COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Case No. 340899

Appeal from Spokane County Superior Court, No.12-2032348

ANDREWS MECHANICAL, INC.
Plaintiff/ Respondent

Vs.

AARON LOWE
Defendant/ Appellant

OPENING BRIEF OF APPELLANT

AARON LOWE
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INTRODUCTION

Appellant, Aaron Lowe (hereinafter Mr. Lowe), requests this Court void the judgment and order that was entered on January 13, 2016 (CP 62), and enter a satisfaction of judgment in this matter since the superior court had no jurisdiction to enter the order and judgment because the parties agreed the judgment had previously been "satisfied."

ASSIGNMENTS OF ERROR

1. The superior court in this matter erred by not entering Mr. Lowe's request for a satisfaction of judgment, or stated another way the superior court erred by entering a new judgment that increased the judgment that has been satisfied. Since the judgment was satisfied before the last judgment was entered, the superior court no longer had any jurisdiction to increase the judgment.

ISSUES PERTAINING TO ASSIGMENT OF ERROR

1. What jurisdiction does a trial court have to increase a judgment once it has been satisfied? Answer: The trial court has NO jurisdiction to take any action in a matter once a judgment is satisfied.

STATEMENT OF CASE

In this appeal, appellant, Mr. Lowe, is requesting that a satisfaction of judgment be entered. There is a history in this matter that Mr. Lowe would make a final payment of the judgment, and then request a satisfaction be entered by the superior court. (RP from May 15, 2015, Page 8 Lines 7-16) Typically, the plaintiff/ respondent, Andrews (hereinafter Andrews), would then alleged more costs and fees after the judgment was satisfied. Rather than relating the many times that this merry-go-around occurred, Mr. Lowe has outlined below the latest version of these events.

At a hearing on May 15, 2015, Mr. Lowe requested that satisfaction be entered by the superior court. The superior court denied Mr. Lowe's request so in order to stop this ever revolving door, Mr. Lowe asked on the record what was the outstanding amount of the judgment. Andrews at the hearing could not state how much it was alleged owed so Mr. Lowe calculated the fees and interested and then tendered a cashier's check for more than this amount to Andrews a few days after the hearing. (RP Pages 8-9).

Moreover, Mr. Lowe requested a transcript of the hearing on May 15, 2015, so he could re-note his motion that a satisfaction be entered. This transcript was not produced until a year later, and after this Court of Appeals noted to the court reporter that he was late in preparing and filing this requested transcript in this appeal. Mr. Lowe thought the transcript showed as outlined below that Andrews admitted that Mr. Lowe "satisfied" the judgment before Andrews yet again requested more fees and interest.

In an affidavit dated November 6, 2015, Andrews' attorney related:

> Plaintiff acknowledges that with the May 19, 2015, check from Defendant in the amount of $1660 (which has yet to be cashed), he (Mr. Lowe) satisfied the Superior Court Judgment.

(CP 52. Page 4 Lines 6-8.) The fact that Mr. Lowe "satisfied" this judgment was also repeated orally on November 13, 2015, by Andrews when its attorney stated:

> So your Honor, as set forth in the affidavit of Mr. Floyd, Mr. Floyd does acknowledge that the May 19 check in the amount of $1660 that the defendant previously references, and has yet to be cashed, does satisfy the Superior Court Judgment.

(RP Page 15 Lines 7-11) Accordingly, the parties agreed that with the payment of $1660 on May 19, 2015, that the judgment was more than satisfied, but like a old (bad) Ronco commercial on television Andrews like now will attempt to allege, "....but wait there is more." As outlined below, all plaintiffs allege there is more after the judgment has been satisfied. In fact, at the time the judgment was satisfied, the judgment was $1580 so Mr. Lowe paid $80 more than the outstanding judgment. The superior court had no jurisdiction to increase the judgment after it was satisfied in May, 2015.

STANDARD OF REVIEW

The standard of review in this matter of law is de novo. *See, e.g., Town of Woodway v. Snohomish County,* 180 Wn.2d 165, 322 P.3rd 1219 (2014).

