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STATE OF WASHINGTON
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No. 89623-2

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK OLLA, an individual,

Appellant,

vs.

ROBERT H. WAGNER, as an individual and as Trustee of THE ROBERT
H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE
ROBERT H. WAGNER PENSION PLAN"), and DOES 3 through 50,
Inclusive,

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF KITSAP COUNTY, WASHINGTON

THE HONORABLE KEVIN D. HULL, JUDGE

ANSWER TO APPELLANT'S PETITION FOR REVIEW

ISAAC A. ANDERSON, WSBA #28186
of Law Office of Isaac A. Anderson, PS
Attorney for Respondent Robert H. Wagner

I. SUMMARY

Pro se appellant MARK OLLA's ("Olla's") petition for discretionary review is just the latest episode of his ongoing vexatious litigation campaign against the respondent, Mr. Robert Wagner ("Wagner"). This is Olla's second petition for review following three appeals and two trials, which have all resulted in adverse decisions against Olla relating to the same litigation.

This Court should deny Olla petition for review for the same reasons it denied Olla's first petition for discretionary review.¹ Olla's petition does not identify any conflicts between the decision of the court of appeals and the decisions of other courts of appeal or this Court. Olla's petition also does not raise any constitutional questions, and does not identify any genuine issue constituting a substantial public interest. Rather, Olla simply argues that the court of appeals misapplied settled law relating to subject matter jurisdiction in a civil lawsuit he filed in June of 2009. There is therefore no reason to accept Olla's petition and grant discretionary review.

II. PROCEDURAL HISTORY

This litigation started when Olla filed a 144-page complaint

¹ Olla v. Wagner, No. 87281-3, Order Denying Petition for Discretionary Review, filed August 7, 2012.

against Wagner in Kitsap County Superior Court on June 29, 2009.²

Using the “kitchen sink” approach, Olla’s complaint contained a whole slew of factual allegations and legal claims, including several Washington-specific claims. For example, Olla asserted the following:

Plaintiff seeks rescission of all loans and agreements *as executed in Washington State . . .*³

* * *

Venue is proper in this court as the Subject Property is located within this jurisdiction, and under Washington Code of Civil Procedure, for actions involving title to Real Property may only be commenced in the county in which the Real Property is situated . . .⁴

Olla also asserted, *inter alia*, the following Washington specific causes of action: (1) Violations of RCW 18.85.230,⁵ (2) fraudulent and intentional deceit based on Washington law,⁶ (3) quiet title in the Washington property.⁷

Wagner then filed counterclaims alleging that Olla’s lawsuit should be dismissed because Olla signed a settlement agreement with Wagner

² CP 2-145.

³ CP at 5 (italics added).

⁴ CP at 11.

⁵ CP at 60.

⁶ CP at 63, 64, 71, 73-74, 77.

⁷ CP at 78-80.

waiving all claims and causes of action against Wagner.⁸

Upon Wagner's motion, the trial court decided to first determine whether the parties' settlement agreement and waiver of claims was enforceable, and whether that agreement barred Olla's lawsuit.⁹ On January 15, 2010, after a three-day trial, the trial court upheld the settlement agreement, awarded \$45,503 in attorney's fees, declared Olla's claims frivolous, and dismissed all of his claims.¹⁰ Olla then filed his first appeal, alleging for the first time that the trial court lacked subject matter jurisdiction. The court of appeals eventually affirmed the trial court on September 13, 2011.¹¹

On March 28, 2011, a second trial occurred to determine Wagner's damages arising out of Olla's frivolous lawsuit and his slander of title. The trial court then awarded a judgment against Olla in the amount of \$107,683.64.¹² Olla promptly appealed for the second time, and again argued the trial court lacked subject matter jurisdiction. Calling Olla's second appeal "clearly without merit", the court of appeals granted

⁸ CP 232-55. This settlement agreement included the conveyance of two properties in lieu of foreclosure by Olla in exchange for his receipt of \$2,141,723 in debt forgiveness and \$165,000 in cash from Wagner. CP 249-55.

⁹ CP 314-15.

¹⁰ CP 1328-30.

¹¹ Olla v. Wagner, 163 Wn. App. 1028 (2011).

¹² CP 1595-99.

