Supreme Court No. ~~101085-1~~

SUPREME COURT

OF THE STATE OF WASHINGTON

No. 830422

COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

Erica Kelly, Respondent

v.

Consuelo Rosales Solano, Appellant

APPELLANT'S PETITION FOR REVIEW

Gordon C. Klug, WSBA No. 21449
Narmina E. Sharifova, WSBA No. 57190
Attorneys for Appellant
Smith Freed Eberhard
1215 Fourth Avenue, Ste. 900
Seattle, WA 98161
Telephone: (206) 576-7575

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Secondary Sources

I. IDENTITY OF PETITIONER

Consuelo Rosales Solano, Appellant in the Court of Appeals, files this petition for review.

II. DECISION OF THE COURT OF APPEALS

Petitioner seeks review of the unpublished decision of the Court of Appeals, Division I, filed on June 13, 2022 in *Erica Kelly v. Consuelo Rosales Solano*, No. 83042-2-I. A copy of the Court of Appeals' unpublished opinion is attached hereto.

The Appendix to this petition includes copies of the following: 1) the Opinion (App. A); 2) RCW 4.84.030 (App. B); 3) RCW 4.84.010 (App. C); 4) Civil Rule 68 (App. D); 5) Federal Civil Rule 68 (App. E); 6) Civil Rule 41 (App. F); and 7) Civil Rule 54 (App. G).

III. ISSUES PRESENTED FOR REVIEW

1. Should the term "costs" under Civil Rule 68 be limited to statutory costs permitted under RCW 4.84.010 when the stated goal of Civil Rule 68 is to encourage settlement and reduce unnecessary litigation?
2. Whether limiting the term "costs" under Civil Rule 68 to statutory costs permitted under RCW 4.84.010 contributes to unnecessary litigation and puts Defendants at a disadvantage?

3. Shall Plaintiff Kelly be required to pay $93,464.35 in costs incurred by Defendant Solano after making two offers of judgment, if the final judgment against Defendant was less favorable to Plaintiff than the two offers of judgment?

IV. STATEMENT OF THE CASE

A. Facts

This case is a personal injury suit that arouse from a series of motor vehicle accidents in which Plaintiff claimed she was injured. CP. at 355-360.[1] The three accidents occurred on January 12, 2015, September 29, 2015, and February 9, 2016, involving Milton Nguyen, Consuelo Solano, and Joanne Brothers, respectively. *Id.*

In the January 2015 accident, Plaintiff was driving eastbound on 204th Street SW in Lynwood, Washington. She stopped her vehicle to make a left-hand turn into a driveway and was rear ended by Defendant Nguyen. *Id.* The impact caused the rear window of Plaintiff's Jeep to shatter, and she claimed her knees hit under the steering wheel. An officer responded to the scene and cited Defendant Nguyen for driving without a valid driver's license. Defendant Nguyen's vehicle had to be

[1] References to the "Clerk's Papers" (abbreviated "CP.") or the "Report of Proceedings" (abbreviated "RP") refer to Appellant's Designation of Records for Transmittal.

towed from the scene. Plaintiff's vehicle was drivable but was ultimately declared a total loss.

In the September 2015 accident, Plaintiff was a passenger in a vehicle driven by Alonso Hatcher, who was traveling southbound on Interstate 405 near milepost 26. *Id.* Mr. Hatcher stopped for traffic and was rear ended by Ms. Solano. *Id.* An officer responding to the scene cited Ms. Solano for driving too fast for conditions. *Id.* Neither vehicle suffered significant damage. Mr. Hatcher's vehicle required roughly $1,500 to repair scratches and chipping on the rear bottom bumper of his Jeep.

In the February 2016 accident, Plaintiff was driving a vehicle and stopped at a red light at S. 43rd Street and Talbot Road in Renton, Washington when she was rear-ended by Ms. Brothers. *Id.* No officers were called, and both vehicles drove away from the scene with minor damage.

Plaintiff claimed a variety of damages arising out of these accidents, including various physical injuries, general damages for pain, and suffering, and past and future lost income. *Id.* Specifically, she alleged that she sustained neck and back injuries, post-traumatic stress disorder, a traumatic brain injury, carpal tunnel syndrome,

depression and failure of her kidneys. She also claimed that all three of the accidents caused her injuries and, as such, all three defendants were jointly and severally liable for her damages.

During trial Defendant Solano was required to retain a significant number of experts to address the plaintiff's myriad of complaints, as well as an accident reconstructionist and biomechanical evaluator to prove what portion of the Plaintiff's damages were due to her accident vs. the other two collisions. The Plaintiff also had a history of prior accidents which were disabling to her. In order to break joint and several liability, Defendant Solano also had to retain experts to prove that a significant amount of the Plaintiff's claims of damages were not related to the second accident.

B. Procedural History of Action in Trial Court

Plaintiff brought the suit against Defendant Solano, the Nguyen Defendants (Mr. Nguyen and his parents), Joanne Brothers, and Hugo Mota Alvarez on December 6, 2016. *Id.* Plaintiff alleged negligence and negligent infliction of emotional distress against the drivers and alleged negligent entrustment against Mr. Nguyen's parents and Mr. Alvarez. *Id.* Ms. Brothers was dismissed pursuant to settlement. Additionally, the Parties stipulated to dismissal of all claims against Mr.

Alvarez and dismissal of the negligent infliction of emotional distress claims against all Defendants. The remaining claims were negligence against the drivers and negligent entrustment against Mr. Nguyen's parents.

