

No. 23-1136

2/6/24

IN THE SUPREME COURT OF THE UNITED STATES

P. KOICHI YAGI, Petitioner

v.

ESTATE OF ROBERT CHARLES CANNON, Respondent

On a Petition for a Writ of Certiorari to the
United States Supreme Court

Petition for a Writ of Certiorari

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Questions Presented

Prefatory Statement.

Primary Issue. The Court has held that a litigant's right to original venue is a basic principle of due process. The Court has further established that the right to original venue is a means to ensure an orderly assignment of venue without bias. The lower court's decision ignores and opposes the Court's foundational precedent. In doing so, the lower court disregards the Court's authority, the principle of stare decisis, and the right of due process.

Secondary Issue. The Ninth Circuit has held that where a litigant has cited no legal authority, none may be presumed. The tenth circuit has held that when a party has presented no reasoned argument in support of an argument, the argument is waived. The lower court decided an important federal question in a way that conflicted with the Ninth and Tenth Circuits. Petitioner seeks the Court's resolution between these conflicted rulings. The issue of legal authority is a critical federal issue with broad due process implications which the Court has not yet addressed.

The Questions Presented Are:

1. Whether the lower court erred by ignoring Petitioner's right under Court precedent to original venue.
2. Whether the Court erred by refusing to recuse at the trial level, and at the court of appeals level.

3. Whether the petitioner was denied due process when the lower court's decisions were based on no legal authorities nor on presented reasoned arguments in support of the decisions.

Parties to the Proceeding

The Parties to the proceeding are:

1. Petitioner Yagi was the Appellate in the court below.

2. Respondent is the Estate of Robert Charles Cannon which was the Appellee in the court below. Petitioner Mr. Yagi asserts that the lower court unlawfully allowed the appointment of Henry Cannon as personal representative of the estate by ignoring Mr. Yagi's rights to original venue and thus his right to due process.

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PETITION FOR A WRIT OF CERTIORARI

I. OPINIONS BELOW

The unreported decisions of the Washington State Supreme Court made on 11-8-2023 in Case No. 1020201 *Estate of Robert C. Cannon v. P. Koichi Yagi aka Peter Yagi*.

The unreported memorandum decision of the Washington State Court of Appeals, Division 1 made on 4-24-23 in Case. No. 1020201 *Estate of Robert C. Cannon v. P. Koichi Yagi aka Peter Yagi*.

II. JURISDICTION

The Washington State Supreme Court filed its decision on November 8, 2023. and entered an order granting attorney fees on December 14, 2023. The jurisdiction of the Court is invoked under 28 USC § 2101(c).

III. FEDERAL CONSTITUTIONAL PRINCIPLES AT ISSUE: DUE PROCESS UNDER FIFTH AND FOURTEENTH AMENDMENTS

For the reasons stated hereinbelow, the lower court's order dismissing petitioner Yagi's claims on defendants' motion for motions on the pleadings should be reversed.

IV. INTRODUCTION

This case presents three critical opportunities for the Court all of which have broad due process

implications:

- 1) To reaffirm the Court's position on a litigant's right to original venue to ensure right to due process;
- 2) To establish a needed procedure in the briefing of cases to ensure that decisions are made free of bias and in compliance with due process. The procedures developed are consistent with procedures developed in the ninth and tenth circuits, and
- 3) To firmly support these procedures with policies that ensure that judicial decision-making is based on logic and authority that is free of bias and conflicts of interest.

V. STATEMENT OF THE CASE

1. Yagi alleged that he filed a probate case in Thurston County on November 8, 2021. This testimony was never controverted by anyone. The alleged estate submitted documentation that Yagi applied for an order to have the filing date adjusted to November 8, but also submitted documentation demonstrating that if even if the motion had been denied, the latest the petition could have been filed was 8:00 am on November 10, 2021.
2. The probate action was filed by the alleged estate in King County on November 10, 2021, at 9:00 a.m. with Henry J. Cannon being appointed as the personal representative for his deceased brother's estate, the Estate of Robert C. Cannon (the alleged estate).
3. On March 3, 2022, Henry Cannon filed a TEDRA action, claiming to be the personal representative of the alleged estate. He filed for a hearing to be appointed as personal representative.