Wagner's motion on the merits and affirmed the trial court.¹³ Olla's motion to modify was denied on March 19, 2012,¹⁴ and his petition for discretionary review was denied by this Court on August 7, 2012.¹⁵

Still undeterred, Olla then turned again to the trial court. On July 13, 2012, Olla filed a motion to vacate the court's original January 15, 2010 judgment, again arguing the court lacked subject matter jurisdiction.¹⁶ Following an oral ruling denying the motion, Olla filed a motion for reconsideration. The trial court denied this motion on July 30, 2012,¹⁷ and on August 3, 2012, the trial court issued a judgment imposing \$4,865 in sanctions against Olla.¹⁸

Olla then filed his third appeal on September 4, 2012, arguing again lack of subject matter jurisdiction.¹⁹ On August 29, 2013, following oral argument, the court of appeals again granted Wagner's motion on the merits and affirmed the trial court.²⁰ The court of appeals determined that

¹³ Olla v. Wagner, No. 42157-7-II, Ruling Granting Motion on the Merits to Affirm, filed January 6, 2012.

¹⁴ Olla v. Wagner, No. 42157-7-II, Order Denying Motion to Modify, filed March 19, 2012.

¹⁵ Olla v. Wagner, 174 Wn.2d 1020 (2013).

¹⁶ CP 1771-98.

¹⁷ CP 2384-86.

¹⁸ CP 2387-88.

¹⁹ CP 2389-95.

²⁰ Olla v. Wagner, No. 43899-2-II, Ruling Granting Motion on the Merits to Affirm, filed August 29, 2013.

(1) Olla’s collateral attack on subject matter jurisdiction was barred by res judicata, (2) he failed to meet the Brown²¹ requirements, and (3) in any event, “[t]he Washington court plainly had subject matter jurisdiction over the enforceability of the settlement agreement.”²² Olla’s subsequent motion to modify was denied on October 29, 2013.²³ He now petitions for discretionary review.

III. ARGUMENT

A. Olla’s Petition Does Not Identify Any Genuine Conflicts between the Court of Appeals or this Court

As this Court is aware, RAP 13.4(b) provides that this Court can only accept discretionary review if one of four criteria are met. Two of these criteria are whether court of appeals decision conflicts with another court of appeals or with Supreme Court precedent. Although Olla asserts there are conflicts, in reality his petition does not identify any genuine conflicts.

Olla’s entire petition is, for the most part, incomprehensible. He advances only one remotely coherent argument asserting a conflict between the court of appeals decision and other precedent, as follows:

In re Marriage of Brown has bred the illusion, which must be

²¹ In re Marriage of Brown, 98 Wn.2d 46, 653 P.2d 602 (1982).

²² Id. at 4.

²³ Olla v. Wagner, No. 43899-2-II, Order Denying Motion to Modify, filed October 29, 2013.

dispelled by this court, that a judgment entered without subject matter jurisdiction can only be vacated upon a showing that the rendering court so plainly lacked subject matter jurisdiction over the *action* that its entry of judgment amounted to a manifest abuse of authority without regard to this the considerable case law confirming a court's nondiscretionary duty to vacate a judgment as void and that a judgment is void if rendered without subject matter jurisdiction over the action.²⁴

When read in conjunction with pages 40 through 41 of his petition for review, and with the case law cited on page 20, Olla appears to argue that In re Marriage of Brown conflicts with the general principle articulated in Allstate Ins. Co. v. Khani, 75 Wash. App. 317, 323, 877 P.2d 724, 727 (1994) as follows: "a court has a nondiscretionary duty to vacate a void judgment." But Olla stretches this principle too far. Khani simply put to rest the questions of whether it makes any difference how long a party waited before attempting to vacate a void judgment, and whether a trial court has the inherent discretion *not* to vacate a void judgment. (The answer is "no" to both questions.) Id. at 324, 877 P.2d at 728; see also, Brickum Inv. Co. v. Vernham Corp., 46 Wash. App. 517, 520, 731 P.2d 533, 535 (1987).

In contrast, Brown merely establishes reasonable requirements on litigants who choose to collaterally attack judgments on the basis of subject matter jurisdiction in subsequent motions to vacate. In this

²⁴ Petition for review at 28-29.

specific context, litigants must demonstrate at least one of the following:

- (1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or
- (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or
- (3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.²⁵

Brown at 50, 653 P.2d 603-04. There is no question that if a litigant demonstrates any of these three factors, a trial court is required vacate a judgment rendered without subject matter jurisdiction. Hence, there is no actual conflict between Brown and Khani.

Olla's petition does not articulate any other potential conflicts with any coherence. Since Olla has failed to establish genuine conflicts within the courts of appeal or this Court, Olla has failed to satisfy the first two mandatory criteria of RAP 13.4(b). As demonstrated below, he has also failed to satisfy the remaining two criteria.

