

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

Supreme Court No. 96437-8

Court of Appeals No. 765426

SUPREME COURT OF THE STATE OF WASHINGTON

JOSEPH P. PADGETT,

Petitioner,

v.

THE LAW FIRM OF KALLIS & ASSOCIATES,
P.C., and THE LAW OFFICE OF BUSTAMANTE
& GAGLIASSO, P.C.,

Respondents.

Appeal from the Superior Court for King County,
Honorable Beth Andrus, Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

Joseph Padgett
35538 SE 41st St.
Fall City, WA 98024
(425) 891-5055

Petitioner
In propria persona

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JOSEPH PADGETT hereby replies to the Answer to his Petition for Review. He avers that:

ARGUMENTS AND AUTHORITIES

I

Respondents argue that the King County Superior Court had jurisdiction over the subpoena issued by its clerk. (Answer, pp. 4-7.) Mr. Padgett has never disputed this. This, however, is beside the point Mr. Padgett makes.

As set forth in detail in the petition, the point Mr. Padgett makes is two-fold: First, the King County Superior Court ought not to have assumed jurisdiction over any dispute related to the subpoena its clerk had issued, because the use of the subpoena process under the Uniform interstate Deposition and Discovery Act [RCW §§ 5.51.010 et seq.] was improper.

The relevant statutes, which are included in the Appendix to the Petition for Review, make clear that the process is available to compel the testimony of out-of-state non-party witnesses. It was not designed and intended to compel the testimony of out-of-state parties.

Because Mr. Padgett was a party to the California lawsuit, which he won on summary judgment, respondents

should have used the process afforded by California law to compel his deposition. Furthermore, the King County Superior Court should have followed the clear dictates of the relevant statutes.

Second, the King County Superior Court did not have jurisdiction over the second and third deposition dates. Those dates were both set by deposition notices issued out of the California court. They were not set by subpoena issued by the King County Superior Court. They were, therefore, under the exclusive jurisdiction of the California court. In no sense were they a proper and valid basis for an exercise of jurisdiction by the King County Superior Court under the Washington Constitution. The King County Superior Court should have respected the comity of the matter

II

Respondents claim that they "twice served petitioner Padgett, personally, with subpoenas, the first of which had been issued by the King County Superior Court." In support of this bold claim, respondents include a proof of service from the Clerk's Papers in their appendix. (See, CP 10 [Reply Appendix, p. 1].)

This claim, however, is not the whole truth.

Respondents omit their claim that the proof of service stamped January 6, 2017, refers to the service of a counterfeit subpoena which had been executed by a California lawyer named Steven Berki, (CP 312 [Reply Appendix, p. 2],) who is not licensed to practice law in Washington. Respondents omit from their claim that the proof of service refers to a fourth deposition date, which respondents canceled on the objection that it had been defectively noticed. (CP 308-310 [Reply Appendix, pp. 3-5].) Respondents omit from their claim that this fourth deposition date was expressly excluded from the grievances which they lodged with, and which were adjudicated by, the King County Superior Court. (CP 326:27-327:1 [Reply Appendix, pp. 6-7].)

Mr. Padgett will leave it to the court to decide whether respondents have been deliberately deceptive. As far as the merits of the matter are concerned, the key facts of his Petition for Review are undisputed and uncontroverted:

1. The first deposition date, which was set by the subpoena improperly obtained from the King County Superior Court, was canceled by respondents. As a result, Mr. Padgett

had no obligation to appear in response to it.

2. The second deposition date, which was set by a deposition notice from California, and which, therefore, should never have been a concern of the King County Superior Court, was also canceled by respondents. As a result, Mr. Padgett had no obligation to appear in response to it.

3. Like the second deposition date, the third date was set by a deposition notice from California. As a result, it should never have been a concern of the King County Superior Court.

Furthermore, one notable, undisputed fact about this third date is that Mr. Padgett appeared exactly as he had been compelled by the deposition notice. Another notable, undisputed fact about this third date is that not only did respondents FAIL TO APPEAR, but also respondents failed even to have the deposition put on the calendar of the court reporter's office where the deposition was to take place.

