

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Received
Washington State Supreme Court

MAR 30 2016
Ronald R. Carpenter
Clerk

EDWARD M. GOODMAN and)
BERNICE S. GOODMAN, husband)
and wife,)
Respondents,)
vs.)
MARY F. GOODMAN,)
Petitioner.)
_____)

RESPONDENTS'
ANSWER TO PETITION
FOR REVIEW AND
MOTION FOR AWARD
OF ATTORNEY FEES

COMES NOW Respondents, by and through their attorney C. Thomas Moser, in opposition to Petitioner's Petition For Review and now ask this Court to deny the motion and award attorney fees to Respondents.

Petitioner Has No Standing: This appeal was filed in the Court of Appeals by Mary F. Goodman on November 6, 2014. See **Appendix A**. Mary is now deceased. See **Appendix B**. Without legal authority or explanation, Mary's husband, Michael Goodman continued with the appeal process before the Court of Appeals. Michael is not a party to this appeal. He has produced no authority to proceed in his deceased wife's name and simply applies his name to her appeal. He has not substituted himself as a party. CR 25.

ORIGINAL

Petitioner's Fifth Appeal To Supreme Court: This is the fifth time the pro se Petitioner has filed an appeal to the Supreme Court in this matter. The first appeal was by Motion For Discretionary Review, in 2013 and was assigned cause number 88811-6. This was an interlocutory appeal of a Court of Appeals order concerning an affidavit of prejudice and motion for emergency stay of proceedings. That resulted in a Ruling Denying Review entered by this Court June 25, 2013, attached as **Appendix C**. That was followed by an Order denying a motion to modify entered September 4, 2013, attached as **Appendix D**.

The second appeal, which Petitioners entitled Motion For Discretionary Review, was dated December 2, 2013 and sought review of a Court of Appeals order denying a motion to amend a brief. The Petitioners' appeal was not given a cause number. This Court determined the rules do not allow for such review and the Petitioner's motion was placed under unfiled pleadings. See letter dated December 5, 2013, attached **Appendix E**.

The third appeal was a Petition For Review dated February 28, 2014 in Supreme Court number 90025-6 and was a challenge to orders denying several motions in the Court of Appeals. The central order was the affidavit of prejudice filed in the Superior Court. This Court issued an Order on June 4, 2014 denying Petition For Review and granted attorney

fees to Respondents. See attached **Appendix F**. That was followed by Clerk's Ruling on attorney fees and final Order by the Chief Justice. See attached **Appendix G and H**.

After the third appeal to the Supreme Court a mandate was issued by the Court of Appeals on September 17, 2014 and awarded attorney fees to Respondents. See attached **Appendix I**. Respondents thought this long legal struggle was at long last ended, but Petitioner Michael Goodman filed a Motion To Recall Mandate in the Court of Appeals, dated December 2, 2014. The Court of Appeals denied the Motion To Recall Mandate by Order entered January 12, 2015. See **Appendix J**.

The fourth appeal was a Motion For Discretionary Review dated February 11, 2015 in Supreme Court number 91287-4 and was a challenge to the Court of Appeals Order Denying Motion To Recall Mandate. The Commissioner entered a Ruling Denying Review on July 2, 2015. Petitioner filed a Motion To Modify, which was denied by the Chief Judge on September 30, 2015, followed by a Clerk's Ruling Setting Attorney Fees and Expenses and another Order of the Chief Judge on February 10, 2015 denying a second Motion To Modify. See **Appendix K and L**.

The present appeal is the fifth time the Court has been asked to consider the same issue involving the Affidavit of Prejudice filed against Judge Susan Cook in 2010.

In addition to these five appeals on the same issue involving the Affidavit of Prejudice, Petitioner's son, Chance Goodman filed a Motion For Discretionary Review dated November 29, 2015 in this Court, which was assigned Supreme Court number 92541-1. The motion was denied by the Commissioner by Ruling Denying Review on March 17, 2016. See **Appendix M**. Chance Goodman was at one time a co-defendant in Superior Court, but the claim against him was dismissed before trial.

Issue Presented: The issue raised in the present Petition For Review is the same issue involving the Affidavit of Prejudice that has been raised by Petitioner and Chance Goodman on several other occasions. Petitioner accuses the Court of Appeals of doing a "re-write" of the trial court decision and alleges a "fraud upon the court" in the process, stating that opposing counsel and "the trial judge deceived defendants' attorney by an omission and commission.¹"

The issue of the Affidavit of Prejudice has been reviewed by the Court of Appeals and by this Court. Each review has affirmed the trial court. The Court of Appeals concluded below that:

This court previously considered this issue when it denied Michael's motion to reverse the order denying the affidavit of prejudice. Mary fails to persuasively explain why this court should revisit our prior decision on this issue.²

¹ Petition For Review, page 2.

² Opinion, December 14, 2015, page 5

The issue has been considered and should not be considered for a sixth time by this Court.

