

71344-2

71344-2

No. 713442

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CARLA D. BIERLINE,
Appellant

v.

TODD J. BIERLINE,
Respondent

BRIEF OF RESPONDENT--CORRECTED

Presented by:
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FILED
COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON
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I. STATEMENT OF THE CASE

The parties in this case were divorced on June 12, 2003. The Decree of Dissolution provided, *inter alia*, that Respondent Todd Bierline was awarded 65% of his pending L&I and medical malpractice settlements. CP 9. Appellant Carla Bierline was awarded 35% of the pending settlement amounts. *Id.* At the time of entry of the decree, these amounts were unknown, and no money judgment summary was entered. *Id.*

On March 26, 2004, upon motion of the Appellant, the Superior Court of King County entered an order clarifying and enforcing the Decree of Dissolution. CP 24. The order set forth a judgment summary in the principal amount of \$29,166.40 plus interest to date, attorney's fees, and 12% future interest. *Id.* No further action took place in this case until Appellant's motion for examination was filed on October 3, 2013. CP 27. An order to that effect 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 Appellant did not file a response to this motion. On December 3, 2013, the court entered an order which quashed the order of examination and halted further enforcement proceedings. CP 34. The Appellant now seeks a review of this decision.

II. STANDARD OF REVIEW

An appellate court reviews questions of law *de novo*. *In re Guardianship of Lamb*, 173 Wn.2d 173, 183-84, 265 P.3d 876 (2011). In addition, *de novo* is the appropriate standard when the court is presented with mixed questions of law and facts. *Kim v. Lee*, 145 Wn.2d 79, 85, 31 P.3d 665 (2001); citing *Rasmussen v. Employment Sec.*, 98 Wash.2d 846, 850, 658 P.2d 1240 (1983). Mixed questions of law and facts, or application issues, arise when the appellate court must compare and bring together the correct law and correct facts, to determine the legal consequences. *Franklin County Sheriff's Office v. Sellers*, 97 Wash.2d 317, 329-30, 646 P.2d 113 (1982).

III. RESPONDENT'S ARGUMENTS

A. Appellant Carla Bierline failed to raise both claims of error before the trial court; appellate review has been waived.

As an initial matter, the Appellant has waived appellate review of this issue. An appellate court may refuse to review a claim of error that was not raised at the trial court level. RAP 2.5(a); *see also Clapp v. Olympic View Pub. Co., L.L.C.*, 137 Wash. App. 470, 154 P.3d 230 (2007); *Ferencak v. Dept. of Labor & Industries*, 142 Wash. App. 713, 175 P.3d 1109 (2008), *review granted*, 165 Wash.2d 1002, 198 P.3d 511,

affirmed on other grounds, 169 Wash.2d 81, 233 P.3d 853 (Court of Appeals would not consider arguments to support workers' compensation claimant's claim for additional interpreter services that were raised for the first time on appeal).

The rationale for the Rule is that trial courts should have an opportunity to avoid or correct errors, thus avoiding unnecessary appeals. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (1983). However, a party may raise an error for the first time in the appellate court if an exception applies.¹

In the present case on appeal, the Appellant contends the trial court erred on two grounds: 1) finding that the statute of limitations barred further enforcement of her judgment against Respondent; and 2) finding that the effective date of the judgment was not March 26, 2004. Pl.'s Br. at 1. This is the first time these claims of error have been raised. They were never raised before the trial court and do not fall within one of the exceptions of RAP 2.5(a).

The Appellant could have adequately raised these errors before the trial court when the Respondent presented his motion to quash the order for examination and halt further enforcement proceedings. But, the Appellant failed to do so. The Appellant was entitled and appropriately

¹ RAP 2.5(a) exceptions: 1) lack of trial court jurisdiction; 2) failure to establish facts upon which relief can be granted; and 3) manifest error affecting a constitutional right.

should have filed a response to the Respondent's motion pursuant to LCR 7(4)(D), which provides, in part:

Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion . . . no later than 12:00 noon two court days before the date the motion is to be considered . . .

LCR 7(4)(D). In fact, the Respondent's motion to quash the order of examination and halt further enforcement proceedings was set for December 3, 2013. CP 31 and 32. Therefore, the Appellant's responsive papers were due on December 1, 2013, at noon. Nevertheless, the Appellant failed to file a response.

If the Appellant had filed a response to the Respondent's motion, she would have had an avenue of relief and the ability to present such errors to the trial court and subsequently to this Court. Nevertheless, the Appellant reluctantly failed to pursue this option. Thus, in conjunction of LCR 7(4)(D) and RAP 2.5(a), that is, the failure to follow trial court rules of procedure and failure to raise errors before the trial court, appellate review on this issue should be deemed waived and this appeal should be barred.

It should be further noted that the appellant did not seek a reconsideration under CR 59, nor a Motion to Vacate under CR 60.

