Court of Appeals (Div. One) No. 74326-1-I

94059-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LARRY SPOKOINY,

Petitioner,

vs.

THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION,

Respondent.

PETITION FOR REVIEW

Submitted By:

Larry Spokoiny, WSBA # 20274
Petitioner

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A. INTRODUCTION

Petitioner Larry Spokoiny ("Mr. Spokoiny") seeks reversal of the decision by the Court of Appeals, Division One, in Case No. 74326-1-I.

Specifically, Mr. Spokoiny petitions this Court to review the Unpublished Opinion filed October 31, 2016 as well as the Order Denying Appellant's Motion for Reconsideration dated December 14, 2016.

True and correct copies of these Court of Appeals rulings are enclosed in the Appendix.

B. ISSUES PRESENTED FOR REVIEW

1. **Can the enforceability period of an original judgment be extended by amendment?**

2. **Are the judgment renewal provisions of RCW 6.17.020 mandatory or optional?**

3. **Does the 10-year clock on an original judgment start over upon later amendment of such judgment?**

4. **Can a writ of garnishment be issued more than 10 years after the date of the original judgment in the absence of formal renewal pursuant to RCW 6.17.020, or does the nonclaim statute RCW 4.56.010 bar any enforcement actions taken after an original judgment has expired?**

5. **While the underlying judgment is on appeal, can a party apply ex parte to the trial court for extension of such judgment, without any notice to the other party or permission from the appellate court as required by RAP 7.2(e)?**

C. STATEMENT OF THE CASE

This action was commenced in King County Superior Court on January 23, 2004. CP at 290. The original judgment in this case was entered by the Honorable Mary Yu on July 8, 2004. CP at 291. The judgment awarded attorney's fee and costs to The Washington State Youth Soccer Association ("WSYSA"). CPA at 291. The original judgment was not renewed within 10 years as required by RCW 6.17.020(3), and therefore expired on July 8, 2014. CP at 291.

The Court of Appeals entered a published decision in this case on July 5, 2005. Spokoiny v. Wash. State Youth Soccer Ass'n, 128 Wn. App. 794, 117 P.3d 1141 (2005). CP at 291. The Court of Appeals' Ruling on Request for Attorney Fees was entered September 2, 2005. CP at 291. As with the original judgment, this case event occurred more than 10 years ago. CP at 291.

After Mr. Spokoiny's appeal was decided, WSYSA sought and was granted an increase in the amount of the original judgment based on accrued interest and additional attorney fees. CP at 1-6. Judge Yu granted the amended judgment on September 29, 2006. CP at 85-87. This amendment did not change the nature and character of the judgment in any way, shape or form; to the contrary, only the judgment amount was

changed by the amendment. CP at 291.

WSYSA secured a judgment lien on Mr. Spokoiny's homestead on March 25, 2005. CP at 291. This judgment lien was never renewed in accordance with RCW 4.56.210 and has now ceased to exist. CP at 291.

Despite the fact that the 10-year period from the date of the original judgment had long since expired, WSYSA sought and obtained an *ex parte* Writ of Garnishment on August 24, 2015 and an *ex parte* Order Re Supplemental Proceedings on September 3, 2015. CP at 91-92, 107-109.

On August 27, 2015, Mr. Spokoiny sent an email to WSYSA's counsel Brian Lawler pointing out that the original judgment had already expired and was never renewed. CP at 118. In response to Mr. Spokoiny's email, Mr. Lawler not only declined to terminate his collection efforts, but also filed a motion for supplemental proceedings without any notice to Mr. Spokoiny whatsoever. CP at 118.

Mr. Spokoiny filed his Motion to Quash on September 10, 2015. CP at 117-120. Judge Chung of King County Superior Court denied Mr. Spokoiny's Motion without comment on September 24, 2015. CP at 282.

Mr. Spokoiny filed his Motion for Reconsideration on October 5, 2015. CP at 290-295. Again, Judge Chung denied Mr. Spokoiny's Motion

on October 16, 2015, this time by written notation "based on the reasons stated in this court's original order". CP at 290-297.

This Appeal was filed on November 16, 2015. CP at 301-305.

On August 8, 2016, while this Appeal was pending, and without any notice to Mr. Spokoiny or the Court of Appeals either before or after seeking relief from the trial court, WSYSA obtained an Order Extending Judgment plus $20,471.00 in attorney's fees and $2,133.41 in costs allegedly incurred on appeal. *See* Appendix.

Oral argument on the Appeal was held on September 29, 2016.

The Court of Appeals entered an unpublished decision on this Appeal on October 31, 2016. WSYSA was denied attorney's fees on appeal. Mr. Spokoiny's subsequent Motion for Reconsideration was denied on December 14, 2016. *See* Appendix.

D. ARGUMENT

1. WSYSA failed to renew their judgment in a timely manner pursuant to RCW 6.17.020, and such judgment has now expired.

The facts relevant to this appeal are not in dispute. This action was commenced more than 12 years ago. The original judgment, which awarded attorney's fee and costs to WSYSA, was entered by the Honorable Mary Yu on July 8, 2004. The original judgment was not

renewed within 10 years as required by RCW 6.17.020(3), and therefore expired on July 8, 2014.

After appeal, the Court of Appeals Commissioner's Ruling Awarding Attorney Fees and Costs was entered on September 2, 2005. To the extent that this could be considered a separate judgment (and not merely a subsidiary act as discussed below), the Court of Appeals judgment was also not renewed within 10 years as required by RCW 6.17.020(3), and therefore expired on September 2, 2015.

RCW 6.17.020(3) states that "a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued."

Having failed to renew either of the two judgments that could arguably be collected upon, WSYSA bases all of its collection efforts on the enforceability of the September 29, 2006 amended judgment.

The 2006 amended judgment was merely a bookkeeping entry

combining the separate and independent judgments of July 8, 2004 (by this Court) and September 2, 2005 (by the Court of Appeals). The amended judgment amount was derived approximately 45% from the July 8, 2004 Superior Court judgment and about 55% from the September 2, 2005 Court of Appeals ruling. WSYSA's own proffered declaration of former attorney Michael C. Walter shows clearly and unequivocally that all claimed attorney fees were incurred by July 11, 2005. CP at 171-172.

WSYSA secured a judgment lien on Mr. Spokoiny's homestead on March 25, 2005. As with every other milestone in this case, this judgment lien was never renewed in accordance with RCW 4.56.210 and has now ceased to exist.

RCW 6.17.020(7) states that "no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court". This contemplates an initial 10-year period with possible 10-year renewal. If WSYSA were allowed to use the 2006 amended judgment as an independent judgment for collection purposes, WSYSA would thereby be granted over 22 years to execute on the original judgment of July 8, 2004 and over 21 years to execute on the Court of Appeals ruling of September 2, 2005.

