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CASE NO. 97299-1

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 77479-4-I

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LARRY SPOKOINY,
an individual,

Petitioner,

v.

WASHINGTON STATE YOUTH SOCCER ASSOCIATION,
LLC, a Washington limited liability company,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Washington State Youth Soccer Association ("WSYSA" or the "Association") submits this Answer to the Petition for Review of Larry Spokoiny ("Petition").

II. COURT OF APPEALS DECISION

The Court of Appeals, Division One, decisions are the unpublished decision ("the Opinion") dated March 4, 2019, in Case No. 77479-4-I and the subsequent Order Denying Motion for Reconsideration dated May 6, 2019.[1] [2]

III. INTRODUCTION & COUNTER STATEMENT OF THE CASE

This is the third appeal by Appellant Larry Spokoiny ("Spokoiny") involving a judgment granted by former King County Superior Court Judge Mary Yu on September 29, 2006. In this

[1] Spokoiny also petitioned the Court to "...review (a) the letter of December 27, 2018 setting the hearing without oral argument…." 2019 Petition at Page 1, Section A "Introduction." Yet he provides no analysis or authority for that alleged error. Under RAP 11.4(j) the Court of Appeals may decide a case without oral argument.

[2] In the final paragraph of his Petition, Spokoiny ask the Court to vacate "two King County Superior Court orders extending WSYSA's judgment." As noted in footnote 1 to the Opinion, Spokoiny's challenge to the 2016 order extending judgment was untimely and was not addressed by the Opinion.

latest appeal, Spokoiny contends that the King County Superior Court first erred in allowing the WSYSA to renew its judgment without notice to Mr. Spokoiny without following the procedures in RAP 7.2(e), and then compounding that error by *sua sponte* issuing an order Nunc Pro Tunc regarding the judgment renewal. Petition, Section 3 "Statement of the Case," pages 3-4. As in his two prior appeals, Mr. Spokoiny is wrong. WSYSA lawfully renewed its judgment. King County Superior Court made no error. The Court of Appeals correctly denied Spokoiny's appeal.

As set forth in the Opinion, this case begins in 2004. Spokoiny improvidently initiated a lawsuit against the WSYSA to forestall certain administrative disciplinary action, instead of pursuing available administrative appeal remedies that were available to him, in violation of WSYSA bylaws. Superior Court Judge Mary Yu ultimately dismissed the Spokoiny lawsuit and, in so doing, granted an award of attorneys' fees and costs to WSYSA. Spokoiny appealed Judge Yu's decision to the Court of Appeals. In *Spokoiny v. Wash. State Youth Soccer Ass'n*, 128 Wn. App. 794, 117 P.3d 1141 (2005) ("Spokoiny I"), this Court denied the Spokoiny appeal, granted an award of fees and costs, and remanded the case back to Judge Yu for further proceedings. Spokoiny petitioned

unsuccessfully for review to the Washington State Supreme Court. *Spokoiny v. Wash. State Youth Soccer Ass'n*, 156 Wn.2d 1036, 134 P.3d 1170 (2006). All of this legal posturing cost WSYSA scarce dollars better spent on youth soccer programs.

The story continued in *Spokoiny v. Wash. State Youth Soccer Ass'n,* No. 74326-1-I (October 31, 2016) ("Spokoiny II") in response to WSYSA's collection efforts. On September 15, 2006, WSYSA had filed a Motion for Entry of Amended Judgment and Second Request for Attorneys' Fees and Costs. Not surprisingly, Spokoiny had opposed this motion. Judge Yu issued an order in favor of WSYSA for attorneys' fees and costs on September 29, 2006. Spokoiny II. She further granted an Amended Judgment, dated September 29, 2006 totaling $45,187.51. Spokoiny II at 2. Spokoiny did not appeal the Amended Judgment.

Nine years later, when WSYSA commenced garnishment and supplemental proceedings, Spokoiny moved unsuccessfully to quash these actions. He contended the ten year time period for renewal had expired, under RCW 6.17.020 and RCW 4.56.210, based on the initial 2004 judgment. Spokoiny II ends with the following statement in the Court of Appeals Opinion: "WSYSA

properly sought to enforce that judgment within the time period allowed by pertinent statutes. This the trial court astutely and properly permitted WSYSA to seek enforcement of the judgment against Spokoiny." Spokoiny II at page 7. Spokoiny sought review by the Supreme Court which was denied. *Spokoiny v. Wash. State Youth Soccer Ass'n, 188 Wn.2d 1004, 393 P.3d 786* (2017).

