

852 30-8

FILED

MAY 07 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 28169-8

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

BONNIE ANTHIS, individually, and as
Personal Representative of the Estate of
HARVEY ALLEN ANTHIS, aka H. AL ANTHIS,

Respondent,

vs.

WALTER WILLIAM COPLAND,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON, BENTON COUNTY

APPELLANT'S SUPPLEMENTAL BRIEF

Lisa Worthington-Brown
WSBA # 34073
Attorney for Appellant

6535 12th Avenue NW
Seattle, Washington 98117
(206) 851-9613

TABLE OF CONTENTS

ISSUES PRESENTED.....1

FACTS.....2

ANALYSIS..... 2-3

CONCLUSION.....4

TABLE OF AUTHORITIES

Cases

Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088 (9th Cir. 2003).....3
Nelson v. City of Irvine, 143 F.3rd 1196 (9th Cir. 1998).....2

Statutes

11 U.S.C. §523(a)(6).....2
RCW 41.26.053.....2

I. ISSUES PRESENTED

1. Whether the bankruptcy proceedings preclude jurisdiction by the Court of Appeals.
2. Whether the bankruptcy decided or is deciding if the LEOFF pension was available to unsecured creditors.

II. FACTS

The following facts are based upon the attached Declaration of Lisa Worthington-Brown. Appellant filed for bankruptcy under Chapter 7 of the Bankruptcy Code on October 10, 2009 under cause number 09-47782-PHB. On November 11, 2009, Respondent filed an Adversary under cause number 09-04192-PHB arguing that her unsecured judgment against Appellant was not dischargeable in bankruptcy. On January 28, 2010, the Bankruptcy Court for the Western District of Washington granted Appellant's discharge under case number 09-47782-PHB and the case was closed on March 3, 2010. The Adversary proceeding remains opens.

According to Appellant's bankruptcy attorney, the case is being assigned to a new judge and therefore a hearing date has not been set. On April 6, 2010, Respondent filed a motion to extent time to file dispositive motions, which the bankruptcy court granted on April 29, 2010. The

current deadline for dispositive motions is May 14, 2010. On April 27, 2010, Appellant requested that the court set a new case schedule.

On March 17, 2010, this Court heard oral argument in the above referenced case on the issue of whether Appellant's LEOFF 1 pension exempt from attachment. Subsequently, on April 2, 2010, this court requested this supplemental briefing.

III. ARGUMENT

The current issue before the bankruptcy court is whether Respondent's unsecured judgment against Appellant is dischargeable under 11 U.S.C. §523(a)(6), which makes judgments resulting from willful and malicious acts nondischargeable. Unlike the issue before the bankruptcy court, the current issue before this court is whether Appellant's pension benefits are exempt from judgment under RCW 41.26.053. The bankruptcy court has not yet been asked to rule on the status of Appellant's pension benefits and such a consideration will be unnecessary if the court finds that Respondent's judgment is dischargeable in bankruptcy. Thus, the issue currently before the bankruptcy court is distinct from the issue before the Court of Appeals and therefore the bankruptcy proceedings do not preclude this court from exercising jurisdiction in this case.

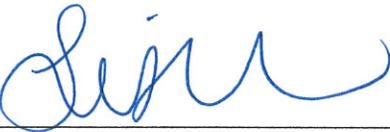
Moreover, the legal status of Appellant's pension benefits is a matter of state law and as such, this Court has jurisdiction over this issue. Federal courts are bound by decisions of the highest court of the State on issues of state law. *Nelson v. City of Irvine*, 143 F.3d 1196, 1206 (9th Cir. 1998). When the highest state court has not ruled on a specific issue, federal courts are bound by decisions of intermediate courts unless there is convincing evidence that the higher court would disagree with the intermediate court's interpretation. *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1099 (9th Cir. 2003). Here, the Washington State Supreme Court has not addressed the precise issue in this case and thus the federal courts will look to the decision by this Court should the issue arise in the federal case.

IV. CONCLUSION

The current issue before the bankruptcy court is whether or not Respondent's unsecured judgment against Appellant is dischargeable under the Bankruptcy Code. This is a separate and distinct issue from that before this Court and as such, this Court has jurisdiction to decide if Appellant's pension is exempt from attachment under Washington State law.

RESPECTFULLY SUBMITTED:

DATED this 3rd day of May, 2010.

By: _____

Lisa Worthington-Brown
WSBA # 34073
Attorney for Appellant
6535 12th Avenue NW
Seattle, Washington 98117
(206) 851-9613

CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2010, I caused the original and one copy of this Supplemental Brief and attached Declaration of Lisa Worthington-Brown to be served on the following in the manner indicated below:

Court of Appeals, Division III by placing into first class mail, postage paid addressed to:

Court of Appeals, Division III
500 N Cedar St
Spokane, WA 99201

Dated this 5th day of May, 2010



Lisa Worthington-Brown

1
2
3
4
5
6
7 IN THE COURT OF APPEALS, DIVISION III
8 OF THE STATE OF WASHINGTON

9 BONNIE ANTHIS, individually, and as)
10 Personal Representative of the Estate of) NO. 28169-8-III
11 HARVEY ALLEN ANTHIS, aka H. AL)
12 ANTHIS,)
13 Respondent,) DECLARATION OF LISA
14 vs.) WORTHINGTON-BROWN
15 WALTER WILLIAM COPLAND,)
16 Appellant.)
17

18 Lisa Worthington-Brown hereby declares:

- 19 1. I am above the age of eighteen and competent to make this declaration. I
20 make this declaration on the basis of personal knowledge.
- 21 2. I am an attorney representing Appellant Walter Copland in this appeal.
- 22 3. I reviewed the case filings from Appellant's bankruptcy case and the
23 Adversary filed by Ms. Anis.
- 24 4. Based on review of these records I determined the following:
25 a. Appellant filed for bankruptcy under Chapter 7 of the Bankruptcy Code on
October 10, 2009 under cause number 09-47782-PHB.

Declaration of Lisa Worthington-Brown - 1

Lisa Worthington-Brown

Attorney at Law

6535 12th Ave NW

Seattle, WA 98117

Phone: (206) 851-9613

