BEFORE THE UNITED STATES SUPREME COURT

JOHN EARL ERICKSON AND
SHELLEY ANN ERICKSON,
Applicants-Prospective Petitioners,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY
AS TRUSTEE FOR LONG BEACH MORTGAGE LOAN
TRUST 2004-6,
Respondent.

EMERGENCY
APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI UNDER 28 U.S.C. SEC. 1257(a) AND SUPREME COURT RULES 13.3 FROM AUGUST 2, 2022 TO OCTOBER 1, 2022 DUE TO EXTRAORDINARY CIRCUMSTANCES PURSUANT TO SUPREME COURT RULE 13.5

TO: The Honorable Elena Kagan
Circuit Justice for the Ninth Circuit
1 First Street, NE
Washington, DC 20543

JURISDICTIONAL STATEMENT

John Earl Erickson and Shelley Ann Erickson ("Applicants" or "Prospective Petitioners") intend to file a Petition for Writ of Certiorari to the Supreme Court of the State of Washington under 28 U.S.C. sec. 1257(a) and Supreme Court Rule 13.3. This Application is brought under Rules 13.3 and Rule 22 of the Rules of the United States Supreme Court. Movant seeks an extension of time to file the Petition for Writ of

Certiorari (the "Petition") from August 2, 2022 to October 1, 2022 pursuant to Rule 13.5 of the Rules of the United States Supreme Court under extraordinary circumstances.

The Petition for Certiorari will seek to have this Court review the November 29, 2022 UNPUBLISHED Opinion of the Court of Appeals for the State of Washington (Exhibit A attached hereto) for which the Applicants sought discretionary review by Petition for Review to the Washington Supreme Court on December 28, 2021. On May 4, 2022, the Washington Supreme Court entered the Order denying the Petition for Review (Exhibit B attached hereto). Applicants, who were self-represented in the Petition for Review proceedings, did not receive the May 4, 2022 Order by mail.

An electronic copy of the May 4, 2022 Order was sent to Applicant Shelley Ann Erickson from the Supreme Court of Washington was sent by email to shelley206erickson@outlook.com but that email was not listed on as an email address on Applicants' Petition for Review. Applicant's primary email address was provided to the Court on the Petition cover sheet is Shelleystotalbodyworks@comcast.net. See Declaration of Shelley Ann Erickson, Exhibit 1: cover page for the Petition for Review. An alternative email at shelley206erickson@icloud.com was also listed on the cover page for the Petition for Review. A previous email address at to shelley206erickson@outlook.com was not provided to the Court because

that email had been hacked and had not been accessed by Ms. Erickson for after it was hacked. The last email to shelley206erickson@outlook.com was received on July 8, 2021. See Declaration of Shelley Ann Erickson. The last activity on to shelley206erickson@outlook.com was an attempted password change on July 10, 2021 after the hacking activity was discovered.

As of July 24, 2022, Ms. Erickson had become concerned that Applicants had not received a decision from the Washington Supreme Court in over six (6) months since the Respondent's Answer to the Petition for Review was filed on January 28, 2022. Applicant was planning to contact the Clerk of the Washington Supreme Court on Monday, July 25, 2022, she searched the hacked email account: shelley206erickson@outlook.com and, to her surprise, she found the May 4, 2022 email from the Washington Supreme Court in the junk folder. She never received an email from the Washington Supreme Court to her primary email account or the alternative email account listed on the cover page of the Petition for Review.

Ms. Erickson immediately forwarded the email she retrieved from the junk mail folder in the hacked email account to her primary email to preserve it because she recalled that junk mail files in outlook.com are ordinarily deleted after 30 days. She then forwarded the May 4, 2022 Order of the Washington Supreme Court to counsel Applicants intended to

retain, if necessary, to file the Petition for Writ of Certiorari to the United States Supreme Court (Exhibit 2 to the Declaration of Shelley Ann Erickson). The undersigned counsel replied to Ms. Erickson's email that same day to state that she had not previously received a copy of the May 4, 2022 email and that the Petition for Writ of Certiorari was due on August 2, 2022 (Exhibit 3 to the Declaration of Shelley Ann Erickson).

