

71344-8

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No. 713442

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CARLA D. BIERLINE,
Petitioner

v.

TODD J. BIERLINE,
Respondent

BRIEF OF APPELLANT

Presented by:
Jason L. Woehler
Wales & Woehler, Inc. P.S.
705 2nd Ave, Suite 605
Seattle, WA 98104
(206) 622-0232

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in finding that the statute of limitations barred further enforcement of Petitioner's judgment against the Respondent.
2. The trial court erred in finding that March 26, 2004 order clarifying and enforcing the decree of dissolution was not the effective date for determining the period of enforcement.

II. STATEMENT OF THE CASE

The parties in this case were a married couple who entered into divorce proceedings on March 5, 2003. CP 5. In accordance with these proceedings, the trial court entered Findings of Facts and Conclusions of Law, together with a Decree of Dissolution. CP 7, 9. The documents were entered on June 12, 2003. Within the Decree of Dissolution, the Petitioner was awarded "35% of [Respondent's] *pending* L&I settlement" (emphasis added). CP 9.

At the time the Decree was entered, Respondent did not in good faith inform the court that a settlement was reached on March 6, 2003. In that settlement, Respondent was awarded \$82,359.57. CP 14, Ex. B. A lump sum of \$8,215.50 was already paid to Respondent March 6, 2003, leaving a balance of \$74,144.07. *Id.* This balance was to be paid in monthly installments of \$2,335.81, with the final payment scheduled on

November 06, 2005. *Id.* In actuality, Respondent received three more payments comprising a total receipt of \$83,332.58. CP 22. These payments are as follows:

04/07/2003	\$2,830.10
05/05/2003	\$2,814.53
05/16/2003	\$69,472.45

Again, Respondent elected to conceal these developments from the court and the Petitioner.

Upon discovering that Respondent had received these settlement funds, Petitioner noted up a hearing for an order clarifying and enforcing the decree. CP 22, Ex. B. This was a necessary step for her to pursue any enforcement efforts on the moneys owed. However, just mere days before the date of the hearing, Respondent filed for Chapter 13 bankruptcy. *Id.* As a consequence, the trial court did not address Petitioner's motion at that time. CP 22, Ex. A.

The Respondent's bankruptcy filing, filed on August 26, 2003, listed very little debt to be discharged and denied owing any debt to the Petitioner. CP 22, Ex.B. The bankruptcy court ultimately found that he Respondent had acted in bad faith in filing the Chapter 13 bankruptcy. *Id.* It also found that Respondent engaged in other deceptive practices, like hiding money in his bathroom and frivolous spending on personal items,

to conceal the settlement funds. *Id.* As a consequence, that court ordered the bankruptcy dismissed on February 11, 2004. *Id.* Nearly seven months had passed where Petitioner was restricted from pursuing enforcement of judgment under the Decree.

The same day the bankruptcy case was closed, March 11, 2004, the Petitioner motioned and re-noted her hearing for an order clarifying and enforcing the decree. CP 22 and 21, respectively. An order was entered into record on March 26, 2004. CP 24. In that order, the court found that Respondent owed Petitioner the sum of \$29,166.40, together with accrued interest of \$2,617.78 and attorney's fees of \$1,500.00. *Id.* This was the first time that the award from the Decree had been finalized and quantified in a manner suitable for enforcement and collection efforts.

After numerous failed attempts at communicating with Respondent, Petitioner's current attorney filed a motion for an order of examination. CP 27. An order was signed on October 4, 2013. CP 28. In response to this motion and order, Respondent's counsel filed a motion to quash the order of examination and halt further enforcement proceedings. CP 32. The court entered an order to that effect on December 3, 2013. CP 34. Due to a miscommunication on the status of the hearing, Respondent's motion was unopposed. Petitioner now seeks a review of this decision.

To maintain Petitioner's standing in this matter, she petitioned for an order to extend judgment on March 25, 2014. CP 40. The order was entered on March 26, 2014. CP 41.

IV. STANDARD OF REVIEW

A trial court's factual conclusions are reviewed under a "clearly erroneous standard." *State v. Walton*, 64 Wn.App. 410, 414, 824 P.2d 533 (1992). An appellate court reviews underlying questions of law de novo. *Mayer v. Sto Industries, Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006).

