

C.O.A.# 52025-9-II

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SUPREME COURT
STATE OF WASHINGTON
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Court of Appeals
Division II
State of Washington
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101740-5

IN THE WASHINGTON COURT OF APPEALS
DIVISION II

GREGORY TYREE BROWN,

PETITIONER,

-vs-

LAWRENCE FREEDMAN,

Respondent

PETITION FOR REVIEW BY THE SUPREME COURT

GREGORY TYREE BROWN #281829
PRO SE PETITIONER
WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA 99362

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I. IDENTITY OF PETITIONER

The Petitioner, Gregory Tyree Brown, is a pro se prisoner of the state of Washington, currently housed at the Washington State Penitentiary.

II. COURT OF APPEALS' DECISION

Petitioner seeks review of the Court of Appeals September 20, 2022 decision affirming the trial court's order of judgment in favor of Defendant, and seeks review of the Court of Appeals' decision denying reconsideration on 1/24/23.

III. ISSUES PRESENTED FOR REVIEW

Petitioner presents for review the following issues: (a) The trial court and appellate court's decisions are in conflict with with decisions of the Supreme Court; (b) The trial court and appellate courts' decisions are in conflict with published decisions the Court of Appeals; (c) Petitioner raises a significant question of law under the Constitution of the State of Washington and the United States; and (d) Petitioner raises an issue of substantial public interest that should be determined by the Supreme Court.

IV. STATEMENT OF THE CASE

Petitioner sought to hire Mr. Lawrence Freedman, a practicing attorney and municipal court judge, to file a personal restraint petition for him. After sending Freedman a \$3,000.00 retainer fee and entering into a contractual agreement stating, in part, that Freedman would not use any

of this \$3,000.00 until after he has performed 11 hours work on his case, the parties failed to come to an agreement upon a plan of action. Brown therefore asked Freedman to return his \$3,000.00 to him.

Freedman refused to return any part of Brown's \$3,000.00 to him. Freedmann stated he had already used the entire \$3,000.00 on things such as payment for Brown's initial phone call to him asking him what type of an attorney is he. According to Freedman, Petitiopner owes him money instead.

Brown then filed a malpractice complaint against Freedman for refusing to return his \$3,000.00 to him upon his request.

On January 23, 2019 Freedman filed a motion for summary judgment against Brown's claims A thru Y of the initial complaint. Dkt. Index #8. Freedman's motion did not address Petitioner's claim that Freedman violated the contractual agreement that he not use any of Petitioner's \$3,000.00 until after he has performed 11 hours work on his case. Id. Freedman's motion was scheduled for hearing on March 8, 2019. On March 4, Brown filed a motion to amend his complaint to add claim Z. Dkt. Index #24. On March 8, 2019 the Superior Court granted Petitioner's motion to amend. Dkt. Index #29; Apendix at 30; CP 103-104.

On March 10, 2019 Petitioner delivered to prison authorities a Motion to File Late Opposition (until April 5, 2019) to Freedman's summary judgment motion in order to

conform to his amended complaint. Dkt. Index #34. Freedman objected by arguing that his motion for summary judgment relates exclusively to the claims raised in the original complaint. Defendant's Opposition, at 2 ("... the only claims subject to Defendant's summary judgment motion are those alleged in Plaintiff's original complaint").

Brown mailed his amended complaint adding claim Z to the Superior Court on March 20, 2019. Dkt. Index #40; Appendix at 32-62; CP 016-045. On March 20, 2019 Petitioner mailed his summatory judgment opposition to the superior court. Dkt. Index #38; Appendix at 63-83; CP 061-102.

On March 20, 2019 Petitioner informed the superior court that he had mailed both his summary judgment opposition and amended complaint to the superior court on March 20, 2019. The superior court then orally granted Freedman's summary judgment motion on March 22, 2019 without having received Petitioner's summary judgment opposition or the amended complaint.

On Friday March 22, 2019, the superior court heard Freedman's motion for summary judgment. Dkt. Index #37.

On the following Monday, March 25, 2019, the superior court clerk's office received Petitioner's summary judgment opposition (Dkt. Index #38) and Amendedc Complaint (Dkt. Index #40). On March 28, 2019 the superior court entered a written order granting Freedman summary judgment against Petitioner's claims A thry Y of the initial compløint. Dkt.