4. The primary asset of the disputed Estate is the decedents residence located at 2017 Edmonds Ave. NE, Renton, WA 98056.
5. The Administrator of the disputed Estate listed the decedent's home for sale and procured a buyer.
- 6.. Yagi has recorded a Deed of Trust on the property based upon a promissory note dated March 10, 2008. The promissory note and Deed of Trust provide that payment in full was due on September 10, 2008.
7. Yagi claims that the principle amount due is \$45,000.00 and the interest from September 11, 2008, through March 10, 2022 in the amount of 376,804.59, plus \$7500 for attorney collection costs.
8. Yagi claims in his declaration that several payments have been made, but the interest was paid first as stated in the promissory note.
9. On April 1, 2022, over the objection of Yagi, the King County Superior Court assumed venue and dismissed all claims that Yagi had against the disputed Estate.
10. On April 11, 2022, Yagi filed a timely motion for revision of the order based upon objections filed with the court.
11. On May 9, 2022, Judge Galvan denied the motion for the revision.
12. On May 10, 2022, the disputed estate brought a motion to release the Lis Pendens but noted it before Judge Galvan.
13. On May 26, 2022, Yagi filed a timely notice of appeal.
14. The motion to release the Lis Pendens was noted before the correct judge, which was the chief civil motions judge, for Friday, July1, 2022.

15. On June 15, 2022, a Motion for Stay was filed.
16. On June 22, 2022, the disputed Estate opposed the motion for a stay. The disputed Estate submitted declarations speculating that it would win attorney fees for the appeal, and he would lose 15% of the purchase price on appeal.
17. On July 1, 2022, Judge Ketu Shah issued an order granting the Motion for the Stay provided Yagi posted of a bond of \$237,000 by July 20, 2022., otherwise the Lis Pendens would be removed.
18. On 8-22-2022 a commissioner denied the motion to stay the removal of the lis pendens that had been filed in the court of appeals on 8-8-2022. On 11-16-2022, a panel of three judges denied the revision.
19. On 2-14-2022 Yagi moved to have the case transferred out of division 1 because the opposing counsel was a former clerk of division 1. Motion was denied on March 9, 2023.
20. Court of Appeals issued its decision on April 24, 2023. A motion to publish was denied on 8-23-23.
21. After a timely appeal to the Washington State Supreme Court it issued a decision denying discretionary appeal on 11-8-23. A motion for Attorney fees was granted on 12-14-2023.

VI. ARGUMENT

A. The state court decision flouts well established precedent by the Court concerning venue, inviting judges to decide cases on the basis political connections or unfair bias than on the actual merits of the case.

Yagi's right to proper venue is the sole and central issue of this case. Only if Yagi's right to proper jurisdiction is further denied does Yagi request a brief period to allow for discovery and other relief as requested in this venue as allowed by statute.

The right of access to the courts is protected by both the Fifth and Fourteenth Amendment due process clauses. *Kentucky Finance Corp. v. Paramount Auto Exchange Corp.* 262 US 544, (1923), *Boddie v Connecticut* 401 US 371, (1971), conformed to (DC Conn) 329 F Supp 844; *Cohen v Beneficial Industrial Loan Corp.* 337 US 541, (1949) *Stiltner v. Rhay* 322 F2d 314, cert den 376 US 920, , reh den 376 US 959.

There is a federal constitutional right to an impartial tribunal. *Neal v. Brim* 0 506 F2d 6; (1975), *Callhan v. Sanders*, 339 F Supp 814 (1971, MD Ala); *Bennett v. Cottingham* 290 F Supp 759, affd 393 US 317, (1968, ND Ala) *Hulett v Julian* 250 F Supp 208. (1966, MD Ala)

Yagi filed his probate action in Thurston County because he believed he could not get a fair trial in King County because the other party held a long-lasting appointment working with the judiciary in that venue. The counsel for the disputed estate further sought to deny Yagi's right to due process by unlawfully asking King County to intervene in the adjudication of Yagi's action in Thurston County, which is prohibited by law.

The King County Superior Court cannot lawfully control the action in Thurston County because one superior court exercise cannot overrule

jurisdiction of another superior court in Washington, where the action was filed first:

The rank and authority of the courts are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply." *Kline v. Burke Constr. Co.*, 260 US 226 - Supreme Court 1922. This rule announced *Kline id.* is well established under the principle of stare decisis and has never been reversed by any court.