Petitioner attempts to raise additional issues in the Petition that were not raised by Mary Goodman below. Petitioner lists four matters that he considers “edited parts of the 2012 trial decision” and argues that “In sum, the opinion in Goodman v. Goodman No. 68416-7-1 (2013) misrepresented the 2012 trial decision and hid the extensive damage done to Michael’s property.³” The attempt is to insert into this appeal a decision made several years ago by the Court of Appeals, which in fact was appealed by Michael to this Court in Supreme Court No. 91287-4, which was Michael’s fourth appeal to the Court. Not only were these issues resolved in prior appeals, they were not raised below by Mary in her initial appeal to the Court of Appeals. As that Court stated:

Mary assigns error only to the trial court’s June 3, 2010 denial of Tyson’s affidavit of prejudice⁴.

Petitioner cannot now use Mary’s appeal to raise new issues not considered below, and he also cannot get a second review of an earlier Court of Appeals decision that has been resolved.

³ Petition For Review, page 4.

⁴ Opinion, December 14, 2015, page 3.

It is Washington law that issues not adjudicated below will not be considered on appeal. That principal applies to trial court decisions reviewed by the Court of Appeal and Court of Appeals decisions reviewed by the Supreme Court. In *Peoples Nat. Bank of Washington v. Peterson*, 82 Wash. 2d 822, 514 P.2d 159 (1973) this Court this issue:

In reviewing a decision of the Court of Appeals, we are generally limited to questions presented before and determined by that court and to claims of error directed to that court's resolution of such issues. *Wood v. Postelthwaite*, 82 Wash.2d 387, 510 P.2d 1109 (1973). We see no reason, therefore, why the rules of review above set forth should not apply to issues and theories not appropriately raised before the Court of Appeals, particularly so, when such issues and theories were not presented in either the trial court or the Court of Appeals.

Peoples Nat. Bank of Washington v. Peterson, 82 Wash. 2d 822, 830, 514 P.2d 159, 164 (1973)

Standard Of Review: Petitioner cites RAP 13.4(b)(1)(2) and (3) in support of the Petition For Review.⁵ The first argument is that “fraud” qualifies the Petition For Review because “the standards for a ‘fair trial’ were grossly flouted.⁶” The authority cited by Petitioner, RAP 13.4(b)(3) concerns alleged significant questions of law under the Constitution of Washington or the United States. None are presented here. Indeed this is an issue not raised below. The second argument is that the Court of

⁵ Respondent believes the proper designation should be Motion For Discretionary Review, but understand that Court will not dismiss on that basis.

⁶ Petition For Review, page 7.

Appeals decision is in conflict with this Court, citing RAP 13.4(b)(1). The circular argument is that since the Affidavit of Prejudice was denied, that decision is on conflict with Supreme Court cases. There is no conflict with the case cited since the Court of Appeals decision does not conflict with any holding of the Supreme Court.

The third argument is that there is a conflict between Court of Appeals divisions, citing RAP 13.4(b)(2). The holding in the Court of Appeals decision below is not inconsistent with any of the cases cited from Division 3 by Petitioner.

For those reasons alone the Petition must be denied.

Respondents' Motion For Award of Attorney Fees

Respondents ask this Court to deny the Petition For Review and award reasonable attorney fees for this continuing series of appeals filed by a pro se litigant who is unhappy with the result of a fair trial conducted in Skagit County Superior Court. This request is made pursuant to RAP 18.1(j). It should also be noted that the Court of Appeals has awarded attorney fees to Respondents because it was determined that the Petitioner's appeal was frivolous⁷.

⁷ Unpublished Opinion, page 8

This appeal is part of an ongoing pattern of litigation abuse by vexatious pro se litigants. As mentioned above, Michael Goodman and his wife Mary Goodman have filed five (5) appeals to this Court. In addition, Chance Goodman filed a sixth appeal to this Court.

The original litigation filed by Respondents included claims against Petitioners and their sons Chance and Tyson Goodman. The claims against the Petitioners' sons were dismissed upon motion for voluntary non-suit in the trial court. This dismissal did not stop both sons from filing appeals and an attempt by Chance Goodman to file an Amicus Curiae Brief in support of his parents, Michael and Mary Goodman during the appeal to the Court of Appeals⁸. Such frivolous motions require the time and expense of research and response, which is the impact sought by litigants who have stated to the opposing party that they will bury them in paperwork and legal expenses.

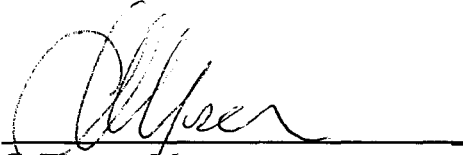
These three pending appeals, filed by the Petitioners and one by Petitioners' son, are part of the frivolous litigation campaign conducted against Respondents by pro se vexatious litigants. In addition to the above Tyson Goodman filed a Motion For Discretionary Review in 2011 seeking interlocutory review of a trial court order. The motion was denied by

⁸ Chance Goodman is not a lawyer and his motion was defective pursuant to RAP 10.6.

Ruling on Discretionary Review (**Appendix N**) and subsequent Order Denying Motion To Modify (**Appendix O**).

Conclusion: Petitioner has failed to demonstrate how the Court of Appeals committed any error or how this appeal complies with any of the considerations governing acceptance of review by this Court pursuant to RAP 13.4(b). The Petition For Review should be denied and Respondents awarded attorney fees.

DATED this 28 day of March, 2016.

A handwritten signature in cursive script, appearing to read 'C. Moser', is written over a solid horizontal line.