Appellant's Opening Brief, at 1 and 6-13. See Appellant's Opening Brief. The Court of Appeals denied the appeal upon finding Brown did not seek to appeal the March 26, 2019 Order of Judgment, and that Brown could not now raise this issue in this appeal. See attached Appendix A, appendices 1-4.

On December 16, 2022 Petitioner filed a Motion for Reconsideration of the Court of Appeals July 9, 2021 order of judgment. On January 24, 2023 the Court of Appeals denied reconsideration.

V. ARGUMENTS

A. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT

This Court may grant review of the Court of Appeals decision denying reconsideration if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. RAP 13.4. The decision of the Court of Appeals conflicts with Supreme Court decisions Brown v. General Motors, Inc., 67 Wn. 2d 278, 282, 407 P. 2d 461 (1965)(piecemeal litigation is not to be encouraged); Boeng Co. v. Brown, 1998 Wash. App. LEXIS 1225 (Aug. 17, 1998)(partial summary judgment denied in order to avoid piecemeal litigation); Fluke Capital 7 Management Services Co. v. Richmond, 106 Wn. 2d 614, 724 P. 2d 356 (1986)("amended complaint replaced the original"); Skidmore v. PAC Creditors, 18 Wn. 2d 157, 160, 138 P. 2d 664 (1943)(holding amended complaint "constituted an abandonment

Index #42; Appendix at 106-108; CP 013-014.

On April 23, 2019 Petitioner filed a Notice of Appeal (Dkt. Index #58) challenging the March 28, 2019 Order of Judgment. Dkt. Index #58. On July 15, 2019 the Clerk of the Court of Appeals rejected Petitioner's Notice of Appeal upon stating the March 28, 2019 Order of Judgment was not a final appealable order. Dkt. Index #61.

On July 9, 2021 the superior court granted Freedman summary judgment against Petitioner's claim Z contained in Petitioner's Amended Complaint. Dkt. Index #88. In granting summary judgment, the superior court ruled, "There are no remaining claims at issue in this case." Id.

On July 26, 2021 Petitioner filed a second Notice of Appeal. Dkt. Index #89. Brown filed his Opening Brief on January 19, 2021. In his Opening Brief, Petitioner argued:

(a) The Superior Court Committed Error In Granting Summary Judgment In Favor Of Freedman Against Brown's Void, Non-Existent Original Complaint. Court Committed Error In Granting Freedman Summary Judgment Against Appellant Brown's Void, Non-Existent Original Complaint (6-1);

(b) The Amended Complaint Adding New Facts and Adding A New Cause Of Action Rendered Freedman's Motion For Summary Judgment Against The Original Complaint "Moot" (9-10);

(c) The Superior Court Committed Error In Finding Plaintiff Did Not File An Objection And Response To Defendant's Motion For Summary Judgment (10-13).

of the original complaint, and the action rests on the amended complaint); Ennis v. Ring, 49 Wn. 2d 284, 300 P. 2d 743 (1956)(where amended complaint added new cause of action, it rests the action upon the amended complaint); Seely v. Gilbert, 16 Wn. 2d 611, 616, 134 P. 2d 710 (1943)(finding "The trial court was never in a position to render judgment on the issues made by the original complaint, or the second amended complaints' because "The filing of the amended complaint ... constituted an abandonment of the two former complaints, and the action rests on the second amended complaint"); White v. Million, 175 Wash. 189, 196, 27 P. 2d 320 (1933)(noting "The amended complaint was a reiteration and repetition of the original complaint, with two paragraphs added alleging presentation and rejection of the claim. By leave of court, and after notice, the amended complaint was served and filed. Under Rule III(7), supra, respondent had the option of pleading further to the amended complaint, or else of having his original answer stand as an answer to the amended pleading"); Robbins v. Wilson Creek State Bank, 5 Wn. 2d 584, 593, 105 P. 2d 1107 (1940)(holding demurer filed against original complaint must be refiled as to amended complaint); Herr v. Herr, 35 Wn. 2d 164, 166-67, 211 P. 2d 710 (1949)(holding amended complaint constitutes an abandonment of the original complaint, and the action rests on the amended complaint).