The January 4, 2022 letter from the Deputy Clerk of the Washington Supreme Court plainly states on the first page, just below the date of the letter, that it was **sent by email only** (Exhibit 3 to the Declaration of Shelley Ann Erickson). The January 4, 2022 letter from the Deputy Clerk of the Washington Supreme Court was not received by your Applicant, who did not expect to receive email correspondence at an email address that she did not provide to the Washington Supreme Court and at which she had not received email since the account was hacked on July 10, 2021. See Declaration of Shelley Ann Erickson. It is, of course, impossible to respond to an email sent to an email address which was not being used and had not been provided to the Court.

On May 4, 2022, the Washington Supreme Court entered the Order denying the Petition for Review (Exhibit B attached to the Application). Applicants, who were self-represented in the Washington Supreme Court discretionary review proceedings, did not receive the May 4, 2022 Order by mail. An electronic copy of the May 4, 2022 Order was sent to

Applicant Shelley Ann Erickson from the Supreme Court of Washington by email to shelley206erickson@outlook.com but that email was not listed on as an email address on Applicants' Petition for Review. Applicant's primary email address was provided to the Court on the Petition cover sheet is Shelleystotalbodyworks@comcast.net. See Declaration of Shelley Ann Erickson, Exhibit 1: cover page for the Petition for Review. An alternative email at shelley206erickson@icloud.com was also listed on the cover page for the Petition for Review. *Id.*

The previous email address: shelley206erickson@outlook.com was not provided to the Court because that email had been hacked and had not been accessed by Ms. Erickson for after it was hacked. The last email to shelley206erickson@outlook.com was received on July 8, 2021. The last activity on the hacked email account at shelley206erickson@outlook.com was an attempted password change on July 10, 2021, after the hacking activity was discovered.

Ms. Erickson immediately forwarded the email she retrieved from the junk mail folder in the hacked email account to her primary email to preserve it because she recalled that junk mail files in outlook.com are ordinarily deleted after 30 days. She then forwarded the May 4, 2022 Order of the Washington Supreme Court to counsel Applicants intended to retain, if necessary, to file the Petition for Writ of Certiorari to the United States Supreme Court (Exhibit 4 attached hereto). Counsel replied to Ms.

Erickson's email that same day to state that she had not previously received a copy of the May 4, 2022 email and that the Petition for Writ of Certiorari was due on August 2, 2022 (Exhibit 5 attached hereto).

Thereafter, at the direction of counsel, Applicant searched her junk mail folder on the hacked email account specifically for the January 4, 2022 email because counsel had retrieved a list of documents filed in the Petition for Review proceedings on July 27, 2022 (Exhibit 6 attached hereto). The January 4, 2022 email with the letter of the Deputy Clerk of the Washington Supreme Court attached was located in the junk mail folder of the hacked email account at shelley206erickson@outlook.com. Exhibit 2 and Exhibit 3 attached hereto.

Applicant Shelley Ann Erickson declares that if she had not been specifically directed to the Court's January 4, 2022 email in the junk mail folder by her counsel, she would never have known that it had been sent. She further declares that it is surprising that the email correspondence from the Supreme Court of Washington could be located in the junk mail folder of the hacked email account because junk mail was usually automatically deleted after 30 days.

The foregoing circumstances regarding the nonreceipt of emails and documents transmitted to Prospective Petitioners by the Washington Supreme Court at an email address which was not provided to the Washington Supreme Court in the Petition for Review proceedings are

extraordinary and outside the control of Prospective Petitioners. Prospective Petitioners did not even learn that the May 4, 2022 Order terminating review was entered by the Washington Supreme Court until July 24, 2022, less than 10 days before this Application for Extension of Time would ordinarily be expected to be filed.

It is not possible for the undersigned counsel to prepare the Petition for Writ of Certiorari by August 2, 2022. See Declaration of Counsel. The requested extension to October 1, 2022 provides Prospective Petitioner's counsel with 68 days from the date of discovery on July that 24, 2022 that the Washington Supreme Court had filed the May 4, 2022 Order Terminating Review (Exhibit A) to prepare and file Applicants' Petition for Writ of Certiorari.

