

Received
Washington State Supreme Court

E AUG 20 2014
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NO. 90420-1

SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID CREVELING,

Defendant/Appellant

v.

GEORGE AND MARY ARMENDARIZ, TERESA REBO, ROBERT
AND HEATHER BRUNKOW, AND JOHN AND JANE DOES 1-40,

Intervenors/Respondents,

RESPONDENTS' OPPOSITION TO APPELLANT'S
PETITION FOR DISCRETIONARY REVIEW

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Attorney for Respondents

 ORIGINAL

Respondents George and Mary Armendariz, Teresa Rebo, Robert and Heather Brunkow, and John and Jane Does 1-40, oppose Appellant's latest Petition for Discretionary Review and request the Court deny this Petition. Without any basis, Appellant's Petition requests the Supreme Court review the Court of Appeals granting Respondents' Motion on the Merits and the Court of Appeals denial of Mr. Creveling's Petition to Modify the Court of Appeals decision. As set forth below, this latest Motion should be summarily denied so this matter may be returned to the trial court for determination.

FACTS

This appeal arises out of the trial court's granting a Motion to Set Aside a Default Judgment in June 2012. In setting aside the Default Judgment the trial court never ruled on the merits of Appellant's claims and the record provided to the trial court was specific and narrowly tailored to the issues presented. For the next two years, justice has been delayed because Mr. Creveling has appealed every possible appellate court Order.

1. Trial Court History.

This appeal arises out of the Okanagan County Superior Court applying sound discretion and entering an Order Vacating Default Judgment on June 6, 2012. The underlying facts are as follows: on April 3, 2012, Appellant David Creveling obtained a Default Judgment in the

underlying Superior Court action against his former spouse Jennifer Creveling, which Default Judgment purported to transfer title in certain real property to Mr. Creveling. Contrary to the requirements of Civil Rule 55(b) this Default Judgment was unsupported by any evidence and was entered solely based on David Creveling's unsubstantiated nine year old pleading captioned "Answer to Quiet Title and Complaint." Appellant's Answer attempted to add his former spouse as a third-party defendant to ongoing litigation brought by Dan and Reba Gebbers in 2003. Long before appellant requested the Default Judgment, the Gebbers obtained a Judgment against Mr. Creveling.

Mr. Creveling's April 2012 Default Judgment was presented despite the court in his divorce action awarding the real property to Jennifer Creveling on August 14, 2002. That 2002 Order was recorded in Okanogan County soon thereafter. On February 15, 2006, the Statutory Warranty Fulfillment Deed from David Creveling to his former wife, including attached Order, was recorded in Okanogan County. This further clarified that David Creveling had no ownership interest in the real property. On July 21, 2003, Jennifer Creveling n/k/a Jennifer Holmes transferred the real property to Caribou LLC.

The Respondents all currently own the real property that is the subject of the Default Judgment. The Respondents purchased their real property several years ago from third parties. The Respondents have had no dealings with David Creveling. In May 2012, Creveling sent letters to Respondents claiming ownership of the real property as a result of the

Default Judgment against his former wife, and threatened to take the real property in 30 days. As a result of Mr. Creveling's actions, the Respondents have and will continue to be damaged.

At the June 6, 2012 hearing on Respondents' Motions, Mr. Creveling appeared and filed his opposition and his own Motion to reaffirm the Default Judgment. As an initial matter, Mr. Creveling agreed to hear all Motions, including his own, on shortened time. Based on these facts and the arguments presented, the Superior Court granted Respondents' procedural Motions.

2. Appellate History.

A. Court of Appeals – Part I.

Mr. Creveling then filed his appeal of the trial court's ruling on July 6, 2012. The issue on appeal was the very limited issue of whether the trial court abused its discretion by vacating its earlier Order granting the Default Judgment. Notwithstanding this, Appellant then attempted to supplement the record with information never presented to the trial court, which information did not address whether it was proper to enter a Default Judgment. The Court of Appeals twice denied Appellant's request to supplement the trial court record and add information not presented to the trial court. On December 27, 2012, the Commissioner denied Appellant's request to supplement the record because Appellant failed to meet the requirements of RAP 9.11. Appellant then requested the Court of Appeals review the Commissioner's ruling. On March 7, 2013 the Chief Judge entered an Order Denying the Motion to Modify.

B. Supreme Court – Part I (Case No. 88655-5).

Instead of proceeding forward and addressing the merits at the trial court level, Mr. Creveling then requested the Supreme Court review the Court of Appeals rulings on Mr. Creveling's procedural motions. On April 30, 2013, Mr. Creveling appealed these procedural rulings by filing a Motion for Discretionary Review with this court under Supreme Court Case No. 88655-5. As here, Appellant's motion failed to add any new information. On May 22, 2013, this Court denied Mr. Creveling's Motion for Discretionary Review. Mr. Creveling then filed his Motion to Modify this Court's Ruling on May 30, 2013. On July 10, 2013, the Chief Justice issued an Order denying Mr. Creveling's Motion to Modify, and this matter was returned to the Court of Appeals for handling.

