89617-8

Supreme Court No:

Court of Appeals No: 67951-1-I

SUPREME COURT OF THE STATE OF WASHINGTON

Vahit Saylik, Petitioner,

vs.

David Walker and Jane Doe Walker
Husband and Wife,

Respondents.

PETITION FOR REVIEW

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A. Identity of Petitioner

Vahit Saylik asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

Saylik v. Walker, 67951-1-I, Court of Appeals of Washington, Division One, was filed on September 23, 2013. The motion for reconsideration was denied on November 4, 2013. A copy of the decision is in the Appendix at pages 1 through 7. A copy of the order denying Saylik's motion for reconsideration is in the Appendix page 8. The order, dated 11-27-2013, awarding attorneys fees and costs on appeal is in the Appendix at pages 9 and 10.

C. Issues Presented for Review

1. Is the Court of Appeals ruling, that defendant Walker's right for bond under RCW 4.84.210 was not waived, in conflict with the Supreme Court's holding in *Swift v. Stine*, 3 Wash. Terr. 518, 19 P. 63 (1888) that the defendant must exercise his right to request bond with diligence or he waives it, when Walker waited almost two years after learning of plaintiff Saylik's overseas residence and continued with the pretrial litigation (including the arbitration) before making his request for bond only three court days prior to the trial date?

2. Is an issue of substantial public interest presented when the

Court of Appeals decided that a defendant's right to security for costs under RCW 4.84.210 is not waived even after waiting almost two years after learning of the plaintiff's overseas residence and continuing litigation (including the arbitration) before making the request for security only three court days before the trial date?

3. Is an issue of substantial public interest presented, whether or not Walker's notice for trial attendance under CR 43(f)(1), without a showing of need, superseded Saylik's use of his deposition in lieu of live testimony at trial due to his overseas residence and unavailability, pursuant to CR 32(a)(3)(B); and whether Walker waived any objections to Saylik's use of the deposition at trial when the deposition was taken by Walker, who provided the deposition for the arbitration hearing and consented to its use in lieu of Saylik's live testimony and raised no questions about Saylik's motive for his overseas residence and unavailability; when the trial court disallowed Saylik's use of the deposition and required Saylik to attend the trial without providing any reasons for its ruling, and the Court of Appeals declined to address the trial court's ruling?

4. Is an issue of substantial public interest presented, that the lower courts violated Saylik's right to due process of the law by an impartial tribunal and with the appearance of impartiality, when they summarily and arbitrarily granted Walker's motions without

expressing its reasons, without articulating on the facts and on the law; overlooked the holding of the Washington Supreme Court on waiver of the right to bond without expressing its reasons for doing so, without entry of the "Findings of Fact and Conclusions of the Law"; and arbitrarily denied Saylik's use of his deposition at the trial even though no questions were raised about his motive for unavailability?

D. Statement of the Case

Vahit Saylik (Saylik) is a retired police chief residing in Ankara, Turkey. On July 3, 2006, Saylik was riding and walking with his bicycle and crossing a crosswalk in Mukilteo, Washington, when respondent David Walker (Walker) hit Saylik with his motor vehicle, knocking him to the ground. Others rushed to help Saylik. Paramedics provided treatment as they took him to the hospital emergency room for his injuries (CP 147-155). Initially, Saylik's attorney was not aware of the fact that Saylik was not residing in Washington, but that he and his family were simply visiting his adult son in Everett (CP 155, 253).

Walker demanded to take Saylik's deposition in Walker's attorney's Everett office (CP 231, 244). Saylik informed Walker a number of times that he was overseas and could not be in Walker's Everett office for an in-person deposition but would be available for a deposition over the telephone (CP 235-236). Saylik also informed Walker that he would have to submit his testimony over the telephone

during the trial (CP 220). Walker strongly opposed both the telephonic deposition and telephonic trial testimony (CP 235-236) and filed his "Motion to Compel Deposition of Plaintiff" in his office (CP 224-250).

Saylik filed his "Response and Declaration in Opposition to Motion to Compel" on 01-08-2010 and stated nine different times the fact that he lived in Ankara, Turkey, and could not be in Walker's Everett office but would be available over the telephone for his deposition (CP 219-223). The court commissioner ordered the deposition to be taken over Internet webcam by Walker as the adverse party (CP 212-213). During the deposition, Saylik repeated the fact that he lived in Eryaman, Turkey [near Ankara] (CP 147, line 24 of its page 7).

The parties went through an arbitration hearing on 07-12-2010 (CP 257), for which the deposition transcript was provided by Walker with his consent and used in lieu of Saylik's live testimony (at page 4 of Respondent's Brief in the Court of Appeals). The arbitrator, who had no previous arbitration experience, awarded $1,651.86 (including the medical bills) to Saylik (CP 257-258). Because of the irregularities in the manner he handled this case, the arbitrator is no longer authorized as an arbitrator. Saylik then filed for a trial de novo.

Almost two years after the deposition, on 10-24-2011 (two weeks before the scheduled trial date of 11-08-2011), Walker

demanded that Saylik appear at the trial (CP 140-141). Next, he filed his "Motion in Limine" and a declaration in an effort to exclude Saylik's use of the deposition in lieu of his live testimony at the trial pursuant to CR 32(a)(3) (CP 205-207, 171-204). In addition, on 11-01-2011, Walker filed "Defendant's Motion for Bond Pursuant to RCW 4.84.210" (CP 161-170), which was received by Saylik in the mail on 11-03-2011 – three court days prior to the trial date (CP 81).

Saylik objected to the motion as being untimely because the notice of the motion was served less than five days prior to the hearing as required by CR 6(d), and the request for bond under RCW 4.84.210 was untimely, being almost two years too late and, therefore, it was waived pursuant to the holding of the Washington Supreme Court in *Swift v. Stine*, 3 Wash. Terr. 518 (1888) (CP 81-83). Saylik attached to his response a copy of the Supreme Court's decision in the *Swift* case (CP 91-92). Saylik also asked for a protective order (CP 158-160). Walker offered no arguments why *Swift* should not apply in this case.

On the day of the trial, the trial court denied Saylik's motion for protective order; ordered that Saylik could testify in person, telephonically, or via webcam (CP 76); granted Walker's motion in limine and prevented Saylik from using the deposition in lieu of his live testimony (CP 79-80); and granted Walker's motion and ordered Saylik to post $5000.00 bond within 90 days or the case would be

dismissed (CP 77-78). The trial date was continued to 03-20-2012, more than four months later.

Saylik failed to post the bond from overseas and the order of dismissal was entered (CP 71-72). The trial court awarded $8,755.40 against Saylik for attorney's fees and costs pursuant to MAR 7.3 and RCW 7.06.060 because Saylik failed to improve his position at the trial de novo (CP 1-3). No "Findings of Fact and Conclusion of Law" was entered as required by CR 52(a).

