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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

**No. 91283-1**

**COURT OF APPEALS CASE No. 31944-0-III**

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**ONEWEST BANK, FSB,**

Appellant,

v.

---

**MAUREEN M. ERICKSON,**

Respondent.

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**Erickson's Supplemental Brief**

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 ORIGINAL

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## I. INTRODUCTION

The Court of Appeals correctly held that the Idaho court had no jurisdiction over a Washington resident's Washington property. Its decision is consistent with the U.S. Constitution's full faith and credit clause. The Idaho order appointing a conservator, upon which OneWest Bank, FSB ("OneWest") relied at trial and on appeal, did not vest the conservator with authority over the Washington property ("Property").

The purported order authorizing a reverse mortgage was not relied on by OneWest at trial or on appeal as a basis for claiming the Idaho court had jurisdiction over the Property. There is no claim or evidence OneWest ever had or saw the purported order, let alone relied on it. It was never authenticated and should not be considered.

The summary judgment granted in favor of Maureen Erickson ("Erickson") should be affirmed, and the matter should not be remanded to allow OneWest to assert equitable claims it never raised in trial or on appeal. OneWest treated Erickson's request for summary judgment as a cross motion for summary judgment, and advised the trial court there were no issues of material fact. Erickson's additional arguments, not reached by the Court of Appeals provide alternative bases for affirming the Court of Appeals.

## II. STATEMENT OF THE CASE

The background facts in this case are largely set out by the Court of Appeals in its decision. Based on the records submitted by both parties, the undisputed facts show the following:

On June 28, 2007, Erickson's father Bill McKee ("McKee") conveyed ownership of the subject property ("Property") to Erickson by quit claim deed (CP 128-129, para. 19; CP 139).

On August 22, 2007, a court order dismissed a cause of action between McKee and Erickson in Spokane County Superior Court, which order was corrected by Order entered January 8, 2008, but effective nunc pro tunc as of August 22, 2007 confirmed conveyance of the Property to Erickson (CP 15, para. 3; 19-22).

On August 27, 2007, an Idaho District Court issued Letters of Conservatorship to Shelley Bruna ("Bruna") to act on McKee's behalf (CP 18).

At all relevant times, McKee was a resident of the State of Washington and the Property is located in Spokane County, Washington (CP 66, para. 1-4). McKee and Erickson also resided in the Property at all relevant times (CP 66, para. 3 and 4). Both McKee and Erickson were

in a position to tell any lender or lender's representative that Erickson owned the Property, not McKee (CP 129, para. 20; 131, para. 23). McKee had, in that timeframe, instructed his Idaho attorney to advise the Idaho court that he had transferred ownership of the Property to Erickson (CP 130, para. 21). During that time, Erickson had told the Idaho Court, Bruna and the loan officer who was acting as the lender's representative with respect to the loan at issue, that she owned the Property (CP 129, para. 20).

On October 25, 2007, Bruna, allegedly acting as McKee's Conservator, purportedly executed the promissory note ("Note") and deed of trust ("DOT") at issue. The DOT named Financial Freedom as the Beneficiary (CP 36-44).

In the DOT acknowledgement, the notary public certified ". . . I know or have satisfactory evidence that . . ." Bruna signed the instrument and acknowledged it. Nothing in the acknowledgement suggested Bruna signed the Deed of Trust or acknowledged anything in the notary's presence (CP 44).

On October 2, 2009, an instrument was recorded in which Financial Freedom assigned the DOT and Note to MERS (CP 48). On

February 3, 2012, an instrument was recorded in which MERS assigned the DOT (but not the Note), to OneWest (CP 49-50).

At some point, a stamped statement indicating the Note was endorsed in blank without recourse by Financial Freedom was added to the last page of the Note or a copy of it (CP 35). No testimony discussed or purported to authenticate the alleged endorsement, or suggested the Note was endorsed before Financial Freedom assigned the Note to MERS.

OneWest and Erickson each requested summary judgment (CP 12, l. 17-26; CP 63, l. 3-13). OneWest treated the competing requests for summary judgment as cross-motions and took the position that there were no issues of material fact in connection with those motions (RP 45, l. 10-13; CP 76).

In its initial Memorandum in Support of Summary Judgment in the trial court, OneWest argued it was entitled to pursue judicial foreclosure on the basis that the DOT was originally assigned by the initial lender, Financial Freedom, to MERS, and then by MERS to OneWest (CP 2 and 3). It provided no argument in its brief that it was the “Holder” of the Note (CP 1-13). OneWest did, however, file an affidavit, stating that it “maintained control” of the Note. Nothing in that affidavit or in any other document stated that OneWest physically possessed the Note (CP 29).

