IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN THE MATTER OF THE PETITION OF THE CITY OF GIG HARBOR, WASHINGTON, TO ACQUIRE BY CONDEMNATION CERTAIN REAL PROPERTY FOR PUBLIC USE AS AUTHORIZED BY ORDINANCE NO. 800 OF SAID CITY,: Petitioner below, v. MARIA L. WILKINSON, DARRELL P. RODMAN, as Trustee of the Living Trust created under Agreement dated October 14, 1988; "JOHN DOE" OR "JANE DOE" as trustee of the HELEN I. WILKINSON REVOCABLE TRUST, dated January 3, 1995; DARRELL DORMAN and JACK A. RODMAN, as Trustees of the LIVING TRUST OF HELEN I. WILKINSON, dated February 28, 1989; "JOHN DOE" OR "JANE DOE" as Trustee of the SONLIGHT TRUST; also all other persons or parties unknown claiming any rights, title, estate, lien or interest in the real estate described therein,	No. 41011-7-II UNPUBLISHED OPINION

Respondents below,

DARRELL RODMAN,

Appellant,

vs.

THOMAS DICKSON,

Respondent.

Johanson, J. — This case concerns the timeliness of a CR 60(b) motion. In 2004, Darrell Rodman failed to pay attorney fees and other professional fees incurred as a result of a condemnation action. His former attorney, Thomas Dickson, and other creditors obtained a single judgment for their fees. In 2007, Rodman approached several of the creditors, including Dickson, and reached settlement agreements with them. Rodman and Dickson dispute whether or not this agreement discharged all remaining debt obligations under the 2004 judgment. In January 2009, Dickson obtained a disbursement, from funds held in the court registry to pay Rodman's debts, to satisfy debt related to the 2004 judgment. Then, in September 2009, Dickson sought amendment of his portion of the 2004 judgment. Finally, in December 2009, Dickson obtained a writ of garnishment against some of Rodman's financial interests.

In June 2010, Rodman filed a CR 60(b) motion to disgorge the January 2009 disbursed funds, vacate the September 2009 amended judgment (2009 amended judgment), and vacate the December 2009 writ of garnishment. The trial court dismissed Rodman's motion as being untimely filed and he appealed. We reverse and remand.

FACTS

Thomas Dickson represented Rodman in a condemnation action brought by the City of Gig Harbor against Darrell Rodman and others. Rodman did not pay Dickson's attorney fees and other professional fees incurred during this litigation. In 2003, an attorney at Dickson's firm obtained an attorney's lien on Rodman's interest in a family estate.

In December 2004, five parties from the underlying condemnation action proceedings obtained a single judgment (2004 judgment) against Rodman for a total of $170,887.82 in principal and prejudgment interest. Dickson's portion of the 2004 judgment included $13,982.35 in principal, with a 12 percent interest rate on this amount, and $2,937.44 in prejudgment interest, for a total of $16,919.79 plus interest.

The 2004 judgment also awarded $49,202.00 to the creditors' attorneys Kinnon Williams and Catherine Clark. In February 2007, Clark's attorney signed a document on Clark's behalf titled "*partial satisfaction of judgment*" in which Clark, as assignee of Williams Clark, PSC, accepted an undisclosed amount of money as a "full satisfaction and settlement of the [2004] judgment amount owed" to them. Clerk's Papers (CP) at 7.[1] In March 2007, Rodman paid Dickson $15,000 and Dickson signed a document titled "Partial Satisfaction of Judgment" (March 2007 agreement). That document contained only one sentence:

> The undersigned, Thomas L. Dickson, the attorney in fact and the successor in interest to the Dickson Law Offices, PLLC., with complete and binding authority from his predecessor and client, *does hereby acknowledge full satisfaction and settlement of the judgment amount owed to the Dickson Law Offices,* PLLC., as the successor in interest, under judgment in the above entitled manner [sic], and by this document, further releases the Dickson Law Office, PLLC, portion of the judgment on record as judgment number 05-9-00030-0,

[1] Eventually, in March 2010, Clark filed a declaration clarifying that "irrespective of the title of the document including the word 'partial,' [it] was a full satisfaction and release." CP at 127.

which was entered in this cause on December 30, 2004.