Meanwhile, in August of 2016, WSYSA began the process of renewing its judgment under RCW 6.28. In King County Superior Court, the renewal of a judgment is an ex parte matter. CP 152; 161-166. Customary renewal procedures were followed. Declaration of Kelli Huerta, CP 151-152. Id. Contrary to Mr. Spokoiny's repeated (and false) assertions, WSYSA did not add attorney's fees of $20,471, nor additional costs of $2,133.41 allegedly incurred in the 2016 appeal. CP 177-178. Verbatim Report of Proceedings (RP) 31, lines 1 -22; 32 lines 21-25; 33, 1 -23. Mr. Spokoiny misread the renewed judgment summary form which merely restated the amount of attorney's fees ($20,741) and costs ($2,133.41) previously awarded by Judge Yu in 2006. CP 168-169. Nothing in the record supports his contention that any kind of fee petition was submitted in connection with the judgment renewal.

Let's be clear. In the initial Order Extending Judgment, the amount stated under Total Fees was $20,471 and the costs were $2,133.41, the amount previously awarded by Judge Yu in the 2006 Judgment. CP 168-169. This is apparent from the worksheet of Kelli Huerta, which is found at the last page of Attachment A to her declaration where she summarizes fees:

DESCRTIPTION	AMOUNT	DAILY INTEREST	DAYS	INTEREST
Original Judgment	$ 16,353.83	$5.38	3597	$ 19,339.64
Fees:	$ 20,471.00	$6.73	3597	$ 24,208.50
Costs:	$ 2,133.41	$0.70	3597	$ 2,522.92
Interest:	$ 6,509.27	N/A	N/A	$ 6,509.27
TOTAL:	$ 45,467.51			$ 52,580.33

AMENDED JUDGMENT INTEREST	
Original Judgment:	$ 4,250.92
Pre-Judgment:	$ 2,258.35
TOTAL:	$ 6,509.27

AMENDED JUDGMENT COSTS	
Assessed by COA:	$ 1,825.59
Since COA decision:	$ 307.82
TOTAL:	**$ 2,133.41**

AMENDED JUDGMENT FEES	
Assessed by COA:	$ 16,994.00
Accrued by COA:	$ 3,197.00
Presenting Motion:	$ 280.00
TOTAL:	$ 20,471.00

CP 156.

During oral argument, King County Superior Court Judge Schubert astutely recognized this and requested *sua sponte* that WSYSA present an order Nunc Pro Tunc to clarify (not modify) that WSYSA had not sought additional attorneys fees or costs. RP 33, lines 19-25; 34, lines 3-13.; 18-25; 35, lines 2-8; 36, lines 3-15. This clarification was accomplished by amending the Order Extending Judgment to read as follows:

> Total Fees: (Previously awarded and included in Judgment Amount). CP 177.

The effect of the Nunc Pro Tunc Order was a non-substantive clarification, with no effect on what Spokoiny owed on the judgment. Judge Schubert further denied Spokoiny's erroneous argument that WSYSA violated RAP 7.2(e) in renewing its judgment. CP 173-174. The Court of Appeals Opinion correctly upheld Judge Schubert's decisions.

IV. ARGUMENT WHY REVIEWED SHOULD NOT BE ACCEPTED UNDER RAP 13.4

A. The Court of Appeals Decision Correctly Held That RAP 7.2(e) Does Not Apply.

1. RAP 7.2(c), Not RAP 7.2(e) Is the Controlling Rule.

Spokoiny's first argument (Petition, Argument D.1) asserts that WSYSA violated RAP 7.2(e) in extending its judgment and that both the Superior Court and the Court of Appeals erred in denying his challenge to the renewal. His argument has no support in case law and is otherwise undercut by RAP 7.2(c).

RAP 7.2(e) and RAP7.2(c) address different issues. RAP 7.2(e) applies to certain post judgment motions and actions to modify a judicial decision under review. RAP 7.2(c), on the other hand, applies to the enforcement of trial court decisions. WSYSA's Petition for Order Extending Judgment was not a post judgment motion within the meaning of RAP 7.2(e) as it was not a modification of a judicial decision. Rather, it was a procedure under RCW 6.17.020(3) allowing continued enforcement of a valid judgment, as allowed by RAP 7.2(c). The difference in the functions of these two provision is apparent from their text.

