97299-1

Court of Appeals (Div. One) No. 77479-4-I

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. 77479-4-I.

Specifically, Mr. Spokoiny petitions this Court to review (a) the letter of December 27, 2018 setting the case for hearing without oral argument, (b) the Unpublished Opinion filed March 4, 2019, and (c) the Order Denying Motion for Reconsideration dated May 6, 2019.

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

B. ISSUES PRESENTED FOR REVIEW

1. **Did WSYA violate 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 the underlying case was still on appeal and WSYSA sought attorney's fees and costs in such petition?**

2. **Is a judgment corrected due to party error entitled to retroactive effect?**

3. **Is a *nunc pro tunc* order ever appropriate to correct errors committed by parties in drafting their own pleadings?**

4. **Does fundamental procedural due process require some sort of notice to the party against whom relief is sought?**

5. **Was Mr. Spokoiny denied the opportunity to oppose the extension "for timeliness, factual issues of full or partial**

satisfaction, or errors in calculating the judgment summary amounts" as contemplated by RCW 6.17.020?

C. STATEMENT OF THE CASE

This action was commenced in King County Superior Court on January 23, 2004. The original judgment in this case was entered by the Honorable Mary Yu on July 8, 2004. The judgment awarded attorney's fee and costs to The Washington State Youth Soccer Association ("WSYSA"). 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 34.

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 35.

More than 10 years later, 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. Mr. Spokoiny's Motion to Quash was denied by the trial court but timely appealed to the Court of Appeals on November 16, 2015. CP at 35.

On August 9, 2016, while the Court of Appeals' case 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. CP at 3-4, 35.

Oral argument on the Appeal was held on September 29, 2016. The Court of Appeals entered an unpublished decision on the Appeal on October 31, 2016. Although the Court determined that WSYSA was able to collect on the amended judgment, there was no ruling on the enforceability of the amended judgment past its original 10-year period. Furthermore, WSYSA was denied attorney's fees on appeal. CP at 36.

Mr. Spokoiny's subsequent Motion for Reconsideration was denied on December 14, 2016. Mr. Spokoiny filed a Petition for Review on January 13, 2017. The Supreme Court denied the petition for review on May 3, 2017. CP at 36.

The Court of Appeals terminated its review upon issuance of the Mandate on July 21, 2017. CP at 36.

After the mandate was issued, Mr. Spokoiny filed his Motion for Order to Show Cause Regarding Vacation of Extension of Judgment on August 9, 2017. CP at 34-38. Oral argument was held before Judge Ken Schubert on September 8, 2017. Verbatim Report of Proceedings.

In a pair of orders entered on September 12, 2017, Judge Schubert denied Mr. Spokoiny's motion to vacate and retroactively extended

WSYSA's judgment by *sua sponte* nunc pro tunc order. CP at 174-179.

Mr. Spokoiny filed this appeal to Court of Appeals, Division One on October 11, 2017. CP at 180-187.

By letter of December 27, 2018, the Court of Appeals scheduled the appeal for consideration without oral argument on February 26, 2019. *See* Appendix.

The Court of Appeals entered an unpublished decision on this Appeal on March 4, 2019. Mr. Spokoiny's subsequent Motion for Reconsideration was denied on May 6, 2019. *See* Appendix.

D. ARGUMENT

1. 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 in such petition.

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. Mr. Spokoiny's 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 (despite the later denial of these same fees and costs by the Court of Appeals).

In the instant case, WSYSA failed to provide any notice whatsoever of its motion to extend judgment to Mr. Spokoiny or the Court of Appeals either before or after seeking relief from the trial court. This lack of notice essentially blocked Mr. Spokoiny from challenging the extension of judgment. The trial court was unable to perform the necessary RAP 7.2 analysis because the fact of the pending appeal was not disclosed to the court commissioner who signed the extension order.

Extending enforceability of the 2006 amended judgment for an additional 10-year period is a significant change or modification that requires appellate court approval, especially where the 2004 original was not similarly extended. Fundamental fairness and the opportunity to be heard dictate that Mr. Spokoiny should have been provided notice of this

secret hearing.