C. Thomas Moser
Attorney for Respondents
1204 Cleveland Avenue
Mount Vernon, WA 98273
360-428-7900
WSBA # 7287

APPENDIX

Appendix A	Appeal dated November 6, 2014 by Mary Goodman
Appendix B	Obituary Notice
Appendix C	Ruling Denying Review dated June 25, 2013
Appendix D	Order entered September 4, 2013
Appendix E	Letter dated December 5, 2013
Appendix F	Order entered June 4, 2014 denying Petition For Review
Appendix G	Clerk's Ruling
Appendix H	Order by the Chief Justice
Appendix I	Court of Appeals Mandate dated September 17, 2014
Appendix J	Motion To Recall Mandate by Order entered January 12, 2015
Appendix K	Ruling Denying Review dated July 2, 2015
Appendix L	Order dated February 10, 2016
Appendix M	Ruling Denying Review on March 17, 2016
Appendix N	Ruling on Discretionary Review
Appendix O	Order Denying Motion To Modify

FILED

SKAGIT COUNTY SUPERIOR COURT
NANCY K. SCOTT
SKAGIT COUNTY CLERK
MOUNT VERNON WA

10-2-00587-3

Rept. Date	11/06/2014	Acct. Date	11/06/2014	Time	02:02 PM
Receipt/Item #	2014-01-20875/01	Tran-Code	1116	Doc-Code	SK
Cashier:	SK				
Paid By: Goodman, Mary		Transaction Amount:		\$290.00	

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
2014 NOV -6 PM 1:58

COPY MAILED
TO CLERK
11-10-14
MZ

SUPERIOR COURT OF WASHINGTON
FOR SKAGIT COUNTY

EDWARD M. GOODMAN, Et ux.,) No. 10-2-00587-3
Plaintiffs,)
vs.) NOTICE OF APPEAL TO
MICHAEL J. GOODMAN, Et ux.,) COURT OF APPEALS
Defendants.)

Mary F. Goodman, Defendant, seeks review by the
Court of Appeals, Division One of the State of Washington of the
Judgment entered on October 8, 2014.

A copy of the decision is attached to this notice.

Dated this 6 day of November, 2014.

Mary F Goodman
Mary F. Goodman, Defendant

Mary F. Goodman, Defendant/Appellant
13785 Goodman Lane
Anacortes, WA 98221
360-293-3298

David L. Day
Attorney for Plaintiffs/Respondents
P.O. BOX 526
Burlington, WA 98233
360-755-0611
WSBA#8361

2014 OCT -8 AM 9:22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT, STATE OF WASHINGTON, SKAGIT COUNTY

EDWARD M. GOODMAN, and BERNICE S.) Case No.: 10-2-00587-3
GOODMAN, husband and wife,)

Plaintiffs,

vs.

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife,

Defendants.

JUDGMENT

JUDGMENT SUMMARY

- 1. Judgment Creditors: Edward M. Goodman and Bernice S. Goodman
- 2. Judgment Debtors: Michael J. Goodman and Mary F. Goodman
- 3. Principal judgment amount \$21,128.66
- 4. Interest to date of judgment \$ —
- 5. Attorney's fees \$ —
- 6. Costs \$ —
- 7. Other recovery amounts \$ —
- 8. Principal judgment shall bear interest at 12% per annum.
- 9. Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum.
- 10. Attorney for Judgment Creditors DAVID L. DAY
- 11. Attorney for Judgment Debtors Pro Se

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, the Plaintiff have and recover
2 Judgment against the Defendants, Michael J. Goodman and Mary F. Goodman, husband and
3 wife, in the principal sum of \$21,128.66, plus costs and attorneys fees in the sum of \$ 0,
4 other recovery amounts in the amount of \$ 0, and interest in the sum of \$ 0 for a total
5 Judgment of \$ ^{21,128.66} together with interest thereon at the rate of 12% per annum on the
6 principal and 12% on the costs and attorney fees from the date of this Judgment until paid.

7 DATED this 8 day of October 2014.

8
9 Susan K Cook
10 Honorable Susan K. Cook

11 Presented By:

12 FAIRHAVEN LEGAL ASSOCIATES, P.S.

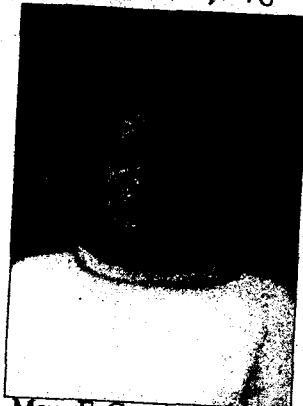
13
14 David L. Day
15 DAVID L. DAY, WSBA #8361
16 Attorney for Plaintiff

17 Object mary f. goodn
18 Mary Goodman, Def. Pro Se

19 An affidavit of
20 Prejudice was
21 filed June 1, 2010.
22 Judge Susan K. Cook
23 lacks jurisdiction
24 in Case no. 10-2-00587-
25

**MARY F. GOOD-
MAN**

October 5, 1948 -
November 11, 2015
SVH 11-17-15



Mary F. Goodman, 67, of Anacortes, passed away on Monday, November 16, 2015 at her home in Anacortes, WA. She was born on October 5, 1948 in Seattle, WA to Raymond F. and Elizabeth A. (Hering) Brennan.

