

IN THE SUPREME COURT OF THE STATE OF OREGON

SHRINERS HOSPITALS FOR CHILDREN, a Colorado nonprofit corporation;
and OREGON SCOTTISH RITE CLINICS, an Oregon nonprofit corporation,

Plaintiffs-Respondents,
Petitioners on Review,

v.

MACK A. WOODS,
Defendant-Appellant,
Respondent on Review,
and

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP, and TYLER SMITH &
ASSOCIATES, P.C.,

Respondents,
Respondents on Review.

Clackamas County Circuit Court
CV07110578

A155952

S064390

BRIEF ON THE MERITS OF PETITIONERS ON REVIEW

Review of the decision of the Court of Appeals
from the Judgment of the Circuit Court for Clackamas County;
Honorable Roderick Boutin, Judge on Order Denying Setting Aside;
Honorable Susie L. Norby, Judge on the Supplemental Judgments

Opinion Filed: August 3, 2016
Author of Opinion: Hon. Joel DeVore
Before: Ortega, P.J., DeVore, J., and Garrett, J.

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December, 2016

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PETITIONERS' BRIEF ON THE MERITS

I. INTRODUCTION

In this brief on the merits, petitioners on review, Shriners Hospitals for Children and Oregon Scottish Rite Clinics (hereinafter “Shriners”), respectfully ask this court to review and reverse the decision of the Court of Appeals in *Shriners Hospitals for Children v. Woods*, 280 Or App 127, 380 P3d 999 (2016). The Court of Appeals wrongly decided that Shriners’ judgment against respondent Woods in this matter was void or potentially void for failure of service, despite Woods having relied to his advantage upon the validity of the judgment against him in two collateral cases.

Shriners takes the position that judicial estoppel prevents a defendant from seeking to void a judgment for purported failure of service after defendant had previously benefitted by treating the judgment as valid and enforceable in a separate proceeding.

Shriners also takes the position that equitable estoppel precludes a judgment debtor from challenging the validity of a judgment after five years of representing that the debtor believed the judgment was valid in all dealings with the judgment creditor, when the judgment creditor forbore from collection efforts and otherwise acted in reliance on the debtor’s position that the judgment was valid.

II. QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

A. Questions Presented

(1) Is a party judicially estopped from challenging the validity of a judgment after relying on the judgment to support that party's position, such as proving damages, in a separate case?

(2) Is a judgment debtor equitably estopped from challenging the validity of a judgment after engaging in conduct or making representations that cause the judgment creditor to change positions in reliance on the judgment debtor's expressed acceptance of the validity of the judgment?

B. Proposed Rules of Law

(1) When a party represents to a court that a judgment against it is valid for purposes of proving a claim before that court, the party is judicially estopped from later challenging the validity of the judgment.

(2) When a judgment debtor expresses acceptance of the validity of a judgment and through that acceptance induces the judgment creditor to take some action detrimental to its own interests, the judgment debtor is equitably estopped from later challenging the validity of the judgment.

III. STATEMENT OF THE CASE

A. Nature of the Action and Relief Sought

This action is a civil action brought by Shriners against Woods to collect an unpaid note. Shriners obtained a judgment by default against Woods in

January of 2008. Woods did not challenge the default judgment in 2008. Since that time, Shriners chose to forebear collecting on the judgment while Woods resolved other litigation he was involved in – a divorce and a malpractice suit against his former attorney. In both of those cases, Woods used the judgment in this case to his advantage.

Now that Woods has resolved his other cases, Shriners seeks to enforce the 2008 default judgment against Woods and to garnish the proceeds of a successful malpractice claim against Woods' former attorney, in which Woods prevailed in part by using the judgment in this case as evidence of damages.

Woods now asserts, for the first time, that the default judgment was void for lack of proper service.

B. Statement of Material Facts

The facts material to the issues on appeal are primarily procedural, involving the entry of judgment in this case and Woods' subsequent use of the judgment in other cases over a five-year period prior to challenging the validity of the judgment in this case for failure of proper service.

In 2007, Shriners brought this action against Woods to collect an unpaid note. Shriners hired a process server, and based upon the process server's representations, filed an affidavit of service of summons and complaint that recited that Woods was personally served on November 28, 2007 at his residence in Canby. (SER-1). Woods did not appear, and the court entered an

order of default and general judgment against Woods on January 3, 2008. (SER-2). Woods did not at that time contest the validity of the judgment or claim that he had not been properly served. Plaintiffs' counsel prepared and served a Notice of Demand for Payment of Judgment and Plaintiffs' Interrogatories to Defendant, which Woods personally signed for on January 11, 2008. (SER-2).