2. **The August 9, 2016 order extending judgment was amended by Judge Schubert on September 12, 2017, and is not entitled to retroactive effect.**

Judge Schubert erred in granting the nunc pro tunc order.

> THE COURT: So guys, this is easy. I'm just going to enter an order nunc pro tunc that amends -- or modifies the August 9th, 2016, this order extending judgment to make clear that the fees and costs that are set forth in that order are subsumed within the 45,000 and change.
> [Verbatim Report of Proceedings at 36]

As WSYSA concedes on page 11 of its brief, "*(t)he Nunc Pro Tunc Order was not intended to correct a mistake, substantive or procedural.*" However, if there was no error in their 2016 pleading, no nunc pro tunc order was required or warranted here. Accordingly, Judge Schubert's order can only be considered as an amended judgment with no retroactive effect. Judge Schubert's amended judgment (wrongly delineated as nunc pro tunc) was entered into on September 12, 2017, which is well past the end of the statutory renewal period set forth in RCW 6.17.020.

It bears noting that the need for a nunc pro tunc order could have been entirely avoided had WSYSA merely notified Mr. Spokoiny of the petition for extension and afforded him a meaningful opportunity to

contest.

3. **A nunc pro tunc order is only appropriate to correct clerical errors by court personnel, and not to correct errors committed by parties in drafting their own pleadings.**

In State v. Hendrickson, 165 Wn.2d 474, 198 P.3d 1029 (2009), the Washington State Supreme Court discussed in detail when nunc pro tunc orders are appropriate and when they are not:

> "A retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred." State v. Smissaert, 103 Wn. 2d 636, 694 P.2d 654 (1985). A nunc pro tunc order "records judicial acts done at a former time which were not then carried into the record." State v. Petrich, 94 Wn.2d 291, 616 P.2d 1219 (1980). A nunc pro tunc order "may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken." State v. Ryan, 146 Wash. 114, 261 P. 775 (1927). Thus, for example, a nunc pro tunc order is not appropriate to reopen a matter that was previously closed in order to resolve substantive issues differently. Instead, a nunc pro tunc order is generally appropriate to correct only ministerial or clerical errors, not judicial errors. A clerical or ministerial error is one made by a clerk or other judicial or ministerial officer in writing or keeping records.

A nunc pro tunc order allows trial courts "to date a record reflecting its action back to the time the action in fact occurred." Hendrickson, 165 Wn.2d at 478. This "`retroactive entry is proper only to

rectify the record as to acts which did occur, not as to acts which should have occurred.'" Ibid. (quoting State v. Smissaert, 103 Wn.2d 636, 694 P.2d 654 (1985)). Specifically, a nunc pro tunc order translates the court's intention into an order. Ibid.

Thus, nunc pro tunc orders are not appropriate to correct judicial errors, which are errors of substance. Ibid.; In re Marriage of Stern, 68 Wn.App. 922, 846 P.2d 1387 (1993). Rather, they are generally appropriate to correct only clerical or ministerial errors, which are errors "made by a clerk or other judicial or ministerial officer in writing or keeping records." Hendrickson, 165 Wn.2d at 479.

Per State v. Luvene, 127 Wash. 2d 690, 903 P.2d 960 (1995), a nunc pro tunc order is appropriate only to record some act of the court done at an earlier time but which was not made part of the record. State v. Smissaert, 103 Wash. 2d 636, 694 P.2d 654 (1985). It cannot be used to remedy the failure to take an action at that earlier time. State v. Mehlhorn, 195 Wash. 690, 692-93, 82 P.2d 158 (1938).

"A nunc pro tunc order allows a court to date a record reflecting its action back to the time the action in fact occurred." Hendrickson, 165 Wn.2d at 478. A judgment nunc protunc may be used to record action previously taken, but it may not properly be used to alter a prior judgment.

