70917-8

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No. 70917-8

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

JACOB A. BECKWITH,

Respondent/Plaintiff,

v.

SEIL REVELS and SQPUTT, LLC, a Washington limited liability company,

Appellants/Defendants.

APPELLANT'S REPLY BRIEF

ATTORNEYS FOR Defendant/Appellant
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I. INTRODUCTION

This Reply Brief is submitted on behalf of Appellant, Seil Revels. In fairness, Mr. Beckwith should have informed the court that SQPUTT's appeal was voluntarily dismissed on its motion only after he executed on Mr. Revels' ownership interest in SQPUTT, LLC and bought it at a Sherriff's Sale on November 20, 2013. CP____. [1] In the event the court grants the relief Mr. Revels requests, all property Mr. Beckwith took from him will be restored in accordance with RAP 12.8. But that is for another day.

With the dismissal of SQPUTT's appeal, only one issue became moot: the invalid and wrongful entry of a default judgment against SQPUTT, LLC after it had answered the Complaint.

As for the rest of this case, Mr. Beckwith does not employ the words "just" or "equity" or "fair" in asking the court to affirm the draconian terms the trial court imposed on Mr. Revels. No doubt because the facts show the opposite is true. And his misdirection arguments fare no better.

The Judgment against Mr. Revels should be reversed and he should have his day in court.

II. ARGUMENT IN REPLY

A. The undisputed facts cry out for relief.

Mr. Beckwith did not oppose Mr. Revels' plea under RAP 9.10 and RAP 9.11 asking the court to take into account the facts and circumstances

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[1] Appellant filed a Designation of Clerk's Papers Supplemental on January 30, 2014.

recited in the Declaration of Seil Revels in Support of Motion on the Merits. (App. Br. at 3, 5). Indeed, Mr. Beckwith relies on those facts to assert that if Mr. Revels "has a grievance against his former counsel, he has recourse in the form of a malpractice action." (Res. Br. at 14). The "too-bad, so-sad – go sue your lawyers" approach flies in the face of the admonition of CR 1 that the rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." A legal malpractice suit always consists of two cases, one to resolve the underlying suit and the second to resolve the claim against the lawyer, hardly a speedy and inexpensive way to resolve a dispute. And that approach ignores the Court's admonition "to give parties their day in court and have controversies determined on their merits." *Morin v. Burris*, 160 Wn.2d 745, 161 P.3d 956 (2007).

The argument that depriving Mr. Revels of his day in court under these circumstances is justifiable because it happens "routinely" when a lawyer misses the statute of limitations (Resp. Br. at 14) is a specious analogy. A dismissal for the expiration of the statute of limitations is not discretionary and can occur only where the undisputed facts show relief must be granted as a matter of law under CR 56. Here the undisputed facts showed only that the judgment should have been vacated, and that was a discretionary ruling Mr. Beckwith does not dispute. The nub of the issue is whether, under the facts of this case, the trial court's exercise of power in conditioning the order vacating the judgment was lawful, just, equitable or

fair. This issue has nothing to do with a summary judgment on the statute of limitations and is in no way analogous.

The undisputed facts relevant to the issue here are egregious. Mr. Revels believed he had counsel on June 18, 19, and 20, and if they had only called Mr. Beckwith's attorney or served and filed a Notice of Appearance, no legitimate *ex parte* default judgment would have been possible. Mr. Beckwith concedes as much when he complains about "the total silence and absence of any communication from Revels **whatsoever**...." (Resp. Br. at 12, emphasis added). Mr. Revels' erstwhile counsel failed to serve or file a Notice of Appearance until several weeks after the default judgment was entered. CP 41.

Mr. Beckwith is wrong when he argues that the alleged negligence of the lawyers was not before the trial court and is not relevant to this appeal. While it is true Mr. Revels' lawyers did not plead for mercy on account of their mistakes – they blamed the client instead – all of the foregoing facts were before the trial court. The trial court ruled they initially botched the motion to vacate. CP 67, 68. The facts presented caused the trial court to conclude there might have been "excusable neglect". CP 140, 141.

The sorry reality is Mr. Revels' lawyers drafted and asked him to sign a Declaration that covered their own mistakes. Mr. Beckwith calls that Declaration "demonstrably false", "ill advised", "manufactured" and "a fraud on the court." (Resp. Br. at 5, 7, 13). After foisting the allegedly "demonstrably false, ill advised and manufactured fraud" on the court, Mr. Revels' lawyers then refused to pay the attorney fees sanctions that

resulted only because they negligently failed to make a timely appearance as counsel in the case.

Mr. Revels is blameless. He had no income, and he lived with his parents. These facts are very relevant to the question of whether the outcome was just or equitable or fair. It is telling that Mr. Beckwith never – not once – argues that what the trial court did to Mr. Revels was just or equitable or fair. He says only that it was "acceptable". (Resp. Br. at 8). And Mr. Beckwith shamelessly executed on Mr. Revels' property before this appeal is concluded. CP ___.[2] The injustice, inequity and unfairness of what was done to Mr. Revels is not in any sense acceptable.

The trial court found there was a *prime facie* defense to Mr. Beckwith's claims. One defense was obvious on the face of the Complaint. It alleged, "Beckwith made loans to SQPutt in the principal amount of $112,811.06, at the request of Revels, as SQPutt's manager, under an agreement with Beckwith that these were short term loans and would be repaid out of proceeds from the sale of the initial production run of 1,200 units." CP 4. But SQPUTT had not sold any units and, consequently, by the terms Mr. Beckwith alleged, the loans were not due to be repaid.