If a statute is unambiguous, its meaning is to be derived from the

language of the statute alone. Wash. State Coal. for Homeless v. Dep't of Soc. & Health Servs., 133 Wn.2d 894, 949 P.2d 1291 (1997). In this case, RCW 6.17.020(3) sets forth the sole method for renewal of a judgment. By its plain and unambiguous terms, RCW 6.17.020(3) requires that the judgment holder "within ninety days before the expiration of the original ten-year period" must "apply to the court that rendered the judgment" and "pay to the court a filing fee". WSYSA made absolutely no attempt to satisfy any of the requirements of RCW 6.17.020(3) here.

Nonclaim statute RCW 4.56.210 is also clear; after the expiration of 10 years of "any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor." American Discount Corp. v. Shepherd, 160 Wn.2d 93, 156 P.3d 858 (2007). The 10-year period begins immediately upon entry of judgment, regardless of when recording or other perfection method occurs. Hazel v. Van Beek, 135 Wn.2d 45, 954 P.2d 1301 (1998).

2. **As all applicable time periods under RCW 6.17.020 and RCW 4.56.210 have now expired, this Court cannot allow WSYSA "overtime" beyond the statutory time limit for collection.**

It is beyond absurd for WSYSA to claim that they can add two expired judgments together to create a magically enforceable amended

judgment. When the allowable period to execute on a judgment expires, the judgment lien ceases to exist and no action can be taken under the judgment. Am. Disc. Corp. v. Shepherd, 129 Wn. App. 345, 120 P.3d 96 (2005). RCW 4.56.210 extinguishes the judgment lien and prohibits any claim under a judgment after the 10 year period, or any extended period, has expired. By its express terms, RCW 4.56.210 prohibits revival of an expired judgment. *Ibid.*

WSYSA is unable to cite even one single Washington case, statute or rule to support their contention that an amendment somehow extends the collectability period on an original judgment. To the contrary, all of the prior Washington court decisions, statutory language and court rules support Mr. Spokoiny's position.

An amendment relates back to the original whenever it "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original". North St. Ass'n v. Olympia, 96 Wn.2d 359, 635 P.2d 721 (1981). In general, a judgment lien relates back to the date of the original attachment. BNC Mortgage, Inc. v. Tax Pros Inc., 111 Wn. App. 238, 46 P.3d 812 (2002).

The Washington State Supreme Court case of TCAP Corp. v. Gervin, 163 Wn.2d 654, 185 P.3d 589 (2008) analyzed the same issue with

respect to foreign judgments and concluded that the date of the underlying judgment governs for purposes of RCW 6.17.020. Although WSYSA tries to distinguish TCAP on the basis that it involves execution on a foreign judgment, there is absolutely no support in law or logic for WSYSA's apparent argument that a judgment creditor on a domestic judgment should be allowed "extra time" beyond that which is allowed on a foreign judgment.

Wlasiuk v. Whirlpool Corp., 76 Wn. App. 250, 884 P.2d 13 (1994) is directly on point regarding the attempt to use an amended judgment in lieu of an original judgment. Under the holding in Wlasiuk, the only instances where an amended judgment supplants the original judgment are when the amendment (1) is stipulated to by both parties or (2) is issued pursuant to a timely CR 59 motion. Neither instance is present here.

Analyzing a situation strikingly similar to the instant case, the Court in Wlasiuk answered "No" to the question "Should the Amended Judgment be treated as entered pursuant to a timely motion to amend the judgment?" and remarked as follows:

> (H)ere there was no need for an amended judgment. The September 24 "Amended Judgment" differed from the July 30 judgment only by specifying the amount of attorney fees awarded. This, as we have

already determined, is a subsidiary issue under the Nestegard analysis.

Ibid, citing Nestegard v. Investment Exch. Corp., 5 Wn. App. 618, 489 P.2d 1142 (1971).

3. WSYSA's 2006 motion to amend judgment was untimely under CR 59(h).

Given that the original July 8, 2004 judgment has clearly expired, WSYSA's only possible angle is to argue that somehow the Court of Appeals ruling of September 2, 2005 "did not take effect" until the date of the 2006 amended judgment. An examination of relevant court rules reveals the utter lack of merit to this argument.

Pursuant to Civil Rule 59(h), "(a) motion to alter or amend judgment shall be filed not later than 10 days after entry of the judgment." In this case, WSYSA did not file its motion for entry of amended judgment until September 15, 2006. CP at 1-6. This motion to amend was filed more than 2 years after the date of the original Superior Court judgment, over a year after the Court of Appeals ruling on attorney fees and costs, and 66 days after the RAP 12.5 mandate issued on July 11, 2006. Thus, all applicable time frames for WSYSA to properly amend their original judgment have expired here.

RAP 17.6(a) indicates that "(a) commissioner or clerk decides a

motion by a written ruling which includes a statement of the reason for the decision. The commissioner or clerk will file the ruling and serve a copy on the movant and all persons entitled to notice of the original motion."

RAP 18.1(h) sets forth that "(t)he award of fees and expenses, including interest **from the date of the award by the appellate court,** may be enforced in the trial court." (emphasis added)

Finally, RAP 12.7(c), entitled "Special Rule for Costs and Attorney Fees and Expenses" states that "(t)he appellate court retains the power after the issuance of the mandate or certificate of finality to act on questions of costs as provided in Title 14 and on questions of attorney fees and expenses as provided in rule 18.1."

Pursuant to these appellate rules, a Superior Court judge does not have the *ex post facto* authority to extend an expired Court of Appeals ruling on attorney fees and costs. Similarly, WSYSA cannot unilaterally reset the time clock for enforcement.

As WSYSA CEO Terry Fisher concedes in his declaration: "Initially our Board made the decision to let the 2006 judgment sit." CP at 251. Now, after all relevant time periods for collection have expired, WSYSA has apparently embarked upon a strategy of surreptitiously filing and obtaining *ex parte* writs and orders before Mr. Spokoiny has the

opportunity to oppose these actions.

WSYSA's reliance on the 2006 amended judgment defies both the laws of mathematics and statutory construction. Any and all underlying judgments have expired and can no longer be collected upon. Adding the current values of the underlying judgments, $0.00 + $0.00 ≠ $93,783.44. Zero plus zero still and always equals zero.

The closing quote in TCAP Corp. v. Gervin, 163 Wn.2d 645, 185 P.3d 589 (2008) is especially appropriate here: "Time has expired on regulation play, and there is no overtime."

4. **The Vermont Supreme Court ruled on this precise issue in Ayer v. Hemingway and concluded that an original judgment cannot be renewed by amendment.**

Vermont has adopted a statutory scheme for judgment renewal that is markedly similar to Washington's approach. In Vermont as in Washington, renewal is only possible by commencing formal action and paying the required filing fee prior to expiration of the original judgment.

The Vermont Supreme Court addressed one party's attempt to extend the enforcement period on a judgment against the other party by amendment rather than following the prescribed statutory process in Ayer v. Hemingway, 2013 VT 37, 73 A.3d 673 (2013). In rejecting the extension of the judgment by mere amendment, the Vermont Supreme

Court found as follows:

> Any other holding would create a continually moving statute of limitations. Trial courts routinely issue post-judgment orders that identify payments made and interest that has accrued. Were we to construe each of these orders as starting a new limitations period, a party could extend the life of a judgment lien indefinitely by filing motions to reduce additional accrued interest to judgment. The statute does not contemplate this result, and the need for certainty and predictability in the law compels us to reject such an approach. The statute of limitations runs from a single ascertainable moment — the issuance of a final judgment on the merits.