Defendants Solano and Alvarez served an offer of judgment on the Plaintiff on August 21, 2020 in the amount of $15,000, and a second offer of judgment on September 2, 2020 in the amount of $25,000, which were never accepted. CP. at 339-342, 335-338. After these offers of judgment were served, and before trial began, the Plaintiff voluntarily dismissed all her claims against Defendant Alvarez.

On March 22, 2021, the jury found a total of $67, 200 in damages for Plaintiff and allocated those damages in the amount of 80% to the Nguyen Defendants and 20% to Defendant Solano. CP. at 353-354. The amount of damages the jury found were owed by Defendant Solano totaled $13,340 which was less than the $15,000 offer of judgment served on the Plaintiff pre-trial. *Id.*

On March 31, 2021, Plaintiff filed a Motion for Entry of Judgment on the Verdict and Award of Attorney Fees and Costs in the amount of $67, 200.00. CP. at 339-342. Defendant Solano filed an opposition to Plaintiff's motion. CP. at 305-329, 121-125, 161-185, 150-

160, 39-119. While Plaintiff requested a total judgment upon the verdict be awarded against both Defendants, Defendant Solano stated in her opposition that the judgment must be made in the amount that represented the Defendants' proportionate share of the total damages under RCW 4.22.070. *Id.* Accordingly, Defendant Solano requested the Court enter judgment in an amount that reflected the Defendants' proportionate shares of liability: $53,760 against the Nguyen Defendants and $13,440 against Defendant Solano. *Id.*

Meantime, Defendants Solano and Alvarez filed a Cost Bill pursuant to CR 68 on April 5, April 9, and May 5, 2021. CP. at 281-304, 220-244, 126-149.

Plaintiff responded to Defendant Solano's opposition claiming that Defendant Solano should not be awarded any of the costs outlined in her cost bill. CP. at 24-38. Plaintiff further stated that the court should grant Defendant Solano the following invoices that could be reasonably awarded under RCW 4.84.010: invoices from Washington Legal Messengers dated February 4, 2021 and for process service on Dr. Bays (total $50.00) and Dr. Shankland (total $104.00). *Id.*

Then, Defendant Solano filed a Cross Motion for Entry of Judgment against Plaintiff Kelly. CP. at 271-275, 245-269. In

Defendant Solano's motion for an award of her own costs per RCW 4.22.070 and CR 68, Defendant Solano explained that she was the prevailing party and, as such, was entitled to an award of her costs against Plaintiff Kelly as she did not improve her position over the offer of judgment served on her attorney on August 21, 2020 in the amount of $15,000, as well as a second offer of judgment served on her attorney on September 2, 2020. CP. at 339-342, 335-338. Since August 21, 2020 up through trial, Defendant Solano incurred $93,474.35 in costs which she is entitled to recoup per Court Rule. *Id.* Defendant Solano respectfully requested the court enter judgment against Plaintiff in favor of Defendant Solano in the amount of $80,034.35. This reflected the amount of the Plaintiff's damages the jury felt was proximately caused by the collision with Defendant Solano, minus $93,474.35 in post offer of judgment costs. She also requested the court not enter any judgment against Defendants Solano and Alvarez. *Id.*

In her response, Plaintiff claimed that Defendant Solano is only entitled to the costs available under RCW 4.84.010 and an award of $200.00 for statutory attorney fees. CP. 198-205, 186-197. In addition, Plaintiff disagreed that Defendants Nguyen should only be responsible for 80% of the filing fee and statutory attorney fee. *Id.*

Defendants Nguyen filed their response to both Plaintiff and Defendant Solano's motions. CP. at 206-209. Defendants Nguyen disagreed that they were responsible for the Plaintiff's entire cost bill. *Id.* They also stated that they should only be responsible for 80% of the remaining cost bill. *Id.*

During a May 7, 2021 proceeding on Plaintiff's Motion for Entry of Judgment on the Verdict and Award of Attorney Fees and Costs, Counsel for Defendant Solano stated that Defendant Solano beat the offer of judgment and, as prevailing party, is entitled to costs under CR 68. RP. at 3.

After the jury's verdict, Defendant Solano filed a motion with Snohomish County Superior Court Judge Anita Farris requesting $93,464.35 in costs and entry of judgment against Plaintiff. CP. at 39-40, 150-151, 161-163. Judge Farris only awarded Defendant Solano $354 in costs per CR 68. CP. at 22-23. On July 23, 2021, the Snohomish County Superior Court issued a Memorandum Decision/Order Regarding Entry of Judgment and Attorney Fees and Costs and on Defendant Solano's Cross Motion for Entry of Judgment and Costs. CP. at 22-23. The Court ordered entry of judgment against Defendant Solano in the amount of $13,086 plus statutorily allowed

interest. *Id.* The Court also awarded Defendant Solano $200 in statutory attorney fees, $50 for service of process on Dr. Bays, and $104 for service of process on Dr. Shankland, totaling $354 in costs. *Id.*

Plaintiff dismissed her claims against Defendants Nguyen on August 27, 2021 as they fully satisfied the jury verdict and cost bill. CP. at 20-21, 1-3. Then, on August 17, 2021, the Snohomish County Superior Court entered a final judgment in the amount of $13,340 against Defendant Solano and in favor of the Plaintiff. CP. at 16-19.

On August 19, 2021, Defendant Solano filed a Notice of Appeal seeking review by Division One of the Washington State Court of Appeals of the Snohomish County Superior Court's Memorandum Decision/Order Regarding Entry of Judgment, Attorney Fees and Cost Bill, entered on July 23, 2021, as well as the Snohomish County Superior Court's judgment dated August 17, 2021. CP. at 5-15.