B. The Washington States court's allowance of case being decided without reasonable argument, conflicts with the standard employed by the ninth and tenth Circuit Courts, and the Court's Fourth Amendment jurisprudence generally, on an important and recurring issue, which the Court has yet to address

Without citing to any authority, or presenting any reasoned argument, the counsel for the disputed estate, the King County Superior Court, and the first division court of appeals demanded exclusive jurisdiction and sanctioned Yagi for not agreeing to the unlawful usurpation of the proper venue. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193

(1962). In Washington, courts may assume that where no authority is cited, counsel has found none after searching. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

The Ninth Circuit Court of Appeals has made similar rulings: See *Acosta Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992); see also *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); *Meehan v. County of L.A.*, 856 F.2d 102, 105 n.1 (9th Cir. 1988).

In Washington, passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. *Holland v. City of Tacoma* 90 Wa. App. 533, 538, 954 P.2d 2d 290(1998). The tenth circuit has made a similar ruling; *Merryfield v. Jordan* 584 F. 3d 923, 929.

Here, Respondent Yagi in this action, and as Petitioner in the Thurston action, has established that the first suit was filed in Thurston and has plausibly alleged that he could not get a fair trial in King County. Under these circumstances, if the allegations are true, then the choice of Thurston County was by necessity and therefore the rule in *Kline supra* applies. If Henry Cannon wanted to have the case in Thurston dismissed, he should have brought his Tedra action in Thurston County or moved to have the action moved out of Thurston County.

The alleged estate and the court of appeals held that since a personal representative was appointed in King County, a Tedra action was initiated in the same county, pursuant RCW 11.96A.030, RCW 11.96.040, RCW 11.96A.060, RCW 11.48.010, RCW 11.48.030. Each of these statutes assume that Henry was lawfully appointed.

However, under the reasoning of *Kline supra*, the proper venue for making this appointment was Thurston County. If Henry Conner was not the personal representative, then he was only a claimant and had no standing to bring a Tedra action because he is not a party until he becomes a creditor. *Sloans v. Berry*, 358 P. 3d 426, 431. To become a creditor, a claimant must proceed under RCW 11.40.100 to obtain a judgment establishing the claim. It is only after a judgment in a civil action establishes the amount of an allowed claim that the claim becomes subject to the rules of estate administration. RCW 11.40.120; *Bailey v. Schramm*, 38 Wash.2d 719, 722, 231 P.2d 333 (1951).

The court of appeals apparently realized that the alleged estate loses under *Kline supra* for not only the original probate but the resulting TEDRA action as well, since both actions would interfere with the action in Thurston County. There is no other explanation as to why they would conclude on page 7 of their decision. "Here, the record establishes that the probate proceedings of the Estate were first commenced in King County." Such a finding not only was not supported by the findings of the trial court, had absolutely no support in the record. That the court of appeals would even attempt to rescue the case in favor of its ex-clerk in such a brazen fashion, only confirms that the court of appeals was biased against Yagi.

Since the King County Superior Court order was void, it is subject to collateral attack. *Picardo v. Peck*, 95 Wash. 474, 164 P. 65, *Cunnius v. Reading*

School District, 198 U.S. 458 (U.S. 05/29/1905) citing 1 Herman on Estoppel, 64.

C. Secondary and diversionary arguments and attempts to defraud require guidance from the Court to establish court policies based on merit rather than unfair bias.

Every argument presented by counsel for the disputed estate and ratified by the court of appeals is diversionary from the central legal issues of this case as cited above. Without acknowledging the validity of the disputed estate counsel's arguments, however, Yagi presents responses to those diversionary arguments hereunder.

1. There was no authority given from any jurisdiction which supported the court of appeals and the trial court's insistence that Yagi post an exorbitant bond based upon speculative and nebulous reasons as a precondition to avoid having the lis pendens canceled.

This ruling alone demonstrates the bias of the courts toward the trial court's ex-employee and appellate court's ex clerk. This ruling not only ignores the purpose of a lis pendens, but if allowed to stand, would make the law regarding lis pendens worthless in the State of Washington.