CASE STATUS

A. Status of the proceedings

The status of the proceedings is set forth in the Jurisdictional Statement.

B. Constitutional Issue of Deprivation of Due Process in the Washington proceedings

The Prospective Petitioners were deprived of their Due Process Rights when the King County Superior Court ("trial court") converted Respondent's Motion to Dismiss under CR 12(b)(6) to a Motion for Summary Judgment approximately 30 minutes after hearing on the Motion to Dismiss commenced without prior notice and opportunity to prepare to

be heard. The Washington Court of Appeals refused to recognize Applicants' right to seek relief from a judgment allegedly procured by fraud on the court committed by counsel for the prevailing party upon false pleadings, supported by fabricated documents and authenticated by opposing counsel's perjured Declaration long permitted to be sought by Independent Action. The trial court refused to consider the Prospective Petitioner's Independent Action for relief from a judgment based on allegations of fraud on the court and the Court of Appeals affirmed the application of the doctrine of collateral estoppel. The identity of the party actually represented by opposing counsel was falsely represented to the court and the Prospective Petitioners. The proceedings below deprived the Applicants of their Due Process Rights.

C. Anticipated Questions for Review

Prospective Petitioners anticipate that the questions for review by this Court may include the following questions or similar questions with a brief statement of the legal authority in support of the anticipated questions are set forth below:

1. Does fraud on the court committed by officers of the Court violate civil litigants' Due Process Rights guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2. Did the Washington Court of Appeals violate the Applicants' Due Process Righs by applying the doctrine of collateral estoppel to an Independent Action seeking relief from judgment procured by fraud on the court?

3. Does the use of fabricated documents and perjured affidavits in

a civil action by counsel for a party and upon which a trial court relies violate Due Process Rights guaranteed by the Fourteenth Amendment to the Constitution of the United States?

4. Did the Washington Court of Appeals violate Petitioners' Due Process Rights when it refused to address the misrepresentation of the identity of the prevailing party?

D. The importance of the issues

The issues proposed to be addressed in Applicants' Petition for Writ of Certiorari are of extreme importance because the use of false pleadings, supported by forged documents and authenticated by perjured declarations and oral misrepresentations of opposing counsel in open court proceedings in civil actions will be shown to be an all too common practice in foreclosure actions throughout the nation. This Court has never been called upon to consider fraud on the court committed by the prevailing party in a civil action as violation of the losing party's Due Process Rights.

REASONS FOR GRANTING THE EXTENSION

I. Applicants' Prospective Petition will raise important issues for review.

The Fourteenth Amendment to the Constitution of the United States guarantees full and fair proceedings before an important liberty or property interest may be taken by judicial action. *Napue v. Illinois*, 360 U.S. 264 (1959); *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Board of Regents v. Roth*, 408 U. S. 564 (1972); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). Fraud on the court committed by officers of the

court, upon which a court relies in awarding judgment to the prevailing party, warrants relief. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). Fraud on the court committed by officers of the Court violates the Due Process Rights of the losing party. Cf. *McDonough v. Smith*, 139 S. Ct. 2149; 204 L. Ed. 2d 506 (2019).

II. If the extension is not granted, Applicants will lose their opportunity to have their Petition considered by the Court, but the opposing party will not suffer any loss if the extension is granted.

The requested extension of 68 days from the date of discovery that the May 4, 2022 Order Terminating Review had been entered to file the Petition unfortunately became necessary due to the fact that the Washington Supreme Court transmitted the May 4, 2022 Order Terminating Review to a hacked email address, which was not provided to the Court, when Applicants had provided current email addresses on the cover page of their Petition for Review. If the extension is not granted, Applicants will lose their right to file their Petition which is terminal. If the extension is granted, it is believed in good faith that the opposing party will suffer no loss whatsoever.