CP at 193 (emphasis added). The signed agreement was notarized.[2]

In 2008, a personal representative of an estate that Rodman had an interest in requested a hearing to settle liens. Dickson filed a declaration including a calculation of the amount he believed Rodman still owed him (September 2008 declaration). Dickson's calculation applied $8,299.65 of the $15,000 he received from Rodman in March 2007 to costs associated with legal services separate from those accounted for in the 2004 judgment. Dickson's calculations applied the rest of the $6,700.35 from the March 2007 payment to Rodman's debt related to the 2004 judgment.[3] Ultimately, Dickson's calculations and declared expenses for collection attempts up to September 2008 produced a remaining debt obligation of $30,468.57.

On January 13, 2009, one of the other creditor's from the 2004 judgment filed a motion and declaration seeking disbursement of $94,827.51 to satisfy part of its portion of the 2004 judgment. This money had been placed in the Pierce County Superior Court registry, after a 2007 real estate transaction, for use to satisfy Rodman's legal debts. On January 22, Dickson filed an

[2] The record contains a variety of documents about the satisfaction of the debts of other creditors that are part of the 2004 judgment. These documents do not appear to be relevant to the issues on appeal. But to the extent these documents might be relevant to show when Rodman tried to satisfy his legal debts, they were similar in title and scope and they were signed by the other creditors between February and August 2007.

[3] Accordingly, Rodman's statement of the case is inaccurate when he states that, "At no time did Mr. Thomas Dickson inform the Court that on March 29, 2007, he already fully satisfied his portion of the original [2004] judgment (or even he was paid $15,000.00 toward [the 2004] judgment)." Br. of Appellant at 11 (capitalization and boldface omitted). In fact, Dickson's September 2008 declaration states, "I received a payment of $15,000 on Rodman's behalf in March 2007. I have not received any other payment since entry of the [2004] judgment [previously] mentioned." CP at 28.

objection to the disbursement and sought a proportional share of the available funds because his "[2004] judgment has not been fully satisfied." CP at 25. The next day, on January 23, the trial court ordered the disbursement of $13,638.11 to Dickson and the remaining funds to the other creditor. Rodman did not receive notice of Dickson's objection and, therefore, he had no knowledge of Dickson's involvement in the litigation before the trial court granted the disbursement of funds. *See* CP 247-48 (declaration of service). Dickson mailed notice of his objection and his request for part of any disbursed funds on January 22. The trial court granted the disbursement requests, with part dispersed to Dickson and the rest dispersed to the other creditor, the very next day.

On September 15, 2009, Dickson moved to amend the 2004 judgment, which he asserted remained "partially unsatisfied." CP at 89. Specifically, he requested inclusion of $7,466.50 in attorney fees related to time that his law firm spent to obtain the original 2004 judgment. Dickson claimed that he submitted this fee request to the lead attorneys, Williams and Clark, but they were inadvertently omitted from the original attorney fees request. Clark submitted a declaration corroborating Dickson's declaration. Dickson also requested inclusion of $13,147.00 in the judgment for fees incurred so far in attempting to collect on the 2004 judgment. Dickson sent Rodman a copy of the motion to amend on September 14, and Clark sent a copy of her declaration to Rodman on September 17.

On September 25, the trial court amended the original 2004 judgment only with regard to Dickson (2009 amended judgment). The trial court noted that of Dickson's original $16,919.79 (plus interest) award, Rodman owed a remaining balance of $3,489.98.[4] The trial court then

amended the 2004 judgment to include the $20,613.50 for the old attorney fees and recent collection endeavors. Under the 2009 amended judgment, Rodman owed Dickson $24,103.48 with a 12 percent interest rate. In December 2009, Dickson sought a garnishment of monies that the family estate owed Rodman.

In late 2009, the personal representative of the same estate previously described again sought to resolve any liens. Dickson again filed declarations calculating the amount of money he believed Rodman owed him. In March 2010, the trial court ruled that the attorney liens on the estate were not enforceable because they had not been adjudicated within the statute of limitations.[5] Dickson did not appeal this ruling and filed a new declaration with a revised calculation of Rodman's debt obligation, which omitted money attributed to the stricken lien.

