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NO. 82294-8

SUPREME COURT

OF THE STATE OF WASHINGTON

JAMIE SESSOM AND STACY RAY SESSOM, husband and wife

Respondent

v.

GORDON H. RINKE and JANE DOE RINKE, husband and wife

Appellant

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BRIEF OF RESPONDENT

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SMITH & O'HARE P.S. INC.
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I. STATEMENT OF THE CASE

The Statement of the Case presented by Appellant accurately presents the sequence of events leading up to this Appeal. However Appellant inaccurately refers to the judgment extension as giving “retroactive effect” to a judgment because the judgment in question has never lapsed. The extension permitted by the statute merely permitted the existing judgment to be given prospective effect.

II. ARGUMENT

1. RCW 6.17.020(3) Plainly Applies to Judgments Existing At Time of 1994 Legislation

The relevant portion of RCW 6.17.020 was amended in 1989 by Chapter 189 of Washington Laws of 1994. That legislation, when adopted, actually stated that:

(3) After the effective date of this act, a party in whose favor a judgment has been rendered pursuant to subsection (1) of this section, 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 may be issued. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court. When application is made to the court to grant an additional ten years, the application shall

be accompanied by a current and updated judgment summary as outlined in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost.” (emphasis supplied)

The effective date of the law was June 9, 1994 because that is the date 90 days following the adjournment of the 1994 Legislature. That is why the codified version of the statute states that :

“After June 9, 1994, a party in whose favor a judgment has been rendered pursuant to subsection (1) ...” (emphasis supplied)

So the Legislature, in 1994, intended the capability to extend a judgment to be effective on the ordinary date for laws passed in the 1994 regular session of the Legislature. (1994 Session Laws of the State of Washington, General Information, Page ii) That distinguished the effective date of another section of the same legislation (Laws of 1994, Chapter 189, Section 2) where the effective date of an amendment to a child support statement was recited to be July 23, 1989.

The 1994 legislation made it clear that at any time after June 9, 1994 any judgment creditor could extend a judgment for ten years by simply applying to the court issuing the original judgment, including an

updated judgment summary, and paying a filing fee. If, as Appellant contends, the statute was intended to be effective only with respect to judgments entered after June 9, 1994, there would have been no reason for the new statute to be effective until March 9, 2004, 90 days before the expiration of a Judgment originally entered on June 9, 1994. That would, as a practical matter, have delayed the actual effective date of the statute from June 9, 1994 to March 9, 2004. But, instead, the Legislature allowed applications for extensions to begin as soon as June 9, 1994. On that date and for nine years and nine months thereafter such extension applications could only apply to judgments originally entered prior to the effective date of the statute. The 1994 legislation plainly intended applications for extension to begin on and after June 9, 1994, not on or after March 9, 2004..

2. RCW 6.17.020(3) Operates Prospectively

The statute only allows an application for extension to be submitted in the 90 day period before a judgment expires. Thus, by the terms of the statute, it cannot be applied to revive an expired judgment. The legislature's decision, in this instance, was consistent with the Washington Supreme

Court's subsequent decision in **American Discount Corp. v. Shepherd** 160 Wash. 2d 93, 156 P.3rd 858 (2006) where the court held that an expired judgment could not be revived by an assignee pursuant to an application made pursuant to legislation not even adopted until after the expiration of the judgment. It was even pointed out in Judge Madsen's dissent (**American Discount Corp. v. Shepherd**, supra, P. 863) that the majority opinion suggested at P. 861 that the original judgment creditor could have extended the judgment under the extension statute and that such an extension before expiration of the judgment would have been valid and effective.

The statute regarded as "retroactive" by the Washington Supreme Court in **American Discount Corp. v. Shepherd**, supra was a legislative attempt to retroactively revive expired judgments which resulted when Assignees attempted to extend judgments instead of having the original judgment creditors apply to extend them. In contrast, the court in **Hazel v. Van Beek** 135 Wn. 2d 45, 954 P.2d 1301 (1998) indicated that RCW 6.17.020 (3) was prospective and not retroactive because, by its terms, it only permitted applications to be made to extend judgments if the

applications were made during the last 90 days of the original 10 year judgment period. Thus, by the very terms of the statute in question there is no question presented to this court regarding retroactive application of RCW 6.17.020 (3)

3. Court of Appeals Divisions I and III Have Upheld Prospective Judgment Extensions Of Judgments Entered Prior to RCW 6.17.020(3)

The logic and reasoning of the two Court of Appeals Decisions regarding extensions of judgments are instructive and persuasive in this matter. In **Summers v. Department of Revenue** 104 Wash. App. 87, 14 P.3rd 902 Division I of the Court of Appeals permitted extension of a tax lien which, by statute, was to be treated in the same manner as extension of a judgment. The court allowed the extension of a 1989 tax lien when the application was filed after the 1994 adoption of RCW 6.17.020(3). Similarly in **State of Washington v. Morgan** 107 Wash. App. 153, 26 P.3rd 965 (2001) Division III of the Court of Appeals allowed the extension of a 1990 judgment over the specific objection that the original judgment pre-dated the 1994 extension statute. The **State of Washington**

v. Morgan decision specifically addressed the fact that in both cited Court of Appeals cases, the original judgment had not yet expired. It noted that in the **Hazel v. Beek** Supreme Court decision, *supra*, the reference to RCW 6.17.020(3) being prospective was dicta and that the judgment being considered in that case had expired before any effort was made to extend it.