The Vermont Supreme Court's well-reasoned decision in Ayer v. Hemingway should be followed here. A copy of the Ayer v. Hemingway decision is enclosed in the Appendix.

5. **WSYA violated RAP 7.2(e) by failing to first seek permission from the appellate court prior to formal entry of its petition to extend the 2006 amended judgment, while seeking attorney's fees and costs for this appeal in such petition.**

As Mr. Spokoiny informed the Court of Appeals at oral argument, while the instant appeal was still pending, WSYSA applied to the trial court and was awarded $20,471.00 in attorney's fees and $2,133.41 in costs allegedly incurred on appeal. Clearly, the trial court's ruling changed the Court of Appeals decision, given that the appellate court specifically

refused WSYSA's request for attorney's fees on appeal in its October 31, 2016 decision.

RAP 7.2(e) applies to the authority of the trial court to modify a judgment or motion after an appellate court accepts review. The rule states in part: "If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained *prior to the formal entry* of the trial court decision." RAP 7.2(e) (emphasis added). State Ex Rel. Shafer v. Bloomer, 94 Wash.App. 246, 973 P.2d 1062 (1999).

In order to determine whether the trial court complied with the requirements set forth in RAP 7.2(e), it must be determined whether the trial court order extending the 2006 amended judgment affected the outcome of a decision currently under review. The instant appeal directly concerned the continuing enforceability of the 2006 amended judgment, and WSYA sought and was awarded over $20,000 in attorney's fees and costs for the pending appeal!

Copies of WSYSA's petition to the trial court seeking appellate attorney's fees and costs and the resultant order are enclosed in the Appendix.

E. CONCLUSION

The decision of the Court of Appeals is in conflict with other published decisions of the Court of Appeals, is a significant question of law in the State of Washington, and involves an issue of substantial public interest that should be determined by the Supreme Court.

WSYSA's continuing collection efforts are all based upon an expired judgment. Although the exact issue may be one of first impression in Washington, the Court is urged to adopt the Vermont Supreme Court's holding in Ayer v. Hemingway.

As this Court is well aware, money judgments accrue interest and therefore the precise amount of the judgment changes daily. Taking the "extension by amendment" approach to its logical extreme, an unscrupulous creditor could file periodic amended judgments to "update" the judgment amount and completely bypass the requisite statutory procedures outlined in RCW 6.17.020.

Accordingly, Mr. Spokoiny respectfully requests that this Court reverses the Court of Appeals decision and declare that the 2006 amended judgment is no longer in effect.

RESPECTFULLY SUBMITTED this 13th day of January, 2017.

By: _____

Larry Spokoiny, WSBA # 20274
Pro Se / Attorney

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LARRY SPOKOINY, Appellant, v. THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION, a Washington nonprofit corporation, Respondent.	DIVISION ONE No. 74326-1-I UNPUBLISHED OPINION FILED: October 31, 2016

DWYER, J. — Today we are called upon to answer whether, when the judgment to be satisfied by an enforcement action is an amended judgment and the amended judgment altered the principal amount of the original judgment by including amounts awarded for losses incurred after entry of the original judgment, the statutory 10-year limitation period for enforcement of judgments commences upon entry of the amended judgment. The answer is yes.

I

In 2004, the Washington State Youth Soccer Association (WSYSA) imposed a five-year suspension against Larry Spokoiny for misconduct. Spokoiny subsequently filed a petition seeking a temporary restraining order

against WSYSA in superior court. WSYSA moved for summary judgment, citing Spokoiny's failure to exhaust the internal appeal procedure required by its by-laws prior to filing a court action. The superior court granted the motion on May 17, 2004. Thereafter, based on a cost-recovery provision in its by-laws, WSYSA requested an award of attorney fees and costs related to the litigation. On July 7, 2004, the superior court granted the request, awarding $16,353.83 in fees and costs. The superior court then entered judgment against Spokoiny in that amount.

On appeal, we affirmed the trial court's decision. Spokoiny v. Wash. State Youth Soccer Ass'n, 128 Wn. App. 794, 117 P.3d 1141 (2005). Spokoiny moved for reconsideration, which was denied. On September 2, 2005, a commissioner's ruling awarding fees and costs granted WSYSA $18,819.59 in attorney fees and costs resulting from Spokoiny's appeal.

Spokoiny sought discretionary review by our Supreme Court, but his request was denied. Spokoiny v. Wash. State Youth Soccer Ass'n, 156 Wn.2d 1036, 134 P.3d 1170 (2006). Our mandate issued on July 11, 2006.

Two months later, WSYSA moved for entry of an amended judgment in the superior court. On September 29, 2006, the superior court entered an amended judgment that included the following components: (1) the original principal judgment amount, (2) interest accrued on that amount, and (3) an additional amount for reasonable attorney fees and costs incurred by WSYSA in successfully defending the appeal. The amended judgment against Spokoiny totaled $45,187.51. Spokoiny did not appeal from the amended judgment.

Nine years later, in August 2015, WSYSA applied for a writ of garnishment against Spokoiny, which the trial court subsequently issued. Two weeks thereafter, WSYSA moved for an order authorizing supplemental proceedings, which the trial court granted.

One week later, Spokoiny filed a motion to quash the writ of garnishment and the order requiring him to appear in court for supplemental proceedings. This motion was denied. Spokoiny unsuccessfully moved for reconsideration.

Spokoiny now appeals.

II

A

Four statutes establish the time period for enforcing a judgment and thus control the disposition of this case.[1] The first such statute, RCW 4.16.020, details that actions upon a judgment are subject to a 10-year limitation period:

> The period prescribed for the commencement of actions shall be as follows:
>
> Within ten years:
>
> . . . .
>
> (2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United

[1] Spokoiny cites numerous cases from Washington—and one case from Vermont—in claimed support for his arguments. TCAP Corp. v. Gervin, 163 Wn.2d 645, 185 P.3d 589 (2008); Am. Disc. Corp. v. Shepherd, 129 Wn. App. 345, 120 P.3d 96 (2005), aff'd, 160 Wn.2d 93, 156 P.3d 858 (2007); BNC Mortg., Inc. v. Tax Pros, Inc., 111 Wn. App. 238, 46 P.3d 812 (2002), overruled on other grounds by Columbia Cmty. Bank v. Newman Park, LLC, 177 Wn.2d 566, 304 P.3d 472 (2013); Wlasiuk v. Whirlpool Corp., 76 Wn. App. 250, 884 P.2d 13 (1994); N. St. Ass'n v. City of Olympia, 96 Wn.2d 359, 635 P.2d 721 (1981); Ayer v. Hemingway, 2013 VT 37, 73 A.3d 673 (2013).