CONCLUSION

The Circuit Justice is asked to exercise her discretion to allow Applicants to file their Petition on or before October 1, 2022 in view of the extraordinary circumstances of Applicants not having received the Washington Supreme Court's May 4, 2022 Order Terminating Review

until July 24, 2022.

Dated at Madison, Wisconsin this 29th day of July, 2022.

Respectfully submitted,

/s/ Wendy Alison Nora

____

Wendy Alison Nora*
ACCESS LEGAL SERVICES, LLC**
Mailing Address: 200 East Verona Ave., #13
Verona, Wisconsin 53593
(612) 333-4144
accesslegalservices@gmail.com

*Admitted to practice before the United States Supreme Court only and not admitted to practice in any other jurisdiction
**Providing research, investigative, technical, filing and process services at the direction of qualified attorneys in all U.S. states exclusive of the State of Wisconsin

DECLARATION OF SERVICE

Wendy Alison Nora declares, under penalty of perjury of the United States pursuant to 28 U.S.C. sec. 1746, that I directed that service of the Application of Time to File Petition for Writ of Certiorari with Exhibits A and B, the Declaration of Shelley Ann Erickson with Exhibits 1-6 and Declaration of counsel to be served by UPS on counsel for Respondent on July 29, 2022 at her address of record in the proceedings as set forth below:

Attorney Vanessa Power
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, Washington 98101-4109

/s/ Wendy Alison Nora

____
Wendy Alison Nora

EXHIBIT A

FILED
11/29/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN EARL ERICKSON and SHELLEY ANN ERICKSON, individuals, Appellants, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR LONG BEACH MORTGAGE LOAN TRUST 2006-4 Respondent.	No. 81648-9-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, J. — John and Shelley Erickson appeal from a dismissal of their latest claims stemming from issues they have attempted to relitigate in various courts over many years. The Ericksons assert a number of claims under CR 60, including common-law fraud, fraud upon the court, lack of subject matter jurisdiction in a prior judgment, and breach of implied duty of good faith and fair dealing. Because the Ericksons seek affirmative relief not available under CR 60, seek relief more than one year after the judgment was entered, and bring claims barred by the doctrine of collateral estoppel, we affirm the trial court's dismissal.

FACTS[1]

John and Shelley Erickson used their home in Auburn, Washington, to secure a loan from Long Beach Mortgage Co. The loan was sold into a pool of loans held in trust, with Deutsche Bank National Trust (Deutsche Bank)[2] serving as trustee. Long Beach Mortgage Co. was part of Washington Mutual, Inc. until it failed.[3] J.P. Morgan Chase (J.P. Morgan) purchased Washington Mutual, Inc.'s assets.

In 2009, the Ericksons sought to modify their loan, but were rejected. The Ericksons brought a claim in King County Superior Court in August 2010, seeking relief. The suit was removed to federal court, which awarded summary judgment in favor of Deutsche Bank. In 2013, J.P. Morgan assigned its interest to Deutsche Bank, who filed suit to foreclose on the Erickson's home in 2014. The trial court awarded summary judgment in favor of Deutsche Bank, which this court affirmed on appeal.

In 2019, the Ericksons again filed suit in King County Superior Court. They sought relief under CR 60 for: (1) relief from the 2015 foreclosure judgment for fraud upon the court; (2) declaratory judgment that the 2015 judgment is void; (3) common-law fraud; (4) breach of the implied covenant of good faith and fair dealing; and (5) relief from the 2015 judgment based on lack of subject matter

[1] We adopt the facts as set out in the opinion from the direct appeal in this matter. Deutsche Bank Nat. Tr. Co. for Long Beach Mort. Loan Tr. 2006-4 v. Erickson, No.73833-0-I (Wash. Ct. App. Feb. 13, 2017) (unpublished) http://www.courts.wa.gov/opinions/pdf/738330.pdf.

[2] The Ericksons allege counsel for Respondent actually represent a separate entity and are "pretending to appear for Deutsche Bank." With no evidence to support this claim beyond the Ericksons' own accusations, we refer to the parties as the trial court did below.

[3] Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 2.

jurisdiction. On June 16, 2020, the trial court granted summary judgment in favor of Deutsche Bank, dismissing the Ericksons' claims with prejudice.