The Court of Appeals affirmed the trial court, ruling that, viewed in context, *Swift* provides no support for Saylik's claim of waiver. (Appendix page 5). The Court of Appeals did not address the trial court's failure to enter its "Findings of Fact and Conclusions of Law", declined to address the use of the deposition, and awarded Walker attorney's fees and costs on appeal in the amount of $9,685.71 – for a total award of attorney's fees and costs in the amount of $18,441.11 (Appendix pages 5, 7, and 10).

E. Argument Why Review Should be Accepted

1. The Court of Appeals ruling, that defendant Walker's right for bond under RCW 4.84.210 was not waived, is in conflict with the Supreme Court's holding in *Swift v. Stine*, 3 Wash. Terr. 518, 19 P. 63 (1888) that the defendant must exercise his right to request bond with diligence or he waives it, when Walker waited almost two years after learning of plaintiff Saylik's overseas residence and continued with the pretrial litigation (including the arbitration) before making his request for bond only three

court days prior to the trial date.

In *Swift v. Stine*, 3 Wash. Terr. 518 (1888), after the trial had begun, defendant Stine made a request for security for costs because of plaintiff Swift's non-residence, under the territorial code predecessor to RCW 4.84.210. The trial court granted Stine's motion and dismissed the cause when Swift failed to file the security. The Supreme Court reversed, holding:

> It is true, also, that the Code provides that such a plaintiff must give security for costs, "when required to do so by defendant;" and it is claimed that "when" means at any time "when required by defendant." If this claim be true, then a defendant may wait until a jury has been called and sworn, and then "require" security for costs, and obtain a stay of proceedings. It would seem, indeed, that he might interpose his request at any other stage of the trial. We cannot agree to this construction of the statute. The defendant may require security for costs of a non-resident, but he must exercise his right in time, and before answer, or at least with diligence. He cannot delay until, from the developments of the trial, he seriously apprehends defeat, and then assert it. His application then becomes dilatory, and cannot be favored. He must be held, under such circumstances, to have waived it. It is true that, in a case where the fact came to his knowledge after answer to the merits, it would excuse his neglect, and his right would remain unimpaired; but no such showing was made here ...

Swift v. Stine, 3 Wash. Terr. at 521.

Concluding from the *Swift* opinion, a defendant's right is waived unless he exercises it with diligence and without being dilatory. In the present case, Walker did not request security for the arbitration

hearing, even though he was notified of Saylik's overseas residence more than six months earlier.[1] Nor did Walker request security promptly after Saylik requested a trial de novo. Instead, Walker waited almost two years after learning of Saylik's overseas residence to demand security.[2] This delay cannot be interpreted as exercising his right with diligence. Furthermore, Walker's demand was received just three court days before the trial date,[3] which was then continued to over four months later, and is, therefore, by definition, a dilatory application.[4] Walker's right was waived.

The Court of Appeals ruled Walker's request was not dilatory for four reasons. The first two are: 1) Unlike *Swift*, trial here had not yet commenced; 2) RCW 4.84.210 does not impose a specific deadline on the trial court for imposing security (Appendix page 5). This reasoning misinterprets *Swift*. In *Swift*, the trial had commenced when the request for security was made, but the Supreme Court held,

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[1]Saylik filed his "Response and Declaration" on 01-08-2010 and stated nine different times the fact that he lived in Ankara, Turkey (CP 219-223). The arbitration hearing was held on 07-12-2010 (CP 257), which is 6 months and 4 days later.

[2]Saylik filed his "Response and Declaration" on 01-08-2010 (CP 219). Walker's motion for bond was filed on 11-01-2011 (CP 161), which is 1 year, 9 months, 3 weeks, and 3 days later.

[3]Saylik received Walker's motion for bond in the mail on 11-03-2011 (CP 81), three court days prior to the trial date of 11-08-2011.

[4]Black's Law Dictionary (9th ed.) p. 522 defines dilatory as "tending to cause delay."

in general, that a defendant must exercise his right with diligence, or his application becomes dilatory and cannot be favored. *Id.* at 521. The generality of the holding is particularly realized by the statement: "It would seem, indeed, that he might interpose his request at any other stage of the trial. We cannot agree to this construction of the statute." *Id.* The purpose of the inclusion of the statement that "[h]e cannot delay until, from the developments of the trial, he seriously apprehends defeat, and then assert it" is to apply the holding to the specific facts of the case, not to limit the holding only to cases where the request for security is made after the trial has begun. *Id.* Therefore, although RCW 4.84.210 does not impose a specific deadline, *Swift* makes it clear that the deadline is the point in time after which the exercising of the right is no longer made with diligence.

The third reason the Court of Appeals ruled Walker's request was not dilatory is that Saylik had no intention of testifying at trial (Appendix page 5). Aside from it being unclear how this is relevant to Walker's waiver of right to security, this conclusory statement is not supported by the record. The fact that Saylik sought to use his deposition transcript in lieu of live testimony pursuant to CR 32(a)(3)(B) cannot be construed as evidence that he would not have testified at trial if required.

The final reason the Court of Appeals ruled Walker's request

was not dilatory is that the status of Saylik's permanent residence or possible return remained unclear (Appendix page 5). This reasoning misapprehends the facts of the case which are clearly in the record. Initially, Saylik's attorney was unaware that Saylik resided in Turkey, not Washington (CP 253). But that initial misunderstanding preceded the "Response and Declaration" in which Saylik stated **nine times** the fact that he lived in Turkey (CP 219-223). Saylik's deposition was taken without his return, during which Saylik again stated that he lived in Turkey (CP 147, line 24 of its page 7). The arbitration hearing was conducted without Saylik's return with the use of his deposition. It was clear for almost two years prior to Walker's request for security that Saylik permanently resided in Turkey.

Therefore, the Court of Appeals opinion is in conflict with the Supreme Court's holding in *Swift*.

2. An issue of substantial public interest is presented when the Court of Appeals decided that a defendant's right to security for costs under RCW 4.84.210 is not waived even after waiting almost two years after learning of the plaintiff's overseas residence and continuing litigation (including the arbitration) before making the request for security only three court days before the trial date.

This is an important issue that the court should address to prevent defendants from abusing the right to demand security in order to prejudice plaintiffs. To allow a plaintiff to proceed with litigating his case without the defendant making any demand for security, then

require the security at a much later stage, is inherently prejudicial to him. If the plaintiff is unable to acquire the security, not only is his case dismissed, but he has incurred costs for all the prior litigation. In reversing a lower court, the Supreme Court of Alabama addressed this and held:

> The right of a defendant to dismiss, for want of security for costs, is a right which he, so far as he is concerned, may waive. He will not be permitted to deal with the case as one rightly in court; continue, or **contribute to the continuation of the litigation**; and, after heavy costs have been incurred, or, perhaps, after he makes the discovery that his defense will be unavailing, then for the first time raise the objection, that he had been improperly sued, without security for costs; and for this omission have the cause repudiated. **Such practice would work the grossest injustice.**

Weeks v. Napier, 33 Ala. 568 (1859) (emphasis added).

