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NO. 67621-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

RAYMOND HAVERSAT,

Appellant,

v.

KING COUNTY, a political subdivision of the State of Washington,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HOLLIS HILL

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JILL HIGGINS HENDRIX
Senior Deputy Prosecuting Attorney
Attorneys for Appellant

King County Prosecuting Attorney
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015

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(2004); Davidson v. Kitsap County, 86 Wn. App. 673, 682, 937 P.2d 1309 (1997); Charles H. Koch, Jr., Administrative Law and Practice Vol. 1, 6.63 at 281 (West Supp. 1996).

II. STATEMENT OF ISSUES

1. Did the trial court abuse its discretion in denying appellant's motion to vacate an order entering summary judgment?

III. STATEMENT OF THE CASE

On June 8, 2010, Respondent King County obtained a judgment against Appellant Raymond Haversat in King County Superior Court. CP 5-8. The judgment mistakenly was dated June 7, 2010, one day earlier. CP 8.

One year later, on or about June 7, 2011, Mr. Haversat filed a motion to vacate the order entering summary judgment which had been entered in 2010. CP 34-36. The initial date of July 1, 2011 for the show cause hearing on his motion was changed to July 29, 2011. CP 74-75.

On July 28, 2011, the court entered its order denying Mr. Haversat's motion. CP 87-89. In the order, the court found that although appellant Haversat's motion to vacate was filed as a motion for order to show cause, "the purpose of the motion is to seek reconsideration by the Court of its June 8, 2010 order." CP 87-88. The court denied Mr.

Haversat's motion. CP 88-89. Mr. Haversat timely appealed the denial of his motion for order to show cause [vacate].

IV. ARGUMENT

The Trial Court Did Not Abuse its Discretion in Denying Appellant's Motion to Vacate.

A trial court's denial of a motion to vacate a judgment or order is reviewed for abuse of discretion. Beckett v. Cosby, 73 Wn.2d 825, 829-30, 440 P.2d 831 (1968). "Discretion is abused when it is exercised on untenable grounds or for untenable reasons." Lane v. Brown & Haley, 81 Wn. App. 102, 105, 912 P.2d 1040, 1042 (1996) (citing In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990)).

Similarly, motions for reconsideration are addressed to the sound discretion of the trial court and a reviewing court will not reverse a trial court's ruling absent a showing of manifest abuse of discretion. Perry v. Hamilton, 51 Wash.App. 936, 938, 756 P.2d 150 (1988). A trial court abuses discretion when its decision is based on untenable grounds or reasons. Wagner Dev., Inc. v. Fidelity & Deposit Co. of Maryland, 95 Wash.App. 896, 906, 977 P.2d 639 (1999). Wilcox v. Lexington Eye Inst., 130 Wash. App. 234, 241, 122 P.3d 729, 732 (2005).

Applying the abuse of discretion standard held in Beckett and Wagner Development to appellant Haversat's appeal, Judge Hill's denial

of Mr. Haversat's motion to vacate was not based on untenable grounds or reasons, and therefore did not constitute an abuse of discretion.

A. Appellant sought reconsideration of the June 8, 2010 Order.

Appellant Haversat's show cause papers, including his motion to vacate, and his supporting sworn statements, directly challenged the merits of the factual findings of the DDES Notice and Order, the legality and fairness of the County's investigation that led to issuance of the Notice and Order, and ultimately, Judge Hill's 2010 judgment upholding the enforcement of King County's Notice and Order. CP 10, 35, 76-84. Thus, the appellant's CR 60 motion was a thinly veiled attempt to ask the court to *reconsider* its 2010 ruling on King County's motion for summary judgment.

Appellant Haversat's motion and supporting evidence challenged the facts and issues the trial court had already conclusively resolved in ruling on King County's summary judgment motion. For the trial court to treat the motion to vacate the judgment as a motion for reconsideration, then deny the motion, can hardly be reasonably viewed as an untenable decision on untenable grounds, constituting an abuse of the court's discretion. Indeed, the ruling to treat the motion as a CR 59 motion and denying it was warranted and proper.

As the trial court correctly held, motions for reconsideration must be brought within 10 days of the date the decision was entered under CR 59(b). The trial court found that Appellant's motion was too late. CR 59(b).

B. Appellant's appropriate procedural remedy was to appeal the June 8, 2010 summary judgment.

Washington law has long firmly established that appellant Haversat is not allowed to collaterally challenge the propriety of the 2010 order entering summary judgment by an appeal such as the one before Division One. See Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533, 534 (1980).

The court in Bjurstrom reviewed a trial court's denial of a motion to vacate based on an eight year delay in entry of a judgment. Id. at 450. The court found that that the appellant's basic contention was that the judgment was improper because of the lapse in time before the judgment was entered. Having failed to appeal the judgment itself, the appellants were precluded from challenging it in their appeal of the denial of the motion to vacate. Id. at 452. In affirming the trial court, the court of appeals explained,

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. 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... Washington has long recognized the principle that a mistake of law will not support vacation of a judgment.

Id. at 451 (footnote and citations omitted).

Applying Burstrom to Mr. Haversat's appeal, because he did not appeal the June 8, 2010 judgment, he is not allowed to use CR 60 as a means to attack it here before Division One.

C. Appellant fails to satisfy any requirements of CR 60.

Appellant's motion to vacate was based on CR 60(a), 60(b)(1), 60(b)(4), 60(b)(5), and 60(b)(11), stemming from three basic claims: (1) the order itself contained errors that entitled Appellant to relief under the rule; (2) the lack of notice prior to entry of the summary judgment entitled Appellant to relief under the rule; and (3) the manner by which the code enforcement case was prosecuted by DDES entitled him to relief under the rule. CP 34-36.