C. Decision of the Division I Court of Appeals

On appeal, Defendant Solano argued: 1) the trial court erred in not awarding Defendant Solano full costs incurred after making two offers of judgment pursuant to Civil Rule 68; and 2) the trial court erred in granting an Order Entering Judgment on the Verdict and Award of

Attorney Fees and Costs against Defendant Solano dated August 17, 2021. Appellant's Corrected Brief (Appellant's Corrected Br.) at 2.

On June 13, 2022, Division I Court of Appeals affirmed the trial court's decision in favor of Respondent Kelly and declined to review Defendant Solano's arguments on appeal:

(1) Pursuant to *Sims v. Kiro, Inc.*, 20 Wn. App. 229, 238, 580 P.2d 642 (1978), absent a specific statutory or contractual provision authorizing an expanded cost, "costs" as defined under CR 68 are only those costs authorized by the statue, and the trial court does not have authority to award costs beyond those allowed under RCW 4.84.030 and RCW 4.84.080. App. B.

(2) Unlike CR 41(d), without additional statutory or contractual authority, case law limits the term "costs" under CR 68 to costs as defined in RCW 4.84.010. Hence, the language of CR 68 does not permit an expanded cost recovery.

(3) Unlike *Marek v. Chesny*, 473 U.S. 1, 2, 105 S. Ct. 3012 (1985), there was no specific statutory or contractual provision authorizing expanded cost recovery.

App. A. at 2-6.

Defendant Solano now seeks review by this Court, of all the issues raised in her opening brief to the Court of Appeals.

V. ARGUMENT

According to RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The second and forth provisions are present in the instant case. The Appellate Court's decision conflicts with at least two decisions of the Division II Court of Appeals, and this petition involves issues of substantial public importance.

A. The unpublished opinion of the Division 1 Court of Appeals conflicts with Washington Law that encourages settlement and prevents unnecessary litigation.

The Division I Court of Appeals' unpublished opinion affirms the trial court's decision to limit recoverable costs to only those costs

permitted under RCW 4.84.010. This decision conflicts with applicable case law that encourages settlement. This Court should review that holding because it conflicts with a published Court of Appeals, Division II's decision-*Wallace v. Kuehner*, 111 Wn. App. 809, 823, 46 P.3d 823 (2002). As Division II Court of Appeals ruled, the purpose of CR 68 is to encourage settlements and avoid lengthy litigation. *Wallace*, 111 Wn. App. 809 at 823, 46 P.3d 823.

Civil Rule 68 states:

> At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the defending party's offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. . . .

App. D **(emphasis added)**.

CR 68 does not, by its plain language, limit costs to those under RCW 4.84.010. App. C. Division 1 Court of Appeals further ruled that as "[Defendant]Solano provided no additional statutory or contractual authority allowing recovery of attorney fees, expert witness fees, or

other litigation expenses," the trial court did not abuse its discretion in awarding her only those costs permitted in RCW 4.84.010." App. A at 1, 4. However, the courts do not lack authority to interpret statutes. When interpreting a statute, courts "may look to a dictionary to determine the plain meaning of an undefined term." *Seattle Housing Authority v. City of Seattle*, 3 Wash.App.2d 532, 416 P.3d 1280 (2018). According to Merriam-Webster dictionary, the term "costs" is defined as "expenses incurred in a judicial process," especially "those given by the law or the court to the prevailing party against the losing party." Merriam-Webster Online Dictionary, (April 11, 2022, 3:11 a.m.), https://www.merriam-webster.com/dictionary/cost. This Court should accept review to correct the Division I Court of Appeals' error in limiting the term "costs" under CR 68 to those costs permitted under RCW 4.84.010.

B. Division I erroneously ruled that *Johnson v. Horizon Fisheries, LLC* is inapposite.

Division I ruled that "unlike CR 41(d), absent additional statutory or contractual authority, case law explicitly limits cost recovery under CR 68 to costs as defined in RCW 4.84.010." App. A at 5; App. F. That decision conflicts with Division II Court of Appeals'

published decision in *American Nat'l. Fire Ins. Co. v. B & L Trucking & Constr. Co.*, 82 Wn. App. 646, 669, 920 P.2d 192 (1996), stating that the trial court has wide discretion in awarding fees and costs. Even if previous courts have not found any basis for including expert witness fees or other costs as part of costs allowed under RCW 4.84.010, that does not preclude this Court from doing so out of equity concerns or other reasons. *Lay v. Hass*, 112 Wn. App. 818, 823, 51 P.3d 130 (2002) (finding that a Washington court may award a prevailing party its attorney fees and costs if recovery of such fees and costs are "provided by private agreement, statute, or a recognized ground of equity").

In her opening brief at 17-19, Defendant Solano requested the Court to follow the guidance of *Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 634, 636, 201 P.3d 346 (2009). In that case, the appellate considered an award by the trial court of costs pursuant to CR 41(d), which allows a defendant to recover "taxable costs" of an action previously dismissed where plaintiff commences an action based upon or including the same claim against the same defendant at a later time. *Johnson*, 148 Wn. App. 628 at 633-634, 201 P.3d 346; App. F. The trial court in the *Johnson* case awarded Defendant costs beyond those allowed under RCW 4.84.010. *Id.* at 628, 631. Plaintiff appealed. *Id.*

at 628. The appellate court affirmed the trial court award of costs on several grounds:

1) First, the Court noted that the text of CR 41(d) does not reference RCW 4.84.010, unlike CR 54(d), which specifically links awardable costs to RCW 4.84.010. *Id.* at 636. The Court found that under the rules of statutory construction, the drafters' decision to omit any reference to §4.84.010 in CR 41(d) established their intent not to limit the cost recovery authorized by Rule 41(d) to costs authorized by the statute. *Id.* at 634.

