No. 97712-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ANDREW SATURN, Petitioner,
v.

OUR REVOLUTION WASHINGTON, et al., Respondents.

PETITION FOR REVIEW

Howard R. Morrill
Attorney for Petitioner, WSBA #17252
12345 Lake City Way NE, #1037
Seattle, WA 98125
(206) 539-2604
hr.morrill@comcast.net
MorrillFranchiseLaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Court Rules

I. Identity of Petitioner

Andrew Saturn, *pro se* Defendant in the Superior Court and Appellant in the Court of Appeals, asks this Court to accept review of the Court of Appeals decision terminating review designated in part II of this petition.

II. Court of Appeals Decision

Division I of the Court of Appeals filed its unpublished decision on July 22, 2019. *Appendix 1.* A timely motion for reconsideration was filed on August 8, 2019, and was denied on August 27, 2019. *Appendix 2.*

III. Issues Presented for Review

A. After entering an agreed order upon the stipulation of the parties, which order dismissed *all* the Respondents' claims in this case with prejudice and reserved *nothing* for later determination, was it error for the trial court to subsequently entertain and grant a motion by Respondents for their attorneys' fees and costs, filed three weeks after dismissal, and thereafter to deny a timely motion for reconsideration with an order awarding additional attorneys' fees to Respondents?

B. Where published Washington case law holds that a stipulated order of dismissal of all claims, with prejudice, is a final order and *res judicata,* and that a stipulation is in fact a contract between the parties, where neither attorneys' fees nor any other issue was reserved for

subsequent determination in these parties' contract, was it error for the Court of Appeals to affirm the trial court with respect to the orders of the trial court referred to in Issue A?

C. Given that Respondents claimed somehow to be entitled to fees and costs as a "prevailing party" on a stipulated dismissal in response to Petitioner's opening brief before the Court of Appeals, was it error for the Court of Appeals to disregard the fact that the Respondents' motion to the trial court was untimely on that basis, when the untimeliness was indisputable and had been documented by citation to the record in [Petitioner's] brief?

IV. Statement of the Case

On March 9, 2018, these parties stipulated to the entry of an order dismissing this matter and striking the trial date, and that stipulated order was entered by the Court on that date. CP 1 – 3. The stipulated order contained several provisions reflecting the resolution of specific issues and dismissed all Our Revolution Washington's claims against Saturn with prejudice. Id. The order contains no provision for attorneys' fees and costs and reserves no issue for later determination. *See,* Id.

The foregoing notwithstanding, *three weeks later*, Our Revolution Washington filed a motion seeking its fees and costs. CP 4 – 10. That motion was granted on April 16, 2018. CP 11 – 14. Saturn filed a timely

motion to vacate and/or reconsider on April 23, 2018. CP 15 – 17. The motion was opposed by Our Revolution Washington on May 4, 2018. CP 18 – 23. Saturn's reply was filed on May 7, 2018. CP 24 – 26. The trial court denied Saturn's motion and awarded additional attorneys' fees to Our Revolution Washington, by order entered May 14, 2018. CP 27 – 28.

V. Argument Why Review Should be Granted

A. The trial court had no authority to enter the awards challenged in these proceedings.

A dismissal with prejudice entered on the stipulation of the parties is a final order. *Berschauer Phillips Construction Co. v. Mutual of Enumclaw Insurance Co.*, 175 Wn. App. 222, 227-28, note 11, 308 P. 3d 681 (Div. One 2013). Nothing remained to be decided after entry of such and order and the matter was res judicata. *Id.*; *see also*, *Krikava v. Webber,* 43 Wn. App. 217, 219 (Div. Two 1986) ("A dismissal with prejudice . . . is equivalent to a final judgment on the merits . . . .")(citing *Maib v. Maryland Cas. Co.,* 17 Wn.2d 47, 52, 135 P.2d 71 (1943)). Consideration of and entry of an order on an issue *well after* final judgment was not only highly irregular, it was contrary to law.

Further, the parties' stipulation, their *agreement*, speaks for itself: "Plaintiffs' claims against Mr. Saturn are DISMISSED with prejudice." CP 1-3. There is no way to read that document as anything but a dismissal

of *all* Respondent's claims. CR 54(d)(2) explicitly labels requests for attorneys' fees and expenses as "claims".