[2] See Designation of Clerk's Paper's Supplemental filed January 30, 2014.

B. The court should reject Mr. Beckwith's mis-direction arguments.

First, any argument about the *basis* for a court's order vacating a judgment under CR 60 or 55 is wholly inapt. The issue here is not the *basis* for the order vacating the judgment; the multiple *bases* for the order are not contested. The *bases* for vacating the judgment were the trial court's findings that there was a defense to the claim, that the failure to appear and answer was the result of mistake, inadvertence, surprise or excusable neglect, that the defendants acted with diligence upon notice of the default, and that there was no hardship on the opposing party. CP 140, 141. Not a single *basis* for the trial court's conclusion that the judgments should be vacated is disputed.

Because the basis for vacating the default judgments is not the issue in this case, the language in the Court's decision in *State v. Scott*, 20 Wn. App. 382, 386-87, 580 P. 2d 1099, 1102 (1978), *aff'd by* 92 Wn. 2d 209, 595 P. 2d 549 (1979) is irrelevant. The issue in this case is whether the trial court's assertion of power to impose a condition under the circumstances of this case was lawful, just, equitable or fair.

Second, Mr. Beckwith wrongly conflates the default judgments entered here with what he says were "default judgments" entered in *Hendrix v Hendrix*, 101 Wash. 535, 172 P. 819 (1918) and *Pamelin Industries, Inc. v. Sheen-U.S.A., Inc.*, 95 Wn.2d 398, 622 P. 2d 1270

(1981). (Resp. Br. at 9-10). No court entered a default judgment in *Hendrix*. Judgment was entered following a trial. The opinion says, "By written stipulation between the attorneys for the respective parties, the cause was tried on the 2d day of November, 1916, and resulted in a judgment as above indicated." *Hendrix*, 101 Wash. at 537.

As for *Pamelin Industries*, *supra*, while the words "default judgment" do appear in the court's opinion, the fact is that no default judgment was entered pursuant to CR 55. Instead, the judgment was imposed as a CR 37 sanction for discovery violations. The judgment was vacated under CR 60 and conditioned on payment of plaintiff's attorney fees and posting a $50,000 performance bond. The facts showed that the defendant against whom judgment was entered 1) failed to respond to a CR 34 request for production, 2) failed to seek a protective order, 3) failed to object to the request for production, 4) failed to make a complete production, 5) failed to appear for the motion to strike its pleadings and enter judgment, and 6) they had prejudiced plaintiffs with dilatory conduct. *Id.* 95 Wn.2d at 404.

It is also a relevant, technical and distinguishing fact that the defendant failed to appeal the entry of the judgment and, consequently, the court concluded all legal errors were waived and could not be challenged. *Pamelin*, 95 Wn.2d at 403. Consequently, the only issue before the court was whether the trial court's sanctions were an abuse of discretion.

What happened in the *Pamelin* case should in no way be equated with or authorize or approve of the conditions the trial court imposed in this case.

Third, Mr. Beckwith is not the victim in this case. He is wrong when he claims that requiring entry of judgment on the sanctions "simply is contrary to common sense and the requirement that the terms be meaningful." (Resp. Br. at 13). Common sense tells us you don't throw somebody out of court merely because his lawyer did not know what he was doing. Whatever he means by "common sense" or "meaningful", the standards by which the trial court's exercise of discretion are measured are justice, equity and fairness.

Fourth, the court should reject Mr. Beckwith's condescending contention there was no abuse of discretion because the fine was "in a relatively modest amount". (Resp. Br. at 13). Indeed, the more modest the amount the greater the injustice in denying Mr. Revels his day in court. It was unjust and inequitable to compel him to pay for his lawyer's mistakes as the price for admission to court.

C. The standard of review is *de novo.*

The first assignment of error addressed the scope of the trial court's power, and that is an issue of law. As argued in Appellant's Brief, the standard of review of an error of law as to the scope of a trial court's

authority in imposing a condition not set forth in a statue is *de novo*. *State v. Hooper*, 154 Wn. App. 428, 225 P.3d. 446 (Div. 3 2010). Mr. Beckwith failed to cite any contrary authority.

Whether the trial court has the power to deny a party his day in court under these circumstances may be a case of first impression. Every poor person whose misfortune includes placing his or her trust in a young and inexperienced lawyer's hands should be greatly concerned by what happened here. That is what Mr. Revels did and because he could not afford to pay for his lawyer's mistakes, he was thrown out of court.

The outcome here is a classic example of a denial of access to justice. It is telling, again, that Mr. Beckwith did not argue otherwise.

The court should examine *de novo* the trial court's exercise of power. No statute, rule or case granted the trial court the power to do what happened in this case.

In any event, under all the circumstances, the trial court's actions were unjust, inequitable, unfair and an abuse of discretion.

The judgment against Mr. Revels should be reversed.

February 3, 2014.

Respectfully submitted,

Michael J. Bond

Michael J. Bond, WSBA #9154
Attorney for Seil Revels

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CERTIFICATE OF SERVICE
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I, Michael J. Bond, certify and declare as follows:

I am over the age of 18 and am otherwise competent to make this declaration. This declaration is made upon personal knowledge setting forth facts I believe to be true.

On February 3, 2014, I served a copy of the Appellant's Reply Brief and this Certificate of Service by deposit in US Mail postage prepaid addressed to:

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DATED: February 3, 2014 at Mercer Island, Washington.

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