None of these cases bear directly upon the matter before us and we need not address them further.

> States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

RCW 6.17.020(1) indicates that legal actions are available to enforce a judgment and that such actions are subject to a 10-year time limit that begins upon entry of the judgment:

> (1) Except as provided in subsections (2), (3), and (4) of this section,[2] the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

RCW 4.56.190 sets forth a limitation period regarding the existence of judgment liens arising from the entry of judgments:

> The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3) . . . .
>
> Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

RCW 4.56.210 sets forth a 10-year limitation period arising from the entry of Washington court judgments and repeats the 10-year limitation for judgment liens:

> (1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any

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[2] Special rules exist for child support judgments and restitution or costs in a criminal case. RCW 6.17.020(2), (4). Subsection (3) of RCW 6.17.020 permits a prevailing party to obtain an extension of the 10-year enforcement period.

> judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.
>
> . . . .
>
> (3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

When read together, these statutes indicate the start date of the time period during which a judgment may be enforced. The statutory language makes clear that this enforcement period begins upon entry of judgment. RCW 6.17.020(1) ("from entry of the judgment"); RCW 4.56.190 ("from the day on which such judgment was entered"); RCW 4.56.210(1) ("from the date of the entry of any judgment").

When "judgment" is initially specified in each statute, it is described as "a judgment" or, more notably, "any judgment." RCW 4.16.020(2); RCW 4.56.190, .210(1); RCW 6.17.020(1). When "judgment" is mentioned again in a statutory section, the language used therein merely refers back to the initial mention of "judgment." See, e.g., RCW 4.56.190 ("such judgment"); RCW 4.56.210(3) ("the underlying judgment"); RCW 6.17.020(1) ("the judgment"). Upon review of the pertinent statutory language, then, it is clear that "judgment" was intended to be construed broadly. Thus, taken together, these statutes establish that the time to enforce a judgment begins upon entry of *any* judgment.

B

Spokoiny contends that WSYSA's 2015 enforcement action is barred by the 10-year limitation period for enforcing judgments.[3] He is wrong.

Spokoiny first asserts that WSYSA is barred from enforcing its judgment because the proper interpretation of "judgment," as set forth in RCW 6.17.020 and RCW 4.56.210, is limited to only an "original judgment." In this case, he argues, that is the 2004 judgment. However, neither the statutes referenced by Spokoiny nor any of the other pertinent statutes support Spokoiny's interpretation of "judgment." Nowhere in the statutory language does the phrase "original judgment" appear. Rather, the time period to enforce a judgment commences upon the entry of that judgment. Spokoiny's contention to the contrary is without merit.

Spokoiny next contends that WSYSA is barred from enforcing its judgment against him because the 2006 amended judgment necessarily "relates back" to the date of the "original judgment" in 2004. As discussed, the pertinent statutes establish the *entry of any judgment* as the triggering event for the purpose of computing a limitation period applicable to that judgment. The statutes do not reference the entry of an earlier or "original" judgment. See RCW 6.17.020(1); RCW 4.56.190, .210. Furthermore, applicable case authority reflects the commonsense interpretation that entry of a judgment is the triggering event for both the availability of enforcement actions and the time period limiting such enforcement. See, e.g., Krueger v. Tippett, 155 Wn. App. 216, 226, 229 P.3d

[3] Spokoiny's arguments focus exclusively on RCW 6.17.020 and RCW 4.56.210, failing to mention RCW 4.16.020 and RCW 4.56.190, two clearly applicable statutes.

866 (2010) ("Entry of judgment creates a lien.") (discussing RCW 6.17.020(1)); Hazel v. Van Beek, 135 Wn.2d 45, 54, 954 P.2d 1301 (1998) ("The 10-year period commences upon entry of judgment, regardless of when the lien is filed.") (citing RCW 4.56.190, .210(1)).

Spokoiny also contends that WSYSA is barred from enforcing its judgment against him because it—in actuality—sought to enforce the 2004 judgment, not the 2006 amended judgment. To the contrary, the 2006 amended judgment is the judgment sought to be enforced by WSYSA. WSYSA's request in 2015 for an order authorizing supplemental proceedings clearly sought to enforce the 2006 amended judgment. It is that judgment that would be satisfied by a successful enforcement action.

C

Entry of a judgment marks the start date of the time period allowing for enforcement of that judgment. The amended judgment herein was explicit in both its incorporation of the original judgment amount and its inclusion of later amounts awarded. WSYSA properly sought to enforce that judgment within the time period allowed by pertinent statutes. Thus, the trial court astutely and properly permitted WSYSA to seek enforcement of its judgment against Spokoiny.

Affirmed.[4]

Dwyer, J.

We concur:

Applewick, J.

Becker, J.

[4] WSYSA's request for an award of attorney fees and costs based on the frivolous appeal provision of RAP 18.9(a) is denied. We express no opinion as to whether such an award would be appropriate if made on a different basis.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LARRY SPOKOINY, Appellant, v. THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION, a Washington nonprofit corporation, Respondent.	)	DIVISION ONE No. 74326-1-I ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION

The appellant, Larry Spokoiny, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 14th day of December, 2016.

FOR THE COURT:

Duyn, J.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

LARRY SPOKOINY, Plaintiff, v. THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 04-2-01973-7 SEA PETITION FOR ORDER EXTENDING JUDGMENT

Pursuant to RCW 6.17.020(3), effective June 9, 1994, the undersigned petitions the Court for an Order Extending Judgment, of an additional 10 years from the expiration date of: September 29, 2016, said date being 10 years from the date of the entry of this judgment: September 29, 2006, and the final date upon which execution of the judgment must be accomplished. This petition is being sought within ninety (90) days of the expiration date stated above. The current updated Judgment Summary in the matter is as follows:

Judgment Creditor:	The Washington State Youth Soccer Association
Attorney for Judgment Creditor:	Brian E. Lawler
Judgment Debtor:	Larry Spokoiny
Original Amount of Judgment:	$45,187.51
Interest to Date:	$52,580.33
Total Sums Paid, if any:	$2,707.00
Total Costs:	$2,133.41

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Judgment Balance, Fees and Costs shall bear interest at 12% per annum.

THIS MATTER having come before the above-entitled Court upon the application of Plaintiff-Judgment Creditor in the above-entitled case, for extension of the judgment summarized above, and it appearing that the judgment was entered on September 29, 2006, and that application is made within 90 days before the expiration of the original ten-year period of the judgment,

IT IS ORDERED that the life of the judgment is extended for an additional 10-year period for all purposes permitted under RCW 6.17.020(3), 4.16.020, 4.56.190, and 4.56.210.

DONE this ____ day of 8/9, 2016.

Judge/Commissioner

Presented by:

JAMESON BABBITT STITES & LOMBARD, PLLC

HENRY H. JUDSON
AUG 09 2016
COURT COMMISSIONER

By s/Brian E. Lawler
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EXP07

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

LARRY SPOKOINY,

Plaintiff,

v.

THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION, a Washington nonprofit corporation,

Defendant.

NO. 04-2-01973-7 SEA

ORDER EXTENDING JUDGMENT ~~[PROPOSED]~~

Updated Judgment Summary

Judgment Creditor	The Washington State Youth Soccer Association
Attorney for Judgment Creditor	Brian E. Lawler
Judgment Debtor	Larry Spokoiny
Original Amount of Judgment	$45,187.51
Interest to Date	$52,580.33
Total Sums Paid, if any	$2,707.00
Total Costs	$2,133.41
Total Fees:	$20,471.00
Filing & Ex Parte Fee for this Petition	$230.00

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Total Fees:	$20,471.00
Filing & Ex Parte Fees for this Petition:	$230.00

Judgment Balance, Fees and Costs shall bear interest at 12% per annum.

The undersigned attorney for the above-named Judgment Creditor has paid the filing fee required for this petition, and the filing fee has been inserted above as an additional recoverable cost, per RCW 6.17.020(3).

DATED this 5th day of August, 2016.

JAMESON BABBITT STITES
& LOMBARD, PLLC

s/Brian E. Lawler
Brian E. Lawler, WSBA No. 8149
Attorneys for Defendant

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RCW 6.17.020

Execution authorized within ten years—Exceptions—Fee—Recoverable cost.

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW **74.20A.020**(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW **4.64.030**. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in chapter **9.94A** RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW **36.18.190**, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter **6.36** or * **6.40** RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW **6.13.090** and chapter **4.56** RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW **4.16.020** (2) or (3), chapter **9.94A** RCW, or chapter **13.40** RCW, no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[**2002 c 261 § 1; 1997 c 121 § 1; 1995 c 231 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2;** RRS § 510. Prior: **1888 p 94 § 1;** Code 1881 § 325; **1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242.** Formerly RCW **6.04.010**.]

NOTES:

Rules of court: *Cf. CR 58(b), 62(a), and 69(a); JCR 54.*

***Reviser's note:** Chapter **6.40** RCW was repealed in its entirety by chapter 363, Laws of 2009. Later enactment, see chapter **6.40A** RCW.

Application—1980 c 105: See note following RCW **4.16.020**.

*Entry of judgment: RCW **6.01.020**.*

RCW 4.56.210

Cessation of lien—Extension prohibited—Exception.

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after *the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after *the effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW **6.17.020**.

[**1995 c 75 § 1; 1989 c 360 § 2; 1979 ex.s. c 236 § 1; 1929 c 60 § 7;** RRS §§ 459, 460. Formerly RCW **4.56.210** and **4.56.220**. Prior: 1897 c 39 §§ 1, 2.]

NOTES:

***Reviser's note:** This act [1989 c 360] has three effective dates. Sections 9, 10, and 16 are effective May 12, 1989, section 39 is effective July 1, 1990, and the remainder of this act is effective July 23, 1989.

*Entry of judgments—Superior court—District court—Small claims: RCW **6.01.020**.*

73 A.3d 673 (2013)

2013 VT 37

Patrick AYER and Terese Ayer v. Louis HEMINGWAY, III, Individually and d/b/a Hemingway Construction and Frances Harris, et al.

Supreme Court of Vermont.

May 24, 2013.

George E. Spear, II, Swanton, and Michael Rose, St. Albans, for Plaintiffs-Appellants.

Timothy G. Hurlbut, St. Albans, for Defendant-Appellee.

Present: REIBER, C.J., DOOLEY, BURGESS and ROBINSON, JJ., and CRAWFORD, Supr. J., Specially Assigned.

BURGESS, J.

¶ 1. Plaintiffs Patrick and Terese Ayer appeal from the trial court's order granting summary judgment to defendants Frances Harris and Louis Hemingway, III, in this foreclosure case. The Ayers argue that the court erred in concluding that their judgment lien had expired. We affirm.

¶ 2. This case involves plaintiffs' longstanding attempts to collect a debt from defendant Hemingway, individually and

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d/b/a Hemingway Construction. Plaintiffs obtained a default judgment against Hemingway in February 2001 for $6830 plus costs of $179.66, with interest accruing at 12% per year ("the 2001 judgment"). The 2001 judgment order did not specify a payment schedule. Plaintiffs subsequently secured a nonpossessory writ of attachment against Hemingway's nonexempt goods and estate.

¶ 3. In November 2004, plaintiffs filed a motion for a possessory writ of attachment. After Hemingway failed to appear at a hearing on the motion, and with court approval, plaintiffs made service by publication pursuant to Vermont Rule of Civil Procedure 4(g). Hemingway subsequently objected to the motion, filing an answer with the court stating, "I did pay my payments until my checks were forged into larger ones." Prior to the contested hearing on these issues, the parties reached an agreement and the trial court issued a stipulated amended order in January 2006 (the "2006 order"). In that order the court recounted that Hemingway had paid only $1150 toward his debt and that, as of September 8, 2005, he owed plaintiffs $11,400. The court wrote: "An amended judgment in this matter is granted for the Plaintiffs against the Defendants as of September 8, 2005 in the amount of $11,400." The order included the parties' stipulated payment plan, with interest accruing at 6% rather than 12%, but stated that if Hemingway defaulted on the payment plan, plaintiffs would be entitled to interest at the rate of 12%, as well as all remedies available to them under Vermont law.[1]

¶ 4. In July 2008, plaintiffs recorded a "Notice of Judgment Lien" in the Alburgh Town Clerk's Office on "all real property held by [Hemingway] in Alburgh" in the amount of $11,400. The notice stated that the lien had been perfected by recording a certified copy of a judgment obtained against Hemingway.[2]

¶ 5. In 2010, Frances Harris brought an unrelated action against Hemingway for damages. In

connection with that action, on August 25, 2010, Hemingway conveyed to Harris two lots in Alburgh that Hemingway had acquired in 2006. At the same time, the trial court issued a stipulated judgment order that, among other things, awarded Harris judgment against Hemingway in the amount of $11,400 plus interest at 12% from September 8, 2005 until the release of the lien in favor of plaintiffs, required Hemingway to keep current on payments to plaintiffs pursuant to a written payment agreement signed by Hemingway and plaintiff Terese Ayer, and provided that if Hemingway defaulted on the lien, he would be liable to Harris for any costs, including attorney's fees, to obtain a release of the lien.

¶ 6. The agreement signed by plaintiff Terese Ayer and Hemingway on August 23, 2010, providing that Hemingway would pay Ayer $7050 over thirty-nine months to settle his debt, was filed with the Harris-Hemingway stipulation. In this agreement, Hemingway stated that he would pay Ayer $201.02 per month for 3.25 years to pay the outstanding debt of $7050, agreed that a lien would remain on his property in Alburgh until the judgment was paid in full, and acknowledged that if he defaulted on his payments, the interest rate would revert to 12% and be recalculated based on the adjusted amount of

$11,400 as reflected in the January 2006 order.