2) Second, the Court found that RCW 4.84.010 does not apply where a specific rule or statute expressly authorizes expanded cost recovery, citing *American Civil Liberties Union of Washington v. Blaine School District No. 503,* 95 Wn. App. 106, 115, 975 P.2d 536 (1999) (holding the trial court erred by limiting costs to those allowed by RCW 4.84.010 when the specific cost recovery rule applicable to that case allowed the award of "all costs") and *McConnell v. Mothers Work, Inc.*, 131 Wn. App. 525, 532, 128 P.3d 128 (2006) (rejecting the argument that RCW

4.84.010 limits assessable costs when the applicable cost recovery provision authorized costs "as may be allowed by the court"). *Id.*

3) Third, the court cited a sound policy reason for not limiting CR 41(d) costs to RCW 4.84.010. In response to Plaintiff's arguments that he should not have to pay for the costs of trial under RCW 4.84.010(5) and (7) where the case never went to trial, the court noted that CR 41 only applies where Plaintiff dismissed an action before trial. *Id.* at 636. Limiting CR 41(d) cost recovery to RCW 4.84 would significantly reduce cost recovery since a defendant cannot use evidence at a trial when there is no trial. *Id.* Thus, the court found that where a Plaintiff has chosen to prevent a trial when he takes a voluntary dismissal, he should be responsible for the costs the defendant reasonably incurred in anticipation of trial. *Id.*

The same reasoning should apply to CR 68. The rule never mentions RCW 4.84.010 (in contrast to CR 54(d)), and the rule states that "if the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after

the making of the offer." App. D and G. The phrase "the costs" can more reasonably be interpreted as meaning *all* costs actually incurred during litigation, as opposed to limiting it to statutory costs. This Court should accept review to correct the Court of Appeals, Division I's error in rejecting CR 41(d) costs to apply the same reasoning to CR 68.

C. This Court should provide a final and definitive ruling on interpretation of "costs" under Civil Rule 68.

Washington's CR 68 is "virtually identical" to Fed. R. Civ. P. 68. App. E; *Johnson v. Dep't of Transp.*, 177 Wn. App. 684, 697, 313 P.3d 1197 (2013) (citing *Lietz v. Hansen Law Offices, PSC*, 166 Wn. App. 571, 580, 271 P.3d 899 (2012); *Hodge v. Dev. Servs. of Am.*, 65 Wn. App. 576, 580, 828 P.2d 1175 (1992)). "In the absence of state authority it is appropriate to look to the federal interpretation of the equivalent rule." *Hodge*, 65 Wn. App. 576 at 580, 828 P.2d 1175.

As elaborated in Defendant's opening brief at 22, in the federal courts, the implicit rule has been that prevailing Defendants are entitled to costs under Rule 68. *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 349-350, 352, 367-368, 101 S. Ct. 1146 (1981); Robert L. Rothman, *Delta Air Lines, Inc. v. August*, 101 S. Ct. 1146 (1981), 9 Fla. St. U. L. Rev. 671 (1981).

The Division I Court of Appeals ruled that "unlike *Marek*, there was no specific statutory or contractual provision permitting an expanded cost recovery. Solano's argument is not compelling." App. A at 6. *Marek* expanded the power of Rule 68 of the Federal Rules of Civil Procedure. Appellant's Corrected Br. at 22-25. In *Marek*, the United States Supreme Court ruled that the term "costs" in Rule 68 was intended to refer to "all costs properly awardable under the relevant substantive statute or other authority." *Marek*, 473 U.S. 1 at 9, 10 105 S. Ct. 3012. The Court concluded that "all costs properly awardable in an action are to be considered within the scope of Rule 68 "costs." *Id.* (citing *Fulps v. Springfield, Tenn., 715 F.2d 1088, 1091-1095 (Sixth Cir. 1983)*; *Waters* v. *Heublein, Inc.*, 485 F.Supp. 110, 113-117 (N.D. Cal. 1979); *Scheriff* v. *Beck*, 452 F.Supp. 1254, 1259-1260 (Colo. 1978)). Therefore, absent contrary congressional expressions, where the underlying statute defined "costs" to include attorney's fees, such fees are to be "included as costs for purposes of Rule 68." *Id.*

Here, Defendant Solano does not request this Court for an award of attorney's fees. Defendant Solano respectfully asks the Court uphold the stated goals of CR 68, and award her requested costs.

D. The meaning of the term "costs" under Civil Rule 68 is a novel issue of substantial public interest.

Another reason that the decision should be reviewed is certainly a public interest issue. The Court has never interpreted the term "costs" under CR 68. The plain language of CR 68 states that Defendants are entitled to costs where their settlement offer exceeds the judgment. App. D. Since 1978, the Division 1 Court of Appeals and lower Courts have limited "costs" under CR 68 only to those costs prescribed by statute. *Jordan v. Berkey*, 26 Wn. App. 242, 245, 611 P.2d 1382 (1980) (citing *Sims*, 20 Wn. App. 229, 238, 580 P.2d 642)).

Since the *Sim's* case, generally, "costs" have been defined by the Courts to not include expert fees. 20 Wn. App. 229 at 238, 580 P.2d 642 (citing *Fiorito v. Goerig*, 27 Wn.2d 615, 619, 179 P.2d 316 (1947)).

With all respect and deference to the lower Court, upon a detailed reading of the *Sims* case, however, it appears that Court took an overly broad, and inappropriate, reading of the 1947 Washington Supreme Court case of *Fiorito v. Goerig*. Washington's offer of judgment rule was first adopted on July 1, 1967 and was amended effective April 28, 2015. This post-dated *Fiorito* by twenty years. The *Fiorito* case involved a dispute between parties regarding a joint venture and an accounting to recover certain sums due for services and machine rental.