RAP 7.2(e) states as follows:

> "(e) Post Judgment Motions and Actions to Modify Decision. The trial court has authority to hear and determine (1) post judgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) **actions to change or modify a decision that is subject to modification by the court that initially made the decision**. The post judgment motion or action shall first be heard by the trial court, which shall decide the matter. 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. A party should seek the required permission by motion. The decision granting or denying a post judgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain review of the decision on the post judgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a post judgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b)." [Emphasis added.]

RAP 7.2(c) states as follows:

> "(c) **Enforcement** of Trial Court Decision in Civil Cases. In a civil case, except to the extent enforcement of a judgment or decision has been stayed as provided in rules 8.1 or 8.3, **the trial court has authority to enforce any decision of the trial court and a party may execute on any judgment of the trial court**. **Any person may take action premised on the validity of a trial court judgment or decision until enforcement of the judgment or decision is stayed as provided in rules 8.1 or 8.3**." [Emphasis added.]

It is undisputed that Spokoiny never stayed the enforcement of the judgment against him. Hence, WSYSA has always had the right to pursue enforcement of its judgment.

RCW Title 6, expressly named "Enforcement of Judgments" deals with various matters relating to enforcement of

judgments, ranging from Execution of Judgments at RCW 6.17, to Garnishments at RCW 6.27, to Supplemental Proceedings at RCW 6.32, to the Uniform Foreign-Money Claims Act at RCW 6.44.

Judgment may initially be enforced at any time within ten years from the date of entry. RCW 6.17.020. A judgment may be renewed for an additional ten years under RCW 6.17.010(3). The order granting the application for renewal shall contain an updated judgment summary as provided for in RCW 4.64.030. The petition for renewal is to 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 amounts. RCW 6.17.020(3). RAP 7.2(c) then should be the controlling provision for the enforcement of a judgment under RCW Chapter 6, including its renewal.

2. The Court of Appeals Decision is Consistent with Washington Case Law.

Spokoiny's RAP 7.2(e) argument rests on a single case, *State ex rel Shafer v. Bloomer*, 94 Wn. App. 246, 973 P.2d 1062 (1999). The case is factually dissimilar. Chris Bloomer appealed a Superior Court order of contempt against him for his failure to make child support payments. During the pendency of the appeal, the trial court continued proceedings on the contempt matter,

ultimately dismissing its order of contempt against Bloomer. The Court of Appeals found the dismissal violated RAP 7.2(e) by modifying and dismissing the very contempt order under appellate review.

By contrast here, Judge Schubert (and the Court Commissioner before him on August 8, 2017), changed nothing that was under review. The King County Superior Court merely allowed WSYSA to renew a judgment which was eligible for renewal. Other than allowed interest, nothing else changed in the amount of the judgment. The Court of Appeals Decision confirmed this analysis. The Court of Appeals Decision is not in conflict with Washington case law.

B. The Court of Appeals Correctly Held that the Trial Court Did Not Abuse Its Discretion in Issuing an Order Nunc Pro Tunc Clarifying Its Order Extending Judgment.

Spokoiny's second and third arguments (Petition, Arguments D.2 and D.3) deal with the appropriateness, validity, and retroactive effect of the September 17, 2017 Nunc Pro Tunc Order of Judge Schubert. Those arguments will be addressed collectively here.

While Argument No. 2 has no case citations, Argument No. 3 brings forth a series of Washington cases on Nunc Pro Tunc

jurisprudence. WSYSA takes no issue with those cases that state the standard principal that Nunc Pro Tunc order cannot be used to correct judicial errors or alter prior judgments. But what relevance do those cases have here? No one is arguing that Judge Schubert's Order altered a judgment. The amount Spokoiny owed on the judgment was the same before and after the Nunc Pro Tunc Order.

Spokoiny's argument seems to be (a) the WSYSA made a drafting error in its Order extending judgment and (b) the doctrine of Nunc Pro Tunc cannot apply to an error made by a party rather than clerk or judicial official. Petition at pages 9 and 10. Opinion at 7. The false premise of the Petition is that there was an error. If that were the case, then there would have been a substantive change in the judgment. There was not. Opinion at 9.

The error has always been in Spokoiny's mind. As he (incorrectly) states in the Petition: "On August 9, 2016, while the Court of Appeal's case was pending...WSYSA obtained an Order Extending Judgment plus $20,471 in attorneys fees and $2,133.41 in costs *allegedly incurred on appeal*. CP at 3-4, 35." Petition at 2, 3. [Emphasis added.] This statement and premise is incorrect. In any event the order Nunc Pro Tunc clarified any source of confusion.