At the time plaintiffs filed this action, Woods was involved in a long-running divorce case with his now-former wife, Woods. The twists and turns of *Woods and Woods*, Clackamas County Circuit Court Case No. DR0209717, are described by the Court of Appeals in part in *Woods and Woods*, 207 Or App 452, 142 P3d 1072 (2006) (when the divorce case itself was before the Court of Appeals) and in part in *Woods v. Hill*, 248 Or App 514, 516-19, 273 P3d 354 (2012) (the appeal of a malpractice claim against Woods' former attorney arising from the divorce). Of relevance to this case is that on August 30, 2006, the Court of Appeals in *Woods and Woods* reversed the trial court's denial of a request for a trial de novo. When Shriners brought this action, trial was pending in Woods' divorce case.

On January 25, 2008, plaintiffs agreed to postpone enforcement of the judgment, pending the trial judge's ruling in Woods' divorce case and in exchange for Woods' agreement not to transfer any assets. (SER-13).

Woods' divorce case was tried on January 8, 9 and 31, and February 1, 2008. Woods submitted the judgment in this case as evidence of a debt in his divorce case for purposes of property division. On July 29, 2008, the trial court at page 5 of the Supplemental Judgment Re: Property Division on Remand in *Woods and Woods* decreed:

The debt represented by the promissory note executed by Husband on December 7, 2001, now reduced to a general judgment in *Shriners Hospitals for Children et al v. Mack A. Woods*, Clackamas County Circuit Court Case No. CV07110578, including all accrued pre-and post-judgment interest and the award of attorney fees and costs in the money award in CV07110578, is deemed a marital debt and each party is responsible for one-half, to the extent any portion remains unpaid after applying so much of the net proceeds from sale of Tax Lot 2900 that are attributable to the value of that property as of June 1, 2004.

(See SER-42.) Woods' attorney approved the form of this judgment (SER-43), which the court entered on July 31, 2008 (see SER-39).

After his divorce was finalized in 2008, Woods sued his attorney, Gary Hill, for legal malpractice in the divorce case. *Mack Woods v. Gary Hill*, Clackamas County Circuit Court Case No. CV07040400, went before the Court of Appeals in 2010 (see the aforementioned *Woods v. Hill*, 248 Or App 514, 273 P3d 354 (2012)), and finally went to trial on March 26-29, 2013. Woods, through his attorney, marked and introduced as exhibits the entire court file from this case (see SER-37 and 38). Included as exhibits in that case were the Shriners General Judgment and Shriners Supplemental Judgment (SER-38, lines 58 and 59). In arguing before the court on March 29, 2013, Woods'

attorney stated they had in evidence “a Shriner’s judgment, that \$137,000, plus attorney’s fees, plus costs, plus interest accumulated over those years” as an element of Woods’ damages, and also calculated \$221,106.97 as damages from the Shriners judgment. (SER-48 and 49). Woods prevailed in his malpractice claim against Hill and received a jury award of \$180,840 and a total judgment of \$187,075.26. (ER-10).

Thus, after the judgment in this case was entered on January 3, 2008, Woods twice used the Shriners judgment, in two different cases. He used it for property division in his divorce in 2008, and he used it as an element of damages in his malpractice claim against his former attorney in 2013.

Furthermore, in May of 2008, Woods, acting through counsel, offered to give Shriners a security interest in Woods’ pending malpractice suit against Hill in exchange for Shriners’ agreement not to foreclose on property owned by Woods (SER-3, 14). In June of 2008, Woods personally responded to the “Notice of Demand for Payment of Judgment and Plaintiffs’ Interrogatories to Defendant” in this case (SER-20 through 26).

After Woods won his malpractice case, Shriners sought in April 2013 to garnish the award to collect on the 2008 default judgment in this case. For the first time, Woods claimed the Shriners judgment was void for failure of proper service and moved under ORCP 71 B(1)(d) to set aside the judgment. In October of 2013, the trial court denied Woods’ motion and ordered the

malpractice award be used to satisfy the judgment in this matter. Woods appealed, and the case was argued before the Court of Appeals on December 19, 2014. On appeal, Shriners argued that judicial estoppel and equitable estoppel prevented Woods from challenging the judgment.