STATEMENT OF THE CASE

RCW 4.56.100 (1) in part provides:

> When any judgment for the payment of money only have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the ***record in the execution docket satisfaction thereof giving the date of such satisfaction upon either the payment to the clerk of the of such judgment, costs and interest*** ...Every satisfaction of judgment and every partial satisfaction of

> judgment which for the payment of money shall clearly designate the judgment creditor and his or her attorney, if any, and the judgment debtor, and amount or type of satisfaction, whether the satisfaction is full or partial satisfaction, the cause number, and the date of the entry of the judgment… (Emphasis added)

RCW 4.84.120 in part provides that once a defendant deposits the amount of the judgment with the clerk of the court, and plaintiff refuses to discharge the action, the plaintiff shall not later recover a larger amount than what was deposited with the clerk or paid to plaintiff.

As stated above, the parties agreed that this judgment was satisfied in May 2015. Andrews did not later move to reopen the judgment, nor did the superior court relate in its oral comments or written orders that it was reopening the judgment. Accordingly, the superior court had no jurisdiction to take any other action in this matter except enter a satisfaction of judgment, or stated another way, it did not have jurisdiction to award more fees, after the judgment was satisfied.

There is little case authority in this area of the law in the state of Washington regarding the "satisfaction" of judgments like there is in other states. As set forth in RCW 4.56.100 (1) a money

judgment can either be : (1) paid, or (2) satisfied. As stated in Judgments Section 804 of American Jurisprudence Page 382 the terms satisfaction and satisfaction of judgment can be confusing. Regarding a money judgment a satisfaction of judgment, a separate document, can be filed with the clerk which will terminate all future proceedings in the matter. When a satisfaction, or release, is obtained and filed from plaintiff, it is not necessary that the judgment debtor pay the full amount of the judgment. The other manner a judgment is satisfied is by full payment to the clerk, or plaintiff, of the amount of the judgment. Mr. Lowe paid the judgment in full in this matter, and Andrews agreed in writing and orally that Mr. Lowe "satisfied" the judgment. *See, e.g.,* RCW 4.56.100.

Generally, a debtor is entitled to have a formal satisfaction of judgment entered once the judgment has been paid or satisfied. American Jurisprudence 2d Judgments Section 805 on page 382-3. Payment of the judgment is the final act and the end of the proceeding. Payment in full, or otherwise a satisfaction of judgment, extinguishes the claim or lawsuit and ends the controversy or lawsuit. Once full payment is made, the judgment

has no further force, authority, or effect. Moreover once full payment is made, that satisfaction bars any further effort to alter or amend the judgment or to take any other action. American Jurisprudence 2d Judgment Section 806 page 383-4.

This treatise even goes on to provide a practice note:

> **Caution:** Since satisfaction of judgment (full payment) bars any further proceedings on the judgment, a full satisfaction (or payment) will extinguish plaintiffs right to any post judgment hearing on a claim for additional attorney fees, costs, or legal interest. (Citations omitted)

Id. Page 384.

There are many different factual basis in which other courts have reviewed the legal maxims outlined above, but generally, the judgment debtor has "satisfied" the judgment either by obtaining some sort of document or release from plaintiff, or the judgment debtor has paid the amount of the judgment.

Even thought these issues have yet to be decided by an appellate court in Washington, other states have reviewed these issues regarding satisfaction of judgments. These courts also have looked at whether the judgment was "satisfied" by a document or

release; or was the judgment "satisfied" by the judgment debtor by paying funds to the plaintiff.

In a similar case to the case at bar, the appellate court in *Spencer v. DiGiacomo,* 56 So. 3rd 92 (Fl. 2011), held that:

> A facially valid satisfaction (of judgment)is a complete bar to any effort to alter or amend the judgment. *Morris North American, Inc. v. King*, 430 So. 2d 592, 593 1983.

Id. at 94. In this case the defendant paid the judgment while the case was on appeal. Later, the plaintiff had the trial court increase the judgment to include pre-judgment interest so the defendant also appealed this issue.