On June 1, 2010, Rodman filed a CR 60(b) motion to disgorge the January 2009 distributed funds, vacate Dickson's September 2009 amended judgment, vacate the December 2009 writ of garnishment, and order the full satisfaction of Dickson's part of the 2004 judgment based on the March 2007 agreement. Specifically, Rodman cited CR 60(b)(1) "irregularity in

[4] The trial court's calculation of this amount is not clear based on the record on review. Under the most generous calculation favoring Rodman's position, if the full $15,000 that Rodman paid Dickson in March 2007 was applied to the 2004 judgment amount, then $1,919.79 would remain without accounting for any interest. A 12 percent interest rate from 2004 to 2007 on the original principal, plus interest on the remaining amount after March 2007 until September 2009, would have easily generated more than $2,470.17 (the difference between the trial court's calculated remaining balance and $1,919.79). On remand, if the resolution of the case requires it, the trial court should review its calculation.

[5] The trial court's March 2010 order and any written rulings are not in the record on review. This description of the ruling is contained in a declaration made by Dickson. It is unclear what specific attorney liens were invalidated and how the trial court's ruling specifically impacted Rodman's alleged continuing debt obligation.

obtaining a judgment or order," (4) "fraud," (5) "judgment is void," and (6) "judgment has been satisfied, released or discharged" as grounds for relief. The exhibits attached to his motion included (1) a declaration by Noel Shillito (Rodman's attorney who negotiated the 2007 agreements with the 2004 judgment's creditors) stating that documents were labeled "Partial Satisfaction[s]" to distinguish between the rights of the various creditors; (2) a copy of the March 2007 agreement signed by Dickson; and (3) copies of other creditors' signed agreements. CP 155-56. Dickson filed a declaration stating that he had not carefully reviewed the March 2007 agreement before signing because he relied on the document's title and his understanding of the negotiations that the $15,000 payment was a partial satisfaction of the debt.

On July 2, the trial court held a show cause hearing on Rodman's motion. At the hearing, Rodman argued that, by the plain language of the March 2007 agreement Dickson signed, Rodman had fully satisfied Dickson's portion of the 2004 judgment with the $15,000 payment. Also, Rodman argued that the reference to a "partial satisfaction" in the document's title was legally accurate because Dickson had only a fractional interest in the entire 2004 judgment. Report of Proceedings (RP) (July 2, 2010) at 3. Finally, Rodman argued that Dickson's subsequent 2009 amended judgment was obtained by fraud because he had failed to inform the court of the March 2007 agreement (satisfaction).

At the hearing, Dickson argued that Rodman had not filed his CR 60(b) motion within a reasonable time. Dickson contended that Rodman should have raised his satisfaction defense as early as September 2008 when Dickson filed the September 2008 declaration indicating that he did not think his part of the original judgment had been fully satisfied. On the merits of Rodman's

motion, Dickson argued that the March 2007 agreement was ambiguous because the title references a "partial satisfaction" whereas the text references a "full satisfaction." CP at 193 (some capitalization omitted). Thus, he believed that, because the document itself contained an ambiguity, the trial court had to evaluate the parties' intent of the document's effect. Based on his declarations, Dickson argued that the trial court could find that the parties intended the $15,000 payment as a partial satisfaction of the 2004 judgment's debt.

The trial court denied Rodman's motion in its entirety. Although the trial court included no explanation of its denial in the final written order, the trial court stated at the July 2 hearing, "It's clear in this case that this motion is untimely." RP (July 2, 2010) at 19. The trial court reasoned that Rodman filed his motion well after "it should have been brought."[6] RP (July 2, 2010) at 19. The trial court also stated that "the satisfaction was treated as partial by [Rodman and his] attorney, at least at the time." RP (July 2, 2010) at 19. Rodman timely appeals.