Even if the plaintiff is able to acquire the security, the proceedings are delayed and justice is obstructed. The Supreme Court of Utah addressed this and held:

> This statutory right, being thus a personal right, a mere personal privilege, may be waived by failure to make demand for security at all, or by failure to make such demand at a seasonable and within a reasonable time after it appears in the case, to the knowledge of the defendant, that the plaintiff is a nonresident. Where, then, the defendant, after the nonresidence has been shown, makes no effort or no reasonable effort, to demand security **until such time that the granting of his motion would cause a continuance of the trial, or delay the proceedings, or interfere with the business of the court**, his laches may prevent him from asserting his right, for in either of such events the

> court may, doubtless, in its sound discretion, and **as a matter of justice, refuse to grant an order requiring such security, and regard the right as waived.**

Sciutti v. Union Pacific Coal Co., 30 Utah 462, 85 P. 1011 (1906) (emphasis added).

Similarly, the appeals court in New Jersey held:

> A defendant, in case his adversary is nonresident, has an unquestionable right to security for costs, but inasmuch as it is a right which **may be used to delay or obstruct justice**, he should be required to insist upon it promptly, and to adhere to it persistently, or otherwise be held to have lost it.

Shuttleworth v. Dunlop, 34 N.J. Eq. 488 (1881) (emphasis added).

In conclusion, many courts recognize that the right to security is one that can be abused in order to obstruct justice. The Supreme Court should address this issue to prevent this from happening.

3. An issue of substantial public interest is presented, on whether or not Walker's notice for trial attendance under CR 43(f)(1), without a showing of need, superseded Saylik's use of his deposition in lieu of live testimony at trial due to his overseas residence and unavailability, pursuant to CR 32(a)(3)(B); and whether Walker waived any objections to Saylik's use of the deposition at trial when the deposition was taken by Walker, who provided the deposition for the arbitration hearing and consented to its use in lieu of Saylik's live testimony and raised no questions about Saylik's motive for his overseas residence and unavailability; when the trial court disallowed Saylik's use of the deposition and required Saylik to attend the trial without providing any reasons for its ruling, and the Court of Appeals declined to address the trial court's ruling.

The court should address this issue to prevent parties from

negating the intention of CR 32(a)(3) by serving a notice of trial attendance on a party. Saylik sought to use his deposition in lieu of his live testimony at the trial pursuant to CR 32(a)(3)(B) (CP 158-160). CR 32 provides in part:

> (a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
> . . .
> (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: . . . (B) that the witness resides out of the county and more than 20 miles from the place of trial, unless it appears that the absence of the witness was procured by the party offering the deposition . . .

Walker opposed this and gave Saylik notice to attend trial pursuant to CR 43(f)(1) (CP 206). Walker gave no showing of a need for Saylik's live testimony in lieu of his deposition. CR 43 provides in part:

> (f) Adverse Party as Witness.
> (1) Party or Managing Agent as Adverse Witness. A party . . . may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown in the manner prescribed in rule 26(c), the court

> may make orders for the protection of the party or managing agent to be examined.
> . . .
> (3) Refusal To Attend and Testify; Penalties. If a party or a managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. . . .

The trial court ruled that Saylik couldn't use the deposition and had to attend trial, without providing any reasons for its ruling (CP 76, 79-80). The Court of Appeals declined to address the use of the deposition but stated that failure to comply with the notice to attend was an independent basis to dismiss the action pursuant to CR 43(f)(3), implying that the notice to attend supersedes CR 32(a)(3) (Appendix pages 5 and 6). If this is true, then a party may prevent another party from benefiting from CR 32(a)(3) by simply serving a notice to attend. The Supreme Court should address this issue so it is clear which court rule can be relied upon by the parties in an action.

Additionally, the Supreme Court should consider the issue of Walker's waiver of any objections to Saylik's use of the deposition at the trial pursuant to CR 32(a)(3)(B), when Walker took Saylik's deposition as an adverse party; provided the transcript for the arbitration hearing; consented to its use in lieu of Saylik's live testimony at the arbitration; raised no questions about Saylik's motive

for his overseas residence and unavailability and, therefore, waived any objections to Saylik's use of the deposition.

Finally, the absence of a "Findings of Fact and Conclusions of Law" placed Saylik in a predicament by preventing him from knowing what factual or legal arguments might have been considered by the trial court or the Court of Appeals on review. This placed Saylik in an unfair position to argue his case on appeal. The Supreme Court should also rule that entry of a findings of fact and conclusions of law is essential in a case such as this one and reverse the lower courts.

4. An issue of substantial public interest is presented, that the lower courts violated Saylik's right to due process of the law by an impartial tribunal and with the appearance of impartiality, when it summarily and arbitrarily granted Walker's motions without expressing its reasons, without articulating on the facts and on the law; overlooked the holding of the Washington Supreme Court on waiver of the right to bond without expressing its reasons for doing so, without entry of the "Findings of Fact and Conclusions of the Law"; and arbitrarily denied Saylik's use of his deposition at the trial even though no questions were raised about his motive for unavailability.

The Supreme Court should accept this petition for review because the issue of Saylik's right to due process of the law by an impartial tribunal and with the appearance of impartiality is of utmost significance to all litigants. Without frequent review of the lower court decisions by the Supreme Court on due process violations, some of the lower courts often will not make a real effort to be impartial in their

dealings with certain parties.

In this case, the trial court granted Walker's motion for bond under RCW 4.84.210 even though it was made almost two years after learning of Saylik's overseas residence and unavailability and continued the pretrial litigation (and the arbitration), and even though the motion was made only three court days prior to the trial date; the court overruled Saylik's objections that the three days notice of the motion under CR6(d) was untimely; denied Saylik's request for attorney's fees for Walker's bad faith dealings; denied Saylik's use of his deposition in lieu of his live testimony without stating any reasons and without entering a "Findings of Fact and Conclusions of Law" required by CR 52(a); caused a delay of the trial date for more than four months because of the bond; dismissed the complaint for Saylik's failure to post the bond from overseas; awarded $8,755.40 against Saylik as attorney's fees and costs pursuant to MAR 7.3 and RCW 7.06.060; and, in the Court of Appeals, in its unpublished ruling against Saylik, the appellate court failed to address the issue that the trial court had failed to enter its "Findings of Fact and Conclusions of Law"; upheld the trial court over the untimely motion under CR 6(d); failed to acknowledge virtually all significant facts cited in court record; adapted certain arguments made by the opposing attorney contrary to the record and without acknowledging the facts and

arguments in support of Saylik; made its own findings contrary to the record; failed to follow the holding of the Washington Supreme Court in *Swift v. Stine* on waiver of bond; denied Saylik's request for attorney's fees for Walker's bad faith dealings; and awarded Walker an additional $9,685.71 as attorney's fees and costs on appeal – for a total award of attorney's fees and costs in the amount of $18,441.11 against Saylik.