A full obituary will follow in the next edition of the Anacortes American. Arrangements are in the care of Evans Funeral Chapel and Crematory, Inc., Anacortes, WA and the San Juan Islands. To share memories of Mary, please sign the online guest register at www.evanschapel.com.

*Evans Funeral Home and
Crematory, Inc.*

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN and
BERNICE S. GOODMAN, husband and
wife,

Respondents,

v.

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife,

Petitioners,

and

CHANCE GOODMAN, a single man;
and TYSON GOODMAN, a single man,

Defendants.

NO. 88811-6

RULING DENYING REVIEW

FILED
2013 JUN 25 A 11:42
BY DONALD R. CARPENTER
CLERK

Michael Goodman seeks review of an order denying his motion to reverse a June 2010 trial court order.

This matter involves a dispute between brothers Edward and Michael Goodman over property located at Lake Campbell in Skagit County. Defendants Michael and Mary Goodman (Michael)¹ appealed Judge Susan Cook's January 2012 decision granting plaintiffs Edward and Bernice Goodman (Edward) the right to use a non-exclusive easement and shared driveway and the right to use a septic system area and permanently enjoining the defendants from hindering or blocking the plaintiffs' use of the easements. The appeal has been briefed and apparently awaits decision. Meanwhile, Michael has inundated the Court of Appeals with motions, including a

¹ First names will be used only for the sake of clarity.

February 4, 2013, "Motion to Reverse Trial Court Order Denying Affidavit of Prejudice." That motion challenged Judge Cook's June 3, 2010, order denying Tyson Goodman's affidavit of prejudice. (Michael's sons Chance and Tyson Goodman were named defendants at the time, but it appears that the claims against them were bifurcated and later dismissed.) Judge Cook denied the affidavit on grounds that she had earlier entered a discretionary ruling in the case, making Tyson's motion untimely. The Court of Appeals denied the motion to reverse by order dated April 23, 2013. Michael now seeks this court's review of that decision.

Michael argues that Judge Cook should have granted the affidavit of prejudice because she had only previously entered an agreed temporary restraining order involving no exercise of discretion. But it appears that prior to entry of the agreed order Judge Cook had issued a continuance order on April 9 keeping an earlier temporary restraining order in place and another temporary restraining order on April 13.² Michael suggests (without citation to the record) that those rulings came before the defendants had appeared in the case. But it is difficult to tell from the record when Tyson Goodman was served. More importantly, Michael does not explain why his motion challenging the denial of the affidavit of prejudice should be considered timely, since Judge Cook entered her order of denial on June 3, 2010. Review of a trial court decision not subject to appeal must be initiated by notice filed within 30 days. RAP 5.2(b). Perhaps it could be argued that the motion should be considered part of the ongoing appeal from the trial court's January 2012 decision. Michael likely could have assigned error to the June 3, 2010, order in his brief on

² Edward argues that Michael should not be permitted to challenge the June 3, 2010, order because only Tyson Goodman filed an affidavit of prejudice. But this court has held that the plaintiffs or defendants in a lawsuit may file only one such affidavit as a class. *LaMon v. Butler*, 112 Wn.2d 193, 201-204, 770 P.2d 1027, cert. denied, 493 U.S. 814 (1989). And in consolidated juvenile adjudicatory proceeding, the Court of Appeals held that an affidavit of prejudice filed by one juvenile respondent may properly be imputed to his or her correspondents. *State v. Detrick*, 90 Wn. App. 939, 954 P.2d 949 (1998).

appeal. *See* RAP 2.4(b) (appellate court will review trial court order not designated in notice of appeal if the order prejudicially affects the decision designated in notice). But error must be assigned in the brief, and the appellate court may decide the case only on the basis of issues raised in the briefs. RAP 10.3(a)(4), 12.1(a). A party simply cannot, as part of an ongoing appeal, file separate motions disputing trial court rulings not challenged by assignment of error on appeal.

The Court of Appeals did not err or depart from accepted practice by denying the motion to reverse. RAP 13.5(b) (considerations governing acceptance of review). Accordingly, the motion for discretionary review is denied.³



COMMISSIONER

June 25, 2013

³ Edward seeks reasonable attorney fees for Michael's "continuing series of appeals." But he fails to support this request with argument or citation to relevant authority. Accordingly, the request is denied.

THE SUPREME COURT OF WASHINGTON

EDWARD M. GOODMAN and BERNICE S. GOODMAN, husband and wife,
Respondents,
v.
MICHAEL J. GOODMAN and MARY F. GOODMAN, husband and wife,
Petitioners,
and
CHANCE GOODMAN, a single man; and TYSON GOODMAN, a single man,
Defendants.

NO. 88811-6

ORDER

C/A No. 68416-7-I

FILED
2013 SEP -4 A 8 25
BY RONALD R. CARPENTER
CLERK

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Fairhurst, Stephens and González, considered this matter at its September 3, 2013, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioners' Corrected Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 4th day of September, 2013.