The parties' resolved their dispute with a stipulated order striking the trial date and dismissing Our Revolution Washington's claims, with prejudice, in addition to other agreed details. Whatever may have preceded this stipulation, the parties mutually contracted to resolve their dispute *in its entirety*. *See*, *Washington Asphalt Co. v. Harold Kaeser Co*., 51 Wn. 2d 89, 91, 316 P. 2d 126 (1957) ("A judgment by consent or stipulation of the parties is construed as a contract between them embodying the terms of the judgment. It excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment.").

The parties' contractual silence on the subject of attorneys' fees and costs did not permit the trial court to impose them after the fact. Again, their stipulation and agreed order was a contract, and court cannot create a contract for the parties they did not make for themselves. *Farmers Ins. v. Miller*, 87 Wn. 2d 70, 73, 549 P.2d 9 (1976).

And finally, there is Respondents' remarkable and unsupported contention that they were a "prevailing party" on this stipulation and agreed order of dismissal, and therefore entitled to fees under CR 54(d)(2). Even if this was conceivable, Respondents' motion was inexplicably late

under that rule, which provides that the motion "*must be* filed no later than 10 days after entry of judgment." (emphasis added).

B. The Court of Appeals erred in its disregard of the principles and authorities just cited.

"*Res judicata* is an issue of law, subject to de novo review on appeal." *Berschauer Phillips* at 227. The Court of Appeals treatment of these issues amounted to a decision that contractual silence made *res judicata* inapplicable—despite authority to the contrary—and allowed the trial court free reign to impose unexpected and unagreed to consequences on a *pro se* Defendant. None of this cannot be squared with the objective of common-sense justice. *See, DeNike v. Mowery*, 69 Wn. 2d 357, 366, 418 P.2d 1010 (1966) ("Common-sense justice is, of course, the most desirable objective inherent in the application of any legal concept; and where the application of a legal concept so clearly results in injustice, it is incumbent upon the courts to examine the concept and its applicability most carefully.") Indeed, why would Petitioner have been willing to enter into this stipulation in the first instance but for its finality?

C. The tardiness of Respondents' request for fees and costs had been fully shown in [Petitioner's] brief, with citation to the record; the Court of Appeals erred in disregarding that issue.

The Brief of Appellant, with citation to the record, explicitly lays out the dates of the agreed order of dismissal and Respondents' motion for fees and expenses. Brief of Appellant, page 2. A footnote to the Court of Appeal's decision of July 22, 2019 suggests that no such information and citation had been provided. In fact, the dates and citation had been provided by Petitioner.

Further, the footnote suggests that it was not proper reply to point out the immutable fact that the Respondents' motion for fees had not been timely. Petitioner respectfully submits that it was perfectly reasonable and fair to reply to an argument that Respondent had been the "prevailing party" with an observation that such an argument would have required compliance with CR 54(d)(2). The trial court's own rationale for making the award was opaque, to say the least. The Respondents' very unusual argument that they "prevailed" on an agreed order of dismissal—really, that they had prevailed on a settlement agreement--was what brought CR 54(d)(2) directly into play. The timeline set forth in CR 54(d)(2) is mandatory.

And further, the Rules of Appellate Procedure are intended to be construed so as to result in decisions *on the merits*. RAP 1.2(a). How

anyone could have ever argued with the proposition that March 30 is more than 10 later than March 9 is a mystery to Petitioner, but it was plainly within the power of the Court of Appeals to permit Respondents to address the issue if it felt that somehow fairness required that opportunity be extended.

VI. Conclusion

In the great scheme of things, the dollar amounts involved here are not immense. But the issues of fundamental fairness, public interest in the administration of justice and adherence to published precedent, all explicitly or implicitly mentioned in RAP 13.4(b), weigh heavily in favor of accepting review of this matter.

Respectfully submitted this 26th day of September, 2019.

HOWARD R. MORRILL, Attorney at Law

By: s/Howard R. Morrill
Howard R. Morrill
WSBA #17252
Attorney for Petitioner
12345 Lake City Way NE, #1037
Seattle, WA 98125
Tel: 206.539.2604
Fax: 206.539.2606
E-mail: *hr.morrill@comcast.net*

APPENDIX 1

FILED
7/22/2019
Court of Appeals
Division I
State of Washington

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

OUR REVOLUTION WASHINGTON, a Washington nonprofit corporation; VIVIAN QUEIJA, an individual, and RYAN WHITNEY, an individual, Respondent, v. ANDREW G. SATURN, an individual, Appellant.	No. 78497-8-I UNPUBLISHED OPINION FILED: July 22, 2019

VERELLEN, J. — Andrew Saturn appeals the trial court's award of attorney fees to Our Revolution Washington (ORW). On minimal briefing, Saturn contends res judicata barred ORW's request for attorney fees because a stipulated order dismissing all claims with prejudice was a final judgment. Saturn is incorrect.