In *Richau v. Rayner*, 988 P. 2d 1052 - Wash: Court of Appeals, 3rd Div. 1999, the court had to decide whether generally, a party is liable for the filing of a lis pendens. It first analyzed section 2 of RCW 4.28.328 and concluded that, as a rule, a party is not

liable for the improper filing of a lis pendens in a real estate action:

Section (2) of that statute bases liability for filing improper lis pendens, when filed in an action other than a real property dispute. The state court read RCW 4.28.328 (based on what the state court believes to be its legislative history) as having been created primarily in response to "common law" pro se litigants who file lis pendens to harass public officials and others. *Richau id.* at 1055-1056

Here, as in *Richau, id.*, the lis pendens affected real estate so section 2 could not be used to impose liability because of a filing of a lis pendens. The state court of appeals in *Richau* at 1056 did consider section 3 of the lis pendens statute but only allowed liability in the situation where the party who filed the lis pendens did not offer substantial justification for the filing. In that case the court awarded damages because the party offered no justification for the filing.

Here, Yagi has not only offered substantial justification, he has also offered a winning justification for which the estate has offered no justification nor any authority in response. The alleged estate submitted no evidence that this transaction was on the scale of having been in response to "common law" pro se liens used to harass public officials. Yagi has put forth evidence that the case was litigated in the wrong county and furthermore put forth evidence that the statute of limitations had not run because of payments on the note he also offers further substantial justifications for this appeal in Part 3.

The Washington state courts have offered no hint as to what would happen if its unprecedented ruling is allowed to stand. What happens now to the unsuspecting purchaser, when title is reversed on appeal? Does he lose out simply because he wasn't provided notice? What happens to the profiteers of the sale? They get to keep their ill-gotten gains, simply because they didn't provide the purchaser with notice? How far is the Washington Supreme Court willing to go in order cover the corruption that now exists in King County and the Washington State Court of Appeals?

2. There is no factual basis for the claim that "Respondent (Yagi) claims that no monies were ever paid as he has claimed the entire principal sum."

In fact, in declaration he specifically presents evidence that payments were paid on several occasions based upon his own sworn testimony which went uncontroverted, in addition to further testimony and possibly documents that could have been offered by two additional parties. The court of appeals tried to sidestep the possibility of other witnesses because it claimed that Yagi never stated what the testimony would show.

However, Yagi presented a detailed offer of proof which stated that the witnesses were present when the moneys were paid and one witness would testify to the close relationship that the alleged estates proposed representative and various court officials including those in the ex parte department.

Counsel for the disputed estate engages in diversion and sophistry, falsely claiming that Respondent Yagi is not credible because he has "changed his story." The disputed estate counsel,

however, cites this alleged issue of credibility without basis and presumes Respondent Yagi changed his testimony in bad faith. Disputed estate counsel presumes intent and thus presumes bad faith. In the absence of discovery, and in the absence of Yagi's right under law to respond to such an allegation, bad faith may not be established. The court of appeals did not have adequate support for its finding that Yagi was not credible because he was never allowed to testify as required by due process.

Counsel for the disputed estate alleges that the principal amount of the subject note has not changed even though Yagi testifies that payments have in fact been made. Yagi references the language of the note which stipulates that the unpaid principal "shall accrue interest at a rate of 18% annually until paid," and thus requires annual compound interest.

There would have been no need for the word "annually" if it were simple interest. The disputed Estate's Counsel cites the fact that Respondent Yagi never changed the amount of the principal when he calculated the interest. The disputed estate counsel implies that there is something wrong with the date of the Decedent's initial payment in the Respondent Yagi's calculations. Respondent Yagi has established that the issue resulted from a typographical error which was corrected during the calculations. The payment originally referenced as having been made in 2000 rather than 2010 was obviously a typo, as the note originated in 2008. The precedents cited by the disputed estate's counsel are not applicable because the note itself describes the interest as accruing annually and not just requiring payments annually

as in *Cullen v. Whitman*, 33 Wash. 366, 74 P. 581. The note also specifically states that all payments go first to the interest, not to the principal. Thus, Yagi has not changed his testimony.

Since the decedent ratified the contract on several occasions when he made payments after the note became due, that restarted the statute of limitations. Thus, the statute of limitations never ran.