For the Court

Madsen, C.J.
CHIEF JUSTICE

APPENDIX D

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



December 5, 2013

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

LETTER SENT BY E-MAIL

Mary F. Goodman (sent by U.S. mail)
Michael J. Goodman
13785 Goodman Lane
Anacortes, WA 98221

Hon. Richard Johnson, Clerk
Division I, Court of Appeals
One Union Square
600 University Street
Seattle, WA 98101

C. Thomas Moser
Attorney at Law
1204 Cleveland Avenue
Mount Vernon, WA 98273-3837

RE: Court of Appeals No. 68416-7-1 - Edward M. Goodman & Bernice S. Goodman, v.
Michael J. Goodman & Mary F. Goodman,

Clerk, Counsel and Mr. Goodman:

On December 4, 2013, a "MOTION FOR DISCRETIONARY REVIEW" filed by Mr. Goodman was received. The motion seeks review of the Court of Appeals clerk's ruling denying Mr. Goodman's motion to file an amended brief in the above-referenced Court of Appeals case.

RAP 13.3 provides that a "party may seek discretionary review by the Supreme Court of any decision of the Court of Appeals which is not a ruling..." A "ruling" is defined in RAP 12.3(c) as "any determination of a commissioner or clerk of an appellate court." In addition, RAP 13.3(e) specifically provides: "A ruling by a commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court. The decision of the Court of Appeals on a motion to modify a ruling by the commissioner or clerk may be subject to review as provided in this title."

Since the rules do not allow for review by the Supreme Court of a ruling by the Court of Appeals clerk, the Petitioner's motion is rejected. The motion will be placed in our unfiled pleadings and no further action taken on it.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:lm

APPENDIX E



THE SUPREME COURT OF WASHINGTON

EDWARD M. GOODMAN, et ux.,

Respondents,

v.

MICHAEL J. GOODMAN, et ux.,

Petitioners.

NO. 90025-6

ORDER

C/A NO. 68416-7-I

Filed
Washington State Supreme Court

JUN - 4 2014

Ronald R. Carpenter
Clerk

Department II of the Court, composed of Chief Justice Madsen and Justices Owens, Stephens, González and Yu, considered at its June 3, 2014, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied and the Respondent's request for attorney fees is granted. The Respondent is awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), Respondent should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington this 4th day of June, 2014.

For the Court


CHIEF JUSTICE

APPENDIX F

291/103

Page 2

No. 90025-6

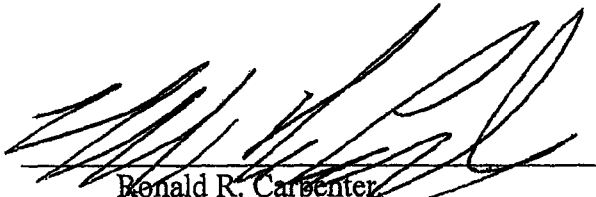
Clerk's Ruling Setting the Award for Attorney Fees and Expenses

RULING:

Based upon my independent review of the file, and consideration of both the affidavit and the objection thereto, I find the requested award amounts for both attorney fees and expenses to be reasonable. Accordingly, the Respondents, Edward M. Goodman and Bernice Goodman, husband and wife, are awarded attorney fees and expenses in the total amount of \$1,685.44, which shall be paid by the Petitioners, Michael Goodman and Mary F. Goodman, husband and wife and the marital community comprised thereof. The Petitioners shall be jointly and severally liable for the payment of the award.

A person aggrieved by this ruling may file a motion to modify the ruling not later than 30 days after this date; see RAP 17. 7.

Dated at Olympia this 25th day of June, 2014.


Ronald R. Carpenter,
Supreme Court Clerk

THE SUPREME COURT OF WASHINGTON

EDWARD M. GOODMAN, et ux.,

Respondents,

v.

MICHAEL J. GOODMAN, et ux.,

Petitioners.

NO. 90025-6

ORDER

C/A NO. 68416-7-I

Filed
Washington State Supreme Court

JUN - 4 2014

Ronald R. Carpenter
Clerk

Department II of the Court, composed of Chief Justice Madsen and Justices Owens, Stephens, González and Yu, considered at its June 3, 2014, Motion Calendar, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied and the Respondent's request for attorney fees is granted. The Respondent is awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), Respondent should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington this 4th day of June, 2014.

For the Court


CHIEF JUSTICE

APPENDIX H

091/103

Pursuant to a Commissioner's ruling entered on February 26, 2014, attorney fees in the amount of \$17,572.50 and costs in the amount of \$120.72 are awarded against judgment debtors MICHAEL J. GOODMAN and MARY F. GOODMAN and are awarded in favor of judgment creditors EDWARD M. GOODMAN and BERNICE S. GOODMAN.

Pursuant to a Supreme Court Clerk's ruling entered on June 25, 2014, attorney fees and expenses in the amount of \$1,685.44 are awarded against judgment debtors MICHAEL J. GOODMAN and MARY F. GOODMAN and are awarded in favor of judgment creditors EDWARD M. GOODMAN and BERNICE S. GOODMAN.

c: Michael Goodman, Mary Goodman
C. Thomas Moser
Hon. Susan Cook



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 17th day of September, 2014.