¶ 7. In May 2011, plaintiffs filed a complaint seeking to foreclose on their judgment lien. Plaintiffs alleged that Hemingway defaulted on his agreement and violated the 2006 order by failing to make any payments after January 2008. Based on the terms of the 2010 payment modification agreement and the 2006 order, plaintiffs asserted that Hemingway owed them $8597 in principal and $3312 in interest at 12% per annum. Plaintiffs cited the 2006 order as the controlling order and asked the court to renew or revive this order.

¶ 8. Plaintiffs named Harris as a defendant in this action because she had acquired the real property upon which they sought to foreclose from Hemingway after plaintiffs' judgment lien was filed, as noted above.

¶ 9. Hemingway filed an unverified answer to plaintiffs' complaint, acknowledging his debt to plaintiffs and offering to make immediate payments pursuant to the 2010 agreement. Harris also filed an unverified answer. Plaintiffs moved for a default judgment, but the court denied their request, granting defendants additional time to file answers that were verified or supported by affidavits. Harris responded to this order; Hemingway did not. Harris later moved for summary judgment, and plaintiffs filed a cross-motion for summary judgment and default.

¶ 10. In January 2011, the trial court granted Harris's motion for summary judgment. As discussed in additional detail below, the court found that plaintiffs' judgment lien was no longer effective because more than eight years had elapsed from the issuance of the original final judgment on which it was based. See 12 V.S.A. § 2903(a). In reaching its conclusion, the court rejected plaintiffs' assertion that the 2001 judgment had been renewed or revived by the 2006 stipulated amended order. As the court explained, revival required the filing of a new and independent action on the judgment, see 12 V.S.A. § 506, which had not occurred here.

¶ 11. The court also rejected the plaintiffs' contention that the 2006 order was a new "final judgment" from which a new eight-year period began to run. The court found that the 2001 order had ended the litigation and disposed of the subject matter before the court while the 2006 agreement merely set forth a payment schedule to carry that judgment into effect. For this and other reasons, the court concluded that the plaintiffs' lien could not be foreclosed upon, and it thus granted Harris's request for summary judgment. This appeal followed.

¶ 12. Plaintiffs maintain that their foreclosure action is timely. They first assert that they renewed the 2001 judgment by filing the functional equivalent of a new complaint. Although the pleading that led to the 2006 order was captioned as a "Motion for a Possessory Writ of Attachment" and utilized the same

docket number as the original action, plaintiffs filed a summons and served the motion on Hemingway pursuant to the provisions of Rule 4(g) for service upon initiation of a new action. For that reason, plaintiffs argue that their motion for a possessory writ of attachment provided Hemingway with notice and an opportunity to be heard, and it should be considered a "new and independent action." Alternatively, plaintiffs argue that the 2006 order should be considered a new final judgment.

¶ 13. We review a grant of summary judgment using the same standard as the trial court. *Richart v. Jackson,* 171 Vt. 94, 97, 758 A.2d 319, 321 (2000). Summary judgment is appropriate "when, taking

[73 A.3d 676]

all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.;* V.R.C.P. 56(a). Summary judgment was properly granted to defendants here.

¶ 14. As the trial court recognized, a judgment lien is effective only "for eight years from the issuance of a final judgment on which it is based." 12 V.S.A. § 2903(a). The default judgment against Hemingway was entered on February 2, 2001, and plaintiffs did not file their foreclosure complaint until May 10, 2011, outside the eight-year period. Thus, the judgment lien was no longer in effect when the complaint was filed and plaintiffs were not entitled to foreclose on the judgment lien.

¶ 15. While the law allows for the renewal of judgments within the eight-year statutory period, see 12 V.S.A. § 506, such judgments can be renewed only by the filing of a "new and independent suit commenced in accordance with Rule 3." *Nelson v. Russo,* 2008 VT 66, ¶ 6, 184 Vt. 550, 956 A.2d 1117 (mem.). They cannot be renewed by motion. *Id.* Our decision in *Russo* was designed to clarify the law in this area given the absence of a specific statute addressing the process for renewing judgments and a confusing reference to renewal by motion in the civil rules. *Id.* ¶ 12.

¶ 16. As plaintiffs acknowledge, they did not file a new complaint on the judgment. Instead, they filed a motion for a possessory writ of attachment and eventually entered into a stipulated agreement with Hemingway regarding his payment of the 2001 debt. While Hemingway may have had notice and an opportunity to respond to plaintiffs' motion, that does not transform their motion into a complaint. *Russo* plainly requires a new and independent suit initiated by the filing of a complaint, not the filing of something that is arguably akin to a complaint. Any other conclusion would reintroduce uncertainty into the judgment renewal process. We thus hold that the 2001 judgment was not properly renewed.

¶ 17. Plaintiffs next assert that the 2006 order constitutes a new "final judgment" for purposes of 12 V.S.A. § 2903(a). According to plaintiffs, the 2006 order not only reaffirmed the monetary judgment in the 2001 order, but it also settled any potential disputes regarding what payments Hemingway had made and what interest was owed. Had the parties not reached an agreement, plaintiffs continue, Hemingway would have been allowed to appeal from the 2006 order.

¶ 18. We find these arguments unpersuasive. The "final judgment" that triggered the running of the statute of limitations was the 2001 default order. It was this order that ended the litigation between the parties and finally disposed of the subject matter before the court. See *Youngbluth v. Youngbluth,* 2010 VT 40, ¶ 18, 188 Vt. 53, 6 A.3d 677 (final judgment is one whose effect is to end litigation); *In re Armitage,* 2006 VT 113, ¶ 6, 181 Vt. 241, 917 A.2d 437 (final judgment is one that "makes a final disposition of the subject matter before the Court" (quotation omitted)). The 2006 order merely set forth an agreed-upon payment plan for the 2001 debt. It was not a new decision on the merits. The fact that this order might have been appealable does not change this result.

¶ 19. Any other holding would create a continually moving statute of limitations. Trial courts routinely issue post-judgment orders that identify payments made and interest that has accrued. Were we to construe each of these orders as starting a new limitations period, a party could extend

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the life of a judgment lien indefinitely by filing motions to reduce additional accrued interest to judgment. The statute does not contemplate this result, and the need for certainty and predictability in the law compels us to reject such an approach. The statute of limitations runs from a single ascertainable moment — the issuance of a final judgment on the merits. That occurred here in 2001. While plaintiffs were hardly sleeping on their rights, they failed to bring an appropriate action within eight years of this date. Plaintiffs' right to foreclose on a judgment lien tied to the 2001 judgment consequently expired. Given our conclusion, we need not decide if plaintiffs properly perfected their lien in the town land records.[3]

¶ 20. Finally, we reject plaintiffs' assertion that the court should have entered a default judgment against Hemingway. According to plaintiffs, the only requirement for entry of default is a defendant's failure to enter a verified answer; given Hemingway's failure to file such an answer, a default judgment should have issued here.