Keves v. Dep't of Motor Vehicles, 11 Wn. App. 957, 528 P.2d 283 (1974). In other words, a judgment nunc pro tunc is used "'to record judicial action taken and not to remedy inaction.'" Ibid. (quoting Osborne v. Osborne, 60 Wn.2d 163, 372 P.2d 538 (1962)).

The Court of Appeals reviews a trial court's exercise of its authority to enter a nunc pro tunc order for abuse of discretion. Hendrickson, 165 Wn.2d at 478. A trial court misuses its nunc pro tunc power and abuses its discretion when it uses such an order to change its mind or rectify a mistake of law. But where the record demonstrates that the court intended to take, and believed it was taking, a particular action only to have that action thwarted by inartful drafting, a nunc pro tunc order stands as a means of translating the court's intention into an order. Ibid.

In the instant case, the trial court lacked authority and therefore abused its discretion in granting the *sua sponte* nunc pro tunc order. WSYSA's erroneous Order Extending Judgment was not a clerical or ministerial error made by a clerk or judicial officer. Although there is no testimony in the record or even any assertion in a legal pleading where WSYSA claims to have made a drafting error in requesting and receiving over $20,000 in attorney fees and costs, to the extent that an error was

made, WSYSA made the error and not a clerk or judicial officer.

Accordingly, a nunc pro tunc order was not appropriate to correct WSYSA's error. Indeed, this mistake could have been avoided entirely had WSYSA simply followed the hearing procedures outlined in RAP 7.2(e).

4. **Although the form of notice may vary, fundamental procedural due process requires some sort of notice to the party against whom relief is sought.**

As the Washington State Supreme Court stated in Olympic Prod. v. Chaussee Corp., 82 Wn.2d 418, 511 P.2d 1002 (1973):

> The fourteenth amendment to the United States Constitution provides in part that no "state [shall] deprive any person of life, liberty, or property, without due process of law..." Article 1, section 3 of the Washington State Constitution likewise states that, "No person shall be deprived of life, liberty, or property, without due process of law." Noting the near identity in the language of these clauses, we stated in Petstel, Inc. v. County of King, 77 Wn.2d 144, 153, 459 P.2d 937 (1969), that "the federal cases while not necessarily controlling should be given `great weight' in construing our own due process provision." We are further cognizant, of course, that insofar as the due process clause of the Fourteenth Amendment provides greater protection than does article 1, section 3, the federal constitution must prevail. U.S. Const. Art. 6.

For over a century it has been recognized that "Parties whose rights

are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1864). The fundamental requisites of due process are "the opportunity to be heard," Grannis v. Ordean, 234 U.S. 385, 394, 58 L.Ed. 1363, 34 S.Ct. 779 (1914), and "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 94 L.Ed. 865, 70 S.Ct. 652 (1950). Thus, "at a minimum" the due process clause of the Fourteenth Amendment demands that a deprivation of life, liberty or property be preceded by "notice and opportunity for hearing appropriate to the nature of the case." Mullane at 313. Moreover, this opportunity "must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S.Ct. 1187 (1965).

[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Boddie v. Connecticut, 401 U.S. 371, 377, 28 L.Ed.2d 113, 91 S.Ct. 780 (1971).

This elasticity in the form of the hearing demanded by due process

in different contexts should not, however, be confused with the basic right to a prior hearing of some sort. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. Boddie at 378.

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.... [N]o later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. This Court has not . .. embraced the general proposition that a wrong may be done if it can be undone. Stanley v. Illinois, 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972).

More specifically, as a matter of constitutional principle, it is no replacement for the right to a prior hearing that is the only truly effective safeguard against arbitrary deprivation of property. Fuentes v. Shevin and

Parham v. Cortese, 407 U.S. 67, 32 L.Ed.2d 556, 92 S.Ct. 1983 (1972). Such notice and hearing need not embody all of the formalities of a full-blown trial on the merits in the principal action. Rather, due process requires that the procedural safeguards afforded the defendant be "appropriate to the nature of the case." Mullane at 313. The purpose of this hearing will be a controlling factor in determining what specific procedures are "appropriate". Olympic Prod. at 432.