The appellate court ruled that since the judgment was "satisfied," the trial court had "no" jurisdiction to amend the satisfied judgment in any manner. *Id.* at 94. Moreover the appellate court held that once a judgment had been "satisfied," this "satisfaction":

> [O]perates as a total relinquishment of all rights of the judgment creditor in the judgment; it (the satisfaction or payment) is a complete discharge of the debt created by the judgment and a complete surrender of the judgment creditor's rights in the judgment, ***including the right to challenge the judgment on appeal and seek a judgment in excess of the amount awarded in the trial court's judgment***. (Emphasis in original)

See, e.g., Challenger Investment Group LC v. Jones, 20 So.3d 941, 944 (Fla. 2009) quoting 47 Am.Jur. 2d Judgments Section 807, at 384-5 (2006).

The parties agree that Mr. Lowe "satisfied" the judgment of the superior court by more than paying what was owed on the judgment in May 2015. Later, upon prompting by the superior court, another judgment was entered allegedly increasing the amount owed, but the superior court no longer had jurisdiction to take any other action other than enter a satisfaction of judgment. Accordingly, this Court must void the judgment that was entered on January 6, 2016, and enter a satisfaction of judgment, as outlined in *Spencer, supra,* above.

In *Mr. G's Mountain Lodge v. Roland Township*, 651 N.W. 2d 625 (N.D. 2002) the supreme court for the state of North Dakota held:

> We have recently held that an attempted appeal from a judgment that has been properly satisfied of record fails for lack of jurisdiction:...A judgment that has been paid and satisfied of record ceases to have any existence. *Lyon v. Ford Motor, Co.*, 604 N.W. 2d 453 (N.D. 2000). A satisfaction of judgment on the record extinguishes the claim, and the controversy is deemed ended, leaving an appellate court with nothing to

> review. *DeCoteau v. Nodak Mutual Insurance Co.*, 636 N.W.2d 432 (N.D. 2001). An appellate court is without jurisdiction if there is no actual and justiciable controversy. *Gregory v. North Dakota Workers Comp. Bureau*, 578 N.W. 2d 101 (N.D. 1998). Thus, an attempted appeal from a judgment that has been satisfied of record fails for lack of jurisdiction. *Stegman v. Nodak Mutual Insurance Co.*, 647 N.W. 2d 133 (N.D. 2002).

Id. at 626. Applying this analysis to the issues at hand, this Court is without jurisdiction to entertain any other plaintiff's motions for attorney fees or otherwise. Judgment in this matter was satisfied when the amount of the judgment due on May 30, 2012, was paid in full. This lawsuit is over. This Court no longer has jurisdiction to make any changes to the judgment or to rule on plaintiff's motion for attorney fees.

A similar result was outlined by the Iowa Supreme Court in *Schwennen v. Abell*, 471 N.W. 880 (1991). In this case the Iowa Supreme Court is construing that state's statutes and case authority where a person was killed in an automobile accident. The defendant had a judgment entered against them. While on appeal, the defendant tendered to the court more than the amount of the judgment owed, but in its offering it specifically reserved the right

to continue its appeal. Later, plaintiff moved to have the judgment amended and for a new trial. The trial court denied plaintiff's motions.

On appeal, the Iowa Supreme Court held that defendant was entitled to satisfaction of judgment in full because the defendant tendered more than the amount of the judgment and interest. Moreover, the Supreme Court affirmed the trial court in holding that the judgment once paid could not be amended. Eventually, the plaintiff conceded this issue on appeal. In construing the Iowa statute the court noted:

> When an amount due upon the judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge satisfaction thereof upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledging and filing in the office of the clerk in every county wherein the judgment is a lien.

Id. at 885. Accordingly, the Supreme Court concluded this section of their analysis with the defendants "...were entitled to a satisfaction of the judgment in full." *Id.* at 885. Applying these rulings to the case at bar, Mr. Lowe is also entitled to a satisfaction of judgment be entered since the parties agreed that he

"satisfied" the judgment before Andrews yet again attempted to increase it. The statutes in Iowa have similar language, and effect, to RCW 4.84.120. For all of these reasons outlined above, the defendant should have a satisfaction of judgment entered.