On August 3, 2016, the Court of Appeals determined the trial court erred, vacated the trial court's order, and remanded the case for the trial court to determine whether Woods was duly served. With respect to equitable and judicial estoppel, the Court of Appeals stated that "estoppel does not operate to prevent a challenge to a void judgment."

IV. SUMMARY OF ARGUMENT

The Court of Appeals erred in ignoring the effects of both equitable and judicial estoppel and treating the question before the court as a question of whether a void judgment may be ratified. Estoppel does not ratify a void judgment – it binds a party to the party's prior position on a judgment's validity when certain conditions are met.

Judicial estoppel prevents a party from assuming a position in a judicial proceeding that is inconsistent with the position the party successfully asserted in an earlier proceeding. Judicial estoppel prevents Woods from treating the Shriners default judgment against him as a valid and enforceable judgment when it benefitted him to do so (in his divorce case for the purposes of property division, and then in a malpractice suit against his former attorney to prove

damages), and then claiming the judgment is void when voiding the judgment would benefit him (when Shriners seeks to enforce the judgment). To allow Woods to do so would defraud the court and bring about the perversion of judicial machinery that the doctrine of judicial estoppel is designed to prevent. Judicial estoppel binds Woods to his prior position that the judgment was valid and enforceable, and prevents him from taking a contrary position in this proceeding.

Equitable estoppel means that a person may be precluded by his acts, conduct, or silence when it was his duty to speak, from asserting a right which he otherwise would have had, if the other party was entitled to rely upon such conduct, acted thereupon and would be prejudiced if the doctrine of estoppel were not applied. All elements of equitable estoppel are present here. Woods, through his conduct, led Shriners to believe he accepted the validity of the judgment. Shriners acted and chose to refrain from enforcing the judgment in the good faith belief that Woods would pay it on the conclusion of his malpractice case. Equitable estoppel now prevents Woods from arguing the judgment is void, when he previously treated it as enforceable.

In addition, Woods' failure to challenge sufficiency of service at the earliest opportunity means that he has waived that defense, and thus has waived any challenge to jurisdiction based upon insufficient service.

V. ARGUMENT

For convenience, the Court of Appeals' analysis of the issues of estoppel in this case is reproduced here in its entirety:

Without reaching the merits of [the service] issue, Shriners argues that we should affirm the trial court on grounds that Woods is either judicially or equitably estopped from challenging the judgment. That is, according to Shriners, Woods should be estopped because Woods relied on Shriners' judgment as proof of damages in his malpractice case. We, however, have already determined that estoppel does not operate to prevent a challenge to a void judgment. As in this case, we observed in *Burt & Gordon v. Stein*, 128 Or App 350, 355, 876 P.2d 338, rev den, 320 Or 270 (1994):

“Plaintiff advances a strong argument that the facts, when viewed most favorably to plaintiff, support the position either that defendant waived his right or is estopped to challenge the judgment * * *. [H]owever, in view of our holding that the circuit court judgment is void, * * * they are not grounds on which one may be barred from collaterally attacking a void judgment.”

Likewise, we observed in [*Estate of Selmar A. Hutchins v. Fargo*, 188 Or App 462, 466, 72 P3d 638 (2003)] that the definition of a void judgment is one that is “absolutely null, without legal efficacy * * * and [is] incapable of confirmation, ratification or enforcement in any manner or to any degree.” 188 Or App at 469 (internal quotation marks omitted) (emphasis added). In other words, estoppel cannot lend validity to a judgment that has never existed.

(Opinion at 7-8; emphasis in original; bracketed material added for clarity). The Court of Appeals erred. Estoppel does not ratify or otherwise “lend validity” to a void judgment. Rather, estoppel prevents a party from changing the party's prior position on a judgment's validity or voidness.

A. Judicial Estoppel Prevents Challenge to Judgment

Where “a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase. *New Hampshire v. Maine*, 532 US 742, 749, 121 S Ct 1808, 149 L Ed 2d 968 (2001). Judicial estoppel is a common law equitable doctrine that precludes a party “from assuming a position in a judicial proceeding that is inconsistent with the position that the same party has successfully asserted in a different judicial proceeding.” *Hampton Tree Farms v. Jewett*, 320 Or 599, 609, 892 P2d 638 (1995). Judicial estoppel ensures that a party may not “have its cake and eat it too by clearing away their debts and letting them keep all net proceeds from a successful subsequent litigation.” *Caplener v. U.S. Nat. Bank of Oregon*, 317 Or 506, 516, 857 P2d 830 (1993). The doctrine of judicial estoppel specifically precludes Woods from relying on the validity of the judgment in his divorce and his malpractice suit against Hill and then – after he’s gotten all the legal use he can out of the judgment – turning around and attacking the judgment as void from the beginning. To do so would allow him to “have [his] cake and eat it too” and

is a “perversion of judicial machinery” of the very sort judicial estoppel is intended to prevent. *Hampton Tree Farms*, 320 Or at 609.

