raised in Appellant's appeal.

Element two of collateral estoppel has been met in that all rulings were final adjudications of the court and therefore appealable. Element three of collateral estoppel has been satisfied as appellant was clearly the party against whom the plea was asserted.

In regards to the fourth element, the application doctrine does not work as an injustice on Appellant. All Appellant had to do if she was dissatisfied with the court's rulings were to appeal them. Appellant, over Respondent's objection, even got a second shot on the issue of extension of judgment by filing her January 6, 2015, motion before Judge Tompkins.

Appellant had a full and fair hearing on all of these issues and did not attempt to overturn the adverse outcome by appealing, and therefore is estopped from bringing these issues up again in an untimely appeal. *Thompson*, supra at PP 799-800. See also *Kinsey v. Duteau*, 126 Wash. 330, 218

P. 230 (1923). Also *Satsop Valley Homeowners Association, Inc. v. Northwest Rock, Inc.*, 126 Wn. App. 536, 108 P.3d 1247 (2005).

D. THE ORDER EXTENDING THE ENFORCEMENT OF THE JUDGMENT TO NOVEMBER 14, 2024, IS VALID

Appellant has not alleged any procedural deficiencies in the Respondent's obtaining the ex parte order extending the judgment to November 14, 2024. Appellant has not raised any procedural deficiencies by Respondent in obtaining the writs of garnishment and judgment on these writs, other than that the underlying judgment is void.

The validity of the underlying judgment has been addressed earlier in this brief. RCW 6.17.020 allows the judgment creditor to obtain an extension of an existing judgment. The statute allows the application to be made within expiration of the original ten-year period of the judgment. Commissioner Grovdahl's ruled that the original ten-year period was from November 25, 2004 to November 14, 2014. (CP at 45-47). Respondent made a timely application for extension on August 29, 2014. (CP at 51-52)

Pursuant to RCW 6.17.020(3), the application for the extension should be granted as a matter of right. The trial courts in this matter have correctly ruled that RCW 6.17.020 allows a ten-year period to execute on a judgment. The authors of RCW 6.17.020 acknowledge that a judgment for the ten-year period may be stayed in instances such as collection of child support until a minor turns age 18. See RCW 6.17.020(2).

The provisions of RCW 6.17.020, just as RCW 4.56.210(1) do not apply to a judgment under which enforcement has been stayed under the terms of the Decree of Dissolution *Ticor Title Ins. v. Nissell*, 73 Wn. App. 818, 821-822, 871 P.2d 652 (1994). Also see *In re: Marriage of Wintermute*, 70 Wn. App. 741 at 746, 855 P.2d 1186 (1993).

Appellant cites *Hazel v. VanBeck*, 135 Wn.2d 45, 954 P.2d 1301 (1998), just as she did in the hearing before Judge Tompkins for the proposition that judgment cannot be stayed for enforcement purposes under RCW 6.17.020. Just as in that hearing, Respondent cites *Henson v. Peter*, 95 Wash. 628, 164 P. 512 (1917), which is controlling and even acknowledge by the *Hazel* Court to be good law. *Hazel*

at P. 63. The *Hazel* Court acknowledge that it's situation was distinguishable from *Henson* in that *Hazel* had nine years to enforce her judgment and she was precluded from executing on the judgment for only a six-month period. *Hazel* at P. 48.

Respondent in the present case was prevented from executing on the judgment/order contained in the Decree for eleven years, i.e. between the entry of the Decree on June 22, 2001, and the graduation of the parties' youngest son in June of 2012. (CP at 13-15). Unlike *Hazel*, both *Henson*, and Respondent's situations prevented them from enforcing the judgment within its statutory lifetime. *Hazel* at P. 63. Consequently, there is no factual basis for the argument that there is no valid judgment upon which Respondent can issue a writ of garnishment.

E. RESPONDENT IS ENTITLED TO ATTORNEY FEES AND COSTS IN RESPONDING TO THIS APPEAL PURSUANT TO RCW 4.84.185, 6.27.230, AND RAP 18.1 AND 18.9(a)

Respondent requests he be awarded his reasonable attorney fees and expenses as allowed by RAP 19.1.

Appellant requests attorney fees pursuant to the garnishment controversion statute RCW 6.27.230. Those

fees are available if, in fact, a defendant is successful in controverting, or plaintiff in defending, the issuance of a writ of garnishment. If the controversion is unsuccessful, the Respondent is entitled to attorney fees. Appellant never properly followed the procedures to controvert the garnishment by filing a controversion to the answer pursuant to RCW 6.27.210. Respondent, as the prevailing party due to Appellant's unsuccessful controversion, should be awarded his reasonable attorney fees and costs

Respondent is entitled to attorney fees pursuant to RCW 4.84.185 in that this appeal is frivolous, untimely and a waste of the Court's judicial time. An appeal is frivolous when the appeal presents no debatable issues on which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 735 P.2d 510 (1987). "The purpose of RCW 4.84.185 is to discourage abuse of the legal system by providing for an award of expenses and legal fees to any party forced to defend itself against meritless claims asserted for purposes of harassment, delay, nuisance, or

spite.” *Ahmad v. Town of Springdale*, 178 Wn. App 333, 343, 314 P.3d 729 (2013 Div 3).

An award of attorney fees on appeal, pursuant to RCW 4.84.185 and RAP 18.9(a) is appropriate when the appeal cannot be supported by a rational argument on the law or facts *Stiles v. Kearney*, 168 Wn. App 250, 260, 277 P.3d 9 (2012).

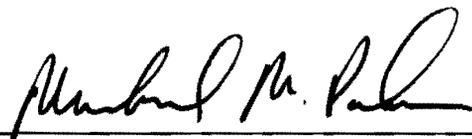
IV. CONCLUSION

Respondent obtained an original judgment in this matter based upon an order and judgment contained in Decree of Dissolution that was unenforceable for over eleven years. Once it became enforceable, the ten-year period for execution on that judgment was allowed, hence extending the period to November 14, 2014. Respondent is entitled to a second extension of that judgment as long as it is filed within the time period of the original judgment, which it was on August 29, 2014. The extension and validity of the garnishments were confirmed by the trial court before Judge Linda G. Tompkins on February 20, 2015. Judge Tompkins ruled on the very same issues brought before court as are in

Appellant's appeal. Appellant is prohibited by tenants or collateral estoppel from raising the very same issues gain.

Appellant has failed to timely file an appeal of any issue in this matter as the 30-day period under RAP 5.2(a) has expired from the time of Commissioner Grovdahl's, Commissioner Pro Tem Mencke Smith's, and Judge Tomkins' decisions. Even if an appeal was appropriate concerning the entry of the judgment on Writ 'E', the 30-day time period for appeal that time period was not met. The trial courts have unequivocally held Respondent's judgment is enforceable until November 14, 2024. For those reasons, the Appeal should be dismissed in its entirety.

DATED this 15th day of September, 2015



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