ANALYSIS

Rodman appeals the trial court's denial of his CR 60(b) motion with regard to (1) the January 2009 disbursement of funds to Dickson, (2) the September 2009 amended judgment of Rodman's debt to Dickson, (3) the December 2009 writ of garnishment, and (4) the trial court's refusal to order Rodman's debt to Dickson discharged by the March 2007 agreement. On review of an order that denies a CR 60(b) motion to vacate a judgment or order, only the propriety of the denial, not the impropriety of the underlying judgment or order, is before the reviewing court.

[6] The trial court reasoned that Rodman should have filed his motion as early as September 2008, after he took notice of Dickson's September 2008 declaration, or as late as immediately following the entry of the 2009 amended judgment.

Barr v. MacGugan, 119 Wn. App. 43, 48 n.2, 78 P.3d 660 (2003); *Bjurstrom v. Campbell*, 27 Wn. App. 449, 451 n.2, 618 P.2d 533 (1980); *see also In re Dependency of J.M.R.*, 160 Wn. App. 929, 938-39 n.4, 249 P.3d 193, *review granted*, 172 Wn.2d 1017 (2011). Accordingly, we do not evaluate the merits of Rodman's CR 60(b) motion. Because the trial court dismissed Rodman's motion on timeliness grounds, we limit our review to whether the trial court erred in its CR 60(b) timeliness analysis.

Timeliness of Rodman's CR 60(b) Motion

Rodman argues that filing his CR 60(b) motion eight months after the September 2009 amended judgment was reasonable. And, Rodman argues that he can always challenge an order that Dickson improperly obtained, based on the theory that Dickson had no legal authority to support subsequent court actions after he signed the March 2007 agreement discharging any debt obligations. Dickson argues that Rodman's delay in filing his motion eight months after the September 2009 amended judgment was not reasonable. Moreover, Dickson contends that the real time frame for evaluating the timeliness of the motion should stretch back even further, to Dickson's September 2008 declaration, in which he asserted that Rodman's debt had not been fully satisfied when asking the trial court to distribute some of the court registry funds to him. Because the trial court erred in its timeliness analysis, we reverse and remand for further consideration of Rodman's CR 60(b) motion.

We review a trial court's decision on a motion to vacate under CR 60(b) for an abuse of discretion. *Haller v. Wallis*, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978); *Mitchell v. Wash. State Inst. of Pub. Policy*, 153 Wn. App. 803, 821, 225 P.3d 280 (2009), *review denied*, 169 Wn.2d

1012, 236 P.3d 205 (2010). "An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *Mitchell*, 153 Wn. App. at 821-22 (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (internal quotation marks omitted).

CR 60(b) motions must be timely filed. Grounds for relief based on CR 60(b)(1) (irregularity in obtaining a judgment or order) must be filed within a reasonable time *and* not more than one year from the date of the challenged judgment, order, or proceeding. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 310, 989 P.2d 1144 (1999), *review denied*, 140 Wn.2d 1026 (2000). Grounds for relief based on CR 60(b)(4) "fraud," (5) "judgment is void," and (6) "judgment has been satisfied, released or discharged" must be filed within a reasonable time from the date of the challenged judgment, order, or proceeding. *Luckett*, 98 Wn. App. at 311.

What constitutes a "reasonable time" depends on the facts and circumstances of each case. *Luckett*, 98 Wn. App. at 312; *see In re Marriage of Thurston*, 92 Wn. App. 494, 500, 963 P.2d 947 (1998), *review denied*, 137 Wn.2d 1023 (1999). The critical period for determining whether a motion to vacate is brought within a reasonable time is the period between when the moving party became aware of the judgment and the filing of the motion. *Luckett*, 98 Wn. App. at 312. Considerations in determining a CR 60(b) motion's timeliness are prejudice to the nonmoving party and whether the moving party has good reasons for failing to take appropriate action

sooner. *Luckett*, 98 Wn. App. at 312-13 (citing *Thurston*, 92 Wn. App. at 500).

We reject Dickson's argument, and the trial court's analysis, that the period for evaluating the motion's timeliness includes events occurring *before* the trial court entered the amended judgment (i.e., before September 2009). At the July 2010 show cause hearing, the trial court stated that Rodman's motion "should have been brought" as early as September 2008 or as late as immediately following entry of the September 2009 amended judgment. RP (July 2, 2010) at 19. The September 2008 date presumably correlates with Dickson's September 2008 declaration where he asserted a right to some of the court registry monies, which were ultimately distributed in January 2009.