The *Fiorito* Court never interpreted the term "costs" under CR

68 because the offer of judgment rule was not yet in existence in 1947. That Court went on to say, "[w]e have consistently followed the general rule concerning allowances of attorneys fees and other items of expense in preparation of trial such as accountants' fees, that such allowances will be allowed only in case of agreement between the parties, or by virtue of specific authority." *Id.* at 619-620 (emphasis added).

Since the *Fiorito* case, our Courts adopted the Washington Civil Rule system which included authority that, by a very plain reading of the rule, allows for a party to recoup, ". . . costs incurred after the making of the offer." App. D. This post *Fiorito* legal authority does not limit costs to only those charges prescribed by statute. Post CR 68 cases have held that Washington's offer of judgment rule's purpose is to encourage settlements and avoid lengthy litigation. *Wallace*, 111 Wn. App. 809 at 823, 46 P.3d 823 (2002) (emphasis added). The purpose of the rule is hamstrung when Court's inappropriately interpret "costs" under CR 68 to mean only a few hundred dollars as allowed by RCW 4.84 *et. seq.*

E. Division I's decision undercuts the central purpose of Civil Rule 68 by limiting "costs" under Civil Rule 68 to statutory costs.

The ultimate impact of the Division I Court of Appeals' unpublished opinion is that despite CR 68's purpose of encouraging settlement and reducing unnecessary litigation, the unpublished decision of Division I Court of Appeals does not uphold the stated goals of CR 68. CR 68 cannot effectively promote settlement and reduce unnecessary litigation if the Court refuses to uphold its main goals to effectuate its purpose. The Division I Court of Appeals' holding encourages lengthy litigation making Defendants bear the actual costs they incurred due to the fact that Plaintiffs refused to accept the offer of judgment and failed to obtain the final judgment greater than the two offers.

As discussed in Appellant's Brief at 25, although the *Marek* case expanded the scope of Rule 68, uncertainty will remain as to the amount of applicable costs when Plaintiffs obtain a final judgment less favorable than the offer they rejected. Agenda Book: Minutes of the October 2019 Meeting of the Advisory Comm. on Civil Rules at 292 (Oct. 29, 2019), https://www.uscourts.gov/sites/default/files/2019-10_civil_rules_agenda_book.pdf.

As Division I Court of Appeals acknowledged, "[i]n very limited situations, the prevailing party may be entitled to a broader range of

costs in addition to the costs specified in RCW 4.84.010." App. A at 3. Further, Division I Court of Appeals cited *American Civil Liberties Union of Washington*, 95 Wn. App. 106 at 116, 975 P.2d 536 (1999) ruling that "[t]he prevailing party is entitled to more than statutory costs as provided for in RCW 4.84.010, in civil rights actions, and under the model toxic control act." *Id.* at 3-4.

Limiting CR 68 "costs" to statutory costs defined under RCW 4.84.010 is an issue of substantial public interest. Here, Defendant Solano served two offers of judgment. CP. at 339-342, 335-338. Plaintiff Kelly obtained a final judgment less favorable than the two offers she rejected. Since August 21, 2020, Defendant Solano incurred $93,474.35 in costs which she is entitled to recoup per CR 68. CP. at 121-125,161-185, 150-160. By rejecting two offers and obtaining judgment less favorable than the two offers of judgment, Plaintiff Kelly increased litigation expenses that could have been avoided or reduced had she accepted one of the offers. By doing so, Plaintiff Kelly put Defendant Solano at a disadvantage. Plaintiff ignored Defendant Solano's offers of judgment realizing that, in Washington, CR 68 is a paper tiger with no teeth. Due to the costs of defending any case at trial, Plaintiffs inappropriately use the prospect of those costs as leverage

thus defeating the very purpose of CR 68; to encourage settlements. Plaintiff Kelly should bear the risk associated with rejecting two timely made offers of judgment in the form of paying the actual costs Defendant Solano incurred since the first offer was made.

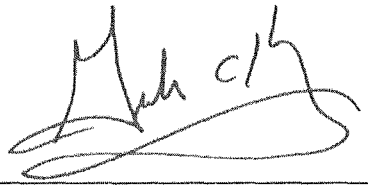
VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(2) and (4), and this Court should enter a ruling that Defendant Solano is entitled to all costs incurred after making the first offer of judgment.

I certify that this document was prepared using word processing software and contains 4684 words excluding the parts exempted by RAP 18.17.

Signed this 12th day of July, 2022.

Respectfully submitted



Gordon C. Klug, WSBA No. 21449
Narmina E. Sharifova, WSBA No. 57190
Attorneys for Appellant
Smith Freed Eberhard
1215 Fourth Avenue, Ste. 900
Seattle, WA 98161
Telephone: (206) 576-7575

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify under penalty of perjury and the laws of the State of Washington that on the below date, I caused a true and correct copy of this Appellant's Petition For Review to be delivered via the method indicated below to the following party(ies):

Attorney for Respondent
Alicia Kikuchi, WSBA #40613
Alicia Kikuchi Law Firm, PLLC
144 Railroad Avenue, Suite 220
Edmonds, WA 98020
P: (206) 249-7610
alicia.kikuchi@gmail.com

	Via Hand Delivery
X	Via U.S. Mail, postage prepaid First Class
	Via Facsimile
X	Via Electronic Mail

Co-Counsel for Respondent
Shannon M. Kilpatrick, WSBA #41495
Law Office of Shannon Kilpatrick
P.O. Box 219 – PMB 187
Duvall, WA 98019
P: (206) 457-3052
shannon@skilpatricklaw.com

	Via Hand Delivery
X	Via U.S. Mail, postage prepaid First Class
	Via Facsimile
X	Via Electronic Mail

Attorney for Defendants Nguyen
James N Mendel, WSBA #29223
Holt Woods & Scisciani LLP
701 Pike Street, Ste. 2200
Seattle, WA 98101
P: (206) 262-1200
jmendel@hwslawgroup.com

	Via Hand Delivery
X	Via U.S. Mail, postage prepaid First Class
	Via Facsimile
X	Via Electronic Mail

DATED this 12th day of July, 2022 at Seattle, Washington.