The Ericksons appeal.

ANALYSIS

I. Summary Judgment

We review an order of summary judgment de novo, "considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party." Singh v. Fed. Nat'l Mortg. Ass'n., 4 Wn. App. 2d 1, 5, 428 P.3d 373 (2018) (quoting Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015)).

A. Conversion to Summary Judgment from Motion to Dismiss

First, the Ericksons argue that the trial court deprived them of their due process rights by improperly converting Deutsche Bank's motion to dismiss into a motion for summary judgment during the hearing.

"Either party may submit documents not included in the original complaint for the court to consider in evaluating a CR 12(b)(6) motion." McAfee v. Select Portfolio Servicing, Inc., 193 Wn. App. 220, 226, 370 P.3d 25 (2016). However, where "a party submits evidence that was not in the original complaint, such submissions convert a motion to dismiss to a motion for summary judgment." Cedar W. Owners Ass'n v. Nationstar Mortg., LLC, 7 Wn. App. 2d 473, 482, 434 P.3d 554 (2019) (quoting McAfee, 193 Wn. App. at 226).

Here, the Ericksons filed 31 documents and four motions over the course of the 13 months between the denial of their motion for a preliminary injunction and the hearing on Deutsche Bank's motion to dismiss. Additionally, the Ericksons failed to object to the conversion of the motion to dismiss into a motion for summary judgment. Generally, this court "may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a), quoted in, Fireside Bank v. Askins, 195 Wn.2d 365, 374, 460 P.3d 157 (2020). Because the Ericksons' own submissions of significant evidence, beyond what was attached to their complaint, in response to Deutsche Bank's motion to dismiss prompted the conversion to a summary judgment proceeding, and because they failed to object below, the trial court did not err.

B. Merits of Summary Judgment Motion

Next, the Ericksons argue even if conversion into a motion for summary judgment was proper, the trial court erred as a matter of law in granting summary judgment in favor of Deutsche Bank on the merits.

"Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Singh, 4 Wn. App. 2d at 5. The court granted summary judgment on several bases: first, to the extent the complaint sought relief under CR 60, it was not filed timely; second, to the extent the complaint sought relief under CR 60, it sought affirmative relief not appropriate under the court rule; third, the issues raised are barred by collateral estoppel.

The Ericksons argue the trial court erred in treating their "Independent Action" as a CR 60(b) motion. The Ericksons misconstrue the record in two ways. First, the trial court referred to their action as seeking relief under CR 60 generally. Second, the Erickson's complaint does seek relief under CR 60(b) as well as CR 60(c), stating "All Judgments and Orders rendered in the Judicial Foreclosure Action . . . must be vacated under CR 60(b)(5)." The trial court did not err by referring to the Erickson's actions as seeking relief under CR 60, and did not err because the Ericksons did seek relief under CR 60(b) as well as CR 60(c).

1. Timeliness

Under CR 60(b), a motion must be made to vacate the judgment "not more than 1 year after the judgment, order, or proceeding was entered or taken." The Ericksons admit in their complaint that they sought relief from the judgment entered on August 27, 2015. Their CR 60 filing is dated May 13, 2019. Therefore, the trial court did not err in finding that, to the extent the Ericksons sought relief under CR 60(b)(5), the pleading was untimely.

2. Affirmative Relief under CR 60

In Fireside Bank, the Washington State Supreme Court discussed the relief available under CR 60. See 195 Wn.2d at 375–76. While the plaintiffs in Fireside Bank brought a motion under CR 60(b), the court discussed CR 60 broadly. The court held that "CR 60 is a limited procedural tool that governs relief from final judgment," balancing the principles of equity and finality. Id. at 375.

The rule is equitable in nature, "consistent with a court's 'inherent power to supervise the execution of judgments' that have prospective effect." Id. (quoting Pac. Sec. Cos. v. Tanglewood, Inc., 57 Wn. App. 817, 821, 790 P.2d 643 (1990)). However, "[n]o matter the circumstances," the only relief available "pursuant to CR 60 is relief 'from a final judgment, order, or proceeding,' not any entitlement to affirmative relief." Id. at 375–76 (alteration in original) (quoting CR 60(b)).