Subsequently, in its reply in support of summary judgment, OneWest claimed, with no additional evidence, that it possessed the Note (CP 82-84). OneWest also argued, “[i]ndeed, ‘the assignment of a deed of trust and note is valid between the parties whether or not the assignment is ever recorded (citation omitted) (CP 83, l. 9-11). OneWest did not respond to Erickson’s argument that, if the Note was endorsed in blank by Financial Freedom before it assigned the Note and Deed of Trust to MERS, that assignment superseded the endorsement in blank; and if the assignment came after Financial Freedom assigned the Note to MERS, Financial Freedom would not have had authority to further assign the Note in blank. Additionally, OneWest did not file the original Note with the trial court as required by Spokane County Superior Court Local Rule, LCR 58(d).

Once OneWest subsequently filed a declaration attaching what purported to be an Idaho court order as an exhibit (CP 105-112). According to the Affidavit from OneWest’s counsel, OneWest was able to locate and provide OneWest’s counsel with a faxed copy of what was purported to be a Court order; but nothing disclosed the source for the purported order or otherwise authenticated it (CP 106, para. 5). OneWest’s counsel did not claim to have any knowledge, first- hand or otherwise, of the document or its source. A review of this purported order

shows that it was supposedly signed in counterparts, was apparently signed by someone purporting to be a judge on two separate pages, lacked any indication that it was filed in any court, and purportedly authorized a loan from Quick Mortgage Services (not Financial Freedom) (CP 108-112). No one authenticated the document or any of the claimed signatures on it. OneWest provided no suggestion or argument at the trial court or in the Court of Appeals that OneWest ever possessed, reviewed, or relied on this order. In fact, OneWest's counsel contended a copy could not be obtained because the order was sealed (CP 106). Counsel did not suggest how his client would have obtained a copy of a sealed order.

On July 18, 2013, Erickson filed a declaration confirming that she did not recall seeing or signing any court order in the Idaho proceedings (CP 131, l. 1-3).

On August 2, 2013, OneWest filed another Affidavit of Plaintiff, with additional items attached as exhibits (CP 150-168). None of the records was identified as being a business record of OneWest or any other entity; and the purported documents were all supposedly generated between 2008 and 2011 (CP 150-152). The DOT was not assigned to OneWest until February 2012 (CP 49-50).

In the Superior and Appeals Courts, OneWest also argued that because Bruna was appointed as the conservator on behalf of McKee, she had the power to execute a deed of trust covering Washington property under Idaho law. As noted above, Erickson provided undisputed testimony that McKee was not an Idaho resident at any time during the pendency of the conservatorship proceedings (CP 66, para. 4).

### III. ARGUMENT

1. The Court of Appeals had authority to determine whether an Idaho court order appointing a receiver should be given force and effect regarding Washington property owned by a Washington resident.

The Supreme Court does not typically review alleged errors that were not presented below unless the error involves a manifest error affecting a constitutional right. *State v. Scott*, 110 Wn.2d 682, 684, 757 P.2d 492 (1988). Here, the Court of Appeals committed no error in determining that the Idaho District Court order at issue was void as applied in this case, based on lack of jurisdiction over a Washington resident's Washington real property. Notably, in its appellate brief, OneWest cited *Freise v. Walker*, 27 Wn. App. 549, 619 P.2d 366 (1980) on this issue (OneWest App. Br., p. 25). That case states a Washington court may refuse to enforce another court's order, even upon collateral

attack, if the second court determines the initial order was void because that court lacked jurisdiction over the parties or the property *Id.* at 553.

In the trial court, OneWest relied on selected sections from the Idaho Probate Court in arguing that an order appointing a receiver vested the Idaho court with authority to enter an order affecting Washington property (CP 80-82). On appeal, OneWest again relied on that Idaho statutory authority, and cited three cases in support of a contention that the order appointing Bruna as a conservator on behalf of McKee was not subject to collateral attack (OneWest App. Br., pp. 24-25). To the extent OneWest alluded in Superior Court to a purported order allegedly authorizing Bruna to obtain a reverse mortgage as additional authority supporting the Idaho court's jurisdiction, she did not make that argument on appeal. An argument not made on appeal is deemed abandoned and should not be considered. *Satomi Owners Ass'n. v. Satomi, LLC*, 167 Wn.2d 781, 808, 225 P.3d 213 (2009); *Seattle School Dist. No. 1 v. State*, 91 Wn.2d 476, 488, 585 P.2d 71 (1978).