In *Hampton*, this court held that applicability of the doctrine of judicial estoppel involves three issues: (1) a benefit in the earlier proceeding; (2) different judicial proceedings, and (3) inconsistent positions. *Id.* at 611.

1. *Benefit in the Earlier Proceeding*

In the *Woods and Woods* divorce proceeding, the Supplemental Judgment Re: Property Division on Remand deemed the default judgment in this case to be a marital debt, for which each party was responsible for half, and directed proceeds from the sale of real property to repay the debt. (SER-42, ¶4). Woods successfully persuaded the court to incorporate the default judgment in this manner into the property division in his divorce, which affected the overall property division. He did not challenge the validity of the dissolution judgment at that time, or object on the grounds that the default judgment was void.

In his trial memorandum in *Woods v. Hill*, Woods stated at 3:14 - 4:1:

“The marital home was purchased and improved with money lent to the Plaintiff [Woods] by his spouse’s aunt, however the home held was solely in the name of the Plaintiff’s spouse. The loan was secured by a promissory note in the name of the Plaintiff only. Eventually the home was sold before the divorce appeal was final. The Plaintiff’s prior spouse retained all of the sale proceeds and the promissory note was never paid. The note was then assigned to the Shriners. Following non-payment of the note the Shriners filed suit against the Plaintiff, resulting in a substantial judgment against him. Plaintiff was left unable to satisfy this loan, or the subsequent judgment, because his spouse retained all proceeds from the sale. As a result of Defendant’s negligence in failing to file a notice of lis pendens, despite the Plaintiff’s repeated requests,

Plaintiff sustained damages exceeding \$350,000 from the loss of sales proceeds, which precluded his ability to satisfy the promissory note.” (SER-34-35, Plaintiff’s Hearing Memorandum quoting the trial memorandum).

Woods used the default judgment as evidence of damages in his malpractice case against Hill; he could prove damages only by representing to the court that the judgment was valid. Woods presented evidence of the judgment to the jury and was awarded damages in the sum of \$180,840.

2. *Different Judicial Proceedings*

There is no dispute that Woods, in making varying representations to trial courts in *Shriners v. Woods*, in *Woods and Woods*, and in *Woods v. Hill*, took a position on the validity of the default judgment in three different proceedings.

3. *Inconsistent Positions*

In the present case, Woods asserts that the judgment is void, meaning that he has no judgment against him. However, in *Woods v. Hill*, Woods specifically referenced the “debt to Venita Morrison” at paragraphs 14 and 15 of the Second Amended Complaint in his claim against Hill as a basis to claim he was damaged in the sum of \$250,000 (see SER-34, Plaintiff’s Hearing Memorandum quoting the complaint). As set forth herein, Woods argued that the debt had damaged him, which he could not have argued if he claimed the judgment was void. In his divorce case, he argued that the debt was a debt of the marriage and needed to be incorporated into the property division; again, he

could not have made that argument if he claimed the judgment was void.

In both his divorce case and his malpractice claim against his attorney, Woods used the default judgment in service of his own interests. In doing so, he necessarily represented to the court that the judgment was valid. In this case, Woods is “seeking to assert an inconsistent position [which] would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.” *New Hampshire v. Maine*, 532 US 742, 750-51, 121 S Ct 1808, 149 L. Ed.2d 068 (2001).

4. *Preserving the Integrity of the Judicial Process*

The purpose of judicial estoppel is “to protect the judiciary, as an institution, from the perversion of judicial machinery.” *Hampton Tree Farms*, 320 Or at 609. Judicial estoppel protects the integrity of the judicial process by “prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *New Hampshire v. Maine*, 532 US at 749-50.

As the Court of Appeals previously observed in *White v. Goth*, 182 Or App 138, 141, 47 P3d 550 (2002):

The doctrine has a twofold purpose: to preserve the sanctity of the oath and to protect the integrity of the judicial system by preventing inconsistent results in separate proceedings. The latter purpose has also been described as preventing litigants from “playing fast and loose” with the courts. Judicial estoppel may be applied when a litigant has benefited from a statement or position in an earlier proceeding that is inconsistent with that same litigant's statement or position in a later proceeding. Most courts require the statement or position to have been accepted and acted upon by the court in the earlier proceeding in order for the doctrine to apply.