Wendy Larson, Legal Assistant

FILED
6/13/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ERICA KELLY, Respondent, v. CONSUELO ROSALES SOLANO, Appellant.	)	No. 83042-2-I UNPUBLISHED OPINION

VERELLEN, J. — Consuela Solano argues that the trial court incorrectly limited her cost recovery under CR 68 to only those costs permitted under RCW 4.84.010, the costs to the prevailing party statute. But because Solano provided no additional statutory or contractual authority allowing recovery of attorney fees, expert witness fees, or other litigation expenses, the court did not abuse its discretion.

We affirm.

FACTS

Between 2015 and 2016, Erica Kelly was in three different motor vehicle accidents.

In December 2016, Kelly sued Milton Nguyen, Consuela Solano, and Joanne Brothers for negligence and negligent infliction of emotional distress, alleging that Nguyen, Solano, and Brothers were jointly and severally liable for her injuries. Kelly

also sued Nguyen's parents and Hugo Alvarez for negligent entrustment.[1] Kelly and Brothers settled.

On August 21, 2020, Solano and Alvarez served an offer of judgment to Kelly for $15,000. That September, Solano and Alvarez served another offer of judgment to Kelly for $25,000. Kelly did not accept either offer. Kelly voluntarily dismissed her claim against Alvarez.

After trial, the jury awarded Kelly $67,200 in damages and apportioned 80 percent to Nguyen and his parents and 20 percent to Solano. Solano submitted a cost bill under CR 68, arguing that she was entitled to all costs she incurred after she submitted the first offer of judgment. Specifically, Solano requested reimbursement for court filing fees, process service fees, interpreter fees, legal messenger fees, copying fees, court reporter fees, deposition transcript fees, expert witness fees, and attorney fees.

The court found that Solano was only entitled to recover costs under RCW 4.84.010.[2] The court entered judgment against Solano for $13,340 and awarded Solano $200 in statutory attorney fees and $154 for service of process fees.

Solano appeals.

ANALYSIS

Solano argues that the trial court erred by limiting her cost recovery under CR 68 to only those costs specified in RCW 4.84.010. We review a trial court's

[1] Nguyen's parents and Alvarez owned the vehicles that Nguyen and Solano were driving when the accidents occurred.

[2] Clerk's Papers (CP) at 126-49.

award of costs for an abuse of discretion.[3] A trial court abuses its discretion when its decision is based upon untenable grounds or reasons.[4]

Under CR 68, "if the judgment finally obtained by the offeree is not more favorable than the offer," CR 68 allows the prevailing party to recover costs as provided in RCW 4.84.010.[5]

RCW 4.84.010, the costs to the prevailing party statute, generally allows the prevailing party to recover costs limited to filing fees, service of process fees, service of publication fees, some notary fees, statutory attorney and witness fees, and reasonable costs of the transcription of depositions used at trial or arbitration proceedings if they are introduced as evidence.[6] In very limited situations, the prevailing party may be entitled to a broader range of costs in addition to the costs specified in RCW 4.84.010 if a specific statutory authority or contractual provision authorizes an expanded cost recovery such as attorney fees, expert witness fees, or other litigation expenses. For example, Washington courts have "found that the prevailing party is entitled to more than statutory costs as provided for in

---

[3] Bevan v. Meyers, 183 Wn. App. 177, 188, 334 P.3d 39 (2014).

[4] Ethridge v. Hwang, 105 Wn. App. 447, 459, 20 P.3d 958 (2001).

[5] Tippie v. Delisle, 55 Wn. App. 417, 421, 777 P.2d 1080 (1989) ("[W]hen RCW 4.84.030 [the general statute entitling a prevailing party to costs] and CR 68 are read together, a defendant making an offer pursuant to CR 68 which is greater than the judgment finally obtained by the plaintiff, is entitled to costs and disbursements.")

[6] RCW 4.84.010(1)-(7); see, e.g., Estep v. Hamilton, 148 Wn. App. 246, 263, 201 P.3d 331 (2008) ("RCW 4.84.010 does not authorize expert witness fees in an award of costs to the prevailing party."); see also Jordan v. Berkey, 26 Wn. App. 242, 245, 611 P.2d 1382 (1980).

RCW 4.84.010, in civil rights actions and under the model toxic control act."[7]

Here, it is undisputed that Solano was the prevailing party under CR 68 and was entitled to recover costs from Kelly. And Solano did not provide any statutory authority or contractual provision authorizing her to recover expanded costs in the form of attorney fees, expert witness fees, or other litigation expenses. Therefore, the trial court did not abuse its discretion in limiting Solano's recovery to the costs specified in RCW 4.84.010.

Solano's arguments advocating for this court to expand CR 68 are not persuasive.