The first case, *Stewart v. Stewart*, 85 Wn. 202, 147 P. 1157 (1915), held that a Washington court has the jurisdiction to adjudicate ownership issues regarding Washington property even though the competing claimants resided in another state. This is entirely consistent with

Erickson's position that Washington has the authority to adjudicate and determine ownership issues regarding property in this state, particularly when it is undisputed that the owners have at all times been Washington residents.

The second case, *Conservatorship of O'Connor*, 48 Cal. App. 4<sup>th</sup> 1076, 56 Cal. Rptr. 2d 386 (Cal. App. 1<sup>st</sup> Dist. 1996) construed specific statutory provisions under California law and has no bearing on this case.

The final case, *Freise v. Walker*, 27 Wn. App. 549, 619 P.2d 366 (1980) supports Erickson's position that the Court of Appeals has authority to determine whether an order or judgment was void. If void, the *Freise* court ruling would permit a party to collaterally attack the order or judgment.

In its decision, the Court of Appeals examined whether the Idaho court order appointing Bruna as receiver was void based on lack of jurisdiction over the subject matter (the Property) or the parties. That review was entirely consistent with the analysis of Idaho law OneWest provided, and the cases upon which it relied.

With regard to whether the Idaho court order appointing Bruna as receiver conferred authority to assert control over the Property, Erickson provided authority that the order appointing Bruna as receiver was not

valid as a basis for her to encumber the Washington Property owned at all times, including prior to the institution of receivership proceedings, by a Washington resident. Erickson also analyzed Idaho statutes and case law regarding the jurisdictional limits Idaho will assert, based on due process considerations, under its probate code and its long-arm statute. Based on that authority, Idaho will not assert jurisdiction, based on due process considerations, over out-of-state property owned by non-residents unless there are business connections or tortuous conduct connections to Idaho (which were not alleged here) (Erickson's Reply Br., pp. 21-23).

The Court of Appeals noted that a Washington court has authority, particularly in an *in rem* proceeding attempting to foreclose a deed of trust purportedly covering Washington property, to evaluate whether a prior Idaho order appointing an Idaho receiver could be the basis for creating a security interest in and subsequently leading to change of ownership of Washington property owned at all times by a Washington resident. The Court of Appeals correctly cited *Fall v. Eastin*, 215 U. S. 1 (1909) as authority for the proposition that a Washington court has the right to determine whether an Idaho decree affecting an interest in land in Washington is required to be extended full faith and credit, and properly concluded it does not. As the U.S. Supreme Court has noted, "A judgment

rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (U.S. 1980) (quoting *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878)).

OneWest contended, for the first time in its motion for reconsideration of the Court of Appeals decision, and despite its prior citation to *Freise v. Walker*, that the Court of Appeals should not have considered whether the Idaho order was void, relying on *In re Marriage of Kowalewski*, 163 Wn.2d 542, 548-49, 182 P.3d 959 (2008). *Kowalewski* did not deal with an order from another state or with the full faith and credit clause. *Kowalewski* held that it a dissolution proceeding, where the Washington trial court had jurisdiction over the parties, the court had the authority and obligation to allocate and divide all property interests of spouses over whom they had jurisdiction, regardless of the location of the property. *Kowalewski* concluded by recognizing that in a subsequent action to change legal ownership of property in another country, the court of that country would have authority to determine whether the Washington order should be given force or effect based on principles of comity. *Id.* at 552. The full faith and credit clause of the U.S. Constitution was not at issue.

In its Motion for Reconsideration in the Court of Appeals, OneWest recognized that another state's court's efforts to affect title to property in this state may be challenged when the other state attempted to assert *in rem* jurisdiction. (Motion For Reconsideration, pp. 2-4). OneWest failed to recognize that, on appeal, it had argued only that the Idaho court had authority to grant an Idaho conservator "power over property in other states." (OneWest's Br., p. 25). Moreover, in the trial court, OneWest asserted "[r]egardless of how long Bill E. McKee was a resident of Washington State prior to the execution and recording of the deed of trust," Idaho law applies to property owned by non-residents in other states and that, because the Idaho Court "saw fit to appoint Shelley Bruna" as Conservator for McKee, Idaho law did not require McKee to be an Idaho resident or the property to be located in Idaho (CP 80-81). OneWest's arguments at trial and on appeal focused on the Idaho court's jurisdiction and authority over out-of-state property, not over McKee.