Even if the Ericksons only sought relief under CR 60(c), the language of subsection (c) mirrors this language. It states "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." CR 60(c) (emphasis added).

The trial court correctly determined that the Ericksons were not entitled to affirmative relief under CR 60.

3. Collateral Estoppel

Next, the Ericksons argue that the trial court erred in granting summary judgment on the basis of collateral estoppel. They argue that "independent actions for fraud on the court are not barred by the doctrines of res judicata or collateral estoppel."

The Ericksons are correct that independent actions under CR 60 are not always subject to res judicata if the claim meets a "demanding standard." See United States v. Beggerly, 524 U.S. 38, 46–47, 118 S. Ct. 1862, 141 L. Ed. 2d 32 (1998) (analyzing Federal Rule of Civil Procedure 60). However, the Erickson's claim was not dismissed based upon res judicata, but upon collateral estoppel. The Ericksons cite no authority for the contention that collateral

estoppel does not apply in an action under CR 60. They cite Corporate Loan & Security Co. v. Peterson, which stated after one year, "the only remedy available for the vacation of a judgment is an independent action in equity or a collateral attack." 64 Wn.2d 241, 244, 391 P.2d 199 (1964). However, the court in Corporate Loan & Security Co. does not hold collateral estoppel did not apply to these independent actions or collateral attacks.

Collateral estoppel prevents litigation of an issue if four elements are met. Hanson v. City of Snohomish, 121 Wn.2d 552, 561–62, 852 P.2d 295 (1993). The four elements are: (1) the issues presented in the previous and current adjudications are identical; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior adjudication; and (4) application of the doctrine does not work an injustice. Id.

Here, the Ericksons present identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I slip op. at 2. In 2017, this court held collateral estoppel precluded the Ericksons' 2014 claim. See Id. at 2–3. We held the Ericksons were precluded from arguing Deutsche Bank does not possess the original note and therefore cannot foreclose. Id. at 3. In the present case, the Ericksons argue Deutsche Bank does not possess the valid, original, note, and therefore did not have standing to foreclose on their home. These issues are identical.

Second, both prior adjudications ended on a valid, final judgment on the merits. "[A] final judgment 'includes any prior adjudication of an issue in another

action that is determined to be sufficiently firm to be accorded conclusive effect.'" In re Dependency of H.S., 188 Wn. App. 654, 661, 356 P.3d 202 (2015). "A grant of summary judgment constitutes a final judgment on the merits and has the same preclusive effect as a full trial of the issue." Brownfield v. City of Yakima, 178 Wn. App. 850, 870, 316 P.3d 520 (2014) (quoting Nat'l Union Fire Ins. Co. of Pittsburgh v. Nw. Youth Servs., 97 Wn. App. 226, 233, 983 P.2d 1144 (1999)). The federal court for the Western District of Washington entered summary judgment against the Ericksons, as did the King County Superior Court in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 3, 6.

Third, the Ericksons were parties to both the federal proceeding and the superior court proceeding. Id. at 6.

Finally, collateral estoppel will not work an injustice against the Ericksons. This is the third time the Ericksons have raised an identical claim. They have had more than a full and fair opportunity to litigate their case in both state and federal court. Each time, their claim has failed. During the hearing for a preliminary injunction, the Ericksons' counsel at the time was warned the court was concerned about whether the claim "is a proper use of your role as an officer of the court" and that the court would consider sanctions if counsel continued with the case. Collateral estoppel is designed to promote "judicial economy and serves to prevent inconvenience or harassment of parties. Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation." Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 306–

07, 96 P.3d 957 (2004). Application of collateral estoppel is appropriate here, where the Ericksons bring a third identical claim against the same party.

