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Supreme Court No. 100691-8
Court of Appeals No. 37663-0-III

**Supreme Court
of the State of Washington**

Leroy Howell, et al.,

Respondents,

v.

Evaan Syrah Solomon,

Petitioner,

and other parties,

Defendants.

Respondents' Answer to Petition for Review

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1. Introduction

Leroy Howell is an elderly, vulnerable adult and owner of 124.19 acres of land near Latah Creek in Spokane County. In the fall of 2019, Evaan Solomon, a man with an extensive history of real estate fraud, which resulted in at least thirteen civil claims and hundreds of thousands of dollars in judgments against him, attempted to swindle Howell out of his Latah Creek property. Through a series of legally deficient documents, Solomon purported to acquire, in the name of a then non-existent trust, fee title to Howell's property. Solomon's fraud was discovered when he tried to sell the property to a third party.

Howell sued Solomon, the alleged trust, and others, to quiet title. The trial court authorized service by publication, which Howell accomplished. Only Solomon answered the complaint. Howell moved for summary judgment against Solomon and default

judgment against all other defendants for their failure to answer the summons and complaint. Solomon's answer and responsive filings failed to controvert Howell's version of the facts. Instead, Solomon chose to attack the character of Howell's attorney with all manner of unfounded allegations. The trial court found no genuine dispute of material fact and granted summary judgment against Solomon and default judgment against all other parties, quieting title in Howell.

Solomon appealed. He argued for the first time on appeal that he had actually represented the trust in the trial court proceedings and that Howell voluntarily signed and Solomon properly recorded the fee simple deed. He also took occasion to repeat and amplify his false accusations of misconduct aimed at Howell's attorney. The Court of Appeals rejected Solomon's arguments about the trust because they were raised for the first time on appeal and because Solomon's

daughters were the named trustees of the trust, not Solomon. The court found that Solomon failed to raise any issue of material fact in the trial court. In addition to affirming the trial court, the Court of Appeals awarded Howell his attorney fees on appeal under RAP 18.9, finding Solomon's appeal frivolous. The court observed,

Evaan Solomon has been afforded multiple opportunities to deny or rebut LeRoy Howell's factual allegations. At each juncture, Solomon chose instead to attack the credibility of Howell's attorney and neighbor and to make conclusory statements as to his ownership of the Latah Creek property. He never properly responded to the substantive allegations in Howell's complaint. He claimed to represent a trust that names others as the trustee. We could have summarily rejected Solomon's appeal because he never assigned any errors to the superior court's rulings. RAP 10.3(a)(4). Therefore, we grant LeRoy Howell reasonable attorney fees and costs incurred on appeal.

Opinion at 14-15.

This Court should take the same view. Solomon had more than enough chances to rebut Howell's claims in the trial court, but he utterly failed to do so. The courts cannot allow him to benefit from his attempts to revise his story every time he loses. The Court should not tolerate his defamatory allegations against attorneys and other innocent third parties. In addition to all of the other failings of Solomon's petition, it fails to establish that this case meets any of the criteria the Court uses to determine whether to accept review. The Court should deny the petition and award Howell his attorney fees for having to respond.

2. Restatement of Issues Presented for Review

Solomon presents essentially a single issue: whether the trial court erred in granting default judgment against the alleged Trust where the trustees allegedly were not personally served.

3. Statement of the Case

3.1 All defendants were properly served but only Solomon, individually, responded. The trial court entered judgment for Howell.

The underlying facts of the case are set forth in the Court of Appeals Opinion, and summarized in the Introduction, above. Of particular note, the fee simple deed, dated November 7, 2019, was incomplete, had portions written in after signing, and was not notarized. CP 14-16. The deed listed as grantee the “Evaan Syrah Solomon Trust 120,” CP 14, and was signed by Solomon himself, ostensibly as trustee of the named trust, CP 15.

After discovering Solomon’s attempted fraud, Howell filed his complaint to quiet title on March 16, 2020. CP 1. The same day, the trial court authorized service by publication on all unknown defendants who might claim an interest in the property. CP 49. Service

by publication was accomplished in April and May 2020. CP 80-81.

Solomon was personally served on March 19, 2020. CP 57. Because Solomon was the apparent trustee of the alleged Trust, according to the fee simple deed, this service also accomplished personal service on the alleged Trust. CP 15, 57. Solomon later produced a document, dated April 1, 2020, that purported to create the Trust, or perhaps a new trust, and make his daughters trustees, only after he himself had been served. CP 485-500.

