

COURT OF APPEALS NO. 74908-1-I
KING COUNTY SUPERIOR COURT NO. 15-2-12970-8

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DANIEL and KRISTI PETERSON,

Appellants,

v.

U.S. BANK, N.A.

Respondent.

FILED
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Court of Appeals
Division I
State of Washington

APPEAL FROM SUPERIOR COURT FOR KING COUNTY

APPELLANTS DANIEL and KRISTI PETERSON'S REPLY BRIEF

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I. Argument

Respondent, U.S. Bank, N.A. (the Bank) has the temerity to (1) concede that Appellants Daniel and Kristi Peterson's statement of the facts of the case is accurate; and (2) shamelessly ask this Court to uphold a judgment, void at inception for lack of compliance with the court rules, based on an imagined requirement in CR 60 to provide a proposed order setting a show cause hearing.

A. The Bank's Entire Argument Hinges on a Requirement That Does Not Exist: That the Petersons Were Required to Submit a Proposed Order Setting a Show Cause Hearing

It appears that the Bank concedes the judgment it acquired against the Peterson's is void. The Bank's sole argument for not vacating that judgment is an imagined failure to submit a proposed order setting a show cause hearing.

B. Court Rules Requiring Submission of Proposed Orders Do Not Include CR 60

The term "proposed order" appears in Washington's Rules for the Superior Court five times. CR 26(f)(4); CR 54(e); CR 54(f)(2) and (f)(2)(B); and CR59(d).

Washington's Supreme Court, in its rule making capacity, is certainly capable of framing a rule requiring the submission of proposed orders.

In CR 26, the Supreme Court provided that a motion by an attorney requesting a discovery conference will be granted if the motion includes, *inter alia*, “proposed orders with respect to discovery”.

In CR 54, the Supreme Court provided that “[t]he attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment”.

In CR 59, the Supreme Court provided that a “court on its own initiative may order a hearing on its proposed order for a new trial”.

C. CR 60 Requires “The Filing of the Motion and Affidavit”

Contrary to the Bank’s assertions CR 60 does not say “[u]pon the filing of the motion and affidavit [and a proposed order] fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted [the court shall consider the merits of the case]¹.

D. But, This Is All Minutiae: The Judgement Is Void

“[A] proceeding before a trial court to vacate a default judgment as ‘equitable in character and relief is to be afforded in accordance with

¹ CR 60 might be read in this fashion in Asotin, Garfield and Columbia Counties by incorporation of LCR 7 which provides “[a] proposed form of order, which the Court may adopt, modify, or reject consistent with the decision of the Court, shall be served with the motion or response to motion.”

equitable principles.” *Vaughn v. Chung*, 119 Wn. 2d 273, 278, 830 P.2d 668 (1992) (quoting *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979)).

The case of *Lindgren v. Lindgren*² is instructive. In *Lindgren*, this Court found that the failure of a party seeking vacation of a judgment, Kimzey, to serve the opposing party, Demopolis, with the motion to vacate was “a harmless deviation from CR 60(e)(3)” because Demopolis “had adequate notice of the motion and was not prejudiced by the procedural defect.” *Id.* at 592-94.

Here, the Bank was served with the motion to vacate and immediately mounted a defense based on procedure claiming the Peterson’s failed to submit a proposed order. It is hard to imagine how prejudice would have inured in this case in light of *Lindgren*.

And *Lindgren* sheds light on the real problem that exists in this case; *Lindgren* explains why the Bank’s judgement is void in the first place. “The validity of a default judgment requires that a proper summons was served upon the defaulting party. It is the summons alone which conveys to a defendant that failing to appear and defend can result in the entry of a default judgment.” *Id.* at 596-97.

² 58 Wn.App. 588, 794 P.2d 526 (1990).

Default judgments are disfavored. *Id.* 595. Default judgments granted without personal jurisdiction are void and it is proper to vacate them. *Id.* 597-98. A motion to vacate a void default judgment should be granted even if procedural defects in seeking vacation exist provided the party against whom vacation operates has notice of the action. *Id. passim.*

II. Conclusion

In short, even if the Bank were not merely imagining a duty imposed by CR 60 which the Peterson's neglected, it would hardly be prejudicial.

The Bank knew the basis for the Petersons' motion, never attempted to refute the declarations of Mr. Peterson and Mr. Poching, and concedes the Petersons' statement of facts which show the Petersons were never served the Original or Amended Complaint and Summons.

The Court should remand with direction to vacate the *Order of Default and Default Judgment Against Defendants Daniel C. Peterson and Kristi J. Peterson* and dismiss the case for lack of jurisdiction.

DATED this 31st day of August, 2016 at Arlington, Washington.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Linda Avery Rodriguez, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1. At all times hereinafter mentioned I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

2. That on the 31st day of August, 2016, I caused to be served a true and correct copy of Appellants Dan and Kristi Peterson's Reply Brief to defendants in the above title matter by causing it to be delivered to:

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DATED this 31st day of August, 2016 at Arlington, Washington.

s/ Linda Avery Rodriguez
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