Thus, the facts are undisputed both that Mr. Padgett did not once fail to appear for a properly noticed deposition, and also that he did, in fact, appear at the one deposition which had been properly noticed. Nevertheless, the King County Superior Court held that Mr. Padgett "repeatedly failed to appear for a

deposition." (CP 396-397.) This finding is a miscarriage of justice in a world in which undisputed facts, fundamental fairness, and old-fashioned fair play are supposed to matter.

III

Respondents argue that "existing case law unanimously contradicts petitioner's thesis" [that this is a case of first impression]. (Answer, p. 7.) However, respondents do not cite a single case for the proposition they urge, which is that it was appropriate for them to use the process of the Uniform Interstate Deposition and Discovery Act to compel the deposition of an out-of-state party.

Instead they rely on four opinions, two published, two unpublished, which confirm exactly the point Mr. Padgett has made. All four of these cases confirm that local subpoenas under the Uniform Interstate Depositions and Discovery Act are used to compel the testimony of out-of-state witnesses who are NOT parties to the lawsuits in which their testimony is required.

None of these cases stands for, or even concerned, the proposition urged by respondents, and adopted by the King County Superior Court and the Court of Appeals, that the

process is equally available to compel the testimony of out-of-state parties, who are already subject to the jurisdiction and control of the court in which the lawsuit is pending. This fact should not be unexpected. The plain language of the relevant statutes strongly militates against the proposition.

This case falls under a national model law, and no court, as far as Mr. Padgett knows, has reached the conclusion of the King County Superior Court or the Court of Appeals. As such, this is a case of first impression, and is of substantial public interest. This makes the case subject to review under RAP 13.4(b)(4).

IV

Petitioner does not argue that an appellate court must find a "bad or improper intent" as a condition for imposing sanctions under RAP 18.9. (Answer, pp. 8-10.) Instead, Mr. Padgett observes from precedent, such as the cases relied on by the Court of Appeals, that something of this sort must be present in order to classify an appeal as "frivolous". To classify an appeal as "frivolous" requires more than the court merely disagreeing with an appellant or believing him or his claims to be unimportant or otherwise insignificant.

Precedent makes clear that where an appeal is presented conscientiously, respectfully, and seriously, and where it raises legitimate, debatable points, such as how a statute should be interpreted, (Fay v. Northwest Airlines, 115 Wn.2d 194, 200-201 (1990),) as this appeal does, the appellant must be given the benefit of the doubt. (Tiffany Family Trust Corp. v. City of Kent, 155 Wn.2d 225, 241 (2005).)

The right of appeal plays a vital role in our jurisprudence, both in terms of improving the clarity of the law and in terms of providing confidence to the public. The courts must never be thought to be chilling this right, intentionally or unintentionally. As a result, sanctions under RAP 18.9 for a "frivolous" appeal should be rare and should be reserved for the most, and for clearly, egregious cases.

No such award should have been made in this case.

This case demonstrated overwhelmingly that (1) the King County Superior Court made a mistake about how to interpret the Uniform Interstate Deposition and Discovery Act, (2) the King County Superior Court wrongly assumed jurisdiction over a discovery dispute which was indisputably, as a matter of law, within the province of the California Superior Court, and (3) the

King County Superior Court reached factual conclusions which defied the undisputed facts on the record. In the greater scheme of things, an appellate court might have affirmed the decisions of the King County Superior Court in an unpublished decision, and then moved on to the next case. However, it was a patent miscarriage of justice to classify Mr. Padgett's appeal as "frivolous".

Similarly, there is no basis on which this court could fairly classify Mr. Padgett's Petition for Review as "frivolous" under its own rules. The Petition for Review does nothing more than respectfully raise serious legal issues, which are important not just to Mr. Padgett, but also concern a national model law and the risk that RAP 18.9 is over-exercised. As a result, respondents' request for sanctions incident to this proceeding should be denied.

CONCLUSION

For the foregoing reasons, and for the reasons previously advanced, this court should grant review of the lower court proceedings, order briefing on the legal issues, and after hearing the merits of the matter, reverse the decisions of the Court of
///

Appeals and the King County Superior Court.

Dated: December 4, 2018

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joseph P. Padgett", written over a horizontal line.

