FILED
SEPTEMBER 22, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

JEFFREY P. JONES and PETER C. JONES,	)	No. 37033-0-III
Respondents,	)	
v.	)	UNPUBLISHED OPINION
RUSSELL K. JONES,	)	
Appellant.	)	

SIDDOWAY, J. — Russell Jones appeals the trial court's denial of his motion challenging the extension of five money judgments and its refusal to vacate orders finding him in contempt and imposing sanctions and attorney fees on account of the contempt. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Between November 2004 and June 2005, Jeffrey Jones and Peter Jones obtained three judgments against their brother, Russell,[1] which we refer to hereafter as "Judgments 1 through 3." All arose out of litigation over the parties' mother's estate.[2]

[1] Given the common last names, we refer to the brothers by their first names, intending no disrespect.

[2] This is Russell Jones's fourth appeal. *See In re Estate of Jones*, 116 Wn. App. 353, 67 P.3d 1113 (2003) (*Jones* I), *rev'd*, 152 Wn.2d 1, 93 P.3d 147 (2004) (*Jones* II); *In re Estate of Jones*, noted at 140 Wn. App. 1022, 2007 WL 2452725 (*Jones* III); *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 338 P.3d 842 (2014) (*Jones* IV).

In aid of collection, Jeffrey and Peter initiated a supplemental proceeding in the spring of 2006, obtaining an order requiring Russell to produce financial records. When the records were not produced, they moved the court to continue the supplemental proceeding and hold Russell in contempt. On May 11, 2006, a court commissioner entered the requested order, continuing the supplemental proceeding to June 15 and ordering Russell to produce the financial records.

When the records were again not produced, a further order was entered on June 15, 2006, continuing the supplemental proceedings to July 13 and requiring Russell to appear and produce the financial records at that time. Russell persisted in refusing to produce the records, and supplemental judgments awarding sanctions and fees were entered in 2006, which we refer to hereafter as "Judgments 4 and 5."

As the five judgments approached their 10-year expiration, Jeffrey and Peter moved ex parte to extend them, obtaining the following orders extending the judgments for another 10 years:

- Judgment 1, entered November 19, 2004, was extended by an order entered October 30, 2014,
- Judgment 2, entered November 19, 2004, was extended by an order entered October 30, 2014,
- Judgment 3, entered June 8, 2005, was extended by an order entered on June 5, 2015,
- Judgment 4, entered September 25, 2006, was extended by an order entered September 20, 2016, and

- Judgment 5, entered November 22, 2006, was extended by an order entered October 28, 2016.

In August 2018, almost two years after the last extension order, Russell moved under CR 60(b)(5) for relief from the 2006 orders of contempt and Judgments 4 and 5, arguing that the court commissioner had lacked subject matter jurisdiction to order the production of documents in a supplemental proceeding. In November 2018, he moved for relief from the 2014, 2015, and 2016 orders extending the five judgments. He argued that the judgments were extended without personal jurisdiction, subject matter jurisdiction, or procedural due process. Among his arguments was that RCW 6.17.020(3) requires that an application to extend a judgment be brought more than 90 days before the expiration of the original 10-year period, and Jeffrey's and Peter's applications had been made too late.

The trial court heard argument of the motions and orally denied the requested relief. Written orders were later entered. Addressing the motion to vacate the orders of contempt and Judgments 4 and 5, the trial court reasoned that supplemental proceedings are equitable in nature, a court's equitable powers apply, and at a postjudgment deposition permitted by CR 69(b), a deponent can be required to produce documents in accordance with civil rules. As an alternative basis for denial, it found Russell's motion untimely.

Addressing Russell's challenge to the extension of the judgments, the trial court found RCW 6.17.020(3) to be plain on its face, allowing a valid judgment to be extended within the 90 days preceding expiration. It found the statute to be self-executing, permitting the judgments to be extended on the basis of an ex parte application.

Russell moved for reconsideration, which was denied. He appeals.

ANALYSIS

Russell makes three assignments of error. We address them in the order presented.

I. A POSTJUDGMENT PROCEDURE FOR EXTENDING THE LIFE OF A JUDGMENT NEED NOT PROVIDE FOR ADVANCE NOTICE AND AN OPPORTUNITY TO BE HEARD

Russell first argues that because a judgment is a lien on real property and an extension of a judgment extends the lien, an order extending a judgment constitutes a deprivation of property that requires due process. He asks us to apply *Connecticut v. Doehr*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991), and hold that before a court extends a judgment, due process requires notice and an opportunity to be heard.

Doehr was a specific application of *prejudgment* attachment principles established in *Mathews v. Eldridge*, 424 U.S. 319, 331-33, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), and *Mathews* is the more relevant authority. In *Mathews*, the United States Supreme Court reiterated, "'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *Id.* at 334 (quoting *Morrissey v. Brewer*, 408 U.S. 471,

481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)). "More precisely," it observed,

> our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 334-35.