¶ 21. It is true that Rule 80.1(c) states that when a defendant fails to file "a verified answer or answer supported by affidavits, disclosing facts alleged to constitute a defense to plaintiff's claim," then "[t]he clerk shall enter a default, in accordance with Rule 55(a)." However, Rule 55 "commits judgment by default to the trial court's discretion." *DaimlerChrysler Servs. N. Am., LLC v. Ouimette,* 2003 VT 47, ¶ 6, 175 Vt. 316, 830 A.2d 38. In *Ouimette,* we held that the trial court had discretion to conclude sua sponte that the statute of limitations barred a plaintiff's request for a default judgment. We reach a similar conclusion here. The court had discretion to refuse to enter a default judgment against Hemingway given its conclusion that plaintiffs' judgment lien had expired.

Affirmed.

ROBINSON, J., dissenting.

¶ 22. I agree with the majority that a judgment may be renewed only by the filing of a new and independent suit. *Nelson v. Russo,* 2008 VT 66 ¶ 6, 184 Vt. 550, 956 A.2d 1117 (mem.). See *ante,* ¶ 15. Had Hemingway objected to plaintiffs' attempt in 2006 to secure a new amended judgment in the case initially resolved by the 2001 judgment, he likely would have prevailed. Likewise, had the trial court declined to enter the 2006 judgment, I would have voted to affirm an appeal of that determination. There is no basis in the Vermont Rules of Civil Procedure for amending a judgment five years after its issuance for the purpose of "updating" the judgment to account for accrued interest, payments made toward principal, or a modified payment plan, in the absence of an infirmity in the judgment itself. See V.R.C.P. 60; see also *Nelson,* 2008 VT 66, ¶¶ 8-9, 184 Vt. 550, 956 A.2d 1117. The proper procedure is a separate and independent action to enforce the judgment; in

the context of such a proceeding, plaintiffs are free to seek a new judgment reflecting the underlying judgment, amounts paid toward that judgment, and interest accrued. See 12 V.S.A. § 506. For all of these reasons, had Hemingway objected, or had the trial court balked, the 2006 order would not have stood.

¶ 23. But Hemingway did not object. He *stipulated* to the 2006 order. The trial court exercised its discretion to enter an amended judgment pursuant to the parties' stipulation. That judgment is the judgment plaintiffs allegedly recorded in the Alburgh land records. That judgment is the judgment to which the judgment lien invoked by plaintiffs allegedly attaches.[4] And that judgment is a final judgment that is not subject to collateral attack. See *Johnston v. Wilkins,* 2003 VT 56, ¶ 8, 175 Vt. 567, 830 A.2d 695 (mem.) (stipulated settlement incorporated into court's final judgment disposing of matter has preclusive effect of final judgment). Moreover, the statute of limitations for enforcing or renewing that judgment, and for invoking the judgment lien, has not run. 12 V.S.A. §§ 506, 2903.

¶ 24. This is where I part ways with the majority. The majority essentially concludes that the 2006

order was not, for purposes of the statute of limitations, a judgment at all. Rather, the majority holds, the only relevant judgment was the 2001 judgment determining Hemingway's initial debt to plaintiffs — even though the 2001 judgment is *not* the judgment on which plaintiffs have brought this action, and is *not* the judgment to which the judgment lien asserted by plaintiffs allegedly attached.

¶ 25. I cannot concur in the majority's conclusion that the 2006 order was not in fact a judgment for the purposes of the statute of limitations. I rely first and foremost on the common understanding of the term "judgment." "Judgment" is not defined in the judgment lien statute, so we look to the definitions of the term found in Rule 54(a) and case law. Rule 54(a) defines judgment as "a decree and any order from which an appeal lies." We have repeatedly cited and applied this rule in our decisions, noting that "[w]hether an order is appealable is left to case law." *Iannarone v. Limoggio,* 2011 VT 91, ¶ 17, 190 Vt. 272, 30 A.3d 655. "The test of finality `is whether it makes a final disposition of the subject matter before the Court.'" *Id.* (quoting *Morissette v. Morissette,* 143 Vt. 52, 58, 463 A.2d 1384, 1388 (1983)); see also *Bach v. Dawson,* 152 Idaho 237, 268 P.3d 1189, 1191 (Ct.App.2012) ("As a judgment must function by its character as a final determination of the parties' rights in a lawsuit, whether a document is a court order or a `judgment' has long been held to be determined not by the document's title, but by its contents."). Had the 2006 order resulted from a nonstipulated court order, either party clearly could have appealed.

¶ 26. Significantly, in other contexts, we have applied the common understanding of the meaning of a "judgment" to issues other than the appealability of a particular trial court order. See, e.g., *Iannarone,* 2011 VT 91, ¶ 17, 190 Vt. 272, 30 A.3d 655 (using Rule 54(a) definition of "judgment" in determining whether final judgment existed for purposes of claim preclusion); see also *Bach,* 268 P.3d at 1192 ("As these sections are akin to a statute of limitations of an enforceable judgment, what constitutes

a `judgment' should be based on a final, appealable (and hence, enforceable) order in the case.").

¶ 27. The majority does not contest that for ordinary purposes the 2006 order was, in fact, a judgment, but essentially crafts a separate definition of "judgment" for the purposes of the statute of limitations. 12 V.S.A. § 2903. In so doing, the majority departs from our ordinary presumption that the Legislature intends terms in statutes to have their well-established legal meanings. See *Morissette v. United States,* 342 U.S. 246, 263, 72 S.Ct. 240, 96 L.Ed. 288 (1952) (stating that when legislature "borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken").

¶ 28. The fact is, the statute of limitations draws no distinction between "original" and "amended" judgments, and nothing in the language of the statute supports the notion that "judgment" has a different meaning for the purposes of the statute of limitations than for other purposes. See 12 V.S.A. § 2903(a) ("A judgment lien shall be effective for eight years from the issuance of *a final judgment on which it is based* ...." (emphasis added)).

¶ 29. In light of the above considerations, the 2006 order was clearly a judgment. It made a final disposition of the issues before the trial court — plaintiffs' claim to be paid pursuant to the 2001 judgment and defendant Hemingway's response that plaintiffs had forged check amounts. The fact that the order was issued pursuant to stipulation rather than after a contested hearing does not mean that it was any less a final judgment. *Johnston,* 2003 VT 56, ¶ 8, 175 Vt. 567, 830 A.2d 695.

¶ 30. Moreover, the 2006 order did not merely rehash the substance of the 2001 judgment. It resolved a subsequent live dispute: how much did Hemingway owe plaintiffs pursuant to that 2001 judgment? The 2006 order established new terms: setting a new total judgment due, establishing terms of repayment that did not exist in the initial judgment, and identifying a rate of interest — 6% except if Hemingway

defaulted — that differed from the 2001 judgment. The 2006 order cannot be characterized as "merely [a] continuation of an action, which create[s] nothing anew, but may be said to reanimate that which before had existence." *Corzo Trucking Corp. v. West,* 61 So.3d 1285, 1289 (Fla.Dist.Ct.App.2011) (quotation and alterations omitted) (distinguishing between judgments in actions on judgment, which start limitations clock from scratch, and post-judgment proceedings, which do not); see also *Koerber v. Middlesex Coll.,* 136 Vt. 4, 8, 383 A.2d 1054, 1057 (1978) (describing common law writ to revive judgment that "created nothing new, but rather was merely `the continuation of an action, a step leading to the execution of a judgment already obtained, and enforcing the original demand for which the action was brought.'" (quoting 2 A. Freeman, Law of Judgments § 1091 (5th ed.1925))). I see no reason to discount the order's status as a judgment merely because the dispute that it resolved was itself predicated on a judgment.