Joseph P. Padgett
In propria persona

Proof of Service

I, Linda Parker, certify under penalty of perjury that:

I am over the age of eighteen and not a party to this case.

My address is 35538 SE 41st Street, Fall City WA 98024. I

served the following:

Reply to Answer to Petition for Review,

by depositing true copies in a mail box regularly maintained by
the United States Postal Service, in Fall City, WA, on December
4, 2018, sealed in envelopes, with first class postage prepaid,

addressed as follows:

Hon. Ken Schubert
Judge of the Superior Court
516 3rd Ave., Room E-609
Seattle, WA 98104,

Attorney for Bustamante &
Gagliasso, P.C.:

Brian Waid
Waid Law Office
5400 California Ave. S.W., Suite D
Seattle, WA 98136, and

///

///

///

///

Attorney for Bankruptcy Estate of
Kallis & Associates, P.C.:

Rory C. Livesey
Attorney at Law
600 Stewart St., Suite 1908
Seattle, WA 98101.

A handwritten signature in cursive script that reads "Linda Parker". The signature is written in black ink and is positioned above a horizontal line.

Linda Parker

Reply Appendix

FILED
17 JAN -6 PM 2:12
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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

**THE LAW OFFICE OF BUSTAMANTE &
GAGLIASSO, P.C.**
Plaintiff/Petitioner

vs.
JOSEPH P. PADGETT

Defendant/Respondent

Cause No.: 16-2-21788-5 SEA
Hearing Date: 01/13/2017

DECLARATION OF SERVICE OF
SUBPOENA IN A CIVIL CASE

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the 4th day of January, 2017 at 5:45 PM at the address of 35538 SE 41ST STREET, FALL CITY, King County, WA 98024; this declarant served the above described documents upon JOSEPH P. PADGETT by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with JOSEPH P. PADGETT, Who accepted service, with identity confirmed by verbal communication, a gray-haired white male approx. 45-55 years of age, 6'0"-6'2" tall and weighing 200-240 lbs..

No information was provided or discovered that indicates that the subjects served are members of the United States military.

Service Fee Total: \$ 129.50

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED 1/5/2017

Eric Traina

Eric Traina, Reg. # 307327, King

ORIGINAL PROOF OF SERVICE

PAGE 1 OF 1

Tracking #: 0014948792



For: Kallits & Associates
Ref #: PADGETT



Issued by the
KING COUNTY SUPERIOR COURT

SUBPOENA IN A CIVIL CASE

The Law Office Of Bustamante & Gagliasso, P.C., Plaintiffs

v.

Joseph P. Padgett, Defendant
CAUSE NUMBER: 16-2-21788-5 SEA

TO: Joseph P. Padgett

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. The Deposition will be stenographically recorded and may be recorded by digital video and audio recording equipment.

PLACE OF DEPOSITION: ~~Buell Real Time Reporting 1325 4th Ave. Suite 1840 Seattle WA 98101~~

DATE AND TIME: ~~January 13, 2017 at 10:00 A.M.~~

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to appear in the above captioned court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

Mr. Steven Berkl Bustamante & Gagliasso 333 W San Carlos, Suite 600 San Jose CA 95110
408 977 1911

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

AT M. Berkl

¹ Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. (CRLJ 26.)

1 Steven M. Berki, Esq. SBN: 245426
2 **BUSTAMANTE & GAGLIASSO, APC**
3 333 W. San Carlos St., Suite 600
4 San Jose, California 95110
5 Telephone: (408) 977-1911
6 Facsimile 408.977.0746

7 Attorney for Plaintiff Bustamante & Gagliasso

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10 **UNLIMITED JURISDICTION**

11 * * *

12
13 The Law Firm of Kallis & Associates, P.C. a)
14 Washington Corporation; Bustamante &)
15 Gagliasso, APC, a California Corporation)

16 Plaintiffs,)

17 vs.)

18 Joseph P. Padgett, an individual, and DOES)
19 1 to 5.)

20 Defendant.)

Case No. 1-16-CV298149

**NOTICE OF DEPOSITION OF
DEFENDANT JOSEPH P. PADGETT**

Action Filed: July 26, 2016

Date: January, 13, 2017

Time: 10:00 a.m.