Procedural due process is not intended to promote efficiency or accommodate all possible interests: it is intended to protect the particular interests of the person whose possessions are about to be taken. The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones. Stanley at 656.

5. **Mr. Spokoiny was denied the opportunity to oppose the extension "for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts" as contemplated by RCW 6.17.020.**

As set forth in his original brief, Mr. Spokoiny was not given any notice, either before or after, of WSYSA's attempted judgment extension.

The belated ability to file a motion is no substitute for the actual right to notice and the opportunity to be heard granted by the Washington and United States Constitutions.

At oral argument. Judge Schubert acknowledged problems with the 2016 judgment extension:

> THE COURT: Yeah, and there was this shows why a notice is so warranted, because the fees sought in the amended judgment were contested and actually were reduced as a result of being contested, correct?
> [Verbatim Report of Proceedings at 28]

WSYSA appears to confuse "default" cases, where a party waives the right to notice by failing to appear and therefore is not entitled to notice of proceedings, with "ex parte" hearings. In general, any non-defaulting party is entitled to notice and the opportunity to be heard, even for ex parte proceedings.

Tellingly, Mr. Spokoiny received copies of pleadings and advance notice from WSYSA of every single hearing associated with this case

dating back to 2004 … except for the petition for extension.

Per RCW 6.17.020(3): "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."

Clearly, this right of review on the attempted judgment extension "*for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts*" granted to Mr. Spokoiny pursuant to RCW 6.17.020(3) is entirely illusory without the corresponding notice and opportunity to be heard.

The Court of Appeals denial of an oral argument hearing to Mr. Spokoiny further compounded this fundamental unfairness.

E. CONCLUSION

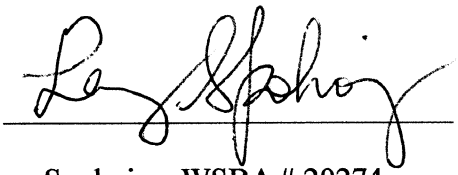
The decision of the Court of Appeals is in conflict with other published decisions of the Court of Appeals, is a significant question of law in the State of Washington, and involves an issue of substantial public interest that should be determined by the Supreme Court.

By its decision, the Court of Appeals has given future litigants a free pass around RAP 7.2(e) and RCW 6.17.020(3). Furthermore, the Court of Appeals extends the application of *nunc pro tunc* orders to

situations where one of the parties, and not the judge or clerk, makes an easily avoidable drafting error. Finally, the Court of Appeals ignores longstanding state and federal jurisprudence protecting a litigant's right to a hearing when property rights are affected.

Accordingly, Mr. Spokoiny respectfully requests that this Court reverses the Court of Appeals decision and vacate the two King County Superior Court orders extending WSYSA's judgment.

RESPECTFULLY SUBMITTED this 5th day of June, 2019.

By: 

Larry Spokoiny, WSBA # 20274
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APPENDIX

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
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CASE #: 77479-4-I
Larry Spokoiny, Appellant v. Washington State Youth Soccer Assn, Respondent

Counsel:

Pursuant to RAP 11.4 (j), the above case has been tentatively set before Judges Appelwick, Hazelrigg-Hernandez and Verellen for consideration without oral argument on February 26, 2019. The parties will be notified when a decision has been entered.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh

FILED
3/4/2019
Court of Appeals
Division I
State of Washington

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.

No. 77479-4-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: March 4, 2019

APPELWICK, C.J. — In 2016, the trial court granted WSYSA's petition to extend its 2006 judgment against Spokoiny. Spokoiny then moved to vacate the order extending judgment, arguing that WSYSA violated RAP 7.2(e) in failing to seek this court's permission before the trial court entered the order. The trial court denied Spokoiny's motion to vacate and entered an order nunc pro tunc clarifying the order extending judgment. Spokoiny argues that the trial court abused its discretion in denying his motion, because WSYSA violated RAP 7.2(e) and failed to provide him notice of its petition to extend the judgment. He also argues that the trial court abused its discretion in entering the order nunc pro tunc. We affirm.