But CR 60(b)'s timeliness requirements are calculated from the date that the "judgment . . . was entered or taken." Therefore, the correct time frame for evaluating the timeliness of Rodman's motion begins with the entry of the challenged judgments or orders. Here, the trial court entered the disbursement order in January 2009, the September 2009 amended judgment, and the garnishment order in December 2009. Thus, the trial court should have evaluated whether the filing of a CR 60(b) motion was reasonable from the dates the trial court entered these orders.

In addition, the trial court's analysis is one statement, "It's clear in this case that this motion is untimely." RP (July 2, 2010) at 19. This conclusory statement does not elucidate much of the trial court's analysis. But given that Rodman's legal debts are complex, that the facts of this case span multiple years, and that Rodman has retained several different attorneys at different stages of these proceedings, it was not unreasonable for Rodman to need considerable time to

unravel the events leading up to the entry of the trial court's orders and judgment. Moreover, it is unclear from the record when Rodman had notice of various trial court proceedings, particularly the January 2009 order of disbursement entered the day after Dickson put a copy of his objection to Dickson's motion for disbursement in the mail. When we consider the relevant time periods involved, we conclude that a reasonable trial court would determine that Rodman timely filed his CR 60(b) motion, at least under CR 60(b)(4)-(6)'s "reasonable time" standard.

Trial Court's Challenged Finding

Although we do not review the merits of Rodman's CR 60(b) motion because the trial court based its dismissal on timeliness grounds, we briefly discuss one other issue. The parties argue extensively in their briefs about the trial court's factual finding related to the parties' intended impact of the March 2007 agreement. Specifically, Rodman asserts that the trial court erred when it found that the March 2007 agreement contained ambiguities and that, based on Dickson's declared understanding of the document, the satisfaction fully satisfied Rodman's original debt to Dickson. But the trial court never evaluated the merits of Rodman's motion because it dismissed the motion on timeliness grounds. The notice of appeal does not include any written findings of fact and the record contains no order of written findings.

But, to the extent the trial court did make an oral finding on the merits of Rodman's CR 60(b) motion at the show cause hearing, the parties mischaracterize the "finding." After dismissing Rodman's motion as untimely, the trial court stated:

> THE COURT: [A]nd further, the satisfaction was treated as partial by Mr. Rodman's attorney, at least at the time.
> [RODMAN'S CURRENT ATTORNEY]: Just to clarify. Your ruling is that the satisfaction was partial as intended by [Rodman's former attorney?].

THE COURT: And by Mr. Rodman.

RP (July 2, 2010) at 19-20. To the extent the trial court's statement is a finding, which we do not hold, the "finding" is that Rodman and his former attorney intended the March 2007 agreement to be a partial satisfaction of Dickson's portion of the 2004 judgment. Notably, though, this "finding" is not sustained by the record.

We review findings of fact for substantial evidence. *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 419, 128 P.3d 588 (2006). All of the evidence in the record, including multiple declarations and exhibits by other creditors signing similarly worded documents, would support a finding opposite to the trial court's—that Rodman and his attorney's intent for the March 2007 agreement with Dickson was a full satisfaction of the original debt. Dickson's declarations about *his* intent cannot support a finding about *Rodman's* and *Rodman's attorney's* intent. Thus, to the extent the trial court entered a "finding" about Rodman's and his attorney's intent of the March 2007 agreement, the trial court's "finding" is not supported by substantial evidence.

ATTORNEY FEES

Both parties seek attorney fees on appeal. Dickson does not prevail on appeal and we deny his attorney fee request. Rodman argues that an attorney fees award is warranted because Dickson's arguments are meritless or frivolous. We disagree that Dickson's arguments are meritless or frivolous and deny Rodman's attorneys fee requests.

We reverse the trial court's dismissal of Rodman's CR 60(b) motion on timeliness grounds and remand for further consideration in light of this opinion.

A majority of this panel has determined that this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Johanson, J.

We concur:

Hunt, P.J.

Van Deren, J.