

64036-4

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No. 64036-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ALLAN PARMELEE, Appellant;

v.

STATE OF WASHINGTON, Respondent.

APPEAL FROM THE SUPERIOR COURT FOR
KING COUNTY

The Honorable Michael Fox

No. 02-1-07183-6 SEA

REPLY BRIEF OF APPELLANT PARMELEE

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ORIGINAL

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A. INTRODUCTION

Appellant Allan Parmelee will reiterate that any garnishment action filed under the criminal cause number is on behalf of the State of Washington, and thus the second garnishment action must be dismissed. He will also show this issue was properly raised and that the State of Washington is not entitled to attorneys fees.

B. ARGUMENT

1. THERE IS ONLY ONE PARTY TO BOTH GARNISHMENT ACTIONS – THE STATE OF WASHINGTON.

Mr. Parmelee argued in his opening brief that because the State of Washington filed an initial action in which they failed to timely challenge his claim of exemption, the State was not entitled to file a second garnishment action. In response, the State argued that two different parties filed the actions and as such, the second action was permitted. Nothing could be further from the truth. Mr. Parmelee will show that statutory construction precludes this interpretation.

- a) Statutory Construction Permits Only One Interpretation – The Clerk Only Collects On Behalf Of The Parties And Cannot Be One.

Statutory construction supports one conclusion, a garnishment action is brought by the State of Washington on behalf of itself and any victim restitution. RCW 9.94A.750(8) expressly states that “[t]he state or

victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action.” There is no express language which states that the King County Clerk’s Office or Superior Court is a separate party permitted to bring an action on behalf of itself. Based upon the statutory construction principal of *expressio unius est exclusio alterius*, express legislative inclusion of particulars implies those not included were intentionally omitted.¹ *State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003). This is also consistent with the express language in RCW 9.94A.760(4) which gives express permission for the legal entity for which monies are owed to collect those monies using civil process. The holding that this process is legal is the meaning of *State v. Wiens*, 776 Wn. App. 651, 894 P.2d 651 (1995) (cited by the State for an entirely different reason in its Response).

As for the authority of the county clerk to arrange for collection, it is collecting for the State of Washington and any victims. “The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk.” RCW 9.94A.760(12). The “department” mentioned is, of course, the Department of Corrections. RCW 9.94A.030(17). And there

¹“The expression of one thing is the exclusion of another.” Black’s Law Dictionary App. B at 1830 (9th ed.2009).

is no question that the “department” is an agency of the executive branch of the State of Washington. RCW 72.09.030.

As for the language in RCW 9.9A.760 which permits a clerk to collect funds, it shares that duty with the Department of Corrections. The stated purpose of the change in this law in 2003 was the following:

"The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections.

2003 c 379 § 13. The power given to county clerks' to collect legal financial obligations was to facilitate collections. The Clerk's Office is not a separate party but a governmental entity in the best position to obtain collections. Also, the Department and county clerks are interchangeable in their respective duties to collect fees. RCW 9.94A.760(12). The

collection is on behalf of the State of Washington and the victims entitled to restitution.

Respondent has tried to blur the lines between the type of action and the parties to it. To this end, it cites *State v. Wiens*, 776 Wn. App. 651, for the proposition that Mr. Parmelee's argument hinges on the inability of the King County Superior Court Clerk and King County to garnish the judgment in question. This argument is a strawman because Mr. Parmelee never argued a garnishment action could not be maintained on behalf of the State of Washington or victims, only that the second garnishment action *in this case* could not be maintained. (Emphasis added.)

Wiens is solely about the victim of a crime and her children personally filing a garnishment action against Mr. Wiens. The sentencing court specifically made provisions in the restitution order that Mr. Wien's insurer would have to pay the restitution amount before December 1, 1992, or else be personally liable. When the amount was not paid, the victim and her children initiated a collection action. *Id.* at 653.

The *Wien* court explicitly held that because statutory language permitted victims to "participate in enforcement of such orders." *Id.* at 657. King County and its Clerk's Office does not have statutory authority to participate as a party.

b) The Clerk's Office And King County Are Not Parties To The Original Action And Would Have To File A Separate Cause Of Action.

CR 10(a)(1) requires the names of parties to be listed in the title of the action contained within the caption. There are two parties listed in the caption, Mr. Parmelee and the State of Washington.² If either the King County Superior Court Clerk or King County considered itself a separate party entitled to a garnishment action, they should have joined the action by an interpleader action. CR 24. That they represented the state in this action is clear because neither party appeared in the caption as a judgment creditor. *Wiens*, 776 Wn. App. at 654. And while there is case law which permits this error to be corrected, this is when the party not named is an opposing party. *Quality Rock v. Thurston County*, 126 Wn. App. 250, 108 P.3d 805 (2005). King County clearly represented the same parties as the first garnishment action on behalf of the State and any victims.