Appellant pointed to various discrepancies in the recitations contained in the summary judgment order as reasons why it should be vacated under CR 60(a) and CR 60(b)(5). These inaccuracies were that the order states that the hearing took place on May 20, 2010, rather than the actual date of the hearing, which was June 8, 2010; that the court heard argument on behalf of the parties at the hearing when no one appeared at

the hearing for the Appellant; and, that defendant was pro se. See Appellant's Opening Brief, page 5.

None of these inadvertent inaccuracies go to the substance of the factual findings or legal conclusions of the 2010 summary judgment, and they are therefore harmless. RCW 4.36.240 mandates that harmless error be disregarded:

The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect.

RCW 4.36.240.

Moreover, in its order denying Appellant's motion to vacate, the trial court entered a correction amending the date of the original judgment. CP 88-89.

However, entering an amended judgment correcting the entries in the original order pointed to by the Appellant would not grant Appellant the relief he actually seeks, which is to reverse the 2010 judgment, based on his challenges to the underlying facts and issues presented in King County's motion for summary judgment and the Notice and Order that constitutes the factual and legal bases of the judgment.

Appellant argues further that the court abused its discretion in granting the summary judgment motion on June 8, 2010 because there was

no notice of hearing filed indicating that the hearing was moved from May 20, 2010 to that date. The continuance was requested by Appellant's attorney, communicating via email with the court and counsel for King County. CP 63-64.

But the civil rules permit summary judgment motion hearing dates to be extended without notice. See CR 6(b). The rule states in pertinent part:

CR6(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) **with or without motion or notice**, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order....

CR 6(b) (emphasis added). Given that the court rules explicitly authorized the continuance without the filing of a new notice of hearing, there was no abuse of discretion by the court's granting the motion to continue (requested by Appellant's counsel), without any additional filings.

King County submits to the Court that there were no procedural or other irregularities that required vacating the judgment under CR 60(b)(1), nor was there any abuse of discretion by the trial court that justifies reversing the denial of the motion to vacate on appeal.

Appellant, in his motion to vacate, also relied on the above clerical errors, an alleged lack of notice of the summary judgment hearing, and the

failure of his withdrawing attorney to attend it, to argue that these matters rendered the judgment void under CR 60(b)(5).

However, CR 60(b)(5) can only relieve a party from a judgment that the rendering court did not have the power to issue. Analyzing and applying CR 60(b)(5), the court in Metro. Fed. Sav. & Loan Ass'n of Seattle v. Greenacres Mem'l Ass'n, 7 Wash. App. 695, 699, 502 P.2d 476, 479 (1972), reasoned and held as follows:

This rule merely recognizes the inherent power of the court. A void judgment can be attacked at anytime but otherwise

'The power to vacate judgments, on motion, is confined to cases in which the ground alleged is something extraneous to the action of the court or goes only to the question of the regularity of its proceedings. It is not intended to be used as a means for the court to review or revise its own final judgments, or to correct any errors of law into which it may have fallen. That a judgment is erroneous as a matter of law is ground for an appeal, writ of error, or certiorari according to the case, but it is no ground for setting aside the judgment on motion.'

1 Black on Judgments (2d ed.) 506, s 329.

Kern v. Kern, 28 Wash.2d 617, 619, 183 P.2d 811 (1947). See also Marie's Blue Cheese Dressing, Inc. v. Andre's Better Foods, Inc., 68 Wash.2d 756, 415 P.2d 501 (1966).

Metro. Fed. Sav. & Loan Ass'n of Seattle v. Greenacres Mem'l Ass'n, 7 Wash. App. 695, 699, 502 P.2d 476, 479 (1972).

Nothing extraneous to this case rendered the 2010 summary judgment void. The filing of a notice of withdrawal by the Appellant's attorney in May of 2010 did not justify reversal of the underlying summary judgment a year later, nor did it render the court's handling of the motion or the judgment itself void for CR 60 purposes. The court had jurisdiction over the parties and subject matter. Appellant's attorney submitted a brief, and Appellant himself submitted a sworn statement in opposition to the motion. CP 57-61, See Declaration of Raymond Haversat, King County v. Raymond Haversat, Superior Court Cause Number 09-2-15930-1 KNT, Docket, Sub Number 20. Therefore, the judgment cannot be reversed on CR 60(b)(5) grounds. "Attacks upon judgments that are merely voidable, rather than void, are not governed by CR 60(b)(5) . . ." 4 Washington Practice, Rules Practice CR 60, page 555 (5th ed., 2006).

Mr. Haversat's CR 60(b)(4) arguments are based solely on contentions about the DDES code enforcement officer and King County citizen complainant who allegedly trespassed onto the Haversat property in the course of investigating the code enforcement case. Appellant's Opening Brief, pp. 7-8. These allegations and contentions are a direct

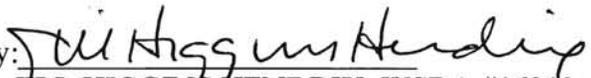
V. CONCLUSION

For the foregoing reasons, the trial court's denial of the motion to vacate should be affirmed.

DATED this 14th day of September, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
JILL HIGGINS HENDRIX, WSBA #16312
Senior Deputy Prosecuting Attorney
Attorneys for Respondents King County