¶ 31. In addition, the 2006 order amended and thereby superseded the 2001 judgment. Plaintiffs could not thereafter seek to enforce the terms of the 2001 judgment, and Hemingway could not thereafter defend that he had made payments in compliance with the 2001 judgment. The only judgment remaining to enforce is that reflected in the 2006 order. These impacts — extinguishment of prior

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claims and judgments and defenses thereto — are hallmarks of a judgment. See Restatement (Second) of Judgments § 17 (1982) (discussing doctrine of merger). By contrast, rulings that are not final judgments are generally subject to revision by the trial court prior to a final judgment. *Morrisseau v. Fayette,* 164 Vt. 358, 363, 670 A.2d 820, 823 (1995) ("[U]ntil final decree the court always retains jurisdiction to modify or rescind a prior interlocutory order." (quotation omitted)). Because the 2001 judgment was effectively supplanted by the 2006 order, if plaintiffs had thereafter expressly sought to renew or revive the 2001 judgment pursuant to 12 V.S.A. § 506, they could not have done so; that judgment was no longer effective. The judgment plaintiffs sought to enforce in this case, and the judgment to which their judgment lien allegedly relates, is the judgment embodied in the 2006 order.

¶ 32. The majority's multiple definitions of "judgment" for different purposes also creates potential practical problems. Rather than promoting clarity, the majority's approach injects uncertainty into the business of enforcing judgments. How is one to know when a court judgment that amends a prior judgment is a *real* judgment for statute of limitations purposes, and when it is not? Is the Court's holding limited to amended judgments that add interest and reflect an updated principal balance? What if an amended judgment issued pursuant to Rule 60(b) flips the obligor and obligee from the original judgment? Does the newly-minted creditor have eight years from the date of the *original* judgment — pursuant to which that party was required to pay the other — even if the amended judgment came years later? See *Estate of Roxas v. Marcos,* 121 Haw. 59, 214 P.3d 598, 606 (2009) ("Holding that the first-in-time judgment controls the statute of limitations for [requests to extend] subsequent judgments would produce an absurd result when the first-in-time judgment does not address or resolve any of the claims ruled on by the subsequent judgment."). One can even imagine the odd situation in which post-trial relief to amend a judgment might be available — pursuant to V.R.C.P. 60(b)(6), for example — but a party would then be foreclosed from actually enforcing the amended judgment.

¶ 33. My approach no more invites a "continually moving statute of limitations" than the majority's. *Ante,* ¶ 19. The majority does not contend that the eight-year limitations period is a once-and-for-all limitation. The Legislature has established a mechanism for reviving a judgment and extending a judgment lien, thereby essentially starting the limitations clock anew. See 12 V.S.A. §§ 506, 2903(b). This process may, through successive renewals, keep a judgment and judgment lien alive and enforceable indefinitely. The majority's concern is not with the fact of renewing judgments and the associated shift in the statute of limitations applicable in a given controversy; the majority's concern is the *procedure* by which a party secures a renewed judgment.[5]

[73 A.3d 681]

¶ 34. The real problem here is the 2006 order: it was not secured through the proper procedure. Although apparently not uncommon, the practice of issuing an amended judgment to reflect accrued interest and an updated principal balance is not sanctioned by any statute or rule. To the extent the majority implicitly so holds, we are on the same page. But insofar as that 2006 order became a final judgment, it was and is enforceable in its own right, an appropriate basis for a judgment lien, and subject to its own statute of limitations. For these reasons, I respectfully dissent.

FootNotes

1. Apparently, in connection with the parties' stipulation, plaintiffs did not pursue the possessory writ of attachment that they had initially sought.
2. We cannot confirm based on this record which order was included — the 2001 order or the 2006 "stipulated amended order."
3. We consider only plaintiffs' foreclosure action premised on its judgment against defendant Hemingway and do not consider any potential claims against Hemingway for breach of contract based on the promises he made in 2006 and 2010, or against Harris as third-party beneficiaries of the 2010 agreement between Harris and Hemingway. See generally C. Marvel, Annotation, *Part Payment or Promise to Pay Judgment as Affecting the Running of Statute of Limitations,* 45 A.L.R.2d 967 (1956); see also *F. Chafee's Sons v. Estate of Blanchard,* 105 Vt. 389, 392, 165 A. 912, 913 (1933) ("A new promise will revive the [contract] right of action whether made before or after the statute [of limitations] has run."); 12 V.S.A. § 2902 ("The lien created by this chapter shall be in addition to and separate from any other remedy or interest created by law or contract.")
4. As the majority notes, we cannot confirm based on this record that the 2006 order was, in fact, the order secured by a judgment lien. Had we reversed for the reasons set forth in this dissent, I would remand for a determination of whether plaintiffs effectively recorded the 2006 judgment so that they can foreclose on the lien.
5. Moreover, it is not clear why a "continually moving statute of limitations" would be contrary to any statutory objective. The purpose of the statutes limiting the enforcement of judgments and judgment liens is not to reward a recalcitrant judgment debtor by providing a windfall if the adjudicated debtor can just hold out long enough. "It is to make necessary the bringing of an action within a reasonable time and thus prevent fraudulent and stale claims from being brought at a time when witnesses have died or disappeared and documentary evidence has been lost or destroyed." *Reed v. Rosenfield,* 115 Vt. 76, 79, 51 A.2d 189, 191 (1947). Because the 2006 order effectively decided any issues concerning payment of the judgment that had arisen prior to that judgment, the only issues concerning satisfaction of the judgment that a court could be asked to address are those arising after the 2006 order — claims no older or more stale than the eight-year limitations statute contemplates.

Court of Appeals (Div. One) No. 74326-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LARRY SPOKOINY,

Petitioner,

vs.

THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION,

Respondent.

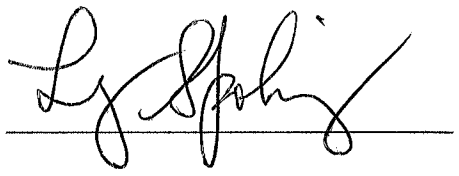
CERTIFICATE OF SERVICE

I certify that on the 13th day of January, 2017, I delivered PETITION FOR REVIEW and this CERTIFICATE OF SERVICE to WSYSA's attorney Brian Lawler by facsimile to (206) 292-1995 and via United States Postal Service First Class Mail to 801 Second Avenue, Suite 1000, Seattle, WA 98104.

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 13th day of January, 2017.

By:



Larry Spokoiny, WSBA # 20274
Petitioner