Although an order granting a stipulated dismissal with prejudice is a final judgment for purposes of res judicata,[1] such an order does not preclude an award of attorney fees. Res judicata can refer to either issue or claim preclusion.[2] Issue

---

[1] Berschauer Phillips Const. Co. v. Mut. of Enumclaw Ins. Co., 175 Wn. App. 222, 228 n.11, 308 P.3d 681 (2013).

[2] Kelly-Hansen v. Kelly-Hansen, 87 Wn. App. 320, 327, 941 P.2d 1108 (1997) (quoting Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 WASH. L. REV. 805, 805 (1985)).

preclusion does not apply because the court did not make any rulings in its dismissal order whether to award or deny attorney fees.[3] And claim preclusion does not apply because "this case does not involve a second suit between the parties but instead involves a subsequent stage of the same litigation."[4] Saturn provides no authority that under either meaning of res judicata, OWA was estopped from requesting attorney fees.[5]

Therefore, we affirm.

WE CONCUR:

[3] Clerk's Papers at 1-3, 230; see Weaver v. City of Everett, 4 Wn. App. 2d 303, 315, 320, 421 P.3d 1013 (2018), review granted, 192 Wn.2d 1001, 430 P.3d 251 (2018) (final judgment on the merits of an issue is required for issue preclusion).

[4] Cook v. Brateng, 180 Wn. App. 368, 373, 321 P.3d 1255 (2014); see Weaver, 4 Wn. App. 2d at 320 ("Generally, [claim preclusion] bars the relitigation of claims that were litigated, *might* have been litigated, or *should* have been litigated in a prior action."); CR 54(d)(2) (allowing a motion for attorney fees after entry of the final judgment for which the party seeks fees); see also, e.g., Elliott Bay Adjustment Co., Inc. v. Dacumos, 200 Wn. App. 208, 214, 218, 401 P.3d 473 (2017) (dismissal with prejudice bars the plaintiff from bringing the same claim against the defendant but does not preclude an award of attorney fees in a subsequent stage of the original action).

[5] Saturn seems to argue in his reply brief that ORW's motion was untimely under CR 54(d)(2), but we decline to consider this argument because he makes it only in reply and provides no citations to the record to support his contention. See RAP 10.3(c) (content of a reply brief is limited to issues already raised); RAP 10.3(a)(6) (arguments must be presented with references to relevant parts of the record).

APPENDIX 2

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

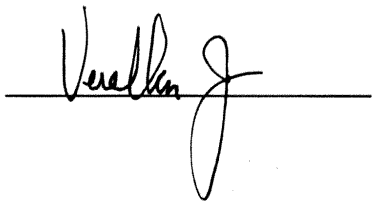
OUR REVOLUTION WASHINGTON, a Washington nonprofit corporation; VIVIAN QUEIJA, an individual, and RYAN WHITNEY, an individual, Respondent, v. ANDREW G. SATURN, an individual, Appellant.	)	No. 78497-8-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant filed a motion for reconsideration of the opinion filed July 22, 2019. Following consideration of the motion, the panel has determined it should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE PANEL:



HOWARD R. MORRILL, ATTORNEY AT LAW

September 26, 2019 - 1:24 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	78497-8
Appellate Court Case Title:	Our Revolution Washington, et al, Respondents v. Andrew Saturn, Appellant

The following documents have been uploaded:

- 784978_Petition_for_Review_20190926132232D1725204_5085.pdf
  This File Contains:
  Petition for Review
  The Original File Name was CompletePetition.pdf

A copy of the uploaded files will be sent to:

- ifordham@msn.com
- inge@fordhamlegal.com

Comments:

Sender Name: Howard Morrill - Email: hr.morrill@comcast.net
Address:
12345 LAKE CITY WAY NE
SEATTLE, WA, 98125-5401
Phone: 206-539-2604

Note: The Filing Id is 20190926132232D1725204