C. Court of Appeals – Part II.

Mr. Creveling subsequently filed his brief with the Court of Appeals, which brief failed to state any basis for the appeal and why the trial court was incorrect. On October 8, 2013, Respondents filed their Motion on the Merits to Affirm seeking dismissal of the appeal. Following Mr. Creveling's filing his opposition and after oral argument, the Court of Appeals granted Respondents' Motion on the Merits on February 25, 2014. Once again, Mr. Creveling filed a Motion to Modify the court's granting the Motion on the Merits. On May 21, 2014, the Chief Judge entered an Order Denying the Motion to Modify.

D. Supreme Court – Part II (Case No. 90420-1).

On June 25, 2014, a date over two years after the trial court entered an Order granting simple procedural motions, Mr. Creveling again sought

review before this court. Mr. Creveling's Petition again fails to address why the trial court abused its discretion and why the Court of Appeals was wrong in upholding the ruling.

DISCUSSION

1. Appellant's Petition should be denied because Appellant fails to comply with the requirements of RAP 13.4(b).

Supreme Court review is limited. RAP 13.4(b) states that the Supreme Court will accept a Petition for Review in only four situations:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Mr. Creveling fails to comply with RAP 13.4(b) and his Petition should be denied. Mr. Creveling's Petition is silent as to all four elements and once again fails to provide this Court any reason to accept review. There is no basis for this Court to accept review and this Petition must be denied under RAP 13.4(b).

2. Appellant's Petition should be denied because Appellant fails to meet his burden as to why the lower courts' rulings were incorrect.

Beyond RAP 13.4, Mr. Creveling fails to provide this Court with anything that suggests the Court of Appeals erroneously granted the Motion on the Merits and improperly denied Mr. Creveling's Motion to Modify. There is no basis to reverse these rulings and Mr. Creveling's Petition should be immediately denied.

The limited issue on appeal is whether the trial court properly set aside an Order granting an unsupported Motion for Default Judgment. Appellant's entire record does not provide any evidence or valid argument as to why the trial court abused its discretion in granting the motions, why the Court of Appeals incorrectly ruled and why he is entitled to relief.

Under RAP 18.14(e)(1), the Court of Appeals properly granted Respondents' Motion on the Merits.

RAP 18.14(e)(1) states:

A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

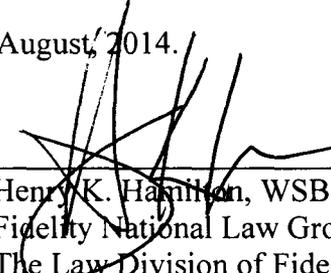
Here, the Court of Appeals properly granted the Motion on the Merits because not one, but all three reasons are met – (a) the trial court's ruling was clearly controlled by settled law; (b) the trial court's ruling was

factually supported by the evidence; and (c) the trial court's rulings were matters of judicial discretion and the decision was clearly within the discretion of the trial court. Mr. Creveling has consistently failed to offer any competent rebuttal. Appellant's Petition for Discretionary Review should be denied.

3. Respondents are entitled to their Attorneys' Fees and Costs for having to continuously respond to Mr. Creveling's unsubstantiated claims.

Respondents request their attorneys' fees and costs under RAP 18.1 and Civil Rule 11. The time has come to put an end to Appellant's frivolous appeals and unsupported claims. Mr. Creveling has continuously failed to provide any authority for his arguments, which arguments delay the Respondents' ability to obtain justice and appear to be little more than a calculated waste of time.¹

Dated this 19th day of August, 2014.


Henry K. Hamilton, WSBA #16301
Fidelity National Law Group
The Law Division of Fidelity National
Title Group, Inc.

Attorney for respondents George and Mary
Armendariz, Teresa Rebo, Robert and
Heather Brunkow, and John and Jane Does
1-40

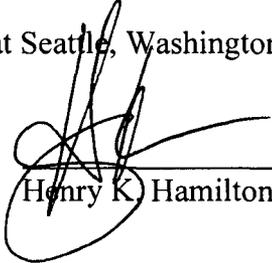
¹ Similar to Mr. Creveling's conduct in *Creveling v. Estate of Stokes*, Supreme Court Case 890897, and the related Court of Appeals Case 30896-1-III, Mr. Creveling is abusing the judicial system and this Court should put an end to this abuse.

CERTIFICATE OF SERVICE

I hereby certify that on the date given below I caused to be served the foregoing document entitled RESPONDENTS' OPPOSITION TO APPELLANT'S PETITION FOR DISCRETIONARY REVIEW on the following individuals in the manner indicated:

David Creveling 110 Gold Creek Loop Rd. Carlton, WA 98814	Legal Messenger Facsimile Hand Delivery X FedEx
Jennifer Creveling P.O. Box 393 Vaughn, WA 98394	Legal Messenger Facsimile Hand Delivery FedEx X U.S. Mail

SIGNED this 19th day of August, 2014, at Seattle, Washington.


Henry K. Hamilton