RICHARD D. JOHNSON

Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

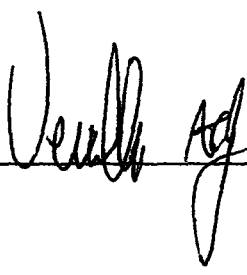
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

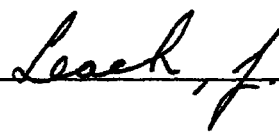
EDWARD M. GOODMAN and)
BERNICE S. GOODMAN, husband and) No. 68416-7-1
wife,)
)
Respondents,) ORDER DENYING MOTION
) TO RECALL MANDATE
)
v.)
)
MICHAEL J. GOODMAN and)
MARY F. GOODMAN, husband and wife,)
)
Appellants.)

Appellants Michael and Mary Goodman have filed a motion to recall the mandate issued by this court on September 17, 2014. Respondents have not filed a response. We have considered the motion under RAP 12.9 and have determined that it should be denied. Now, therefore, it is hereby

ORDERED that the motion to recall the mandate is denied.

Done this 12th day of January, 2015.





FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 JAN 12 PM 1:40

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED

JUL - 2 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

NO. 91287-4

RULING DENYING REVIEW

EDWARD M. GOODMAN and
BERNICE S. GOODMAN,

Respondents,

v.

MICHAEL J. GOODMAN, Petitioner,

and

MARY GOODMAN, CHANCE
GOODMAN, TYSON GOODMAN,
Defendants.

After a bench trial, the Skagit County Superior Court quieted title in Edward and Bernice Goodman to non-exclusive easements on petitioner Michael Goodman's property for a shared driveway and a septic system and drain field. The Court of Appeals affirmed the superior court in an unpublished opinion. Michael¹ filed a petition for review in which the only issue presented for review was whether Michael filed a timely affidavit of prejudice and the superior court judge should have been disqualified from hearing the matter. This court denied review and awarded the

¹ First names are used where necessary for clarity. No disrespect is intended.

respondents attorney fees and expenses pursuant to RAP 18.1. The Court of Appeals issued the mandate on September 17, 2014. Michael filed a motion to recall the mandate on December 4, 2014. His motion observed that although the court's opinion addressed his assigned error to the superior court's conclusion that usage of these easements was reasonably necessary, the court's opinion did not explicitly mention the superior court's findings of fact that an easement on a different adjacent lot could be used to reach the northern part of the property of Edward and Bernice. Michael contended the Court of Appeals "missed trial court findings of fact 46 and 47, the useable easement to Ed's property," and that this was an inadvertent mistake under RAP 12.9(b). The Court of Appeals denied the motion, and Michael now seeks this court's discretionary review. Edward and Bernice seek an award of attorney fees incurred in answering the motion for discretionary review.

The appellate court may recall a mandate to correct an inadvertent mistake or to modify a decision obtained by the fraud of a party or counsel in the appellate court. RAP 12.9(b). The Court of Appeals does not have authority to recall a mandate for the purpose of reexamining a case on its merits. *See Shumway v. Payne*, 136 Wn.2d 383, 393, 964 P.2d 349 (1998). There is nothing to suggest that the Court of Appeals mistakenly overlooked the findings of fact that Michael now cites. The Court of Appeals noted Michael's challenge to the superior court's conclusion regarding reasonable necessity and his arguments regarding the relative costs of substitutes, and also noted the superior court's findings related to how the topography of the lot affected the feasibility of alternative access. The Court of Appeals then wrote, "Absolute necessity is not required to establish an implied easement," citing *Eyich v. Kovacevich*, 33 Wn.2d 151, 157-58, 204 P.2d 839 (1949). Clearly, the opinion did not assume there were no conceivable substitutes. The Court of Appeals did not err or depart from accepted practice by denying the motion to recall the mandate, and this

court's review is not warranted under the criteria of RAP 13.5(b) (considerations governing acceptance of review).

Edward and Bernice have requested fees for answering Michael's motion for discretionary review pursuant to RAP 18.1(j). This rule allows attorney fees for answering a petition for review, not for answering a motion for discretionary review. *See* RAP 18.1(j) (attorney fees for answering a petition for review). Another rule, RAP 18.9, allows an appellate court to order a party who uses the rules for the purpose of delay or who files frivolous appellate actions to pay terms or compensatory damages to any other party who has been harmed. *See Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 384-85, 46 P.3d 789 (2002); *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). An appellate action is frivolous if, considering the entire record, the court is convinced that it presents no debatable issues upon which reasonable minds might differ and is so devoid of merit that there is no possibility of reversal. Here, the motion for discretionary review is devoid of merit and is frivolous.

Accordingly, the motion for discretionary review is denied. Pursuant to RAP 18.9(a), the respondents Edward and Bernice are awarded reasonable attorney fees and expenses for responding to the motion for discretionary review, to be paid by Michael in an amount to be set in accordance with the procedures of RAP 18.1.


COMMISSIONER

July 2, 2015

Filed *E*
Washington State Supreme Court
MAR 17 2016 *h*
Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN and
BERNICE S. GOODMAN,

Respondents,

v.

CHANCE GOODMAN, a single man,

Petitioner,

and

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife; TYSON
GOODMAN, a single man,

Defendants.

NO. 92541-1

RULING DENYING REVIEW

Chance Goodman filed a “Motion to Challenge Jurisdiction of Judge Cook and Honor Affidavit of Prejudice” in Skagit County Superior Court in January 2015. In the motion he challenged Judge Cook’s June 2010 denial of an affidavit of prejudice. The superior court denied the motion and Chance¹ sought review in Division One of the Court of Appeals. Commissioner Kanazawa dismissed the appeal

APPENDIX M

¹ First names are used for clarity. No disrespect is intended.