²While the trial court pleadings name the State of Washington Department of Corrections as Garnishee Defendant, the caption of Respondent's appellant brief just names the State of Washington. Also, the same attorneys have represented the State of Washington in both cases, no matter how King County tries to categorize it.

2. EVEN UNDER A STRICT COMPLIANCE ARGUMENT, MR. PARMELEE PROPERLY SUPPLIED THE KING COUNTY PROSECUTOR'S OFFICE WITH THE CLAIM OF EXEMPTIONS.

The State argues that strict compliance is required to comply with the statutory requirements for service of the garnishment statute. Even if strict compliance is required, it is hard to believe that serving it on the records department of a law firm in the same building but a different floor is not strict compliance, especially as the case had a criminal number and it was served on the criminal division's record department. The King County Prosecutor's office had seven days in which to find out where the document should go.³

3. THE STATE HAS FAILED TO ADDRESS THE TRIAL COURT GRANTING AN UNTIMELY JUDGMENT AND THEREFORE THE WRIT MUST BE DISMISSED.

Over one year after the trial court denied Mr. Parmelee's claimed exemptions, the State moved for an order of judgment. The trial court granted this order, violating the plain language of RCW 6.27.310:

In all cases where it shall appear from the answer of the garnishee that the garnishee was indebted to the defendant when the writ of garnishment was served, no controversion is pending, there has been no discharge or judgment against the garnishee entered, and one year has passed since the

³If nothing else, the King County Prosecutor's Office should be penalized for its failure to make sure the claim of exemption reached the proper person, no matter what division.

filing of the answer of the garnishee, the court, after ten days' notice in writing to the plaintiff, shall enter an order dismissing the writ of garnishment and discharging the garnishee: PROVIDED, That this provision shall have no effect if the cause of action between plaintiff and defendant is pending on the trial calendar, or if any party files an affidavit that the action is still pending.

RCW 6.27.310.

The State makes a procedural argument which is not supported by the facts. Mr. Parmelee's attorney at the judgment was forced by circumstances beyond his control to present his arguments orally.⁴

It is also disingenuous for the State to argue about form over substance. The State has argued that Mr. Parmelee should be held in strict compliance with garnishment service requirements, making sure documents go to the correct floor. Now it argues that it shouldn't be held to a lower standard when it ignores the plain statutory language of RCW 6.27.310. The positions are not consistent.

4. MR. PARMELEE ASSIGNED ERROR TO THE TRIAL COURT'S DENIAL OF HIS CLAIM OF EXEMPTION BASED ON THE FILING OF THE PRIOR GARNISHMENT ACTION.

Mr. Parmelee is confused. The second issue presented in his opening brief was the following:

⁴The motion for reconsideration put these objections in written form including the argument based on RCW 6.27.310.

Did the State of Washington waive its right to file a second garnishment action by failing to timely challenge the claim of exemption served by Mr. Parmelee in response to the first garnishment action?

This is precisely the issue that he has argued and continue to argue before this Court. It is clear that Mr. Parmelee's first exemption claim in the second garnishment action was based on the prior garnishment action. CP 24-25. This exemption stated the following:

Because Plaintiff failed to response to Defendant's prior timely claim of exemptions, Plaintiff has defaulted on the claim against this particular garnishee.

This Court has an ample factual basis with legal argument to reach a conclusion of this matter. Appellant has provided sufficient clarity in Issues Pertaining to Assignments of Error, Statement of Facts, and Argument to meet the requirements of RAP 10.3(a)(4).

5. THE STATE OF WASHINGTON IS NOT ENTITLED TO ATTORNEY FEES IF IT PREVAILS.

RCW 6.27.160(2) provides a mechanism that permits the award of costs to the prevailing party. Attorney's fees may be awarded if the claim or objection was not made in good faith. Because the State failed to allege bad faith on the part of Mr. Parmelee, no attorneys fees may be awarded.

C. CONCLUSION

For the reasons set forth above, Mr. Parmelee asks this Court to rule that the State waived its right to garnishment of the Mason County judgment and dismiss the writ. He also asks that counsel be granted reasonable attorney's fees and costs.

DATED this 3rd day of March, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael C. Kahrs", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on March 3, 2010, in Seattle, County of King, State of Washington, I emailed and deposited the following documents with the United States Mail, postage prepaid and 1st class on the following parties:

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