4. RCW 6.17.020(3) Judgment Extensions Do Not Affect any Substantive Vested Right of Defendant

Extending the life of a judgment is analogous to extending a statute of limitations which can and is done from time to time without violating any due process rights. **State v. Shultz**, 138 Wash. 2d 645, 980 P.2d 1265 (1999); **State v. Hodgson** 108 Wash. 2d 662, 740 P.2d 848 (1987) .Here, again, the courts have made a distinction between extending the term for bringing an action before the original time for action has expired, and reviving the right to bring a claim once the original statute of limitation has expired. **State v. Hodgson**, *supra*.; **Falter v. United States** 23 F.2d 420, (2d Cir.), cert. den. 277 U.S. 590, 48 S. Ct. 528, 72 L.Ed. 1003 (1928).

“... until the statute has run it is a mere regulation of the remedy subject to legislative control. Afterwards it is a defense, not of grace, but of right, not contingent but absolute and vested, ... not to be taken away by legislative enactment.”

This led the **State v. Hodgson** court , supra, to state that:

“Thus, where a statute extends a period of limitation or provides for the tolling thereof, it applies to offenses not barred at the effective date of the act, so that a prosecution may be commenced at any time within the newly established limitation period although the original period of limitation had by then expired.”

In the case of **Gillis v. King County** 42 Wash. 2d 373, 255 P.2d 546 (1953) relied upon by Appellant, the court distinguished situations in which a legislative enactment affected rights to real property when a street was unopened for a five year period. That court stated that:

“But in the case before us, only three years of the required five-year period of nonuser had run at the time the 1909 proviso was enacted. Hence the decisions just cited are not determinative on the question of whether appellants’ predecessors had the claimed vested rights in 1909.”

Thus the Washington Supreme Court has made it clear that a Statute of Limitation in civil cases may be changed and applied to causes of action which have already accrued at the time of the legislation. **Earle v. Froedert Grain & Malting Co.** 197 Wash. 341, 85 P.2d 264 (1939);

Kittilson v. Ford 23 Wash. App. 402, 595 P.2d 944, affirmed 93 Wash. 2d 223, 608 P.2d 264 (1979).

While it may be possible that the courts, in some instances will go further, one bright line adopted by the courts in all of the above cases is that so long as the time period of the claimed “vested” right has not fully run, the Legislature retains the right to amend the time period without a violation of any substantive or “vested rights”. That rule has been applied in a variety of situations ranging from criminal restitution requirements, to road establishment, to criminal or civil statutes of limitation. The courts, as in **American Discount v. Shepherd**, supra, seem to struggle with the vested rights questions once the initial time period has expired, but uniformly reject the vested rights arguments when the legislative amendment occurs before the expiration of the initial period.

Because RCW 6.17.020 (3) only applied to judgments which had not run their full 10 year terms, the legislation affected no vested rights and must be applied as it was clearly written, to apply to all actions where the application for extension occurred before the expiration of a full ten year judgment period.

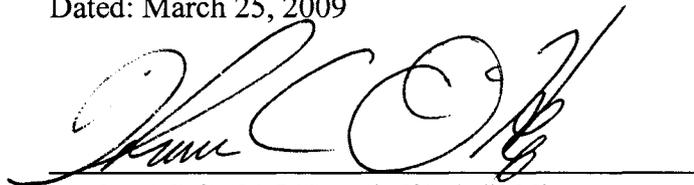
5. Attorneys Fees Are Not Recoverable

As pointed out by the Washington Supreme Court in **Rorvig v. Douglas** 123 Wn. 2d 854, 873 P.2d 492 (1994) attorneys fees are ordinarily not recoverable as damages or costs. The court has carved out very limited exceptions for cases involving malicious prosecution, wrongful temporary injunction, wrongful attachment or wrongful garnishment and slander of title. **Rorvig v. Douglas**, supra.. No such award has been or should be recognized in cases that involve simply following the statutorily prescribed procedure for extending the period of a Washington judgment.

III. Conclusion

For the reasons stated above the decision of the trial court should be affirmed in all respects.

Dated: March 25, 2009

A handwritten signature in black ink, appearing to read 'THOMAS C. O'HARE', written over a horizontal line.

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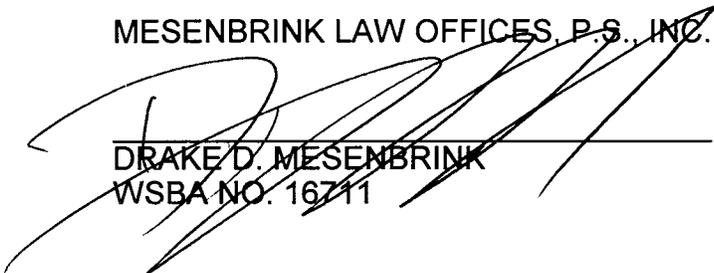
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JOINDER ON
RESPONDENT'S
BRIEF
RAP 10.1(g)

Pursuant to RAP 10.1(g) Drake D. Mesenbrink, Attorney for Respondent,
joins in Respondent Jamie Sessom's brief filed by Thomas O'Hare, Attorney
for Respondent, on March 26, 2009.

DATED this 1st day of May 2009.

MESENBRINK LAW OFFICES, P.S., INC.



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