

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	No. 64036-4-I
v.)	
)	DIVISION ONE
Alan Parmelee,)	
)	
Appellant,)	
)	
STATE OF WASHINGTON)	
DEPARTMENT OF CORRECTIONS,)	UNPUBLISHED OPINION
)	
Defendant.)	FILED: <u>August 16, 2010</u>

SPEARMAN, J. — In this garnishment action Alan Parmelee contends the trial court erroneously entered judgment against him. We reject Parmelee’s arguments and affirm.

FACTS

Alan Parmelee obtained a \$19,170 judgment against the State of Washington for violations of the Public Records Act. Since Parmelee is serving a prison term, the Department of Corrections holds the funds. In October 2007, the State of Washington initiated a garnishment action against the Department of Corrections and Parmelee to satisfy a portion of Parmelee’s legal financial

obligations, which include restitution for his arson convictions, recoupment of attorney fees paid by King County, and court costs owed to the King County Superior Court Clerk's Office. Parmelee filed a claim of alleged exemptions from garnishment. The State of Washington did not respond to the claim of exemptions within the time allowed by statute, and instead voluntarily dismissed the garnishment action.

In January 2008, the King County Superior Court Clerk and King County¹ filed an application for writ of garnishment. Parmelee again filed a claim of exemptions, but served it on the criminal division of the King County Prosecutor's Office instead of the civil division, which was the address shown on the writ. The claim was delivered to the civil division more than 28 days after the writ was issued. The trial court entered an order denying the claim of exemptions, finding that the claim was both untimely and meritless. Parmelee moved to reconsider, and the trial court denied the motion. Parmelee appealed those orders. That appeal, cause number 61796-6-1, was dismissed on February 9, 2009, after Parmelee failed to comply with a commissioner's ruling requiring him to file a motion for discretionary review within 45 days. The trial court entered a judgment of \$19,170 on the writ. Parmelee again moved for reconsideration, and the trial court denied the motion. In this appeal Parmelee challenges only two orders, the July 1, 2009 judgment, and the July 28, 2009 order denying his motion for reconsideration.

¹ For ease of future reference we refer to both parties as King County.

DISCUSSION

Entry of Judgment

Parmelee argues the trial court erred by entering judgment against him. The basis of this argument is Parmelee's contention that the trial court erred in finding his claim of exemptions untimely and without merit. Parmelee, however, failed to appeal from or assign error to the court's order denying his claim of exemptions. Where an appellant fails to assign error to an order or present argument in support of the assignments of error, this court will not consider the issue. Ang v. Martin, 154 Wn.2d 477, 487, 114 P.3d 637 (2005); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a). However, even if we were to consider the issue, and further assume that Parmelee's service was timely, the trial court also considered and rejected Parmelee's claimed exemption on the merits, finding they were baseless. To the extent Parmelee contends this decision was error, he has provided no argument or authority in support of this claim. RAP 10.3(a)(4). Accordingly, we find no error in the trial court's resolution of this issue..

Waiver of Objection to Claim of Exemptions

Parmelee next contends that King County "waived" its right to file an objection to Parmelee's claim of exemptions. The gravamen of Parmelee's argument is that, in the previous garnishment action filed by the State of Washington, an objection to Parmelee's claim of exemptions was not filed within seven days, as is required by RCW 6.27.160(2). Instead, the action was

dismissed more than seven days after the claim of exemptions was filed.

According to Parmelee, this means that “the State waived its right to collect.”

We disagree.

As discussed above, Parmelee waived this argument by failing to appeal from or assign error to the court’s order denying his claim of exemptions. Ang, 154 Wn.2d at 487; Cowiche Canyon, 118 Wn.2d at 809; RAP 10.3(a). But, even if we were to consider Parmelee’s arguments, they are without merit. Parmelee relies primarily on two cases, but neither supports his argument. In the first, Bour v. Johnson, 80 Wn. App. 643, 910 P.2d 548 (1996), the plaintiff obtained a default judgment in a garnishment case. Bour, 80 Wn. App. at 645. The garnishee defendant moved to vacate the default judgment on grounds that a federal statute exempted the funds from garnishment, and the trial court denied the motion. This court reached the merits of the alleged exemption, but also held that the garnishee defendant had waived the right to assert such a defense because the defendant had failed to answer the writ or claim any exemptions in the trial court. Bour, 80 Wn. App. at 650 (citing RAP 2.5(a)). Thus, Bour stands for the unremarkable proposition that issues raised for the first time on appeal will not be considered by this court. Contrary to Parmelee’s briefing, Bour says nothing about whether one party’s failure to respond to a claim of exemptions in one action can “waive” a response filed by another party in a different action.

Likewise, Camp Finance, LLC v. Brazington, 133 Wn. App. 156, 135 P.3d 946 (2006), is of no help to Parmelee. There, the plaintiff had failed to object to

a sheriff's sale as was required by the statute, and the trial court dismissed the case. This court affirmed dismissal. Camp Finance, 133 Wn. App. at 166.

Thus, in Camp Finance as in Bour, the defendant was not alleging that failure to act in a prior law suit waived defenses in a subsequent law suit brought by a different party.

In short, Parmelee has failed to provide any argument or authority supporting his argument of waiver.

Timeliness of Entry of Judgment

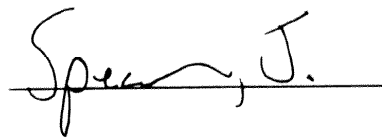
Parmelee next contends the trial court erred by entering judgment against him in an untimely manner. We disagree. RCW 6.27.310 requires that the trial court dismiss a writ of garnishment and discharge the garnishee if "one year has passed since the filing of the answer of the garnishee." Parmelee is correct that the July 1, 2009 judgment was filed more than a year after the DOC filed its response on January 24, 2008. Parmelee, however, ignores the rest of the statute, which provides that the "provision shall have no effect if the cause of action between plaintiff and defendant is pending on the trial calendar, or if any party files an affidavit that the action is still pending." RCW 6.27.310. Here, the action was still pending. Indeed, the judgment was not filed until 2009 largely because Parmelee unsuccessfully sought interlocutory review of the order denying his claim of exemptions. The trial court thus did not err in entering judgment against Parmelee.

Attorney Fees and Costs on Appeal

Both parties seek attorney fees and costs on appeal. After a hearing on a claim of exemptions in a garnishment action, “the court shall award costs to the prevailing party and may also award an attorney’s fee to the prevailing party if the court concludes that the exemption claim or the objection to the claim was not made in good faith.” RCW 6.27.160(2). Here, Parmelee is not entitled to costs or attorney fees. He is not the prevailing party, and he has not established that the State’s objection to his claimed exemptions was made in bad faith.

Respondent is the prevailing party and is entitled to costs on appeal. We decline to award attorney fees, however. The trial court considered respondent’s request for fees below, but did not find that Parmelee’s exemption claim was made in bad faith. Respondent did not appeal from this ruling. Accordingly, there is no basis upon which we may properly award attorney fees.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, reading "Schweitzer, J.", written over a horizontal line.

A handwritten signature in cursive script, reading "Cox, J.", written over a horizontal line.