There are several other cases involving the judgment debtor paying some, or all, and then entering into a written agreement acknowledging the payment. Beyond acknowledging the full satisfaction based upon the payments, these courts also review the written agreements, but we do not have written agreement for this Court to construe.

In *Key Savings and Loan Association v. Louis John,* 549 A.2d 988 (PA 1988) the judgment debtor paid the judgment and obtained a written release which outlined the parties' agreement regarding the settlement. The plaintiff failed to supply the court with a satisfaction of judgment so the defendant sued for damages. The appellate court ruled that:

> [O]nce the debtor has complied with the written notice requirement and has shown that the judgment has been satisfied (paid), the debtor is automatically entitled to liquated damages....

Id. at 990. This value of this case for the state of Washington because there is not an applicable a liquated damages statute when the plaintiff does not file a satisfaction of judgment after payment, but the judgment debtor in the case at bar more than paid the judgment, and the satisfaction should be entered before actual damages are incurred by the defendant.

In *Dock and Marine Construction Corp. v. Parrino*, 211 So.2d 57 (1968) a judgment was entered for the sum of $7,500 together with costs. Later, the judgment was paid in full, and in response to this full payment, plaintiffs executed a satisfaction of judgment. After the judgment was paid, plaintiff moved for more costs, but the appellate court ruled that the payment and the filing of the satisfaction "...precluded any subsequent order or judgment for (additional) costs." *Id.* at 59. This is what the Andrews is improperly attempting to do at the case at bar. Full judgment has been paid and agreed to by the parties. Accordingly, satisfaction of judgment must be entered. The superior court is without jurisdiction to make any additional orders or changes to a judgment that was already satisfied. This Court must void the last judgment that was entered on January 6, 2016, and direct that a satisfaction

of judgment be entered since the superior court had no jurisdiction to further increase the judgment once it was satisfied in May 2015.

A similar result was obtained in *Johnson v. BMW of North America*, 583 So. 1333 (Ala. 1991). In this case, plaintiff obtained a judgment. After the judgment was entered, the plaintiff filed a motion for attorney fees. The judgment was later paid in full by defendant. The trial court denied plaintiff's pending motion for attorney fees, and this holding was affirmed by the Alabama Supreme Court.

The Supreme Court held that:

> This is an apparent case of first impression in Alabama. Courts in other jurisdictions, however, have held that a satisfaction of judgment is the end of a proceeding and bars any final judgment. (Citations Omitted) ...

The parties went on to execute a document acknowledging the payment of the judgment. The document provided that:

> Judgment having been entered in favor of the plaintiff and against defendant...Satisfaction (payment)in full of said judgment is hereby acknowledged...

Id. at 1334. This case is procedurally similar to the case at bar while still applying the CAUTION note outlined above in American Jurisprudence. The plaintiff obtained a judgment.

Plaintiff paid the judgment, and plaintiff acknowledged the payment of the judgment. Later, plaintiff moved more for attorney fees and a new judgment amount. Both the trial court and the Supreme Court for the state of Alabama ruled that since the judgment was paid and the plaintiff acknowledged such payment, that was the end of the case, and there was no jurisdiction to amend the judgment to include more attorney fees.

From the above outlined cases, the general holdings that are that a trial court loses all jurisdiction to amend a judgment once the judgment has been paid. In the case at bar, the parties agree that the judgment was more than paid, and satisfied, in May, 2015. Accordingly, the superior court had no jurisdiction to increase or amend the judgment yet again in January, 2016. (CP 62) Therefore, Mr. Lowe requests this Court void the judgment and order entered on January 13, 2016, and direct that a satisfaction of judgment be entered.

RAP 18.1 REQUEST FOR ATTORNEY FEES AND COSTS

Mr. Lowe request this Court grant him fees and costs pursuant to RAP 18.1. *See, e.g., Piepkorn v. Adams*, 102 Wn.App. 673, 10 P.2d 428 428 (2000).

CONCLUSION

Mr. Lowe requests that a satisfaction of judgment be entered in this matter for all of the reasons outlined above.

DATED this 12th day of July, 2016

Aaron Lowe, Appellant