V. APPELLANT'S ARGUMENTS

A. The Order Clarifying and Enforcing Decree of Dissolution is the Controlling Order for the Judgment, not the Decree of Dissolution.

Generally, decrees are to be construed as a whole, whereby meaning and effect are given to each word. *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980). The words used have the legal effect as understood by the law at the time a decree is entered into record. *Reedy v. Reedy*, 12 Wn.App. 844, 848, 532 P.2d 626 (1975). In making this determination, words are to be given their ordinary meaning. *Corbray v. Stevenson*, 98 Wn.2d 410, 415, 656 P.2d 473 (1982). And where language is used in one instance but not another, there is a difference in intent. *Seeber v. Wash. State Pub. Disclosure Comm'n*, 96 Wn.2d 135, 139, 634 P.2d 303 (1981)

RCW 4.56.210 provides that after ten years from the date of entry, a judgment “shall cease to be a lien or charge against the estate or person of the judgment debtor. RCW 4.16.020(2) provides that actions on a judgment or decree must be brought within ten years. This time period begins to run the date the judgment or decree is entered. RCW 4.16.020(1). This time frame may be extended for an additional ten-year period as set forth in RCW 6.17.020. However, in *French v. Goetz Brewing Co.*, the court recognized that it was an “established rule that, to sustain an action upon a judgment or decree, plaintiff must show defendant to have become bound by a personal judgment for the **unconditional payment of a definite sum of money**, final in its character and not merely interlocutory, and capable of immediate enforcement” (emphasis added). 3 Wn.2d 554, 558, 101 P.2d 354 (1940).

The State Legislature has a constitutional power to fix a precise time beyond which no remedy will be available. *Hudesman v. Meriwether Leachman Associates, Inc.*, 35 Wn.App. 318, 666 P.2d 937 (1983). In doing so, it has emphasized the importance of providing a requisite period for the life of a judgment. In approving Senate Bill 2763, the bill that increased the statute of limitation from six years to ten years under RCW 4.56.210, the Judiciary Committee included in its analyses that the bill was meant to “extend the **effective life** of judgments from six to ten years”

(emphasis added). Wash. SB 2763, Analyses dated 02/20/1979, 02/22/1979, 02/26/1979. Indeed, in the final bill report for SB 2763, the summary stated that the “bill permits a person who has obtained a judgment to attempt to collect the judgment for a period of ten years from the date the judgment is entered.” Wash. SB 2763, Bill Report dated 04/05/1979. With these intentions, the bill was passed into law by clear majorities from both the House and Senate. Wash. SB 2763, Certificate of Enrolled Enactment (1979).

The State Legislature took similar views in ensuring a requisite period for the process of judgment enforcement. In passing SB 3334, the Judicial Committee recognized that the effective ability to enforce a judgment should match the effective life of the judgment itself. Wash. SB 3334, Bill Report dated 02/14/1980. Again, this bill was passed into law by clear majorities. Wash. SB 3334, Certificate of Enrolled Enactment (1979). In particular, the effective period of enforcement was increased for (i) the statute permitting a judgment lien against the real property of a judgment debtor (RCW 4.56.190), (ii) the statute dealing with the issuance of writs of execution against property (RCW 6.04.010), (iii) the statute allowing for supplemental proceedings to uncover the debtor’s assets (RCW 6.32.010), and (iv) the statute allowing the creditor to submit written interrogatories to the debtor (RCW 6.32.015).

1. The effective date of the Judgment in this matter is March 26, 2004, because this was the date that the Judgment was entered in a form and manner sufficient for enforcement.

Generally, pending is defined as “not yet decided; being in continuance.” Webster’s New Collegiate Dictionary (1973). Legally, pending is defined as “begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment.” Black’s Law Dictionary 20, (4th rev. ed. 1968).

In the Decree of Dissolution for this matter, dated June 12, 2003, the court stated that the Petitioner would retain “35% of *pending* L&I Settlement.” (emphasis added) CP 9. Given the definition of “pending”, it is clear from the decree that the L&I settlement was not finalized in the eyes of the court. Any claim Petitioner had to the future proceeds would only vest at the point that a settlement was reached. If no settlement was reached, then Petitioner would not be entitled to any moneys.