The Ericksons also allege that if this court holds their collateral attack is barred by collateral estoppel, every collateral attack would be barred. They incorrectly anticipate the basis for our decision. Our decision does not rest upon the procedural posture of the Ericksons' claim as a collateral attack on a judgment, but on its substance. The Ericksons allege fraud based on the same facts as their prior litigation, which was decided on the merits. Because of the substance of their claim, it is barred by collateral estoppel. The trial court did not err in so finding.

C. Consideration of Evidence

The Ericksons also allege summary judgment was improper because the superior court never viewed the exhibits and declarations they submitted. This is based on the trial court's statements that it "didn't see" the Paatalo and Nora declarations when seeking to retrieve them within the digital record system. However, the trial court's initial confusion seemed to be because the declarations had been filed early in the life of the case, stating "I didn't realize I was going that far back in the record to look for them." The declarations were attached to the Ericksons' May 13, 2019 complaint, filed long before the hearing on June 6, 2020. There is no reason to believe the trial court neglected to review the declarations in the 13 months between the filing of the complaint and the summary judgment hearing simply because it could not pull up the declarations during the hearing. As Deutsche Bank notes, the trial court made specific rulings with respect to both

declarations in its written order. The Ericksons have brought forth no evidence to suggest that the trial court did not review these declarations prior to making its decision.

Additionally, the court explicitly noted on the record all it had "received and reviewed," before asking the Ericksons if there was "anything else that you filed that I should be considering?"—to which Ms. Erickson responded "I believe that's it." Therefore, any objection is waived by the Ericksons' failure to raise it below. See Fireside Bank, 195 Wn.2d at 374.

The trial court properly ruled there were no genuine disputes of material facts, and Deustche Bank was entitled to judgment as a matter of law. We affirm the trial court's summary judgment award in favor of Deutsche Bank.

II. Evidentiary Determinations

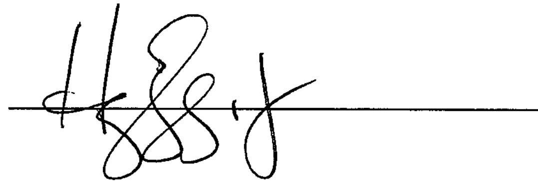
Finally, the Ericksons argue that the trial court erred by striking portions of the Nora declaration. We review evidentiary rulings related to a summary judgment motion de novo. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 196 Wn.2d 506, 514, 475 P.3d 164 (2020) (quoting Wilkinson v. Chiwawa Cmtys. Ass'n, 180 Wn.2d 241, 249, 327 P.3d 614 (2014)). This is "consistent with the requirement that the appellate court conduct the same inquiry as the trial court." Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

"[E]videntiary error is grounds for reversal only if it results in prejudice." Bengtsson v. Sunnyworld Int'l, Inc., 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020) (quoting City of Seattle v. Pearson, 192 Wn. App. 802, 817, 369 P.3d 194 (2016)). "An error is prejudicial if 'within reasonable probabilities, had the error not occurred,

the outcome of the trial would have been materially affected.'" Id. The Ericksons have failed to demonstrate a reasonable probability that the outcome would have been different had the Nora declaration not been struck. Based on the court's decisions regarding timeliness and unavailability of affirmative relief under CR 60, as well as its decision on the basis of collateral estoppel, it is unlikely the outcome would have been different had the Nora declaration been admitted. The trial court did not abuse its discretion in excluding the Nora declaration.

The Ericksons fail to demonstrate any reversible error by the trial court below. We affirm the trial court's award of summary judgment in favor of Deutsche Bank.

Affirmed.



WE CONCUR:

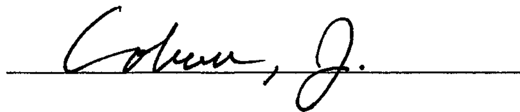


EXHIBIT B

FILED
SUPREME COURT
STATE OF WASHINGTON
5/4/2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

JOHN ERICKSON and SHELLEY ERICKSON, Petitioners, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, Respondent.	)	No. 100511-3 **O R D E R** Court of Appeals No. 81648-9-I

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis (Justice Stephens sat for Justice Montoya-Lewis), considered at its May 3, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 4th day of May, 2022.

For the Court

CHIEF JUSTICE