Courts applying *postjudgment* enforcement procedures such as Washington's extension of judgment procedure have recognized that when a creditor's interest in collecting a valid judgment is balanced against the debtor's interest in keeping property that has already been protected by prior notice and hearing, due process does not require prior notice and an opportunity to be reheard. *E.g.*, *Gedeon v. Gedeon*, 630 P.2d 579, 583 (Colo. 1981). A number of state courts have held that the Uniform Enforcement of Foreign Judgments Act, which allows creditors to file foreign judgments without affording the judgment debtor prior notice and an opportunity to be heard, does not violate due process. In *Gedeon*, for example, the Colorado Supreme Court found no due process violation where the debtor's only notice that a New Mexico judgment had been filed in Colorado was notice upon filing, by mail to his last known address. The Colorado Supreme Court rejected the debtor's argument that the procedure of entering the judgment without formal notice or the requirement of a hearing was an

unconstitutional taking of property without due process of law. *Id.* at 582-83. The Iowa Supreme Court agreed in *Wells Fargo Equipment Finance, Inc. v. Retterath*, 928 N.W.2d 1, 10 (Iowa 2019). So did a New Jersey appellate court, which held that "neither *Fuentes* [*v. Shevin*[3]] *nor* [*Connecticut v.*] *Doehr* apply here because those cases dealt with pre-judgment remedies and the procedure at issue here is a post-judgment process." *Enron (Thrace) Expl. & Prod. BV v. Clapp*, 378 N.J. Super. 8, 19, 874 A.2d 561 (App. Div. 2005); *and see accord Nix v. Cassidy*, 899 So. 2d 998, 1002 (Ala. Civ. App. 2004).

Applying the *Mathews* factors, a debtor has no significant interest in the extension of a judgment, since Washington statutes contemplate upon entry that a judgment can be extended. There is little risk of an erroneous deprivation: the debtor's due process right to contest liability was protected before the judgment was entered, and the limited risk of an irregular extension is adequately protected by the debtor's right to bring a postextension challenge. Finally, the court extending a judgment will review whether the extension appears regular, meaning there will seldom be a need for anything more than an ex parte procedure.

Russell argues there was a "second deprivation of property" because the orders extending the judgments changed his status from that of a 10-year judgment debtor to that of a 20-year judgment debtor. Washington statutes treat judgment debtors as 10-year

[3] 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972). Russell also relies on *Fuentes.* Br. of Appellant at 7 n.2.

debtors subject to their creditor's election to extend the judgment for another 10 years. Russell's status did not change.

No due process violation is shown.

II. RUSSELL SHOWS NO FAILURE TO COMPLY WITH RCW 6.17.020(3)

Russell next argues that the judgments were extended in violation of RCW 6.17.020(3). We review the trial court's application and interpretation of a statute de novo. *Sessom v. Mentor*, 155 Wn. App. 191, 195, 229 P.3d 843 (2010).

A judgment creditor has 10 years to execute, garnish, or use another legal process to collect or enforce a judgment. RCW 4.56.210(1); RCW 6.17.020(1). 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.

The statute further provides that "[t]he 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." *Id.*

Russell's first argument that the judgments were extended in violation of RCW 6.17.020(3) is easily rejected. Although the statute does not require advance notice to the debtor and an opportunity to be heard, Russell argues that we should imply those procedural requirements since they are constitutionally required, and the legislature

is presumed to know the law in the area in which it is legislating. We have already held that those procedures are not constitutionally required.

His second argument focuses on the phrase "within ninety days before the expiration of the ten-year period" and asks us to apply cases that have held, construing different statutes, that "within" fixes the termination of the period.

One of the cases he cites, *Adams v. Ingalls Packing Co.*, 30 Wn.2d 282, 282-83, 191 P.2d 699 (1948), concerned a manufacturer who sold a piece of equipment to a packing company in Auburn under a conditional sales contract. Because conditional sales can create the appearance that the purchaser has title, a statute provided that a vendor would not be protected from the claims of bona fide purchasers or the vendee's creditors, "'unless within ten days after the taking of possession by the vendee, a memorandum of such sale . . . shall be filed in the auditor's office of the county.'" *Id.* at 284 (emphasis omitted) (quoting the statute). Several months passed between the packing company's purchase of the equipment and its delivery. Shortly *before*, rather than *after* the packing company took possession, the manufacturer filed the required memorandum with the county auditor.

At issue was whether the language "within ten days after the taking of possession by the vendee" defined the exclusive 10-day period within which the memorandum could be filed, or whether—since an early filing provided bona fide purchasers and the vendee's creditors with the same protection—an early filing would be effective. The

court relied on a decision of the United States Supreme Court holding that as applied to a particular subject matter, "'the fair and reasonable interpretation'" of a time frame for giving notice might be to fix only "'the terminus ad quem, the limit beyond which the notice shall not be given,'" and not to fix the "'terminus a quo, or the first point of time at which the notice may be given.'" *Id.* at 285-86 (emphasis omitted) (quoting *Davies v. Miller*, 130 U.S. 284, 288-89, 9 S. Ct. 560, 32 L. Ed. 932 (1889)). The only other Washington case that Russell cites on this issue, *In re Improvement of Cliff Ave.*, reaches a similar result. 122 Wash. 335, 339, 210 P. 676 (1922) (appeal of an ordinance was timely even though filed within 10 days after its passage rather than 10 days after its effective date, and therefore arguably prematurely).