Further, in disregarding federal authority cited at

PETITION FOR REVIEW - 6 -

pages 7-1 of Petitioner's Opening Brief, which Petitioner referenced at page 14 of his Motion for Reconsideration, the Court of Appeals' decision is in conflict with Supreme Court decision, Beal v. City of Seattle, 134 Wn. 2d 769, 777, 954 P. 2d 237 (1997)(where state rule parallels a federal rule, analysis of the federal rule may be looked to for guidance); Carusco v. Local Union No. 690, 100 Wn. 2d 343, 349, 670 P. 2d 240 (1983); see also Adams v. Allstate Insurance Co., 58 Wn. 2d 659, 672, 364 P. 2d 804 (1961)("Our rule [15] is the exact counterpart of the provision in the federal rules of civil procedure ...").

Petitioner's Opening brief cited the following court opinions accompanied by the legal points contained therein. Ferdik v. Bonzelet, 963 F. 2d 1258, 1262 (9th Cir. 1992)(after amendment, courts treat amended complaint as non-existent); Forsyth v. Humans, Inc., 114 F. 3d 1467, 1474 (9th Cir. 1997)("amended complaint supersedes the original, the latter being treated thereafter as non-existent"); Spears v. Arizona Board of Regents, 372 F. Supp. 3d 893 (D. Ariz. 2019)("amended complaint supersedes the original complaint"); King v. American Power Conversion Corp., 347 F. 3d 11, 16 (1st Cir. 2003)(noting "[Plaintiff's] amended complaint completely supersedes his original complaint, and thus the original complaint no longer performs any function in the case"); Young v. City of Mt. Rainier, 238 F. 3d 567, 573 (4th Cir. 2001)(holding amended pleading rendered original pleading of no effect);

DeJesus Baltierra v. W. Va. Bd. of Med., 253 F. Supp. 2d 9 (D. D.C. Cir. 2003)(holding amended pleadings rendered pending motion to dismiss initial complaint "moot"), aff'd, 2004 U.S. App. LEXIS 11290 (D.C. Cir. 2004). Particularly in light of the fact that Respondent cited no authority whatsoever on this point, the Court of Appeals should have considered each of these authorities cited by Petitioner.

The Court of Appeal decision upholds the trial court's granting of summary judgment against Petitioner's original complaint after Petitioner had filed an amended complaint adding new facts and an additional claim Z for relief. Thus, the decision by the Court of Appeals conflicts with the Supreme Court decisions in Fluke Capital 7 Management Services Co., supra, Skidmore v. PAC Creditors, supra, Ennis v. Ring, supra, Seely v. Gilbert, supra, Robbins v. Wilson Creek State Bank, supra, and Her v. Herr, supra, that an amended complaint adding new facts and adding a new claim completely replaces the original complaint and renders the original complaint null, void, and without legal effect.

B. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH A PUBLISHED DECISIONS OF THE COURT OF APPEALS

The Court of Appeals decision conflicts with published decisions of the Court of Appeals in White v. Million, supra, that an amended complaint adding new facts and adding a new claim completely replaces the original complaint and renders the original complaint null, void, and without legal effect.

C. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE PETITIONER RAISES A SIGNIFICANT QUESTION UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON

PETITION FOR REVIEW - B-

C. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE PETITIONER RAISES A SIGNIFICANT QUESTION UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON

This Court may grant review where a Petitioner raises a significant question under the Constitution of the State of Washington and United States Constitution. RAP 13.4(b)(3). Petitioner raises a significant question of law under Washington State Constitution article I, section 4 ("The right to petition and of the people peacefully to assemble for the common good shall never be abridged"); Richmond v. Thompson, 130 Wn. 2d 368, 380-81, 922 P. 2d 1343 (1996).

D. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE PETITION RAISES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THE SUPREME COURT

The Supreme Court may grant review where a Petitioner raises an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). A question of first impression may constitute an issue of substantial public interest that should be determined by the Supreme Court. Columbia Riverkeepers v. Port of Vancouver, 188 Wn. 2d 421, 432-33, 395 P. 3d 1031 (2017)(Supreme Court granted review of issue of first impression).

Petitioner has found no Washington law resolving the question whether or not the current framework of the civil rules render an original complaint invalid, void, non-existent, and of no legal effect, requiring a defendant to re-file a dispositive motion that was initially directed at the original complaint as to conform to the amended pleading. In Respondent's Opposition to Appellant's Motion

for Reconsideration, Freedman effectively concedes that the issue presented by Petition is an issue of first impression, where Freedman argues that Fluke and Ennis do not necessarily fully support Petitioner's argument. Respondent's Opposition, at 4-7. Respondent fails to cite any case law that would undercut Petitioner's argument.

