

OCT 22 2015  
E  
Ronald R. Carpenter  
Clerk

92013-3

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Marriage of:	)	
	)	
TINA CASE, nka Mendoza,	)	ANSWER IN RESPONSE
	)	TO MOTION TO WAIVE
Respondent,	)	FILING FEE
v.	)	
	)	
RICHARD A. CASE,	)	
	)	COA No. 71605-1-I
Appellant.	)	

Before the Court is a motion to waive filing fee for petition for review. We have been directed by letter from the Court dated September 28, 2015 to file and serve this Answer to the motion by October 28, 2015. Respondent is hereby responding to the motion to waive filing fee.

This motion should be denied. The appellant seeks to parse aspects of RAP 15.2, claiming that the finding of indigency referenced by the Court of Appeals on July 25, 2014 on the second page noted that the trial court found the appellant indigent but declined to waive the appellate filing fee on the grounds that he had

not complied with RAP 15.2(c) that he had not demonstrated probable merit, the issues he would raise and the right to review.

This finding of indigency does not mean in all matters that a filing fee at the Supreme Court should be waived. Turning to RAP 15.2(a)(1), a specific list of the sorts of cases in which the Court would waive fees is listed. The matter in question involves a judgment for past due child support and there is no demonstration that the case falls under any of these categories which mandate a finding of indigency.

The judgment we obtained in superior court was forwarded to Montana where we believe a probate is pending and our effort was to finally after all these years collect child support from Mr. Case before the money he has inherited is disseminated to him; that is to attach it in the State of Montana. We provide the Court with the most recent ruling in that effort which has as its tone the exasperated nature of the court there in Montana as to the proclivity of the appellant here to file frivolous motions and other memoranda not recognized by court rule.

In short, we believe that the appellant is not indigent; he has never demonstrated that he does not have access to the money or

assets in Montana or cannot receive an advance from it somehow in order to pay filing fees or a transcript of the record below.

Instead he parses RAP 15.2 on page two of his motion for waiver of filing fee, quoting a portion of RAP 15.2(f), without ever answering our question as to whether his inheritance is available to him which would then allow the Court to make a determination as to whether his circumstances have improved.

Mr. Case also says at page three of his motion for waiver that a finding of indigency once necessarily means that the matter is not frivolous by implication. That does not necessarily follow and is flawed logic.

Secondly, under RAP 15.2(c), referencing "Other Cases", the party is required to demonstrate in the motion or supporting affidavit that the issues the party wants reviewed have probable merit and that there is a constitutional or statutory right to review. The appellant has addressed this in his Petition for Review and we will take that up in answer to that document.

Given the limited nature of the Court of Appeals waiver of the filing fee but no other costs, given the trial court's finding of no probable merit, given the intransigence this Court and the Montana court has experienced with Mr. Case and not just with respect to

disclosures as to his inheritance but also with respect to his incessant filing of memoranda without probable merit, the motion for waiver of filing fee should be denied.

Respectfully Submitted this 19 day of October, 2015

NEWTON KIGHT LLP

By:



Mark T. Patterson II, WSBA #13777  
Attorney for Respondent

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

*The Court of Appeals*  
of the  
*State of Washington*

DIVISION I  
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July 25, 2014

Richard A. Case  
DOC #896282  
Airway Heights Correction Ctr.  
P. O. Box 2049 / M-Unit  
Airway Heights, WA, 99001-2049  
(sent via U.S. mail)

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CASE #: 71605-1-I

In re Marriage of: Tina Case nka Mendoza, Resp. vs. Richard A. Case, App.

CASE #: 72191-7-1

In re Marriage of: Tina Case nka Mendoza, Resp. vs. Richard A. Case, App.

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on July 25, 2014:

**NOTATION RULING**

**In re Marriage of Case**

**No. 71605-1-I**

**No. 72191-7-I**

**July 25, 2014**

In No. 71605-1-I, appellant Richard Case filed a notice of appeal seeking review of a "February 4, 2014 trial court order awarding judgment in favor of [Tina Case f/k/a Rowley n/k/a Mendoza]. I will use the parties first names for clarity. No disrespect is intended. The superior court docket appears to show that the February 4, 2014 order denied reconsideration. Richard has not filed a copy of the underlying judgment, which apparently was entered on January 6, 2014.

On May 13, 2014, Richard also filed a notice of appeal seeking review of two orders entered on April 11, 2014: a trial court order denying Richard's motion to waive the filing fee; and a trial court order denying Richard's motion for revision of a superior court commissioner's ruling denying Richard's motion to vacate. Review in this matter has been assigned No. 72191-7-I.