Facing this lack of impartiality and lack of appearance of impartiality, any reasonably interested person would inquire on the motives. It was recently discovered that, as displayed in the Appendix page 12, Walker's initial attorney of record was Ms. Vickie K. Norris, a senior counselor and shareholder of Anderson Hunter Law Firm, which represents Walker. Ms. Norris is the wife of the chief judge of the Court of Appeals, Division One, J. Robert Leach, who also worked at Anderson Hunter Law Firm for almost two decades prior to being appointed to the same Court of Appeals division where Saylik's case was decided (Appendix pages 13 and 14).

In his dissenting opinion, in *City of Bellevue v. Hellenthal*, 144 Wn.2d 425, 28 P.3d 744 (2001), Justice Johnson summarized due process of the law and Saylik incorporates his summary in here by reference:

[. . .] Due process is founded upon an impartial tribunal

and the appearance of impartiality is essential to judicial credibility. . . . The United States Supreme Court has recognized that "to perform its high function in the best way 'justice must satisfy the appearance of justice.' " *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) (quoting *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954)).

. . .

The principle of impartiality is as old as the courts. It is a fundamental idea and it is the acknowledged inviolability of this principle that gives credibility to judicial decrees. *State ex rel. Barnard v. Bd. of Educ.*, 19 Wash. 8, 17-18, 52 P. 317 (1898). Common law, as well as due process under both the federal and state constitutions, guarantees to every defendant a trial before a fair and impartial judge. The law requires more than an impartial judge; it requires the judge to appear to be impartial. [citations omitted] A trial judge advocating on behalf of one party to a dispute denies due process of law. [citations omitted] The need for an impartial judge applies to a civil setting. "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). Where the impartiality of a judge reasonably may be questioned, the Code of Judicial Conduct requires the judge's disqualification. Canon 3(D)(1).

. . .

The high standards of judicial impartiality from the above cases are no less firmly protected by our prior decisions and the Code of Judicial Conduct. For example, in the past when violations of the traffic code still constituted a criminal matter, it was proper for a justice of the peace to transfer venue when the judge believed impartiality could not be maintained. We found the judge's actions were essential to the due administration of justice. *McFerran*, 32 Wash.2d at 549-50, 202 P.2d 927. Similarly, in *Diimmel*, the trial judge in a quiet title action properly avoided the appearance of unfairness by granting a new trial after entering an impartial judgment upon learning the decision might appear to have been influenced by a former law partner. We found the judge's actions conformed to the highest standards of judicial

> conduct because they avoided the suspicion of irregularity in the discharge of the judge's duties. *Diimmel*, 68 Wash.2d at 699, 414 P.2d 1022. Canon 3 of the Code of Judicial Conduct establishes that this is the high standard necessary to protect judicial impartiality. Under this standard, even truly impartial judges who find their impartiality "might reasonably be questioned" should disqualify themselves. Canon 3(D)(1). The comment to Canon 3(A)(5) explains the appearance of bias "impairs the fairness of the proceeding and brings the judiciary into disrepute." Canon 3(A)(5) cmt.

City of Bellevue v. Hellenthal, 144 Wn.2d at 437-440.

In this case, the trial court failed to enter a "Findings of Fact and Conclusions of Law" and failed to express any reasons for its arbitrary orders. On appeal, the Court of Appeals considered the appeal without oral arguments, with an implication that the facts and the law were clear for a decision; rendered an unpublished opinion (which appears to make it harder to obtain a review by the Supreme Court); failed to address the issue that the trial court had not entered a "Findings of Fact and Conclusions of Law;" failed to acknowledge most of the significant facts and issues in the record; made some factual claims unsupported by the record; and went through elaborate efforts to provide a rationale as to why the *Swift* holding of the Supreme Court did not support Saylik's position.

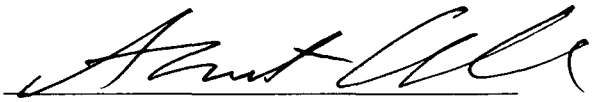
Any reasonable and impartial person who reviews this case would agree that Saylik has not been treated impartially and that Saylik had no chance in this litigation as long as Walker is represented

by Anderson Hunter Law Firm.

F. Conclusion

The order of dismissal should be reversed, Walker's right to security should be held waived, Saylik should be permitted to use his deposition and not be required to attend trial, Saylik should be awarded terms, sanctions, and costs for Walker's bad faith dealings and frivolous actions in the lower courts, and Saylik should be awarded attorney's fees and costs on appeal.

Respectfully submitted on this December 4, 2013



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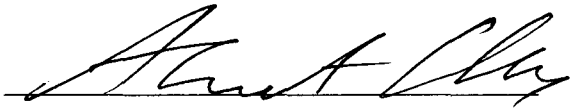
APPENDIX pages 1 through 14, is attached.

DECLARATION OF SERVICE:
I certify that on December 4, 2013, I served a copy of this document on defendant's counsel by mailing it first class mail postage prepaid to John A. Follis, Attorney at Law, Anderson Hunter Law Firm, 2707 Colby Avenue, Suite 1001, PO Box 5397 Everett, WA 98206-5397 ~~and by fax to 425-258-3345~~



APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

VAHIT SAYLIK, Appellant, v. DAVID D. WALKER and JANE DOE WALKER, husband and wife, Respondents.	)	No. 67951-1-I DIVISION ONE UNPUBLISHED OPINION FILED: September 23, 2013

APPELWICK, J. — Saylik, a resident of Turkey, sued Walker for injuries sustained in a bicycle accident. Following mandatory arbitration, Saylik requested a trial de novo. When he failed to post a nonresident plaintiff security bond under RCW 4.84.210, the trial court dismissed the action. Saylik contends that Walker waived his right to the security bond and that the trial court erred in awarding attorney fees. We disagree and affirm.

FACTS

Following a 2006 bicycle-automobile collision in Mukilteo, Vahit Saylik filed this personal injury action against David Walker. The complaint alleged that Saylik was a resident of Snohomish County. Saylik's discovery responses indicated that he lived in Bothell.

In October 2009, Saylik's counsel requested a trial continuance until at least February 2010 because Saylik was out of the country. Counsel explained that Saylik

an extended medical leave. Counsel indicated that Saylik's return date was uncertain.

In January 2010, Walker sought to compel Saylik's presence for a deposition. The trial court ordered that both parties' depositions would be conducted via webcam over the internet. Saylik participated in his deposition from Turkey.