The Supreme Court should decide this matter because litigants "should not have to act as soothsayers" to prophesize when a motion for summary judgment filed against an original complaint must be revised in order to take into account the filing of an amended complaint that alleges additional facts and an additional claim. See e.g., Denny v. City of Richland, 195 Wn. 2d 649, 658, 462 P. 3d 842 (2020).

E. THE SUPREME COURT SHOULD GRANT REVIEW BECAUSE THE DECISION OF THE COURT OF APPEALS AND THE SUPERIOR COURT ARE IN CONFLICT WITH A SUPREME COURT DECISION

The decision of the Court of Appeals is in conflict with Supreme Court decision, Saunders v. Lloyd's of London, 113 Wn. 2d 330, 345, 779 P. 2d 249 (1989) (declining to reach arguments not supported by adequate argument and authority).

Without citation to any such authority, Freedman argues that Ennis v. Ring, supra, and Fluke Capital 7 Management Services Co., supra, did not permit or require Petitioner to rewrite his summary judgment objection as to conform to his amended complaint. Respondent's Opening Brief in Opposition to Appellant's Motion to Reconsider, at 4 thru 7. Respondent's failure to cite any authority in support of its

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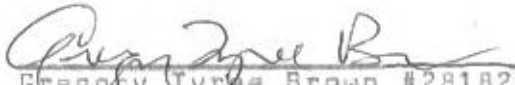
is equivalent to no opposition at all. The Court
therefore, grant review of Petitioner's claims.

Respondent argument that Petitioner wants a "do over"
is simply ridiculous. Respondent's Brief at 7. Since the
trial court never considered any objection submitted by
Petitioner, Petitioner simply wants his one and only day in
court--that his one and only summary judgment objection ever
submitted to the court be heard. This is not a "do over,"
but rather, this is the "one and only argument" that has
ever been submitted.

VI. CONCLUSION

Wherefore, the Supreme Court should grant review of
this matter and reverse the decisions of the Court of
Appeals and trial court.

Respectfully submitted this 22nd day of February, 2023.


Gregory Tyrone Brown #281829
Pro Se Petitioner
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

INMATE

March 10, 2023 - 1:45 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,740-5
Appellate Court Case Title: Gregory Tyree Brown v. Lawrence Freedman
Superior Court Case Number: 18-2-00459-7

DOC filing of BROWN Inmate DOC Number 281829

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Appellate Court Case Number: 56025-9
Appellate Court Case Title: Gregory Tyree Brown, Appellant v. Lawrence Freedman, Respondent
Superior Court Case Number: 18-2-00459-7

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IN THE WASHINGTON COURT OF APPEALS
DIVISION II

GREGORY TYREE BROWN

Petitioner,

- vs -

LAWRENCE FREEDMAN

Respondent.

APPENDIX TO PETITION FOR REVIEW BY SUPREME COURT

GREGORY TYREE BROWN #281829
PRO SE PETITIONER
WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA 99362

UNPUBLISHED OPINION

APPENDICES 1 thru 4

September 20, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GREGORY TYREE BROWN,

Appellant,

v.

LAWRENCE FREEDMAN,

Respondent.

No. 56025-9-II

UNPUBLISHED OPINION

VELJACIC, J. — Gregory T. Brown, pro se, appeals the trial court’s 2021 order granting Lawrence Freedman’s motion for summary judgment and dismissing Brown’s amended complaint against Freedman. The court had previously granted summary judgment in Freedman’s favor in 2019, dismissing Brown’s original complaint. Brown now raises issues relating to the court’s 2019 summary judgment order. Because Brown did not timely appeal the 2019 summary judgment order, we do not reach his arguments. We affirm the trial court’s 2021 summary judgment order.

FACTS

Brown is currently serving two consecutive life sentences for two 1983 aggravated murder in the first degree convictions. In June 2015, Brown retained Freedman, an attorney, to petition the Indeterminate Sentence Review Board (ISRB) to grant Brown a parole hearing. Brown asserted that it was unclear whether the trial court sentenced him to an indeterminate sentence or life without the possibility of parole. Freedman began investigating the matter and drafted a letter to the ISRB seeking clarification.

APPENDICIES 1

On July 6, 2015, Brown sent a letter to Freedman, terminating their agreement. Freedman mailed a letter to Brown on July 29, 2015, acknowledging that their agreement was terminated. The parties disputed whether Brown's payment to Freedman for his services should be refunded.