As has long been the rule, to sustain an action on a judgment, a plaintiff must show that the defendant is bound by a judgment for the unconditional payment of a definite sum of money that is capable of immediate enforcement. *Goetz Brewing Co.*, 3 Wn.2d at 554. With respect to the present matter, this was not established by the decree. The lack of a

definite sum, together with the pending nature of the settlement, made the award incapable of enforcement.

This requirement becomes abundantly clear when one looks to the current statutes on judgments. In order for a clerk to enter a judgment into record, he or she must be able “specify clearly the amount to be recovered, the relief granted, or other determination of the action.” RCW 4.64.030. This could not be done at the time of the decree of dissolution because there was not sufficient certainty on the settlement or any potential amounts comprised therein.

Similar requirements exist within the controlling statutes for enforcing and collecting on judgments. To pursue a writ of garnishment or bank levy, it is necessary for the judgment creditor to prove to the court the “amount alleged to be due under that judgment.” RCW 6.27.060. For a judgment creditor to conduct supplemental proceedings, that creditor must have an “entry of judgment for the sum of twenty-five dollars or over.” RCW 6.32.010. And to perfect a judgment lien, it is necessary for a judgment to list the “[t]he judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees. RCW 4.56.200 (incorporating the requirements of RCW 4.64.030). The award in the decree of dissolution did not establish the

components necessary to make the judgment enforceable under any of these enforcement statutes. Therefore, the date of the decree should not be controlling.

If taken to a logical extreme, the absurdity of using the date of the decree as the starting point for limitations on an award that is “pending” is painfully obvious. In the present matter, nearly eight months passed where enforcement of the judgment could not have occurred. But what if the “pending settlement” was not finalized for four years, or perhaps even ten years? Such a diminished period of enforcement is surely not what was envisioned by the Legislature when enacting the laws around this subject matter. Rather, they envisioned an effective period of a full ten years for judgment and enforcement thereupon. For a judgment to be effective, it must be enforceable.

It is true that in actuality the Respondent had lied to the court and Petitioner about the status of settlement and disbursement of the proceeds. CP 22, Ex. B. However, immediately upon discovering this, Petitioner filed a motion and noted a hearing to obtain an entry of judgment and an order clarifying and enforcing the decree of dissolution – a necessary step to establish a judgment in accordance with RCW 4.64.030 that is capable of sustaining an action for enforcement. *Id.* However, two days before the hearing, the Respondent filed Chapter 13 Bankruptcy in bad faith as an

effort to block Petitioner's attempt at securing an enforceable judgment. CP 22, Ex. A, Ex. B. As a consequence, Petitioner waited to re-file her motion until his bankruptcy case was closed. She did this the same day, March 11, 2004. CP 22. At no time did Petitioner sit on her rights. And had the Respondent been honest in the divorce proceedings, an enforceable money judgment could have been entered at that time, thereby making June 12, 2003 the effective date for limitations. However, this is not the case. Due to the Respondent's dishonesty, an entry of judgment on the L&I claim was unable to be made until March 26, 2004. CP 24. Given this, and in the interest of fairness, the Respondent should not now be allowed to benefit from the shenanigans he engaged in.

I. CONCLUSION

Petitioner respectfully requests that this court reverse the trial court's order stopping all enforcement proceedings for being time barred. The proper date for determining statutory limitations is the date that an enforceable judgment was entered into the record, March 26, 2004. The date of the decree, however, is not valid as a result of the aforementioned reasons. Accordingly, the order must be reversed so that Petitioner can continue to exercise her rights under law to collect and enforce this judgment.

Respectfully submitted this 9th day of May, 2014

A handwritten signature in black ink, appearing to read "Jason L. Woehler", written over a horizontal line.

Jason L. Woehler
WSBA # 27658
Attorney for Petitioner
Wales & Woehler, Inc. P.S.
705 2nd Ave, Suite 605
Seattle, WA, 98104
(206) 622-0232