From these and other cases, Russell argues that under RCW 6.17.020(3), the period within which to apply for an extension ends 90 days before the expiration of the original 10-year period. What distinguishes RCW 6.17.020(3) from *Adams*, *Cliff Avenue*, and other cases on which Russell relies, however, is that one can conceive of *two* periods of time suggested by RCW 6.17.020(3), and they have different termination dates. One, and the period on which Russell relies, is the almost 10-year period between entry of the judgment and the date 90 days before the expiration of the original 10-year period. If that is viewed as the pertinent period, then, as Russell argues, 90 days before expiration is the "terminus ad quem." But another period suggested by the statute—and more logically suggested, given the statute's purpose—is the 90-day period that begins 90 days before

the expiration of the original 10-year period and ends with the expiration of the original 10-year period. If that is the relevant period, then the "terminus ad quem" is the expiration of the 10-year period.

"A statute is ambiguous only if susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable." *Burton v. Lehman,* 153 Wn.2d 416, 423, 103 P.3d 1230 (2005). Russell conceives of an interpretation under which 90 days before expiration of the original 10-year period is the "terminus ad quem," but it is not a reasonable interpretation. Jeffrey's and Peter's applications to extend their judgments were timely under the only reasonable plain reading of the statute.

III. RUSSELL WAS NOT ENTITLED TO RELIEF UNDER CR 60(b)(5)

Finally, Russell contends the trial court erred when it denied his motion for relief from the May 11 and June 15, 2006 contempt orders and Judgments 4 and 5 imposing sanctions, fees and costs. He argues that supplemental proceedings do not allow for the production of documents, and the trial court lacked subject matter jurisdiction to sanction a lawful act.

Under CR 60(b)(5), a court may relieve a party from a final judgment or order on the grounds that "[t]he judgment is void." "A void judgment is a 'judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved.'" *State ex*

rel. Turner v. Briggs, 94 Wn. App. 299, 302-03, 971 P.2d 581 (1999) (internal quotation marks omitted) (quoting *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968)). "An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment." *Bjurstrom v. Campbell*, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980). "The exclusive procedure to attack an allegedly defective judgment is by appeal from the judgment, not by appeal from a denial of a CR 60(b) motion." *Id.* at 451.

A trial court's decision to grant or deny a CR 60(b)(5) motion to vacate a void judgment is reviewed de novo. *Ahten v. Barnes*, 158 Wn. App. 343, 350, 242 P.3d 35 (2010). We may affirm the trial court on any basis supported by the pleadings and the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

Superior courts in Washington have subject matter jurisdiction over all types of cases unless jurisdiction is vested exclusively in another court. WASH. CONST. art. IV, § 6. Among cases in which the Washington Constitution explicitly provides that superior courts have jurisdiction are "all matters of probate" and "such special cases and proceedings as are not otherwise provided for." *Id.* The superior court had subject matter jurisdiction of the supplemental proceeding.

Russell argues that because a supplemental proceeding is a statutory proceeding in which statutory procedure controls over court rules, the trial court erred by concluding it had the authority to order the production of documents. Washington has long recognized

the principle that a mistake of law will not support vacation of a judgment. *Bjurstrom*, 27 Wn. App. at 451. Even if we assume that the trial court made a mistake of law when it ordered the production of documents in a supplemental proceeding, Russell's remedy was to appeal the resulting judgments. The judgments are not void and he was not entitled to have them vacated under CR 60(b)(5).

IV. ATTORNEY FEES AND COSTS ON APPEAL

Citing RCW 11.96A.150 and RAP 14.2, Jeffrey seeks an award of attorney fees and costs on appeal. Alternatively, he asks us to impose sanctions against Russell under RAP 18.9 for a frivolous appeal.

A party may recover attorney fees on appeal if authorized by applicable law. RAP 18.1(a). While RCW 11.96A.150 gives courts broad authorization to award attorney fees, it applies to "proceedings governed by [Title 11 RCW], including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters." RCW 11.96A.150(2). While the underlying judgments Jeffrey and Peter sought to collect and extend were entered in probate matters, the supplemental proceeding and extension of judgments were not governed by Title 11 RCW.

We have discretion under RAP 18.9(a) to order a party or counsel who files a frivolous appeal to pay terms or compensatory damages. An appeal is frivolous if it presents no debatable issues on which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal. *In re Marriage of Foley*, 84 Wn. App. 839,

847, 930 P.2d 929 (1997). A civil appellant has a right to appeal under RAP 2.2, and all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant. *See Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980).

Russell's arguments on appeal lack merit, presenting no possibility of reversal. We award Jeffrey his reasonable attorney fees and costs on appeal subject to his timely compliance with RAP 18.1(d).

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, J.

WE CONCUR:

Pennell, C.J.

Korsmo, J.