B. Olla's Petition Presents No Significant Question of Constitutional Law

Olla also does not present a significant question of constitutional

²⁵ Id. at 50, 653 P.2d at 604.

law pursuant to RAP 13.4(b)(3). Within the body of his argument, Olla only mentions article IV, section 6 of Washington's Constitution, and only for the purpose of establishing that this provision provides the basis for the jurisdictional limits described in RCW 4.12.010.²⁶ Simply scattering a few constitutional references into a petition for review does not raise a genuinely significant question of constitutional law. In fact, Olla does not present any articulate argument which this Court should explore the scope of constitutional jurisdiction granted to trial courts. Further, Olla failed to raise a constitutional issue before the trial court.²⁷

C. Olla's Petition for Review Presents No Issue of Substantial Public Interest

The last opportunity for Olla to establish a basis for this Court's review is RAP 13.4(b)(4), which allows for discretionary review if the petition involves an issue of substantial public interest. But Olla fails this last test also. Nowhere in Olla's petition does he identify any issue of substantial public interest.

An issue of "substantial public interest" is not easily defined, but it is clear this Court rarely decides to review a lower court decision on this basis. For example, this Court found a substantial public interest when the

²⁶ See petition for review at 16, 38.

²⁷ Olla presented no constitutional issue in his motion to vacate the judgment (CP 1771-98), his reply brief (CP 2351-60), and his motion for reconsideration (CP 2372-81). Olla only made two references to Article IV, section 6 of Washington's Constitution, and one irrelevant reference to the federal Constitution. CP 1782, 1886 and 2355.

lower court's decision had "the potential to affect every sentencing proceeding in Pierce County after November 26, 2001 where a DOSA sentence was or is at issue." State v. Watson, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005). See also, In re Marriage of Ortiz, 108 Wn.2d 643, 740 P.2d 843 (1987). But this case presents no similar substantial public interest issues. This case deals only with a lawsuit brought by one disgruntled pro se litigant who is determined on advancing his consistently discredited jurisdictional arguments to every court possible, regardless of how many sanctions he incurs along the way. The issues raised simply do not rise to the level that Supreme Court determination is necessary or proper.

For these reasons, this Court should deny Olla's petition for review because he has failed to establish any of the four factors in RAP 13.4(b).

D. Wagner Should be Entitled to an Award of Attorney's Fees and Costs

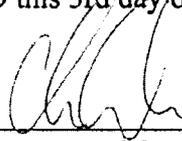
Pursuant to RAP 18.1(j), Wagner requests an award of attorney's fees and costs incurred in the preparation and filing of his response to Olla's petition for review. There are two reasons why Wagner is entitled to attorney's fees and expenses incurred in this appeal pursuant to RAP 18.1. First, the parties' settlement agreement states that "[i]f legal action is required to enforce the provisions of this agreement, the prevailing party is

entitled to recover its attorneys' fees and costs from the nonprevailing [sic] party." CP 253. Second, attorney's fees and costs are allowed pursuant to CR 11 and RCW 4.84.185 because Olla's claims are clearly without merit and frivolous in nature, as reasonably determined by the trial court and the court of appeals multiple times.

IV. CONCLUSION

For the reasons explained above, Wagner respectfully requests that this Court deny Olla's petition for discretionary review, and award his attorney's fees and costs incurred in this appeal.

RESPECTFULLY SUBMITTED this 3rd day of January, 2014.



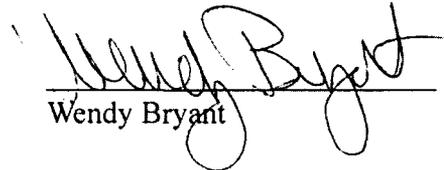
ISAAC A. ANDERSON, WSBA #28186
Of Law Office of Isaac A. Anderson, PS
Attorney for Respondent Wagner

DECLARATION OF SERVICE AND FILING

Wendy Bryant declares and states as follows:

1. On the 3rd day of January, 2014, I mailed, postage prepaid, a copy of the attached answer to petition for discretionary review to the petitioner Mark Olla at P.O. Box 1213, Newport, OR 98365, and emailed the same to the petitioner at markolla@aol.com.
2. On the same day, I furthermore filed a copy of the attached answer to petition for discretionary review with the Supreme Court by emailing the same at supreme@courts.wa.gov.
3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 3rd day of January, 2014 in Poulsbo, Washington.


Wendy Bryant

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