In this case, the Court of Appeals ignored its own precedent, as well as the standards set forth by the Oregon Supreme Court, by allowing Woods to “play fast and loose” with Oregon’s courts by relying on the validity of a judgment for his own benefit in one case, then seeking to have the judgment declared void in another court after the judgment had served his purpose.

The Court of Appeals erroneously treated the central question in this matter as whether or not a court could ratify a void judgment. To that end, it relied on its own decision in *Estate of Selmar A. Hutchins v. Fargo*, 188 Or App 462, 469, 72 P3d 638 (2003) to state that “the definition of a void judgment is one that is ‘absolutely null, without legal efficacy * * * and [is] incapable of confirmation, ratification or enforcement in any manner or to any degree.’” (Opinion at 8, emphasis in original). However, judicial estoppel is not about whether or not a court may “ratify” a void judgment. Judicial estoppel is about preventing a party from defrauding the court by taking two inconsistent positions on the enforceability of a judgment in two different cases. Having already taken positions in two other cases that necessarily required the judgment was not void, and having benefitted from that position, Woods is judicially estopped from now taking the position that it is void. Judicial estoppel binds Woods to his prior position on the issue, and prevents him from taking a contrary position in this proceeding.

B. Equitable Estoppel Prevents Challenge to Judgment

Under the doctrine of equitable estoppel, a person may be precluded by his act, conduct, or silence when it was his duty to speak, from asserting a right which he otherwise would have had. The one invoking such doctrine must show that he was entitled to rely upon such conduct, action or silence, that he acted thereupon and would be prejudiced if the doctrine of estoppel were not applied. *Marshall v. Wilson*, 175 Or 506, 518, 154 P2d 547 (1944). "If one person makes a definite misrepresentation of fact to another person having reason to believe that the other will rely upon it and the other in reasonable reliance upon it does an act" then the first person is not entitled "to regain property or its value that the other acquired by the act, if the other in reliance upon the misrepresentation and before discovery of the truth has so changed his position that it would be unjust to deprive him of that which he thus acquired." *Heckler v. Community Health Servs.*, 467 US 51, 59, 104 S Ct 2218, 81 L. Ed. 2d 42 (1984).

To constitute estoppel by conduct there must be: "(1) a false representation; (2) it must be made with knowledge of the facts; (3) the other party must have been ignorant of the truth; (4) it must have been made with the intention that it should be acted upon by the other party; (5) the other party must have been induced to act upon it[.]'" *Day v. Advanced M & D Sales, Inc.*, 336 Or 511, 518-19, 86 P3d 678 (2004). The duty to speak arises when the party

against whom the estoppel is urged knew or should have known that his failure to speak would probably mislead the other party to their injury. *Seguin v. Maloney*, 198 Or 272, 287, 256 P2d 514 (1953).

1. *Woods Made False Representation*

In this case, the evidence shows that Woods knew of the judgment and behaved as though the judgment was valid in all of his dealings with Shriners for five years. This included his public conduct in treating the judgment as valid in court filings. It also included Woods' offer to give Shriners an interest in his malpractice suit against Hill, his personally answering interrogatories designed to help Shriners collect the judgment against him, and his agreement not to transfer assets in exchange for Shriners' forbearance in seeking to enforce the judgment.

2. *False Representation Made with Knowledge of the Facts*

Woods now claims he was not properly served in this matter. If indeed Woods was not served (a point that Shriners does not concede), he knew all along that he hadn't been served, but kept that knowledge to himself for five years even though he unquestionably knew of the suit against him and the resulting default judgment. Woods had numerous opportunities to challenge the judgment and did nothing for five years, while Shriners forbore enforcement and waited patiently for the resolution of his malpractice case.

3. *Shriners Was Ignorant of the Truth*

Shriners had received proof of service from the process server it had hired to serve Woods. Woods did not raise the issue of proper service for five years, but instead acted as though he had been properly served and cooperated. Shriners clearly had no knowledge that Woods would later challenge the sufficiency of service.

4. *Woods Intended Shriners to Act Upon Representation*

Woods' conduct demonstrates that Woods wanted Shriners to forbear enforcement of the judgment as long as Woods saw advantage in treating the judgment against him as valid. Woods agreed to not transfer assets if Shriners held off enforcing the judgment. (SER-13). Through counsel, he offered Shriners a security interest in the malpractice lawsuit against Hill. (SER-18).