In August 2010, the case proceeded to mandatory arbitration. The arbitrator awarded Saylik damages totaling $1,651. Saylik timely requested a trial de novo.

On October 20, 2011, Saylik's counsel informed opposing counsel that Saylik would not be present for trial and that he intended to submit Saylik's deposition in lieu of live testimony. Counsel rejected Walker's proposal that Saylik testify telephonically.

On October 21, 2011, Walker served Saylik with a CR 43 notice to attend trial. Walker also filed motions asking the trial court to require that the parties' trial testimony be presented in person or telephonically and to require Saylik to post a bond under RCW 4.84.210 as security for an attorney fee award should he fail to improve his position at trial.

In response, Saylik moved for a protective order, asking the court to strike the CR 43 notice of trial attendance, find Saylik unavailable, admit his deposition in lieu of in-court testimony, and impose sanctions for Walker's alleged abuse of process and frivolous motions.

On November 8, 2011, the trial court denied Saylik's motion for a protective order, ruling that Saylik must testify at trial in person, telephonically, or via webcam. The court granted Walker's motion for a bond, setting the amount at $5,000 and ordering that the case would be dismissed unless Saylik posted the bond within 90 days.

When Saylik failed to post the bond within 90 days, the court dismissed the action and awarded Walker attorney fees and costs as the prevailing party.

DISCUSSION

I. Requirement to Post Bond

Saylik contends that the trial court erred when it ordered him to post a pretrial security bond for attorney fees under RCW 4.84.210. He argues that, because the request for the bond was untimely, Walker waived any right to security. We review the trial court's decision to order security under RCW 4.84.210 de novo as a question of statutory interpretation. White Coral Corp. v. Geyser Giant Clam Farms, LLC, 145 Wn. App. 862, 866, 189 P.3d 205 (2008).

On November 1, 2011, 7 days before the scheduled trial, Walker filed a motion for a bond under RCW 4.84.210, which authorizes the trial court to order a nonresident plaintiff to provide "security for the costs and charges which may be awarded against such plaintiff." See White Coral Corp., 145 Wn. App. at 867. When security is ordered, proceedings are stayed pending execution of the bond. RCW

4.84.210. If the plaintiff fails to post the bond within 90 days, the trial court may dismiss the action. RCW 4.84.230. In support of the motion, Walker noted that Saylik continued to reside in Turkey and that he was subject to the payment of attorney fees and costs should he fail to improve his position following the trial de novo. See RCW 7.06.060(1).

On appeal, Saylik contends that Walker had known for at least two years that he was a resident of Turkey and that the request for security was therefore untimely. As he did in the trial court, Saylik relies on Swift v. Stine, 3 Wash. Terr. 518, 19 P. 63 (1888), for this proposition, but provides no legal argument supporting application of Swift to the facts of this case. Saylik presumably relies on the following passage from Swift, in which the court considered the territorial code predecessor to RCW 4.84.210:

> The defendant may require security for costs of a nonresident, but he must exercise his right in time and before answer, or at least with diligence. He cannot delay until, from the developments of the trial, he seriously apprehends defeat, and then assert it. His application then becomes dilatory and cannot be favored. He must be held, under such circumstances, to have waived it.

Swift, 3 Wash. Terr. at 521.

In Swift, the defendant moved for security after the case had gone to trial and the plaintiff had commenced presenting rebuttal evidence. Id. at 520. In concluding that the defendant's motion was untimely, the Supreme Court noted that a defendant should not be permitted to "wait until a jury has been called and sworn, and then

'require' security for costs, and obtain a stay of proceedings." Id. at 521. Viewed in context, Swift provides no support for Saylik's claim of waiver.

Unlike Swift, trial here had not yet commenced, and Saylik does not allege that he was prejudiced in any manner by the timing of the motion for a bond. Saylik had no intention of testifying at trial, either in person or by telephone, and the trial court denied his motion to admit his deposition testimony. Moreover, although it was clear that Saylik had been residing for some time in Turkey, the status of his permanent residence or possible return remained unclear. Finally, RCW 4.84.210 does not impose a specific deadline on the trial court for imposing security. Under the circumstances, Walker's request for security was not dilatory, and the trial court did not err in requiring Saylik to post a bond under RCW 4.84.210.

Saylik also contends that Walker's service of the motion for security was untimely under CR 6(d). But, "CR 6(d) is not jurisdictional, and . . . reversal for failure to comply requires a showing of prejudice." Brown v. Safeway Stores, Inc., 94 Wn.2d 359, 364, 617 P.2d 704 (1980). Saylik does not allege—much less demonstrate—any prejudice. Consequently, even if service was untimely, Saylik is not entitled to relief.

Because the trial court did not err in dismissing the action for Saylik's failure to post the security bond, we need not address Saylik's contention that the court erred in refusing to admit his discovery deposition at trial under CR 32(a)(3). We note,

however, that in light of Walker's timely CR 43 notice to attend trial, Saylik's failure to appear, either in person or telephonically, would have provided the trial court with an independent basis to dismiss the action. See CR 43(f)(3) (if party refuses to attend and testify at the trial after timely CR 43 notice, "the complaint, answer, or reply of the party may be stricken and judgment taken against the party").

II. Attorney Fees and Sanctions

Saylik's claim that the trial court erred in refusing to impose sanctions against Walker and his attorney for abuse of process and frivolous filings is also without merit. The mere fact that Walker vigorously opposed Saylik's attempts to rely solely on his deposition at trial does not constitute bad faith or support the imposition of sanctions. Saylik's conclusory allegations do not merit further consideration. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

Finally, Saylik contends that the trial court erred in awarding Walker costs and attorney fees of $8,755. Saylik does not dispute that he failed to improve his position after requesting a trial de novo and that Walker was therefore entitled to an award of costs and attorney fees. RCW 7.06.060(1); MAR 7.3. Rather, he appears to allege that the amount of the award was excessive. But, the trial court supported the award with findings addressing the reasonableness of the hours spent on the case,

counsel's hourly rate, and the sufficiency of the documentation. See Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998). Those findings amply support the award. Because Saylik has not challenged or even addressed the trial court's findings on appeal, he has not demonstrated any error in the fee award.

III. Attorney Fees on Appeal

As the prevailing party, Walker is entitled to recover attorney fees and costs on appeal. MAR 7.3; RCW 7.06.060; Tribble v. Allstate Prop. & Cas. Ins. Co., 134 Wn. App. 163, 174, 139 P.3d 373 (2006). We therefore grant Walker's request and award attorney fees and costs on appeal, subject to compliance with RAP 18.1(d).

Affirmed.

Appelwick, J.

WE CONCUR:

Schindler, J.

Becker, J.