733/24

ruling that Chance failed to file a timely notice of appeal from the January 2012 final judgment in the underlying matter, and he cannot now challenge a pretrial ruling in that matter. A panel of judges denied Chance's motion to modify the commissioner's ruling. He now seeks this court's review. This court will grant discretionary review only if the Court of Appeals committed an obvious or probable error or substantially departed from the accepted and usual course of proceedings. RAP 13.5(b).

The broad sequence of events provides some context for Chance's motion. In March 2010 Edward and Bernice Goodman filed a quiet title action in Skagit County Superior Court naming as defendants Michael and Mary Goodman and their sons, Tyson Goodman and Chance Goodman. On June 3, 2010, Judge Susan Cook denied an affidavit of prejudice filed by Tyson on the ground that the judge made a discretionary ruling in the case after all four defendants had been served. *See* RCW 4.12.050.

In January 2012 the superior court quieted title in Edward and Bernice to non-exclusive easements on the property of Michael and Mary, and Michael and Mary appealed.² While the appeal was pending, Michael filed various motions in the Court of Appeals, including a "Motion to Reverse Trial Court Order Denying Affidavit of Prejudice." That motion challenged Judge Cook's June 3, 2010, order denying Tyson's affidavit of prejudice. The Court of Appeals denied the motion and Michael

² In September 2010 Chance filed a third-party complaint for defamation against Wayne Olsen, who reported to law enforcement that Chance assaulted him when Mr. Olsen attempted to serve him with legal documents in the quiet title action. The third-party claim was dismissed and the court ruled Mr. Olsen was entitled to statutory damages and attorney fees under the anti-SLAPP (strategic lawsuits against public participation) statute, RCW 4.24.510. The Court of Appeals affirmed the superior court decision. Mr. Olsen has filed an answer to the motion for discretionary review, noting that it is unclear whether Chance intends his motion to affect the summary judgment in the third-party action that was decided by Judge Cook. According to Commissioner Kanazawa's ruling, Chance did not file an affidavit of prejudice or otherwise oppose Judge Cook's consideration of the summary judgment motion.

sought this court's review of that decision. The former commissioner of this court considered the motion for discretionary review in No. 88811-6 and ruled as follows:

Michael argues that Judge Cook should have granted the affidavit of prejudice because she had only previously entered an agreed temporary restraining order involving no exercise of discretion. But it appears that prior to entry of the agreed order Judge Cook had issued a continuance order on April 9 keeping an earlier temporary restraining order in place and another temporary restraining order on April 13. Michael suggests (without citation to the record) that those rulings came before the defendants had appeared in the case. But it is difficult to tell from the record when Tyson Goodman was served. More importantly, Michael does not explain why his motion challenging the denial of the affidavit of prejudice should be considered timely, since Judge Cook entered her order of denial on June 3, 2010. Review of a trial court decision not subject to appeal must be initiated by notice filed within 30 days. RAP 5.2(b). Perhaps it could be argued that the motion should be considered part of the ongoing appeal from the trial court's January 2012 decision. Michael likely could have assigned error to the June 3, 2010, order in his brief on appeal. *See* RAP 2.4(b) (appellate court will review trial court order not designated in notice of appeal if the order prejudicially affects the decision designated in notice). But error must be assigned in the brief, and the appellate court may decide the case only on the basis of issues raised in the briefs. RAP 10.3(a)(4), 12.1(a). A party simply cannot, as part of an ongoing appeal, file separate motions disputing trial court rulings not challenged by assignment of error on appeal.

This court denied a motion to modify the commissioner's ruling. Thereafter the Court of Appeals considered Michael and Mary's appeal and affirmed. The only issue presented in the subsequent petition for review was whether Michael filed a timely affidavit of prejudice and Judge Cook should have been disqualified from hearing the matter. This court denied review in No. 90025-6. The Court of Appeals issued the mandate on September 17, 2014. Michael filed a motion to recall the mandate on December 4, 2014. The Court of Appeals denied the motion, and this court denied review in No. 91287-4.

There is no reason to treat the motion filed by Chance in a different manner. If aggrieved by the order, he could have appealed, assigned error to the June 3, 2010, order in his brief on appeal, and presented his arguments. Since he did not do so, the superior court's ruling was not subject to review by the Court of Appeals. *See State v. Hubbard*, 103 Wn.2d 570, 574, 693 P.2d 718, 720 (1985). Commissioner Kanazawa correctly dismissed the appeal from the denial of the motion seeking to challenge that pretrial order. The Court of Appeals did not err or depart from accepted practice by dismissing the appeal. Accordingly, this court's review is not warranted under RAP 13.5(b)

The motion for discretionary review is denied.³


COMMISSIONER

March 17, 2016

³ I note that Mary assigned error to the June 3, 2010, denial of Tyson's affidavit of prejudice in Court of Appeals No. 72711-7-I, and the Court of Appeals declined to consider the matter because it had already rejected the claim and because Mary could have raised the issue in her first appeal. Mary's petition for this court's review of the decision is pending in No. 92835-5. The clerk is requested to place any motion to modify this ruling on the same department calendar as the petition in No. 92835-5.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