5. *Shriners Was Induced to Act upon Representation*

The evidence below shows that in reliance on Woods' cooperation, Shriners chose to forbear any efforts to enforce the judgment, intending to seek recovery against the proceeds of Woods' malpractice claim. Woods induced Shriners through what Woods now claims is essentially a false representation on his part -- that Woods considered the judgment valid. If Woods intended to challenge the validity of the judgment, he should have done so within a reasonable time under the circumstances.

6. *Equitable Estoppel Does Not “Ratify” Judgment*

By conduct and silence, in standing by and making no objection to the judgment, in not notifying Shriners that they could not rely on the validity of the judgment, and in not challenging the judgment, Woods is now precluded from asserting a right which he might otherwise have had. *Hayward v. Morrison*, 194 Or 335, 350, 241 P2d 888 (1952).

This is not a matter of estoppel “ratifying” or otherwise rendering a void judgment valid. Equitable estoppel instead prevents a judgment debtor from arguing the judgment is void, after knowing about the judgment’s existence and treating the judgment as valid for five years in all of the debtor’s dealings with the judgment creditor. The evidence below shows that Woods indisputably knew of the judgment’s existence shortly after it was entered, but said and did nothing to challenge the judgment’s validity despite his purportedly having knowledge that he was not properly served.

Because Woods represented through silence and through conduct to Shriners that he considered the judgment against him to be valid for five years, he should be equitably estopped from taking a contrary position once he has obtained the resources to satisfy the judgment. This is particularly true when he relied on the judgment to secure the funds needed to pay it.

C. *Challenge to Sufficiency of Service was Waived*

In addition to being estopped, Woods waived any challenge to the

sufficiency of service of process by not raising it at the earliest opportunity.

Whether before or after judgment, a party waives all irregularities in the service of process when he appears generally and asks to plead and defend upon the merits of the case. *Coleman v. Meyer*, 261 Or 129, 131, 493 P2d 48 (1972). A defendant must attack personal jurisdiction at the first opportunity; failure to do so means the defendant has submitted to the court's jurisdiction. *Pacific Protective Wear Distributing Co., Inc. v. Banks*, 80 Or App 101, 105, 720 P2d 1320 (1986). The Washington Supreme Court has held that a defendant "cannot justly be allowed to lie in wait, masking by misnomer its contention that service of process has been insufficient, and then obtain a dismissal on that ground only after the statute of limitations has run, thereby depriving the plaintiff of the opportunity to cure the service defect." *Lybbert v. Grant County, State of Wash.*, 141 Wash 2d 29, 40, 1 P3d 1124 (2000).

Here, Woods had ample opportunity to timely challenge sufficiency of service. He did not do so at the first opportunity; therefore, he has waived any challenge to jurisdiction.

VI. CONCLUSION

The Court of Appeals decision, if left undisturbed, would allow judgment debtors to game the judicial system, treating a judgment as valid when it promotes their interests to do so, and then challenging the validity of the judgment years later once it no longer serves their purpose. A judgment creditor

should be able to rely on the finality of a court's judgment. If a judgment is indeed void, the party opposing the judgment should be required to say so in a timely manner, rather than trying to have it both ways as convenient.

This court should reverse the decision of the Court of Appeals and affirm the judgment of the Circuit Court. The court should remand this action back to the Clackamas County Circuit Court for further proceedings.

Respectfully submitted,

RICHARD L. GRANT, P.C.

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**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH
AND TYPE SIZE REQUIREMENTS**

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and ORAP 9.05(3)(a); and (2) the word count of this brief (as described in ORAP 9.05(3(a)) is 4,891 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Dated this 12th day of December, 2016.

RICHARD L. GRANT, P.C.

By: s/ Richard L. Grant
Richard L. Grant, OSB #832138
Attorney for Petitioners on Review

CERTIFICATE OF FILING

Pursuant to ORAP 1.35, I hereby certify that on the 12th day of December, 2016, I electronically filed the foregoing BRIEF ON THE MERITS OF PETITIONERS ON REVIEW with the State Court Administrator at:

State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301

CERTIFICATE OF SERVICE

I further certify that on the 12th day of December, 2016, the foregoing BRIEF ON THE MERITS OF PETITIONERS ON REVIEW was served on the following attorneys through the court's electronic filing system:

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