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

VAHIT SAYLIK, Appellant, v. DAVID D. WALKER and JANE DOE WALKER, husband and wife, Respondents.	)	No. 67951-1-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Vahit Saylik, having filed his motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied;

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

DATED this 4th day of November, 2013.

Judge

RICHARD D. JOHNSON.
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

November 27, 2013

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CASE #: 67951-1-I
Vahit Saylik, Petitioner v. David Walker, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on November 26, 2013, regarding respondent's affidavit of attorney fees:

"This Court issued an unpublished opinion on September 23, 2013, affirming the trial court's dismissal of appellant Vahit Saylik's action for failing to post a bond under RCW 4.84.210. In the opinion, this Court stated that respondents David Walker and his wife are entitled to attorney fees and costs on appeal under MAR 7.3 and RCW 7.06.060, subject to compliance with RAP 18.1(d). On October 3, 2013, respondents filed an affidavit of fees and expenses, seeking attorney fees in the amount of $9,678.50 and costs in the amount of $558.51. On October 14, 2013, appellant filed an objection to the fees and expenses. On October 14, 2013, appellant filed a motion for reconsideration, arguing, in part, that attorney fees should not be awarded to respondents. On November 4, 2013, this Court denied reconsideration. The attorney fees of $9,678.50 are awarded, but the cost award should be limited to the $7.21 charge paid to this Court for reproducing the brief of respondent under RAP 14.3(a).

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The affidavit of fees contains a specific itemization of the fees and expenses. Appellant argues the fees and expenses should be allowed only for services performed on the issues of the bond, and respondents did not separately identify fees and expenses incurred for the bond issues He further argues, as he did in his failed motion for reconsideration, that respondents' untimely request for the bond caused the legal work. However, this Court determined respondents are entitled to attorney fees and costs on appeal, and respondents' counsel's affidavit states the claimed fees and expenses were incurred for services rendered in this appeal. This appeal involves issues related to the dismissal of the case for appellant's failure to post a statutory bond, the trial court's award of attorney fees and costs, and appellant's claim of error in the trial court's refusal to impose sanctions against respondent and respondent's counsel for abuse of process and frivolous filings. Appellant lost on all of those issues. Appellant cites no authority and offers no persuasive argument to support his claim that respondents are entitled to attorney fees and costs only on limited issues. The requested attorney fees are awarded, because respondents' counsel's affidavit complies with RAP 18.1(d), and the requested attorney fees are reasonable.

As to the costs, respondents claim expenses for messenger service, photocopying, and the $7.21 charge paid to this Court for reproducing the brief of respondent. Expenses incurred for messenger service and photocopying are not allowed under RAP 14.3(a). Absher Constr. Co. v. Kent Sch. Dist. No. 415, 79 Wn. App. 841, 848, 917 P.2d 1086 (1995). Neither RCW 7.06.060 nor MAR 7.3 provides for an award of costs not allowed under RAP 14.3(a), except the statute allows awarding expenses related to reasonably necessary expert witness testimony. Thus, only the $7.21 charge paid to this Court is allowed as costs.

Therefore, it is

ORDERED that the attorney fees $9,678.50 and costs of $7.21 are awarded to respondents. Appellant Saylik shall pay the fees and costs."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

emp

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§ 4.84.210. Security for costs.

Washington Statutes

Title 4. Civil procedure

Chapter 4.84. Costs

Current through Chapter 2 of the 2013 Third Special Session

§ 4.84.210. Security for costs

When a plaintiff in an action, or in a garnishment or other proceeding, resides out of the county, or is a foreign corporation, or begins such action or proceeding as the assignee of some other person or of a firm or corporation, as to all causes of action sued upon, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant or garnishee defendant. When required, all proceedings in the action or proceeding shall be stayed until a bond, executed by two or more persons, or by a surety company authorized to do business in this state be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or proceeding, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action or proceeding stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond.

Cite as RCW 4.84.210

History. 1929 c 103 § 1; Code 1881 § 527; 1877 p 111 § 531; 1854 p 204 § 389; RRS § 495.

CASE#: 08-2-08163-8 JUDGMENT# YES
TITLE: SAYLIK VS WALKER ET UX
FILED: 10/15/2008
CAUSE: TMV TORT-MOTOR VEHICLE DV: N

RESOLUTION: DSM DATE: 03/13/2012 DISMISSAL WITHOUT TRIAL
COMPLETION: JODF DATE: 03/13/2012 JUDGMENT/ORDER/DECREE FILED
CASE STATUS: CMPL DATE: 03/13/2012 COMPLETED/RE-COMPLETED
ARCHIVED:
CONSOLIDT:
NOTE1:
NOTE2:*12 PERSON JURY

---------- PARTIES ----------

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	DATE
PLA01	SAYLIK, VAHIT		
DEF01	WALKER, DAVID D		
DEF02	WALKER, JANE DOE H/W		
ATP01	CHABUK, AHMET		
BAR#	22543		
WTD01	NORRIS, VICKIE KAY		
BAR#	08725		
ATD02	MASONHOLDER, MEGAN OTIS		
BAR#	29495		

---------- APPEARANCE DOCKET ----------

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
-	10/15/2008	$FFR	FILING FEE RECEIVED	200.00
1	10/15/2008	CICS	CASE INFORMATION COVER SHEET	
2	10/15/2008	SMCMP	SUMMONS & COMPLAINT	
		ATP01	CHABUK, AHMET	
3	10/15/2008	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
4	10/17/2008	NTAPR	NOTICE OF APPEARANCE	
			BOTH DFDTS	
		ATD01	NORRIS, VICKIE KAY	
5	10/17/2008	NTSBC	NOTICE OF SUBSTITUTION OF COUNSEL	
			BOTH DFDTS	
		WTD01	NORRIS, VICKIE KAY	
		ATD02	MASONHOLDER, MEGAN OTIS	
6	10/17/2008	ANAFDF	ANSWER & AFFIRMATIVE DEFENSES	
			BOTH DFDTS	
		ATD02	MASONHOLDER, MEGAN OTIS	
7	10/17/2008	$JDR12	JURY DEMAND RECEIVED - TWELVE	250.00
8	03/02/2009	NTTSNA	NT FOR TRIAL & STMNT OF NONARBITRA	03-17-2009TA
		ACTION	SET FOR 12 PERSON JURY	
-	03/17/2009	ASTD	ASSIGNMENT OF TRIAL DATE	10-20-2009JT
9	03/18/2009	NTTD	NOTICE OF TRIAL DATE	
10	09/25/2009	MTC	MOTION TO CONTINUE	
11	09/25/2009	ORCTD	ORD FOR CONTINUANCE OF TRIAL DATE	03-23-2010JT
		JDG06	JUDGE LARRY E MCKEEMAN	

12

Vickie K. Norris

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or vnorris@andersonhunterlaw.com

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Paralegal:
Laurie Gibson
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Vickie is a shareholder and senior counsel and has been at Anderson Hunter since 1981. Vickie's practice emphasis is on employment law issues, including discrimination, harassment, FMLA and other leave laws, and employment practices. Vickie frequently provides training and legal advice on a variety of employment law topics for local employers and professional groups, including Snohomish County PUD, Sno-Isle Libraries, Everett Clinic, Port of Everett, The Herald, Port of Edmonds, City of Everett, Northwest Human Resource Management Association, and Everett Chamber of Commerce.