OneWest analyzed the Idaho court's authority to enter an order that operated *in rem* with respect to the Washington Property, and the nature of the present case. OneWest fails to recognize that the foreclosure proceeding at issue is only an *in rem* proceeding in which OneWest seeks to enforce an Idaho order affecting interests in Washington property

owned at all times by a Washington resident in a foreclosure proceeding that would result in changing the legal ownership of that real property. Consistent with *Fall v. Eastin*, *Kowalewski*, and *Freise v. Walker*, all *supra* (and all cited at different times by OneWest as authority on this issue) the Court of Appeals properly examined whether the Idaho court had jurisdiction to enter the order appointing Bruna as receiver, upon which OneWest relied in summary judgment proceedings in the Washington Superior and Appellate Courts.

2. Idaho law, as limited by the due process clause of the United States Constitution, did not vest the Idaho court with authority to enter an order appointing receiver in a manner that would govern transactions affecting title to Washington property owned at all relevant times by Washington residents.

As noted above, In the trial court and Court of Appeals, OneWest relied on selected provisions in the Idaho Probate Code in arguing that Bruna had authority to transact business with respect to real property in which McKee had an interest, regardless of where located, and irrespective of the fact that he was a Washington resident at all times and that the subject property is in Washington.

The Court of Appeals properly evaluated this contention in light of IC 15-1-301 which defines the territorial application given to the Idaho Code. Under IC 15-1-301(2) and (3), the Idaho court does not purport to apply to or cover property located outside of Idaho belonging to people who did not live in Idaho, such as McKee (CP 59, l. 1-13). In addition, as noted by Erickson in the trial court and the Court of Appeals, the Idaho Probate Code should be read in conjunction with Idaho's long-arm statute, IC 5-514. Under that statute, jurisdiction is conferred on Idaho courts over people living outside Idaho in matters arising out of "... (a) The transaction of any business within this state ... (c) The ownership, use or possession of any real or personal property situated within this state ...". Neither of those provisions, nor any other portion of the Idaho long-arm statute, would apply to grant the Idaho court jurisdiction over a Washington resident's property in Washington, having nothing to do with the transaction of business or tortious conduct in the state of Idaho. As noted by Erickson, Idaho courts recognize that Idaho's long-arm statute establishes the limits for determining compliance with constitutional due process requirements and asserting jurisdiction over non-residents or their property. *South Idaho Pipe & Steel Co. v. Cal-Cut Pipe & Supply, Inc.*, 98 Idaho 495, 567 P.2d 1246 (1997) (CP 59, l. 10-25; 60 l. 1-4).

OneWest did not respond to these arguments and the Court of Appeals' analysis was correct in determining that the Idaho order appointing Bruna as receiver was void to the extent that it purported to confer authority on her to create an interest in the subject Property, located in Washington, owned at all relevant times by Washington residents that were never present at relevant times in Idaho.

3. The original deed of trust lender did not rely on a purported Idaho court order authorizing the deed of trust.

OneWest's assertion that the original lender relied, reasonably or otherwise, on a purported Idaho order authorizing the DOT was not asserted as an issue in the trial court or the Court of Appeals and should not be considered. See RAP 9.12.

In addition, the contention is not supported by any evidence or inference from evidence. As noted above, the purported order to which OneWest refers was "located" by OneWest by some unidentified source and then faxed to its counsel. Notably, OneWest's counsel confirmed that a copy of the order could not be obtained because it was under seal. The order was not authenticated by any source and there is no suggestion that it was located in the original lender's files or relied upon in any respect by the original lender. The Court should disregard it.

4. This matter should not be remanded for OneWest to assert equitable defenses.

OneWest claims that, even if the DOT is deemed void, OneWest should be able to return to the trial court to assert potential equitable defenses. OneWest made no such argument in the trial court and, instead, advised the trial court that Erickson had presented a cross-motion for summary judgment and that the parties agreed there were no issues of material fact precluding entry of summary judgment. On appeal, OneWest again noted that Erickson had requested summary judgment in her favor and did not contend that if summary judgment in its favor was reversed, summary judgment in favor of Erickson would be inappropriate. Nor did OneWest argue on appeal that the matter should be remanded for it to assert any equitable defenses if the summary judgment entered in its favor was reversed. This argument and these issues were not raised below and should not be considered. RAP 9.12.

5. The purported order allegedly authorizing the DOT did not constitute admissible evidence and should not be considered.