September 6, 2011

Mary Goodman
13785 Goodman Lane
Anacortes, WA, 98221
(sent via US mail)

C. Thomas Moser
Attorney at Law
1204 Cleveland Avenue
Mount Vernon, WA, 98273-3837
tom@tomoser.com

Tyson Goodman
13785 Goodman Lane
Anacortes, WA, 98221
(sent via US mail)

Thomas Lee Schwanz
Wieck Schwanz
400 112th Ave NE Ste 340
Bellevue, WA, 98004-5528
toms@wieckschwanz.com

Michael Goodman
13785 Goodman Lane
Anacortes, WA, 98221
(sent via US mail)

Gary T. Jones
415 Pine St.
Mount Vernon, WA, 98273
(sent via US mail)

Kelly M Madigan
Law Ofc. of Andrea Holburn Bernarding
1730 Minor Ave Ste 1130
Seattle, WA, 98101-1448
Madigak@nationwide.com

Chance Goodman
PO Box 1801
Anacortes, WA, 98221
(sent via US mail)

CASE #: 67403-0-I

Tyson Goodman, Pet. vs. Edward & Bernice Goodman, et ux., Resps.

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on September 6, 2011:

APPENDIX N

RULING ON DISCRETIONARY REVIEW
Goodman v. Goodman, No. 67403-0-1
September 6, 2011

Defendant/petitioner Tyson Goodman seeks discretionary review of the June 8, 2011 trial court order denying his motion to dismiss the complaint of plaintiffs/respondents Edward and Bernice Goodman for improper service of process. Tyson Goodman argues that the trial court order is reversible error because he was not personally served when the summons was dropped on the porch of 13781 Goodman Lane. He also argues that it was error because he is not a resident of 13781 Goodman Lane, but instead is a resident of 13785 Goodman Lane. Tyson argues that Edward initially testified that Tyson lived in the travel trailer at 13781 Goodman Lane, but subsequently, only after Tyson filed his motion to dismiss, Edward contradicted himself and testified that Tyson lived in the cabin at 13785 Goodman Lane.

Where a defendant challenges jurisdiction based on insufficient service of process, the plaintiff has the burden of proof to establish a prima facie case of proper service. Gross v. Sunding, 139 Wn. App. 54, 60, 161 P.3d 380 (2007). The sufficiency of service of process is a question of law. Id. at 67. In denying Tyson Goodman's motion to dismiss, the trial court made findings of fact and conclusions of law. Some of the findings are based on credibility determinations, which this court does not review. Burnside v. Simpson Paper Co., 123 Wn.2d 93, 108, 864 P.2d 937 (1994) (in evaluating the persuasiveness of evidence and the credibility of witnesses, appellate court defers to trier of fact). In addition, the litigation has been bifurcated in the trial court. Review by this court must wait for entry of a final judgment.

Therefore, it is

ORDERED that discretionary review is denied.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

hek

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

EDWARD M. GOODMAN and BERNICE
S. GOODMAN, husband and wife,

Respondents,

v.

MICHAEL J. GOODMAN and MARY F.
GOODMAN, husband and wife; and
CHANCE GOODMAN, a single man,

Defendants,

TYSON GOODMAN, a single man,

Petitioner.

No. 67403-0-1

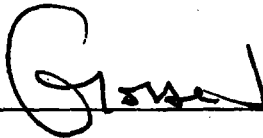
ORDER DENYING MOTION
TO MODIFY

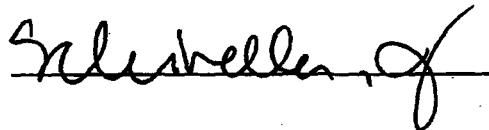
Petitioner Tyson Goodman has filed a motion to modify the commissioner's September 6, 2011 ruling denying his motion for discretionary review. The respondents, Edward and Bernice Goodman, have not filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby

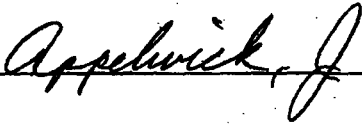
ORDERED that the motion to modify is denied.

Done this 22ND day of November, 2011.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 NOV 22 AM 11:44







IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 92835-5
Received
Washington State Supreme

MAR 30 2016
Ronald R. Carpenter
Clerk

EDWARD M. GOODMAN and)
BERNICE S. GOODMAN, husband)
and wife,)
Respondents,)
Vs.)
MICHAEL J. GOODMAN and)
MARY F. GOODMAN, husband)
and wife,)
Petitioner.)

DECLARATION OF
SERVICE

I certify under penalty of perjury under the laws of the state of Washington that I am over the age of eighteen years and not a party to this action. I certify that on March 28, 2016, I caused to be delivered, a copy of Respondents' Answer to Petition for Review and Motion for Award of Attorney Fees to the parties listed below, at the addresses of record on the date listed below.


Michael and Mary Goodman
13785 Goodman Lane
Anacortes, WA 98221

- First Class Mail
- Email
- Hand Delivery

WAL

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and that this declaration was executed at Mount Vernon, Washington.

DATED this 28 day of March, 2016.



Toni Riedell