To est: 7-28-14

Review of a trial court order denying findings of indigency is only by discretionary review. See RAP 15.2(h). Here the trial court found Richard indigent but declined to waive the appellate filing fee on the ground that Richard had not complied with RAP 15.2(c), i.e. he had not demonstrated probable merit – the issues he would raise and the right to review. Compliance with RAP 15.2(c) is required if Richard were seeking the expenditure of public funds for the appeal. But in this instance, Richard is seeking only waiver of the appellate filing fee. Review in No. 72191-7-1 is consolidated under No. 71605-1-1. The court's motion to dismiss set on August 1, 2014 is stricken. Based on his demonstrated current indigency, the filing fees in the consolidated appeals are waived.

There appear to be questions regarding the scope of review, but those remain for another day.

Therefore, it is

ORDERED that review in No. 72191-7-1 is consolidated under No. 71605-1; and it is

ORDERED that the filing fees in the consolidated appeals are waived; and it is

ORDERED that the court's motion set on August 1, 2014 is stricken.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

hek

12-7-15

RECEIVED

AUG 28 2015

CROWLEY FLECK PLLP

1 David M. Ortley  
2 District Judge, Department No. 4  
3 Flathead County Justice Center  
4 920 South Main, Suite 310  
5 Kalispell, MT 59901  
6 (406) 758-5906

ELEVENTH JUDICIAL DISTRICT COURT,  
FLATHEAD COUNTY

Tina A. Rowley,	Petitioner	Cause No. DV-14-015(D)
vs.		ORDER ON "RESPONDENT'S SECOND OBJECTION, W/ MOTION TO QUASH, VACATE & DISMISS"
Richard A. Case,	Respondent.	

12 This matter comes before the Court on "Respondent's Second Objection w/ Motion  
13 to Quash, Vacate & Dismiss," wherein Respondent Richard Case (Respondent) "moves  
14 the Court under § 25-9-503, MCA to quash the registration [of the foreign judgment by  
15 Petitioner Tina A. Rowley], vacate the foreign judgment and dismiss" the above-entitled  
16 action.

17 **BACKGROUND**

18 Petitioner Tina A. Rowley (Petitioner) was granted a judgment against  
19 Respondent, pursuant to that Findings and Order on Show Cause (the Order), dated  
20 January 02, 2014, entered by the Superior Court of the State of Washington, In and For  
21 Snohomish County, Case No. 85-3-02405-4.

22 On or about January 08, 2014, the Order was domesticated and docketed in the  
23 Montana Eleventh Judicial District Court, in the above-entitled action. On or about  
24 January 24, 2014, Petitioner filed a Notice of Filing Authenticated Foreign Judgment.  
25 On February 18, 2014, Respondent filed an Objection to Filing and Motion to Dismiss.  
26 On April 28, 2014, this Court issued an Order denying Respondent's Motion to Dismiss.

27 On May 05, 2014, Respondent filed the instant "objection" and "motion."  
28 Petitioner responded on June 04, 2014. On June 09, 2014, Respondent filed, in this

1 action, a form Notice of Appeal, dated June 05, 2014. This Court has not received any  
2 related Notice of Filing of Appeal from the Clerk of the Montana Supreme Court.

3 ANALYSIS AND RATIONALE

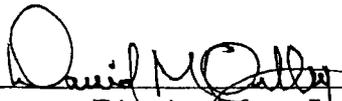
4 On April 28, 2014, this Court issued its Order denying "Respondent's Objection to  
5 Filing w/ Motion to Dismiss."

6 A "motion to dismiss" is not among the post-judgment motions contemplated under  
7 the Montana Rules of Civil Procedure. Further, the instant motion presents arguments  
8 Respondent raised in his "Respondent's Objection to Filing w/ Motion to Dismiss," –  
9 which the Court considered and rejected – and raises arguments that could have and  
10 should have been made in the prior motion. A motion that seeks to accomplish the same  
11 is substantively a motion for reconsideration. See *Nelson v. Driscoll*, 285 Mont. 355, 360-  
12 61, 948 P.2d 256, 259 (1997). The Montana Supreme Court has repeatedly explained  
13 that a "motion for reconsideration" does not exist under either the Montana Rules of Civil  
14 Procedure or the Montana Rules of Appellate Procedure. *Id.*, 285 Mont. at 258, 948 P.2d  
15 at 359. See also e.g., *Horton v. Horton*, 2007 MT 181, ¶ 14, 338 Mont. 236, 165 P.3d  
16 1076; *Haugen v. Blaine Bank of Mont.*, 279 Mont. 1, 11, 926 P.2d 1364, 1369-70 (1996).

17 CONCLUSION

18 As set forth above, "Respondent's Second Objection w/ Motion to Quash, Vacate &  
19 Dismiss" is substantively a motion for reconsideration and is procedurally improper.  
20 Therefore, it is ordered that "Respondent's Second Objection w/ Motion to Quash, Vacate  
21 & Dismiss" is denied.

22 August 21, 2015.

23  
24   
25 \_\_\_\_\_  
District Court Judge

26 c. Richard A. Case  
27 Eli J. Patten