Before joining Anderson Hunter Vickie was a Snohomish County Deputy attorney prosecuting criminal matters (1978-1981).

Vickie and her husband J Leach, a Court of Appeals Judge for the State of Washington, live in Everett and enjoy traveling, reading, and their cat, Bob'D Cat.

Areas of Practice:
» Employment Law

Professional and Community Activities:
» Member of Washington State Bar Association
» Member of Snohomish County Bar Association
» AV Rated Martindale Hubbell
» Board of Governors, Washington State Bar Association (1992-1995)
» Special District Counsel, WSBA (1989-1992)
» American Board of Trial Advocates, President, WA Chapter (2000)
» Washington College of Trial Lawyers, Fellow
» Washington Defense Trial Lawyers
» Snohomish County Chapter, Washington Women's Lawyers
» Board Member and Past Chair, Planned Parenthood of Western Washington (1998-2005)
» Board Member, Everett Public Library (2010)
» Board Member, Snohomish County Public Defenders (2009)
» 2012 Recipient of the Richard Wendt Award of Excellence for Contributions to the Arts

Education:
» 1978—Willamette University, JD
» 1974—University of Washington, BA

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Robert Leach

Washington Court of Appeals
Division One, District Two

CURRENT OCCUPATION/EMPLOYER: J. Robert Leach is a Court of Appeals Judge employed by the State of Washington.

EDUCATION: 1973- University of Washington, B. A. History, 1976-University of Washington School of Law, J. D.

LEGAL/JUDICIAL EXPERIENCE: Judge Leach was appointed to the Court of Appeals in January 2008, effective March 1, 2008. For over thirty-one years before his appointment to the Court of Appeals he was in private practice in Snohomish County, the last seventeen at the Anderson Hunter Law Firm with his wife, Vickie Norris.

CANDIDATE STATEMENT: While Judge Leach was in private practice he represented many individuals, businesses and government agencies, including the Snohomish Regional Drug Task Force, The City of Everett, The Snohomish County PUD, and the Port of Everett. He tried hundreds of cases in many different areas of the law and regularly appeared before the appellate courts. He also appeared before state and federal administrative agencies as well as local government councils. He served as a court appointed and private arbitrator, a mediator, a judge pro tem and special deputy prosecutor.

Judge Leach has a history of contributing to the community, including volunteering on the boards of the Providence General Foundation, Deaconess Children's Services and the Arts Council of Snohomish County.

"J. Leach has the broad experience, legal skills and good judgment we need for this position." — Governor Christine Gregoire (1/23/2008)

"J. Leach has a reputation as a superb attorney with diverse legal experience. I believe he will be an asset to the Court of Appeals." — Justice for Washington Foundation Chairman Senator Slade Gorton (1/24/2008)

Rated "Exceptionally Well Qualified" by the Washington Association of Prosecuting Attorneys (4/30/2008)

Endorsed by Snohomish County Executive Aaron Reardon and Snohomish County Prosecutor Janis Ellis

Retain Judge Leach.

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Official web site:

Opponent:

Supreme Court No: 89617-8
Court of Appeals No: 67951-1-I

SUPPLEMENTAL APPENDIX
TO
PETITION FOR REVIEW

Vahit Saylik, Petitioner
vs.
David Walker, Respondent.

Attached, in the Supplemental Appendix, pages 1-5: is Plaintiff Saylik's **notice to the defendant** of Saylik's **overseas residence** – the notice designated as:

> **"Response and Declaration in Opposition to Motion to Compel the Deposition of Plaintiff,"** filed on 01/08/2010.
>
> (The emphasis in the appendix is added) – (CP 219-223).

CP 219

Hearing Date: 01/12/ 2010
Time: 10:30 A.M.
Court Commissioner
Civil Calender

FILED 01-08-2010

IN THE SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

Vahit Saylik Plaintiff, vs. David Walker and Jane Doe Walker Husband and Wife, Defendants.	NO: 08 2 08163 8 RESPONSE AND DECLARATION IN OPPOSITION TO MOTION TO COMPEL THE DEPOSITION OF PLAINTIFF

PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION TO COMPEL

1. RELIEF REQUESTED

a. Motion to strike: Vahit Saylik moves the Court to strike the **attachments** of the motion of counsel of the defendant as they contain some portions of certain settlement communications between the opposing attorneys and they were attached to defendant's motion improperly and unnecessarily;

b. Deny defendant's (David Walker's) motion for Court's leave for his own deposition to be taken only after a deposition of the plaintiff is taken;

c. Deny defendant's motion for a court order requiring deposition of all parties to be held only in Snohomish County;

d. Deny defendant's motion for award of attorneys fees;

e. Grant leave of Court for deposition of the plaintiff to be taken over telephone, under CR 30(a)(7), as the plaintiff lives in Ankara, Turkey, and he is not in good health;

f. Grant leave of Court, under CR 32, for use of the deposition of the plaintiff at

AHMET CHABUK
ATTORNEY AT LAW
11663 Ivy Lane
SILVERDALE, WA 98383

APPENDIX P. 1

the trial as the plaintiff lives in Ankara, Turkey, and he is not in good health;

g. Grant leave of Court, under CR 30(a)(7) and CR 32 for plaintiff to testify at the trial over telephone as the plaintiff lives in Ankara, Turkey and he is not in good health.

2. STATEMENT OF GROUNDS

The "facts" as submitted by the defendant's counsel in support of their motion to compel are missing significant facts which are essential for a fair decision on the issues presented by the parties:

The relevant facts in this legal action are very basic and very short. And Mr. Vahit Saylik (the plaintiff) has provided not only his written statement of facts, but has always stated his willingness to cooperate for his deposition over the telephone because lives in Ankara, Turkey, and he is not in good health.

Mr. Saylik used to spend extended periods of time in Everett with his adult son, who worked there. During his stay in Everett, on July 3, 2006, the defendant negligently collided with Mr. Saylik and his bicycle and caused Mr. Saylik's injuries, which required the assistance of Fire and Rescue department and ambulance services to take him to the hospital for his treatment (for his injuries).