In a summary judgment proceeding, only admissible evidence may be considered. CR 56(e). In this case, the purported order supposedly authorizing the DOT was attached by counsel for OneWest, who had no

firsthand knowledge of its content whatever. Moreover, counsel did not suggest the order came from any client files, but instead stated “Plaintiff was able to locate and provide to Plaintiff’s counsel a faxed copy of an executed order ...” Nothing in the purported order was authenticated, there was no indication that it came from any client records, and there was no other record made regarding this order that confirmed its validity. Instead, it purportedly came from a party with a motivation to utilize incorrect or unsubstantiated information for its own benefit, and with no indicia of reliability having been provided (CP 106, para. 5). Additionally, as noted above in the Statement of Facts, the purported order appears to have been signed on various pages by different individuals, to have been purportedly signed by a magistrate on different pages, does not indicate it was entered with any court, and does not indicate that it was transmitted to any person (CP 108-112). Erickson’s undisputed testimony demonstrates that she has no recollection of signing an order (CP 130-131, para. 22).

6. The DOT’s acknowledgement was statutorily defective and invalid.

As noted in the Statement of Facts above, the acknowledgement on the original lender’s DOT, prepared in its form, included an

acknowledgement that does not comply with Washington law. Under express Washington law, an acknowledgement in Washington must confirm that the signer appeared before the notary providing the acknowledgement. Further, a defective acknowledgement failing to meet the minimum requirements for acknowledgement is void. This argument was made in Erickson's appeal brief at pages 17 and 18 and that argument is incorporated in this brief by reference.

7. OneWest did not carry its burden of proving it is the holder of the Note.

As noted in the Statement of Facts above, in its initial summary judgment brief, OneWest included no statement that it was in possession of the Note. It argued that it had the right to proceed based on successive assignments of the DOT, first from Financial Freedom to MERS, and then from MERS to OneWest. When Erickson pointed out in response to OneWest's motion that the Note was never assigned from MERS to OneWest under the assignment document upon which OneWest relied, OneWest responded in reply that it was in possession of the Note. (That contention was based on OneWest's affidavit at CP, para. 3). In that paragraph, OneWest asserted first that it is the "holder" of the Note. It then explained that it "maintains control of the loan documents, including

the original promissory Note” (punctuation as in original). Notably, this affidavit was filed in conjunction with OneWest’s original brief in which it asserted it had a right to pursue foreclosure based on the successive recorded assignments referred to above. OneWest’s later assertion that it was in physical possession of the Note is not established by its sworn testimony that it “maintains control of the ... Note.” Further, under Spokane County Local Rule, LCR 58(d). Based on that rule, judgment should not have been entered in its favor and OneWest should have been determined to have failed to meet its burden of proving it was the holder of the Note. OneWest has acknowledged that, if it is not the holder of the Note, it has no right to proceed with foreclosure in this action since the deed of trust always follows the Note (CP 83-84).

8. OneWest had actual or constructive knowledge that McKee did not own the Property.

Undisputed evidence established that (a) Erickson owned the property when the Note and DOT were supposedly executed; (b) Erickson informed the Idaho court, Bruna, and the lender representative with whom she dealt that she held title to the property; and (c) that she and McKee were the only residents of the Property and both were in a position to and would have told anyone that asked that Erickson, not McKee, owned the

Property. Under these circumstances, OneWest was not a bona fide purchaser under applicable Washington law and received no greater interests than McKee held. Since McKee did not hold the Property, Erickson's title and ownership interest in the Property remained unencumbered by the DOT. This argument is more completely set out in Erickson's opening appeal brief at pages 21 through 25 and those arguments are incorporated herein by this reference.

#### IV. CONCLUSION

For the reasons stated above, Erickson requests that this Court affirm the decision of the Court of Appeals in all respects.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of July 2015.

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**IN THE SUPREME COURT  
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**ONEWEST BANK, FSB,**

Appellant,

v.

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**MAUREEN M. ERICKSON,**

Respondent.

---

**Certificate of Service of Erickson's Supplemental Brief**

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury according to the laws of the State of Washington that the following statement is true and correct:

On the 31<sup>st</sup> day of July 2015, I caused to be served true and correct copies of Erickson's Supplemental Brief by the method indicated below, and addressed to the following:

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--	---

DATED this 31<sup>st</sup> day of July 2015 at Spokane, Washington.

  
\_\_\_\_\_  
LISA Y. OESTREICH-BERG

**OFFICE RECEPTIONIST, CLERK**

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Please find attached for filing:

1. Erickson's Supplemental Brief; and
2. Certificate of Service of Erickson's Supplemental Brief.

Thank you.

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