C. Spokoiny Was Not Denied Due Process.

Spokoiny's issues at Petition, Arguments D #4 and #5 address due process and the opportunity to oppose the judgment renewal under RCW 6.17. His argument No. 4 is long on the rhetoric of due process jurisprudence, which is not really disputed in this case, but lacks any direct challenge to any Washington statute. His argument No. 5 asserts a right to advance notice of the judgment extension. Yet, his argument is cursory. Is he challenging RCW 6.17.020, and if so, where is the analysis that a judgment renewal is the type of proceeding that is to be heard in a noticed, contested proceeding like a motion? As noted in the Opinion at page 6, RCW 6.17.020(3) does not contain an express notice requirement. How does Spokoiny address this? He just ignores it. As the Opinion notes at page 7, Spokoiny does not provide authority to support that a petition to extend a judgment requires notice to the other party. In such cases, the Court may assume that after diligent research, no supporting authority has been found. Opinion at 7 citing to *DeHeer v. Seattle Post-Intelligencer*, 60 WN. 2d 122, 126, 372 P.2d 193 (1962).

Is Spokoiny challenging the King County Superior Court procedures which authorize judgment renewals as one of many type of ex parte matters? CP 161-166. If so, where is the analysis?

What substantively is it exactly that Spokoiny feels he was denied due process on? RCW 6.17.020(3) allows a judgment renewal as a matter of right, subject to review regarding (1) timeliness, (2) factual matters of partial or full satisfaction, or errors in calculating judgment amounts. Spokoiny has not alleged a timeliness issue, a factual matter on satisfaction, or an error in calculations. His due process argument lacks any connection to an alleged error.

Less legally relevant, but perhaps worth noting, Spokoiny makes an unsubstantiated and misleading factual argument that he has received notice from WSYSA for every other "hearing associated with this case…except the petition for extension." Petition at pages 14-15. Any "hearing" would require notice. Judgment enforcement actions do not require advance notice. See RCW 6.17.020. Spokoiny actually concedes this point in his Petition at C. "Statement of the Case" where he states that WSYSA pursued a Writ of Garnishment in August of 2015 and an ex parte Order for Supplemental Proceedings in September of 2015, the issuance of which he then

challenged after the fact in a Motion to Quash which he later appealed (and lost). He received no advance notice of the garnishment or supplemental proceedings order that were issued ex parte.

The Court of Appeals correctly disposed of this “notice” issue in its analysis at pages 6 and 7.

D. The Case Does Not Otherwise Meet the Requirements for Review under RAP 13.4(b).

The Spokoiny Petition asserts in its Conclusion on page 15 that: “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 pubic interest that should be determined by the Court.” The Petition does not meet any of these standards.

The Court of Appeals decision is not in conflict with a published decision of the Court of Appeals, on the issue of judgment renewals. The Court of Appeals Decision does not involve an issue of substantial public interest that should be determined by the Supreme Court under RAP 13.4(b)(4). Other than trying to achieve a personal windfall in debt reduction through a technicality, what is the important public purpose of his Petition?

Spokoiny suggests that the Opinion gives a "free pass around RAP 7.2(e) and RCW 6.17.010(3)" without elaboration what that free pass is. The Opinion is unpublished and is not to be cited as having prudential value. GR 14.1(a).

V. CONCLUSION

The Court should deny review.

DATED this 3rd day of July, 2019.

JAMESON BABBITT STITES & LOMBARD, PLLC
Attorneys for Washington State Youth Soccer Association

By: */s/ Brian E. Lawler*
Brian E. Lawler, WSBA #8149

CERTIFICATE OF SERVICE

I, Evan C. Heaney, declare that I am employed by the law firm of Jameson Babbitt Stites & Lombard, PLLC, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On July 3, 2019, I caused a true and correct copy of the foregoing document to be filed with the Court and to be served on the Petitioner Larry Spokoiny via email at larryspo@yahoo.com and via regular U.S. Mail at 4306 – 245th Avenue SE, Issaquah, WA 98029.

DATED this 3rd day of July, 2019.

/s/ Evan C. Heaney
Evan C. Heaney
Legal Assistant
eheaney@jbsl.com

JAMESON BABBITT STITES & LOMBARD PLLC

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