Mr. Saylik's adult son had to take extended medical leave and had to spend extended periods of time in Turkey. And, therefore, Mr. Saylik also had to leave for Turkey. On January 2, 2009, the undersigned attorney informed defendant's counsel that Mr. Saylik was going to be back in Washington in a few weeks and asked her if she needed to schedule anything. The defendant made no efforts to take his deposition. For health reasons, Mr. Saylik and his adult son had to go back to Ankara, Turkey. After this fact was disclosed to the defense counsel, the defendant's counsel had a special interest to take Mr. Saylik's "in-person" deposition. The undersigned attorney always expresses readiness for deposition of Mr. Saylik over telephone. But the defendant's counsel would not agree to a telephonic deposition – even though virtually every detail of the accident was stated in Mr. Saylik's statement.

Meanwhile, repeatedly the undersigned attorney asked for an agreed date for a deposition of Mr. David Walker (the defendant, himself) in Bremerton Washington,

near where he practices. Yet the defendant's counsel refused to conduct the defendant's deposition in Kitsap County without stating any legal basis for her refusal.

Now, Mr. Saylik is asking for the Court's leave for his telephonic deposition and use of his deposition at the trial since the issues and facts involved in this court action are very basic and very short and Mr. Saylik lives in Ankara Turkey and is not in good health.

3. STATEMENT OF ISSUES

a. Should the Court strike the defendant's attachments submitted in support of his motion to compel as they contain some portions of certain settlement communications between the opposing attorneys and they were attached to defendant's motion improperly and unnecessarily;

b. Should the Court deny defendant's David Walker's motion for leave for his own deposition to be taken only after a deposition of the plaintiff is taken;

c. Should the Court deny defendant's motion for a court order requiring deposition of all parties to be held in only Snohomish County;

d. Should the court deny defendant's motion for award of attorneys fees;

e. Should the Court grant leave for deposition of the plaintiff to be taken over telephone, under CR 30(a)(7), as the plaintiff lives in Ankara, Turkey and he is not in good health;

f. Should the Court grant leave of Court, under CR 32, for use of the deposition of the plaintiff at the trial instead of plaintiff's presence at the trial as the plaintiff lives in Ankara, Turkey, and he is not in good health.

g. Should the Court grant leave of Court, under CR 30(a)(7) and CR 32 for plaintiff to testify at the trial over telephone as the plaintiff lives in Ankara, Turkey and he is not in good health.

4. EVIDENCE RELIEF UPON

The plaintiff relies on the attached Declaration of Ahmet Chabuk and the records of this case. The plaintiff relies only for impeachment purposes on the Attachments submitted by the defendant in support of his motion to compel.

CP. 222

5. LEGAL AUTHORITY

In support of his motion, Mr. Walker (the defendant) provides no legal authorities or any compelling facts as to why this Court should order a deposition of the defendant (David Walker) only after a deposition of Mr. Vahit Saylik (plaintiff) – especially considering the fact that Mr. Saylik has provided a detailed statement of his facts and always expressed his willingness for his telephonic deposition.

Similarly, in support of his motion, Mr. Walker (the defendant) provides no legal authorities or any compelling facts as to why this Court should order all depositions to be held in the defendant's counsel's law office, in Everett. On the contrary, in reference to "place of deposition," Mr. Karl Tegland, in his Washington Handbook on Civil Procedure, §44.3 (2006 edition, page 292), states that the "restrictions just mentioned do not apply when seeking to take the deposition of a **party**." Therefore, there is no reason why the parties should be ordered to be deposed only in the law offices of the defendant's counsel, in Snohomish County.

Similarly, CR 30(a)(7) provides that the Court may grant leave for deposition of by telephone. And, CR 32 authorizes depositions to be used at trial under a number of miscellaneous circumstances of a witness **"whether or not a party."**

The Vahit Saylik lives in Ankara Turkey and he is not in good health. And the facts of this case is very basic and simple. In fact, virtually all of the fact were summarized in a two-page statement by Mr. Saylik and submitted to the defendant's counsel. And the amount of damages are relatively very small.

The defense counsel has been insisting in-person deposition of Mr. Saylik (and refusing a telephonic deposition) only after it was disclosed that Mr. Saylik is overseas and is not in good health.

Respectfully submitted on this January 7, 2010

/s/

Ahmet Chabuk (WSBA #22543)
Attorney for Plaintiff
11663 Ivy Lane, Silverdale Wa 98383
(360) 692-0854

CP. 223

DECLARATION OF AHMET CHABUK

I am the attorney of record for Vahit Saylik (the plaintiff) in this case and I make this declaration of my own personal knowledge. Mr. Saylik had to travel to overseas for extended period of time and is not in good health. It is very difficult for him to be in Washington for his deposition and for the trial. Mr. Saylik used to live with his son in Everett Washington. And his son had to go overseas on an extended medical leave from his employment in Everett. And the plaintiff Mr. Saylik had to follow his son to Ankara Turkey but is not in good health now.

I have communicated this issue to the opposing counsel many times and offered a telephonic deposition of Mr. Saylik. However, the opposing side has refused and has been insisting on a "in-person" deposition of Mr. Saylik in Everett Washington.

Meanwhile, I asked the opposing counsel for an acceptable date for a deposition of the defendant in Kitsap County, where my office and court reporter is located. However, the opposing counsel has been insisting that she takes Mr. Saylik's deposition before I can take a deposition of the defendant and that I must take the deposition in Everett, not in Kitsap County.

I certify under penalty of perjury under the laws of the State of Washington that the preceding is true and correct to my best knowledge.

Signed and dated on this 7th day of January, 2010, in Silverdale Washington.

Signed: /s/ Ahmet Chabuk
Ahmet Chabuk

DECLARATION OF SERVICE:
I, Ahmet Chabuk, certify that on 7 the day of January, 2010, I served a copy of this document on defendant's counsel by mailing it first class mail postage prepaid to Megan O. Masonholder, 2707 Colby Avenue, Suite 1001, PO Box 5397 Everett, Wa 98206-5397

/s/ Ahmet Chabuk

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, December 10, 2013 12:55 PM
To: 'achabuk@gmail.com'; 'jfollis@andersonhunterlaw.com'
Cc: Faulk, Camilla
Subject: FW: Motion for Leave to Supplement the Appendix
Attachments: MOTION FOR LEAVE TO SUPPLEMENT.pdf; Supplement to Appendix.pdf

Rec'd 12-10-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Faulk, Camilla
Sent: Tuesday, December 10, 2013 12:49 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: FW: Motion for Leave to Supplement the Appendix

Can you process like normal? Thanks.

From: A Chabuk [mailto:achabuk@gmail.com]
Sent: Tuesday, December 10, 2013 12:35 PM
To: Faulk, Camilla
Cc: jfollis@andersonhunterlaw.com
Subject: Motion for Leave to Supplement the Appendix

In the matter of Saylik, the petioner, vs Walker, the respondent,
attached please find the petitioner's motion for leave to supplement the Appendix.

Best regards,

Ahmet Chabuk
Attorney for the petitioner.
360-692-0854