FACTS

This action began in 2004, when Larry Spokoiny sought a restraining order against the Washington State Youth Soccer Association (WSYSA) after it suspended him for five years. Spokoiny v. Wash. State Youth Soccer Ass'n, 128

Wn. App. 794, 796, 117 P.3d 1141 (2005). WSYSA moved for summary judgment, citing a requirement in its bylaws that he exhaust internal remedies before resorting to the courts. Id. at 798-99. A party violating that requirement was subject to suspension and fines, and liable to WSYSA for all expenses it and its officers incurred in defending the court action. Id. at 799. The trial court granted WSYSA's motion in May 2004, ordering attorney fees and costs to the WSYSA as provided for by the rules and bylaws. Id. at 800. That June, it awarded WSYSA $16,353.83 in attorney fees. Id.

In 2005, we affirmed the trial court's decision. Id. at 805. After Spokoiny's motion for reconsideration was denied, a commissioner granted WSYSA $18,819.59 in attorney fees and costs resulting from Spokoiny's appeal. Spokoiny v. Wash. State Youth Soccer Ass'n, No. 74326-1-I, slip op. at 2 (Wash. Ct. App. Oct. 31, 2016) (unpublished), http://www.courts.wa.gov/opinions/pdf/743261.pdf. This court's mandate issued on July 11, 2006. Id. WSYSA then moved the trial court for entry of an amended judgment. Id. In September 2006, the trial court entered an amended judgment against Spokoiny totaling $45,187.51. Id.

In August 2015, WSYSA applied for a writ of garnishment against Spokoiny. Id. at 3. The trial court issued the writ, and then granted WSYSA's motion for an order authorizing supplemental proceedings. Id. Spokoiny moved to quash the writ of garnishment and order requiring him to appear in court, which the trial court denied. Id. Spokoiny then appealed, arguing that the 10 year limitation period for enforcing judgments ran from the 2004 judgment rather than the 2006 amended judgment, that period had expired, and WSYSA was barred from enforcing its

judgment. Id. at 6. On October 31, 2016, we affirmed the trial court's decision. Id. at 1, 8.

In August 2016, while the trial court's decision was still under review, WSYSA filed a petition to extend its 2006 judgment against Spokoiny, pursuant to RCW 6.17.020(3). The judgment was set to expire on September 29, 2016. On August 9, 2016, the trial court entered an order extending judgment. The order included an entry for fees in the amount of $20,471.00. Spokoiny did not appeal this order.

On August 9, 2017, Spokoiny filed a motion to (1) vacate the order extending judgment and (2) order WSYSA to appear and show cause why the order should not be vacated. He argued that WSYSA violated RAP 7.2(e) in failing to seek permission from this court before the trial court entered the order extending judgment. He also stated that the order extending judgment awarded WSYSA an additional $20,471.00 in attorney fees allegedly incurred on appeal. Therefore, he argued that the order extending judgment changed this court's October 31, 2016 decision, because this court refused WSYSA's request for attorney fees.

The trial court granted Spokoiny's motion for an order to show cause, and set a September 8 hearing date on his motion to vacate. At the hearing, Spokoiny also argued that because he was not given notice of WSYSA's petition to extend the judgment, he was unable to challenge the judgment amount. WSYSA stated that the $20,471.00 in fees listed in the order extending judgment were part of the original judgment amount. Instead of adding fees, WSYSA explained it was "restating what the fees were from the prior judgment." It also submitted a

breakdown of the original judgment amount prepared by Kelli Huerta, a paralegal for WSYSA's counsel. The breakdown showed that the $20,471.00 in fees were part of the 2006 judgment totaling $45,467.51.