First, Solano argues that the trial court miscalculated her costs by relying on this court's decision in Sims v. KIRO Inc.,[8] which, according to Solano, misinterpreted our Supreme Court's decision in Fiorito v. Goerig.[9] Solano's argument is based upon her faulty premise that Fiorito cannot control the outcome here because that case was decided decades before CR 68 was enacted. In interpreting our Supreme Court's decision in Fiorito, this court in Sims held that absent a specific statutory or contractual provision permitting

---

[7] Am. Civil Liberties Union of Washington v. Blaine Sch. Dist. No. 503, 95 Wn. App. 106, 116, 975 P.2d 536 (1999); see also Hume v. Am. Disposal Co., 124 Wn.2d 656, 674, 880 P.2d 988 (1994) (noting that "[c]osts have historically been very narrowly defined, and RCW 4.84.010 limits cost recovery to a narrow range of expenses such as filing fees, witness fees, and service of process expenses. Civil rights cases stand as an exception to this rule because the Legislature has expressly authorized recovery of actual costs of the litigation, including expert witness fees, facsimile and copying expenses, costs of depositions, and other out-of-pocket expenses") (citing Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 743, 733 P.2d 208 (1987)).

[8] 20 Wn. App. 229, 580 P.2d 642 (1978).

[9] 27 Wn.2d 615, 179 P.2d 316 (1947).

recovery of attorney fees, expert witness fees, or other litigation expenses as costs to the prevailing party, the trial court does not "have authority to include expenses in such an award beyond the statutory costs allowable under RCW 4.84.030 [the general statute entitling a prevailing party to costs] and 4.84.080 [the statutory attorney fee provision]."[10] We agree with the holding in Sims.

Solano also argues that this court should "follow the guidance" of Johnson v. Horizon Fisheries, LLC.[11] In Johnson, the appellate court held that costs under CR 41(d) are not limited to RCW 4.84.010.[12] The court reasoned that CR 41(d) does not explicitly limit recovery to RCW 4.84.010, the language of CR 41(d) authorizes a more expansive cost recovery, and CR 41(d) applies only before trial, so restricting costs to RCW 4.84.010 would substantially limit the prevailing party's recovery.[13] But unlike CR 41(d), absent additional statutory or contractual authority, case law explicitly limits cost recovery under CR 68 to costs as defined in RCW 4.84.010, the language of CR 68 does not permit a more expansive cost recovery, and CR 68 applies after trial. Johnson is inapposite.

Finally, Solano contends that CR 68 is "virtually identical" to the federal rule and should be expanded to include costs in addition to those prescribed by

---

[10] Sims, 20 Wn. App. at 238; see also Fiorito, 27 Wn.2d at 619.

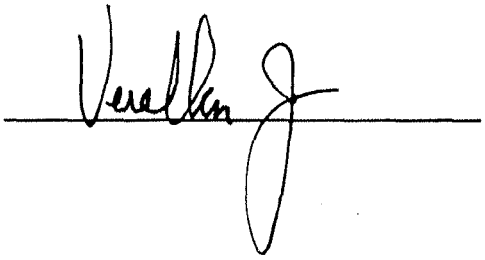
[11] Appellant's Corrected Br. at 16-17 (citing Johnson v. Horizon Fisheries, LLC, 148 Wn. App. 628, 201 P.3d 346 (2009)).

[12] Johnson, 148 Wn. App. at 632-33.

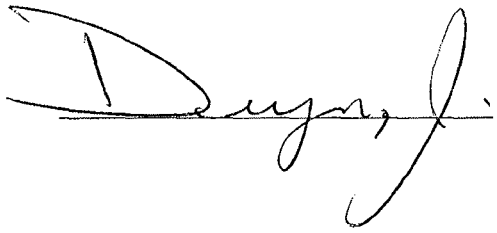
[13] Id. at 633-35.

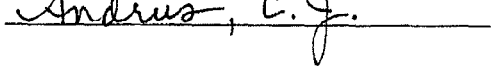
RCW 4.84.010.[14] In support of her argument, Solano cites to Marek v. Chesny.[15] In Marek, the plaintiff filed a Civil Rights Act claim under section 1983 which explicitly permits "the court, in its discretion [to] allow the prevailing party, other than the United States" to recover reasonable attorney fees as costs.[16] But here, unlike Marek, there was no specific statutory or contractual provision permitting an expanded cost recovery. Solano's argument is not compelling.[17]

We affirm.



WE CONCUR:





[14] Appellant's Corrected Br. at 21.

[15] 473 U.S. 1, 105 S. Ct. 3012, 87 L. Ed. 2d 1 (1985).

[16] Id. at 2; see also Hume, 124 Wn.2d at 674.

[17] Solano further argues that this court should expand the cost provision in CR 68 for public policy reasons, namely, so that defendants are not discouraged from making offers of judgment. But because the language of CR 68 is plain on its face, and neither party argues that CR 68 is ambiguous, we need not consider Solano's public policy argument. And as this court noted in Sims, "In the event that [CR 68] is to be expanded . . . it should be expanded by statute or by amendment." Sims, 20 Wn. App. at 238.

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.84. Costs (Refs & Annos)

West's RCWA 4.84.030

4.84.030. Prevailing party to recover costs

Currentness

In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of the district court when commenced in the superior court.

Credits

[1987 c 202 § 121; 1890 p 337 § 1; 1883 p 42 § 1; Code 1881 §§ 506, 507; 1854 p 201 §§ 368, 369; RRS § 476.]

OFFICIAL NOTES

Intent--1987 c 202: See note following RCW 2.04.190.

Notes of Decisions (115)

West's RCWA 4.84.030, WA ST 4.84.030
Current with all effective legislation from the 2022 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.84. Costs (Refs & Annos)

West's RCWA 4.84.010

4.84.010. Costs allowed to prevailing party--Defined--Compensation of attorneys

Effective: July 26, 2009
Currentness

The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

(1) Filing fees;

(2) Fees for the service of process by a public officer, registered process server, or other means, as follows:

(a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;

(3) Fees for service by publication;

(4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;

(5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;

(6) Statutory attorney and witness fees; and

(7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

Credits

[2009 c 240 § 1, eff. July 26, 2009; 2007 c 121 § 1, eff. July 22, 2007; 1993 c 48 § 1; 1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

OFFICIAL NOTES

Court Improvement Act of 1984--Effective dates--Severability--Short title--1984 c 258: See notes following RCW 3.30.010.