Solomon was the only party to answer the complaint, on April 6, 2020. CP 58-59. He signed the Answer in his individual capacity, without mentioning the Trust. CP 58-59.

In June 2020, Howell moved for default on non-responding parties, including the Trust, CP 89-91, and for summary judgment against all parties, CP 95-110. The summary judgment motion emphasized that

Solomon's answer failed to dispute any material facts that entitled Howell to the relief requested in his complaint. CP 95-110. Solomon filed a declaration responding to the motions but failed to dispute any of the material facts regarding the flaws in the deeds. CP 178-83. The trial court granted Howell's motions and quieted title in Howell against all defendants. CP 414-23. Solomon appealed, in his individual capacity. CP 428.

3.2 After the Court of Appeals affirmed, Solomon sought further review.

Division III of the Court of Appeals issued its Opinion on January 20, 2022, affirming the trial court and awarding attorney's fees to Howell for Solomon's frivolous appeal. Solomon filed a timely motion for reconsideration. The motion was denied by Order dated February 15, 2022.

Solomon filed a "Petition for Discretionary Review" on or around February 24, 2022. The petition

failed to meet the content and formatting requirements of RAP 13.4(c). This Court notified Solomon that the petition was defective and that a proper petition would have to be filed by March 14, 2022.

On or around March 14, 2022, Solomon filed a motion to extend time and a motion to set aside default judgment. The Clerk of this Court referred the motions for consideration by a Department of the Court only if Solomon filed a proper petition by April 14, 2022. The Clerk noted that the petition and other motions would only be considered by the Court if the Court first granted the motion to extend.

Solomon filed a Petition for Review on April 13, 2022. He then filed an Amended Petition for Review on April 15, 2022. The Clerk notified Solomon that the amended petition would not be considered unless he filed a motion to amend by April 29, 2022. On April 26, 2022, Solomon filed a “Motion to Amend,” which was typed into a Spokane District Court motion form,

without presenting any facts or legal argument to support the request to amend the petition for review.

The Clerk called for Howell to answer the Petition, the motion to extend, the motion to amend, and the motion to set aside default judgment by May 31, 2022.

3.3 The Petition fails to address the criteria for accepting review, fails to refer to the record, and fails to present legal argument supported by authority.

Solomon's April 13 Petition asked this Court to accept review of the Court of Appeals decision, presenting three issues for review: 1) Lisa Brewer never presented proof of service; 2) Lisa Brewer never provided proof that she represented Howell; and 3) Lisa Brewer never served Solomon's daughters, who he claims are the trustees of the alleged Trust. The amended petition made no change to the issues for review.

Both petitions recite Solomon's factual allegations that Howell signed a deed transferring the property to the alleged Trust and that Solomon and Howell had other contracts for development of the land, which Howell claims were partly performed. The statement of the case contains no references to the record in the trial court.

Both petitions argue that Solomon appeared and was not in default and that Solomon's daughters, as alleged trustees, were not personally served. Solomon argues that Howell's attorney allegedly knew the names and addresses of the daughters and their role as trustees. Again, neither petition provides any reference to anything in the trial court record that could substantiate these claims. This Court should "decline to consider facts recited in the briefs but not supported by the record." *Sherry v. Financial Indem. Co.*, 160 Wn.2d 611, 615 n.1, 160 P.3d 31 (2007).

The April 13 petition was signed by an unnamed “trustee,” with the names of two of the daughters printed below. The amended petition bore the same, single signature, with the names of all three daughters printed below. Both petitions listed “Evaan Syrah Solomon Trust” as the Appellant.

Neither petition presented any legal argument in support of the issues presented for review. Neither petition demonstrated from the record below that there was any error committed by the trial court or the Court of Appeals. Neither petition mentioned RAP 13.4 or presented any argument as to how this case meets any of the criteria for accepting review.

4. Argument

4.1 The petition fails to establish, or even argue, any of the RAP 13.4(b) criteria for accepting review.

A petition for review should only be accepted when the case meets at least one of the criteria set forth in **RAP 13.4(b)**: if the Court of Appeals decision

conflicts with a published opinion of the Court of Appeals or of this Court; if a significant Constitutional question is involved; or if the petition involves an issue of substantial public interest that should be determined by this Court.

Solomon has failed to establish, argue, or even mention any of these criteria. For this reason alone, the petition should be denied.