The trial court entered an order nunc pro tunc clarifying that the fees and costs in the order extending judgment were part of the original judgment amount, not an award of additional fees at the time of the extension of the judgment. It also denied Spokoiny's motion to vacate, concluding that RAP 7.2(e) did not apply to WSYSA's petition to extend the 2006 judgment, and that notice is not required to extend a judgment. Spokoiny appeals.

DISCUSSION

Spokoiny makes two arguments. First, he argues that the 2016 order extending judgment should be vacated, because WSYSA violated RAP 7.2(e) in failing to seek the appellate court's permission before the trial court entered the order.[1] Second, he argues that the trial court abused its discretion in entering the order nunc pro tunc.

I. Motion to Vacate

Spokoiny argues that the 2016 order extending judgment should be vacated, because WSYSA failed to comply with RAP 7.2(e). He states that extending the enforceability of the 2006 judgment for an additional 10 years is a

[1] Spokoiny assigns error to the 2016 order extending judgment, but that challenge is untimely and will not be addressed. See RAP 5.2(a) ("[A] notice of appeal must be filed in the trial court within the longer of (1) 30 days after the entry of the decision of the trial court that the party filing the notice wants reviewed, or (2) the time provided in section (e)."). As a result, we address only his other assignments of error to the trial court's denial of his motion to vacate and to the 2017 order.

significant change or modification requiring appellate court approval. And, he states that he should have been provided notice of WSYSA's petition to extend the judgment.

We review a trial court's decision on a motion to vacate a judgment for an abuse of discretion. In re Marriage of Scanlon, 110 Wn. App. 682, 686, 42 P.3d 447 (2002). A trial court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. Hundtofte v. Encarnación, 181 Wn.2d 1, 6, 330 P.3d 168 (2014).

A. RAP 7.2

RAP 7.2(e) applies to a trial court's authority "to modify a judgment or motion after an appellate court accepts review." State ex rel. Shafer v. Bloomer, 94 Wn. App. 246, 250, 973 P.2d 1062 (1999). The rule states that "[i]f 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).

While this court was reviewing the trial court's 2015 decision, WSYSA petitioned to renew its September 29, 2006 judgment against Spokoiny, pursuant to RCW 6.17.020(3). The judgment was set to expire on September 29, 2016. Under RCW 6.17.020(3),

> [A] party in whose favor a judgment has been filed . . . may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment . . . for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued.

Spokoiny argues that the $20,471.00 in fees and $2,133.41 in costs listed in the order extending judgment "changed the Court of Appeals decision, given that the appellate court specifically refused WSYSA's request for attorney's [sic] fees on appeal in its October 31, 2016 decision." But, WSYSA clarified that the fees and costs in the order were part of its original judgment against Spokoiny. Rather than modifying the judgment by requesting new fees and costs, WSYSA simply exercised its statutory right to extend its ability to enforce the judgment. Had WSYSA not petitioned for renewal, it would have lost that ability. See RCW 6.17.020(1). Extending the judgment was not a modification of the judgment that triggered the application of RAP 7.2(e).

B. Notice

Spokoiny also argues that WSYSA should have provided him notice of its petition. Because he was not provided notice, he states that he "was denied the opportunity to oppose the extension 'for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts,' as contemplated by RCW 6.17.020."

To extend a judgment for an additional 10 years, RCW 6.17.020(3) requires that a party file an application for an extension with the trial court and pay a filing fee. The court must grant the application 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." Id. The statute does not contain an express notice provision.

Spokoiny does not bring a constitutional challenge to RCW 6.17.020(3). Rather, he argues that in his case, he was denied due process because he did not have the opportunity to challenge WSYSA's petition before the trial court extended the judgment. Spokoiny does not provide authority to support that a petition to extend a judgment requires notice to the other party. Where a party fails to cite authority in support of a proposition, "the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

And, Spokoiny had the opportunity to challenge the order extending judgment at the hearing on his motion to vacate. He availed himself of that opportunity in arguing that WSYSA added new fees and costs to the order. Had the trial court agreed, it would have vacated the order.