Notes of Decisions (189)

West's RCWA 4.84.010, WA ST 4.84.010
Current with all effective legislation from the 2022 Regular Session of the Washington Legislature. Some statute sections may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Part IV. Rules for Superior Court
Superior Court Civil Rules (CR) (Refs & Annos)
8. Provisional and Final Remedies (Rules 64-71)

Superior Court Civil Rules, CR 68

RULE 68. OFFER OF JUDGMENT

Currentness

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the defending party's offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Credits
[Amended effective April 28, 2015.]

Notes of Decisions (65)

CR 68, WA R SUPER CT CIV CR 68
State court rules are current with amendments received through 6/1/22. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Some rules may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Part IV. Rules for Superior Court
Superior Court Civil Rules (CR) (Refs & Annos)
8. Provisional and Final Remedies (Rules 64-71)

Superior Court Civil Rules, CR 68

RULE 68. OFFER OF JUDGMENT

Currentness

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the defending party's offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Credits
[Amended effective April 28, 2015.]

Notes of Decisions (65)

CR 68, WA R SUPER CT CIV CR 68
State court rules are current with amendments received through 6/1/22. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Some rules may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Part IV. Rules for Superior Court
Superior Court Civil Rules (CR) (Refs & Annos)
6. Trials (Rules 38-53.4)

Superior Court Civil Rules, CR 41

RULE 41. DISMISSAL OF ACTIONS

Currentness

(a) Voluntary Dismissal.

(1) *Mandatory.* Subject to the provisions of rules 23(e) and 23.1, any action shall be dismissed by the court:

(A) By Stipulation. When all parties who have appeared so stipulate in writing; or

(B) By Plaintiff Before Resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of plaintiff's opening case.

(2) *Permissive.* After plaintiff rests after plaintiff's opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.

(3) *Counterclaim.* If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of plaintiff s motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(4) *Effect.* Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.

(b) Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.

(1) *Want of Prosecution on Motion of Party.* Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

(2) *Dismissal on Clerk's Motion.*

(A) Notice. In all civil cases in which no action of record has occurred during the previous 12 months, the clerk of the superior court shall notify the attorneys of record by mail that the court will dismiss the case for want of prosecution unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the court indicating the reason for inactivity and projecting future activity and a case completion date. If the court does not receive such a status report, it shall, on motion of the clerk, dismiss the case without prejudice and without cost to any party.

(B) Mailing Notice; Reinstatement. The clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.

(C) Discovery in Process. The filing of a document indicating that discovery is occurring between the parties shall constitute action of record for purposes of this rule.

(D) Other Grounds for Dismissal and Reinstatement. This rule is not a limitation upon any other power that the court may have to dismiss or reinstate any action upon motion or otherwise.

(3) *Defendant's Motion After Plaintiff Rests.* After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross Claim, or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Notice of Settlements. If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing pro se to notify the court *promptly* of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk.

Credits

[Amended effective September 1, 1997; April 28, 2015.]

Notes of Decisions (260)

CR 41, WA R SUPER CT CIV CR 41

State court rules are current with amendments received through 6/1/22. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Some rules may be more current, see credits for details.

End of Document

West's Revised Code of Washington Annotated
Part IV. Rules for Superior Court
Superior Court Civil Rules (CR) (Refs & Annos)
7. Judgment (Rules 54-63)

Superior Court Civil Rules, CR 54

RULE 54. JUDGMENT AND COSTS

Currentness

(a) Definitions.

(1) *Judgment.* A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.

(2) *Order.* Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in her or his pleadings.

(d) Costs, Disbursements, Attorneys' Fees, and Expenses.

(1) *Costs and Disbursements.* Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) *Attorneys' Fees and Expenses.* Claims for attorneys' fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element

of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

(e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and the prevailing party's attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in subsection (f)(2).

(f) Presentation.

(1) *Time.* Judgments may be presented at the same time as the findings of fact and conclusions of law under rule 52.

(2) *Notice of Presentation.* No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After Verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court.

Credits
[Amended effective September 1, 1989; September 1, 2007; April 28, 2015.]

Notes of Decisions (128)

CR 54, WA R SUPER CT CIV CR 54
State court rules are current with amendments received through 6/1/22. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Some rules may be more current, see credits for details.

End of Document

SMITH FREED EBERHARD

July 12, 2022 - 9:35 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	83042-2
Appellate Court Case Title:	Erica Kelly, Respondents v. Consuelo Rosales Solano, Appellants
Superior Court Case Number:	16-2-20507-9

The following documents have been uploaded:

- 830422_Petition_for_Review_20220712093241D1008107_9519.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Appellant Petition for Review.pdf

A copy of the uploaded files will be sent to:

- aalexander@hwslawgroup.com
- alicia.kikuchi@gmail.com
- jmendel@hwslawgroup.com
- nsharifova@smithfreed.com
- shannon@dawson-brown.com
- shannon@stritmatter.com

Comments:

Sender Name: Melanie Kent - Email: mkent@smithfreed.com
Filing on Behalf of: Gordon Charles Klug - Email: gklug@smithfreed.com (Alternate Email: wlarson@smithfreed.com)

Address:
1215 Fourth Ave
Suite 900
Seattle, WA, 98161
Phone: (206) 576-7549

Note: The Filing Id is 20220712093241D1008107