3. The trial court should have allowed discovery.

Henry Cannon demanded that the Court make all determinations at the most recent hearing on April 1st but did not cite to any authority as to how this may be lawfully done after Respondent Yagi's answer placed several factual issues in dispute. RCW 11.96A.100(8) indicates that once a party requests, as Yagi did, that the initial hearing not resolve issues of fact, then it should not be done at the initial hearing:

(8) Unless requested otherwise by a party in a petition or answer, the initial hearing must be a hearing on the merits to resolve all issues of fact and all issues of law;

RCW 11.96A.100(9) further states that any party may move for summary judgment but there is no indication that the alleged estate ever did that. The state court essentially made a decision as if the alleged estate's petition was a summary judgment motion without giving Yagi notice that a summary

judgment motion was being filed, thus depriving him of a due process right to respond.

Henry Cannon's own petition, in fact, clearly stipulated that several factual issues are in dispute, including A) whether respondent Yagi may receive a fair trial in King County; B) the amount of money owed on the subject note; C) if any monies are owed on the subject note; and D) whether payments have been made on the subject note. Henry's own crystal-clear, incontrovertible written admission concedes these are factual issues in dispute.

RCW 11.96A.115 grants Washington courts the power to allow for discovery once these issues have been raised. Counsel for the disputed estate cites to no authority that allows for a grant of summary judgment at the first hearing before this discovery has been allowed, especially when both the petition and the answer put several factual issues in dispute. *In Estate of Michael J. Fitzgerald v. Mountain-West Resources Inc*, 294 P. 3d 720, 725-726, 172 Wash. App. 437 addresses this issue and indicates that the standard for denying discovery on summary judgment is relevant. In such proceedings, where good reasons are established as to why the affidavit of a material witness cannot be timely obtained, the trial court must "accord the parties a reasonable opportunity to make the record complete before ruling on a motion for summary judgment." *Lewis v Bell*, 45 Wn.App. at 196, 724 P.2d 425.

By way of offer of proof, respondent Yagi stated that there are at least two witness that will provide relevant testimony: The first is Brenda Alston who had a long term committed intimate relationship (CIR) with the decedent of over

approximately 30 years of which included 20 years of caring for the decedent throughout his illness. The other witness is Isaac Palmer, the cosigner of the note. Respondent Yagi states that both Brenda Alston and Isaac Palmer were present when the payments were made.

Respondent Yagi stated that Brenda Alston will testify that the disputed estate administrator Henry Cannon had a working and personal relationships with many the judges in King County Superior Court for decades including roughly the past ten years of when he was retired. This includes several of the commissioners in the ex parte department. Ms. Alston would also testify that Henry Cannon was employed as a King County Court bailiff for several years.

The court of appeals brushed aside his request for discovery by ignoring Yagi's detailed offer of proof and then stated that Yagi never explained why he could not have obtained the declarations earlier. This ignores the fact that Yagi was not required to submit any declarations at all because the pleadings had put several factual issues in dispute.

4. No attorney fees should be allowed.

The alleged estate's counsel, in the record, only cited RCW 11.96A.250 as a basis for attorney fees. Conan's counsel's statutory reference is completely off-point, erroneous, irrelevant, and diversionary. Said statute is completely disconnected from this case, referencing procedures regarding the appointment of special representatives. No party has asked that an

attorney be appointed as special representative. The cited statute only becomes applicable once a special representative has been requested, which has no application to this case and is a nonsensical reference. Counsel cites to no authority of law as to how respondent Yagi can be ordered to pay for special representative when none has been requested nor would be applicable. The argument and reference is irrelevant as the price of tea in China, is knowingly fraudulent, and again factually establishes bad faith by counsel for the disputed estate. Inexplicably, and with no legal basis whatsoever, the superior court accepted this legally baseless and random argument, raising a fundamental issue as to whether the Court has read the briefing, relying on its own bias in favor of Henry Cannon as the basis for its ruling.

The court of appeals found that the alleged estate claimed the reference to the wrong statute was a scrivener's error, but there is nothing in the record that supports this assertion. Yagi has been denied due process on this because he was never given notice either to the scrivener's error argument, and the actual statute was never raised at the trial court level and only in a response brief in the court of appeals with no opportunity for rebuttal. Again, this is further evidence of the court of appeals bias in favor of its ex-clerk.

VII. CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the Court reverse the Washington State Supreme Court prior decision.