B. The trial court's ruling that the decree of dissolution is the controlling order for the judgment, not the order clarifying and enforcing decree of dissolution should be affirmed.

The trial court's Order Quashing the Order of Examination and Halting Further Enforcement Proceedings is valid on the basis that the decree of dissolution is the controlling order for the judgment. Actions on a judgment or decree must be brought within ten years. *See* RCW 4.16.020(2). The time period begins to run the date the judgment or decree is entered. RCW 6.17.020(1). Courts have repeatedly found that a decree of dissolution is a judgment subject to the time limits of RCW 4.16.020 and 6.17.020, even when no sum certain was awarded and there was no judgment summary in the decree. *Bank of America, N.A. v. Owens*, 173 Wn.2d 40, 51, 266 P.3d 211 (2011); *see also Stokes v. Polley*, 145 Wn.2d 341, 37 P.3d 1211 (2001).

In *Owens*, the court entered a decree of dissolution, which divided the future, and yet to be determined, proceeds of the sale of the family home. *Owens*, 173 Wn.2d at 52. Although there was no sum certain, the court found that the decree was a judgment because it “set forth, with specificity, a final determination of how proceeds from the sale of [the home] [were] to be distributed.” *Id.* Likewise, in *Polley*, the court found that a decree awarding one-half the equity in real property “meant a money judgment barred by the statute of limitations.” *Polley*, 145 Wn.2d

at 345. The court further found that the wife's enforcement action was time barred when it was filed after the ten year time period as set forth in RCW 4.16.020 and 6.17.020. *Id.* at 351-52.

In the present case, the decree of dissolution set forth a full determination of the parties' rights. CP 9. Although the settlement had not been finalized and exact amounts were not known, by awarding a percent interest in the settlement, the decree is analogous with *Polley* and *Owens*. In those cases, the court found that judgments had been entered despite the fact that specific amounts were unknown. As such, a decree is a judgment, and the timeframe for filing an enforcement action expired June 13, 2013.

The wife argues the decree of dissolution is not the controlling judgment based on the lack of a definite sum in the decree and the "pending" nature of the settlement. Pl.'s Br. at 7-8. The Appellant attempts to support this argument by relying primarily on *French v. Goetz Brewing Co.*, 3 Wn.2d 554, 101 P.2d 354 (1940). However, the *Goetz Brewing Company* case is not analogous or controlling to the present matter for two reasons.

First, in *Goetz Brewing Company*, the decree did not have a provision for a payment of money or a description of any monetary interest. *Id.* at 558. In contrast, in the present case, there is mention of a monetary sum in the decree of dissolution, in reference to the settlements,

as specified by the percentage interest each party is entitled to receive. CP 9.

Second, in *Goetz Brewing Company*, the decree was negative in character, as it could only be enforced, if violated, by contempt proceedings. *Id.* In the present case, the decree could have been enforced, at any time within ten years of its execution, if the Appellant would have commenced enforcement proceedings. However, the Appellant failed to do so.

Furthermore, actions on a judgment or decree can be extended pursuant to RCW 6.17.020(3). However, the Appellant never sought this remedy. Although she did seek clarification of the decree after the L&I settlement was finalized, the order only clarified a previous judgment. CP 24. In addition, the Appellant provided no case law or statutory authority to support that a later clarifying order extends the time for enforcing a judgment beyond its original expiration date, nor is there anything in the order than shows this was the intent of the court. *Id.*

Since the decree of dissolution is controlling and the Appellant failed to follow the proscribed statutory procedure for extending the judgment, she should be prohibited from taking further enforcement actions. Thus, the trial court's ruling that the decree of dissolution is the controlling order for the judgment should be affirmed.

Subsequent to the Order to Quash Order Entered October 4, 2013, and Stopping All Enforcement Proceedings Under this Action As Time Barred under RCW 4.16.020 and RCW 6.17.020, CP 34, and Notice of Appeal, CP 35, and all subsequent action in the case below, the Appellant filed a Petition for an Order Extending Judgment, CP 40, and an Order Extending Judgment, CP 41, without notice to the Respondent. This is inappropriate and should subject the Appellant and her counsel to CR 11 sanctions. (This malfeasance was discovered during preparation of this Response Brief and upon receipt of Appeal Brief (See attached Ex. A and B, CP 42, 43). We had to go to the King County Superior Courthouse to retrieve these documents ourselves.