Place: Buell Reporting
1325 Fourth Avenue, Suite 1840,
Seattle, Washington 98101

21 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

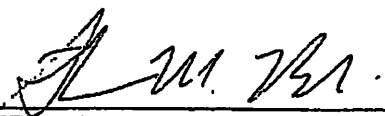
22 PLEASE TAKE NOTICE that, pursuant to Sections 2025.010, et seq., and 1015, et seq., of
23 the California Code of Civil Procedure, Plaintiffs, by and through their attorneys of record, will take
24 the deposition, on oral examination, of Defendant; Joseph P. Padgett, commencing on January 13,
25 2017 at 10:00 a.m., at Buell Reporting 1325 Fourth Avenue, Suite 1840, Seattle, Washington
26 98101, and continuing from day to day, Saturdays, Sundays, and legal holidays excluded, until
27 completed, or until any time limitation imposed by statute or agreed upon by the parties is reached.
28

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PLEASE TAKE FURTHER NOTICE that the deposing party intends to cause the proceedings to be recorded both stenographically, including by the instant display of testimony, before a certified court reporter, and by videotape. The deposing party specifically reserves the right to use the videotape at the time of trial.

Dated: January 4, 2016

BUSTAMANTE & GAGLIASSO, APC



STEVEN M. BERKI,
Attorney for Plaintiff Bustamante & Gagliasso

1 **CASE NAME: Law Firm of Kallis & Associates, et al. v. Padgett**
2 **ACTION NO.: 1-15-CV288147**

3 **SANTA CLARA COUNTY SUPERIOR COURT**

4 **PROOF OF SERVICE**

5 STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

6 I am a citizen of the United States. My business address is 333 West San Carlos St, Suite
7 600, San Jose, California 95110. I am employed in the County of Santa Clara where this service
8 occurs. I am over the age of 18 years, and not a party to the within action or cause. I am readily
9 familiar with my employer's normal business practice for collection and processing of
10 correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is
11 deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course
12 of business.

13 On the date set forth below, following ordinary business practice, I served the foregoing
14 document(s) described as:

15 **NOTICE OF TAKING DEPOSITION OF JOSEPH PADGETT**

16 on said date at my place of business, a true copy thereof, on the following parties by enclosing said
17 copies in a sealed envelope in the ordinary course of business, addressed to the parties as follows:

18 Hugo Torbet
19 Attorney at Law
20 3223 Webster Street
21 San Francisco, CA 94123
22 steadyrolling@gmail.com

23 M. Jeffrey Kallis
24 The Law Firm of Kallis & Associates, P.C.
25 321 High School Road, Suite D
26 Bainbridge Island, WA 98110
27 Jeff_Kallis@kallislaw.com

- 28 (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the U.S.
mail at San Jose, California.
- (BY E-MAIL) I caused such documents to be delivered via Electronic Mail to the addresses
listed above.
- (BY FACSIMILE) I caused such documents to be delivered by facsimile transmission this
date to the offices of the addressee(s), to the fax number noted herein.
- (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to
the offices of the addressee(s).
- (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight
delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be
served.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.
- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
whose direction the services was made.

Executed on January 4, 2017 at San Jose, California.


LISA MURPHY

1 [7] Padgett fails to look at the UIDDA's effect on California litigation and is mistaken in
2 his belief that California courts have jurisdiction over a discovery dispute where the discovery is
3 conducted in Washington. California Senate Analysis on UIDDA stated "In the event that court
4 intervention is requested by the deponent, for example to quash or modify the subpoena, the
5 laws of the discovery state will apply." The UIDDA itself states in Section 6. "An application to the
6 court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court
7 . . . must comply with the rules or statutes of the discovery state and be submitted to the court in
8 the [county, . . .] in which discovery is to be conducted." Simply put, any Washington discovery,
9 is subject to the jurisdiction of the Washington Courts.

10 [8] Padgett does not deny that in December he was asked on numerous occasions to
11 confirm his attendance at the December 27 deposition. He did not even respond until after the
12 deposition had been cancelled -11 hours before the scheduled start. Had Padgett responded to
13 any correspondence this motion would be moot.