On March 30, 2016, the ISRB sent a letter to Freedman stating that it had contacted the sentencing court and the court clarified that it sentenced Brown to life without the possibility of parole, so Brown would not be eligible for a parole hearing. Believing Brown was notified directly of this decision, Freedman did not forward the letter to Brown.

In 2018, Brown filed a pro se complaint against Freedman, alleging malpractice, breach of contract, fraud, misrepresentation, and violation of the Washington Consumer Protection Act chapter 19.86 RCW. In January 2019, Freedman filed a motion for summary judgment dismissal of all claims.

On March 22, 2019, the trial court held the summary judgment hearing. Two days before, Brown mailed a late response to Freedman's motion for summary judgment.¹ The court filed its summary judgment order on March 28 granting Freedman's motion. Our record does not show that the court received Brown's response prior to granting the motion.

On March 25, 2019, Brown filed an amended complaint. The amended complaint was the same as the original, but added a new allegation against Freedman for not sending the ISRB's 2016 letter to Brown.

¹ Under CR 56(c), Brown's response must have been filed and served no later than "11 calendar days before the hearing." Even with the benefit of GR 3.1(b), which permits an inmate's correspondence to be deemed filed on the date the document is deposited in the institution's internal mail system, Brown's response would still have been untimely.

On April 5, 2021, Freedman filed another motion for summary judgment, to dismiss the newly raised claim. Freedman argued that Brown failed to establish legal malpractice for not mailing the 2016 letter. The court granted Freedman's motion for summary judgment dismissing Brown's new claim. Brown appeals the trial court's 2021 summary judgment order.

ANALYSIS

Brown argues that the trial court erred in granting summary judgment in favor of Freedman in 2019 because Brown's amended complaint rendered his original complaint void; therefore, the trial court wrongly ruled on a void complaint. He also argues the court erred in granting summary judgment in 2019 without considering his objection.

Under RAP 5.1(a), "[a] party seeking review of a trial court decision reviewable as a matter of right *must* file a notice of appeal." (Emphasis added.) The notice must be filed within 30 days of the entry of the judgment the party wants reviewed. RAP 5.2(a). Moreover, RAP 5.3(a) requires a party to designate in the notice of appeal the order it wants us to review.


While Brown assigns error to the 2019 order, he did not appeal the 2019 order. Moreover, he did designate that order as an order he wanted us to review in his notice of appeal. Instead, he designated only the 2021 order, to which he does not assign error.

For this reason, his allegations relating to the 2019 order are not properly us. Accordingly, we decline to reach these issues. As to the 2021 order that Brown has appealed, he does not argue any error with regard to this order.

CONCLUSION

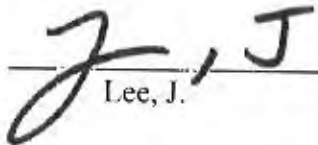
We affirm the trial court's 2021 summary judgment order.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

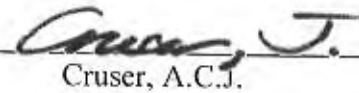


Veljovic, J.

We concur:



Lee, J.



Cruiser, A.C.J.

ORDER DENYING
MOTION FOR
RECONSIDERATION

January 24, 2023

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

GREGORY TYREE BROWN,
Appellant,
v.
LAWRENCE FREEDMAN,
Respondent.

No. 56025-9-II

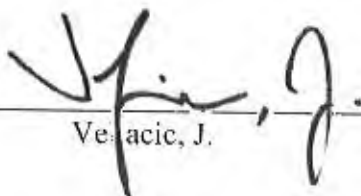
**ORDER DENYING MOTION FOR
RECONSIDERATION**

Appellant, Gregory Tyree Brown, moves this court to reconsider its September 20, 2022 opinion. Respondent, Lawrence Freedman, responded in opposition of Appellant's motion. After consideration, we deny Appellant's motion for reconsideration. It is

SO ORDERED.

Panel: Jj. Lee, Cruser, Veljacic.

FOR THE COURT:


Veljacic, J.

INMATE

February 23, 2023 - 9:45 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 56025-9
Appellate Court Case Title: Gregory Tyree Brown, Appellant v. Lawrence Freedman, Respondent
Superior Court Case Number: 18-2-00459-7

DOC filing of BROWN Inmate DOC Number 281829

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