4.2 The Trust, the purported petitioner, lacks standing to seek review in this Court.

The petition should also be denied because the purported Petitioner, “Evaan Syrah Solomon Trust,” did not appeal the trial court decision. The Notice of Appeal, at CP 428, listed Solomon, not the Trust, as the Appellant, and was signed by Solomon individually, without any mention of the Trust. The Court of Appeals Opinion reflects this, with Solomon listed in the caption as “Appellant” and the Trust listed as a non-participating “Defendant.”

Under **RAP 3.1**, only an aggrieved party may seek review. To seek review in this Court, a party must have been aggrieved by the Court of Appeals' decision.

Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 151-52, 437 P.3d 677 (2019). Because the Trust was not a party to the appeal, the Trust could not be aggrieved by the Court of Appeals decision. By not appealing, the Trust accepted the trial court decision against it. Having failed to appeal in the first place, the Trust may not seek further review. Because both Petitions purport to be made by the Trust, this Court should deny the Petition for lack of standing.

4.3 The Court of Appeals correctly affirmed the trial court decision.

Solomon also failed to establish any error committed by the trial court or the Court of Appeals. Howell provided proof in the trial court record that Solomon had been personally served. At the time of that personal service, the trust document at CP 485-

500 had not yet been executed. The only evidence that any trust existed at the time of service was the fee simple deed, in which Solomon purported to be the trustee. Thus, personal service on Solomon also accomplished personal service on whatever trust might have existed at that time. Having been personally served, the Trust failed to respond to the summons and complaint or to the summary judgment motion. The trial court properly entered default judgment against the Trust.

To the extent Solomon's daughters claim an interest in the property, they were unknown defendants at the time of the complaint because there was no reason for Howell to know of their existence or to believe that they might have an interest. They were squarely within the class of defendants for which the trial court properly authorized service by publication. Solomon did not assign error to the trial court's order authorizing service by publication.

Howell's complaint and summary judgment motion established that the deeds to Solomon or the Trust were invalid and that title should be quieted in Howell. *See* RCW 64.04.020; *Genessee v. Firstline Investment*, 48 Wn. App. 707, 710-11, 740 P.2d 367 (1987) (an unacknowledged deed is invalid and does not convey an enforceable property interest). Solomon's answer and responsive declaration failed to dispute any of the material facts regarding the invalidity of the deeds. Even if Solomon was representing the Trust in the summary judgment proceedings, the Trust also failed to dispute any material facts. Not a single known or unknown defendant disputed any material fact. The trial court was correct to enter summary judgment against Solomon.

The trial court did not err. Neither did the Court of Appeals. The Court of Appeals decision does not conflict with any published precedent. The case does not involve a significant Constitutional question. The

case does not involve a matter of any public interest.

This Court should deny review.

4.4 Howell requests an award of attorney's fees for having to respond to this frivolous petition.

Under RAP 18.9, “The appellate court ... may order a party or counsel ... who uses these rules for the purpose of delay [or] files a frivolous appeal ... to pay terms or compensatory damages to any other party who has been harmed.” **RAP 18.9(a)**. The primary inquiry under this rule is whether, when considering the record as a whole, the appeal is frivolous, *i.e.*, whether it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal. *Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980).

In *Streater*, the court found the appeal frivolous where “the assignments of error challenge findings of fact that are amply supported by substantial evidence as well as the conclusions of law which are clearly

supported by the findings.” *Streater*, 26 Wn. App. at 435. The same is true here. The trial court’s decision stands on a strong foundation in the record. Howell’s evidence established that Solomon and the Trust were properly served and that Howell was entitled to the relief he sought. Solomon failed to dispute any material facts, and all other defendants, including the Trust, failed to respond. To make matters worse, Solomon’s appeal, and now his petition, utterly fail to present any coherent argument based on the facts in the record. Solomon fails to cite to the record or to any legal authority to support his positions, which are untenable.

There are no debatable issues in the petition. There was never any reasonable possibility of reversal. The Court of Appeals was correct to award Howell his attorney’s fees for the frivolous appeal. This Court should also award Howell his attorney’s fees for responding to this frivolous petition.

5. Conclusion

The trial court did not err. Neither did the Court of Appeals. The Court of Appeals decision does not conflict with any published precedent. The case does not involve a significant Constitutional question. The case does not involve a matter of any public interest. This Court should deny review and award Howell his attorney's fees for responding to the frivolous petition.

I certify that this document contains 2,613 words.

Submitted this 31st day of May, 2022.



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