14 [9] Padgett does not deny that Plaintiffs made numerous efforts to re-instate the
15 cancelled December deposition so that Padgett would not be inconvenienced despite his
16 refusals to confirm that he was going to attend. He does not deny that he chose not to respond
17 to telephone calls and emails that gave him the new location, which was three blocks away, or
18 that he refused to talk to Central Reporting who were going to tell him to go to the new location.
19 In fact, Torbet stated he did not have any obligation to respond to plaintiffs to get the new
20 information. More game playing and bad faith.

21 Padgett raises the "4th deposition", to take a shot at Mr. Berki. He ignores the fact that
22 he wanted reparations of \$4000 to attend the deposition. Instead of dealing with his extortion he
23 alleges a violation of law. First, Mr. Berki signed an amended deposition notice after the clerk of
24 the King County Court was contacted and asked if an out of state attorney, who had procured a
25 Washington subpoena for a deposition, could sign an *amended* subpoena, (only changing the
26 date and time of the deposition). The Clerk said yes. She explained that if he had the authority
27 to issue subpoenas for the same person and case in California he could amend an existing
28 Washington subpoena and did not have to pay for another subpoena. Second, the fourth

1 deposition was taken off calendar and it is not at issue in this Motion to Show Cause. Raising the
2 "validity" of the subpoena is more gamesmanship

3 CONCLUSION

4 Torbet spent over two months refusing to say he was the attorney of record and would
5 accept service. More bad faith and gamesmanship. Padgett spent over 6 weeks asserting that
6 service was somehow faulty, never filing any motion to quash the depositions. Twice Padgett
7 failed to appear. More bad faith and gamesmanship. The Court should not allow it.

8 Padgett wants it both ways: A) only California law applies to the deposition notice and
9 subpoena process; B) as Padgett wrote " . . . check WA law . . . so that you comply with that
10 requirement" (Kallis Dec. Ex. 2 P6); "Let's cut to the chase, whether you wish to acknowledge it
11 or not, the fact of the matter is that *if you want to conduct an out of state depo, you must*
12 *satisfy the statutory requirements of both CA and WA*" - (Kallis Dec. Ex. 2 P13) and "the process
13 of the Washington Court has not been in accordance with the Interstate compact." (Kallis
14 Declaration Ex 4 P22). The UIDDA spells out the rules. Padgett insists they be followed when
15 they help him, when they don't he assert other rules control. . . .

16 Third notice was an amendment of the original notices and followed the UIDDA with
17 both a subpoena and a notice served on Torbet and Padgett, but Padgett played games again.
18 He refused to confirm his attendance, even though he was contacted almost a dozen times
19 for confirmation. When the location was changed to 3 blocks away, Padgett would not respond
20 to the new information, nor would he get the new information. More bad faith and
21 gamesmanship. The Court should not allow it

22 The Fourth deposition was cancelled because he said he wouldn't appear for it unless
23 he was paid \$4,000.

24
25
26 Dated:

The Law Firm of Kallis & Associates P.C.
Jointly submitted for the Bustamante Firm

27 _____/s/_____
28 By: M. Jeffery Kallis, for Plaintiff

JOSEPH PADGETT - FILING PRO SE

December 04, 2018 - 1:23 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96437-8
Appellate Court Case Title: The Law Firm of Kallis & Associates., P.C., et ano. v. Joseph Padgett
Superior Court Case Number: 16-2-21788-5

The following documents have been uploaded:

- 964378_Answer_Reply_20181204131656SC332060_6988.pdf
This File Contains:
Answer/Reply - Reply to Answer to Petition for Review
The Original File Name was WA Pet Reply v.2signedFinal.pdf

A copy of the uploaded files will be sent to:

- Jeff.Kallis@Kallislaw.com
- Jeff.kallis@Protecting-Civil-Rights.com
- Rory@Liveslaw.com
- bjwaid@waidlawoffice.com

Comments:

Sender Name: Joseph Padgett - Email: legaltkr@gmail.com
Address:
35538 SE 41st Street
Fall City, WA, 98024
Phone: (425) 891-5055

Note: The Filing Id is 20181204131656SC332060