RAP 7.2(e) did not apply to WSYSA's petition to extend its judgment, and WSYSA was not required to provide Spokoiny notice of the petition. Accordingly, the trial court did not abuse its discretion in denying Spokoiny's motion to vacate.

II. Order Nunc Pro Tunc

Spokoiny argues next that the trial court abused its discretion in entering the extension order nunc pro tunc. He states that, to the extent that an error was made in the 2016 order extending judgment, WSYSA made the error, not a clerk or judicial officer. Therefore, he argues that an order nunc pro tunc was not appropriate to correct WSYSA's error.

"A nunc pro tunc order allows a court to date a record reflecting its action back to the time the act in fact occurred." State v. Hendrickson, 165 Wn.2d 474,

478, 198 P.3d 1029 (2009). But, "[a] retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred." State v. Smissaert, 103 Wn.2d 636, 641, 694 P.2d 654 (1985). Thus, an order nunc pro tunc is not appropriate to reopen a previously closed matter "in order to resolve substantive issues differently." Hendrickson, 165 Wn.2d at 478. Rather, such an order is "generally appropriate to correct only ministerial or clerical errors, not judicial errors." Id. at 479. We review for abuse of discretion a trial court's authority to enter an order nunc pro tunc. Id. at 478.

The 2016 order extending judgment listed fees in the amount of $20,471.00. At the 2017 hearing on Spokoiny's motion, WSYSA stated that those fees were part of the original judgment amount. Instead of adding fees to the judgment, it was "restating what the fees were from the prior judgment." A breakdown of the original judgment amount showed that the $20,471.00 in fees were part of the 2006 judgment totaling $45,467.51.

The order nunc pro tunc clarified that the $20,471.00 in fees listed in the 2016 order did not include additional attorney fees. Specifically, the order stated,

> THIS MATTER was subject to a further hearing on September 8, 2017 on Plaintiff's Motion to Vacate Extension (which motion is denied in a further order of this Court) which included argument whether the Defendant had improperly included additional attorney fees of $20,471[.00], which the Court finds the Defendant has not done, but the Court orders that the Order Extending Judgment of August 9, 2016 be clarified Nunc Pro Tunc to more clearly state that Defendant has not sought additional attorneys [sic] fees of $20,471[.00].

The trial court also changed the fees and costs entries in the order from "$20,471.00" and "$2,133.41" to "(Previously awarded and included in Judgment Amount)."

The trial court did not correct or resolve differently any substantive issues in the 2016 order. It did not change the judgment amount. Rather, the order clarified that the $20,471.00 in fees and $2,133.41 in costs listed in the 2016 order were part of WSYSA's original 2006 judgment against Spokoiny, not a request for new attorney fees and costs. Accordingly, the trial court did not abuse its discretion in entering the order nunc pro tunc.[2]

We affirm.

WE CONCUR:

[2] Spokoiny's request for attorney fees and costs "pursuant to RAP 18.9 and applicable law" is denied because WSYSA did not fail to comply with the Rules of Appellate Procedure.

FILED
5/6/2019
Court of Appeals
Division I
State of Washington

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

LARRY SPOKOINY,

Appellant,

v.

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

Respondent.

No. 77479-4-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Larry Spokoiny, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Appelwick, C.J.
Judge

Court of Appeals (Div. One) No. 77479-4-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LARRY SPOKOINY,

Petitioner,

vs.

THE WASHINGTON STATE YOUTH SOCCER ASSOCIATION,

Respondent.

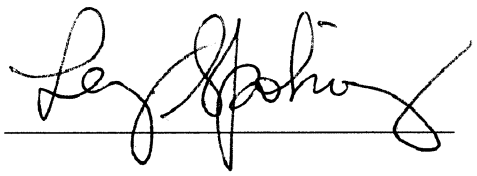
CERTIFICATE OF SERVICE

I certify that on the 5th day of June, 2019, 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 700, 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 5th day of June, 2019.

By:



Larry Spokoiny, WSBA # 20274
Petitioner

LARRY SPOKOINY - FILING PRO SE

June 05, 2019 - 3:31 PM

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