C. The Respondent Todd Bierline is entitled to attorneys' fees and costs.

The Respondent is entitled to the fees he incurred in responding to the Appellant's appeal. First, RAP 18.1(a) allows fees on appeal if they are available under applicable law. *See also Bowles v. Dep't of Retirement Sys.*, 121 Wash.2d 52, 70, 847 P.2d 440 (1993). Here, RCW 26.09.140 provides for an award of fees based upon need and ability to pay. RCW 26.09.140 provides in part:

The court . . . may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection

therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceedings or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

RCW 26.09.140. Here, there is a nexus between the appeal and the parties' dissolution action. At issue is the division of the L&I and medical malpractice settlements as defined in the Decree of Dissolution. CP 9. In addition, the Respondent has had to retain counsel to defend the claims asserted against him. For these reasons, RCW 26.09.140 is applicable and statutorily this Court should award reasonable attorneys' fees and costs to Respondent.

Second, RAP 18.9(a) authorizes this Court to award to the Respondent his attorneys' fees for responding to the Appellant's frivolous appeal. An appeal is frivolous if it "raises no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal." *Andrus v. State Dept. of Transportation*, 128 Wn.App. 895, 900, 117 P.2d 1152 (2006), *review denied*, 157 Wn.2d 1005, 136 P.3d 759 (2006). In the present case, the timeframe for enforcement of the judgment is barred by the statute of limitations and presents no debatable issue for the Court to consider.

Actions on a judgment or decree must be brought within ten years. *See* RCW 4.16.020(2). And courts have repeatedly found that a Decree of Dissolution is a judgment subject to the time limits of RCW 4.16.020, even when no sum certain was awarded and there was no judgment summary in the decree. *See Owens*, 173 Wn.2d at 51.; *Polley*, 145 Wn.2d 341. On that basis, the timeframe for any enforcement action expired on June 13, 2013.

A debatable issue would be present if the Appellant had extended the timeframe for enforcement, pursuant to RCW 6.17.020. However, the Appellant did not seek an extension of the judgment. Therefore, the Appellant's position that the March 26, 2004 order should determine the enforcement time period is unsound.

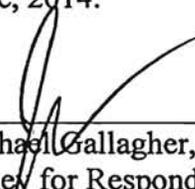
On these grounds, the Appellant's appeal is frivolous and has not established that the trial court erred in the proceedings which quashed the order of examination and halted further enforcement proceedings. This Court has not been presented with a debatable issue which has a reasonable possibility of reversal. Therefore, this Court should award attorneys' fees to the Respondent for responding to this frivolous appeal.

IV. CONCLUSION

The Appellant cannot establish that the trial court erred in entering the order to quash which is well-supported by the facts and law.

Accordingly, this Court should affirm the trial court's order and award the Respondent the attorneys' fees and costs he incurred to respond to this appeal.

Dated this 11th day of June, 2014.



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V. EXHIBITS

A. Index to Clerk's Papers received May 15, 2014

B. Brief of Appellant received May 12, 2014

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Index Date: 05-09-2014

Appeal No.: 71344-2-1

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No. 713442

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION I
JUN 11 2014

CARLA D. BIERLINE,
Petitioner

v.

TODD J. BIERLINE,
Respondent

BRIEF OF APPELLANT

Presented by:
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EXHIBIT B COPY

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J. MICHAEL GALLAGHER

IN THE KING COUNTY SUPERIOR COURT
STATE OF WASHINGTON

In re the Marriage of:

CARLA D. BIERLINE,
Petitioner,
vs.
TODD J. BIERLINE,
Respondent.

No. 03-3-00447-6
**SUPPLEMENTAL DESIGNATION
OF CLERKS PAPERS**

TO THE CLERK OF THE COURT

Please prepare and transmit to the Court of Appeals, Division I, the following clerk's paper's. The case number for the appeal is # 713442.

SUB #	Document	Date
14	Declaration of Carla D. Bierline	08/06/2003
40	Petition to Extend Judgment	03/25/2014
41	Order Extending Judgment	03/26/2014

DESIGNATION OF CLERKS PAPERS- 1

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1 DATED this 9 day of May, 2014, at Seattle, Washington.

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25 DESIGNATION OF CLERKS PAPERS- 2

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J. MICHAEL GALLAGHER

No. 713442

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

CARLA D. BIERLINE,
Petitioner,

vs.

TODD J. BIERLINE,
Respondent.

DECLARATION OF MAILING

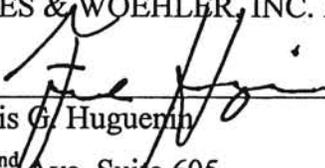
The undersigned declares under penalty of perjury: That he is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled Action, and competent to be a witness herein.

That on May 5, 2014, at the address of 705 Second Avenue, Suite 605, Seattle, King County, Washington State, I mailed true and correct copies of (i) Petitioner's Brief, (ii) Supplemental Designation of Clerk's Papers, and (iii) this Declaration of Mailing. Said documents were mailed to the following person and address:

Name: James Michael Gallagher, WSBA # 12645
Address: 300 Vine St, Suite 4, Seattle, WA 98121-1465

DATED this 5th day of May, 2014.

WALES & WOEHLE, INC. P.S.

By: 
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COPY
EXHIBIT B