

68021-8

68021-8

COURT OF APPEALS NO. 68021-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIV. I

VLADIK BYKOV,

Appellant,

v.

DAVID R. ADAMS,

Respondent.

BRIEF OF RESPONDENT

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I. STATEMENT OF ISSUES

A. Did the trial court abuse its discretion by granting Respondent Adams' motion to impose CR 11 sanctions against Appellant Bykov for filing a pleading for the improper purpose of harassing Adams' attorney?

B. Did the trial court err in granting Respondent Adams' motion for postjudgment interest where Appellant and judgment debtor Bykov failed to unambiguously and unconditionally direct the court clerk to apply funds in the court registry to the satisfaction of the judgment in favor of Respondent Adams?

C. Did the trial court properly deny Appellant Bykov's CR 60 motion to vacate the \$731.50 judgment and does Bykov's failure to assign error to this ruling and present argument or legal authority preclude appellate review?

D. May an appellate court independently review the record to determine whether a CR 11 violation has occurred where the trial court failed to enter a finding that the sanctioned party failed to conduct a consisting solely of written documents and make factual findings with respect to whether the trial court properly found that a motion to vacate a judgment violated CR 11 and determine whether the motion violated CR 11?

II. STATEMENT OF THE CASE

A. Bykov's Lawsuit Against David Adams.

Vladik Bykov commenced a lawsuit against his apartment complex neighbor David Adams on April 26, 2010. CP 20-26. King County Superior Court Judge Jeffrey Ramsdell subsequently granted Bykov's motion to voluntarily dismiss his lawsuit on June 29, 2010. CP 29-30.

On August 19, 2010, Judge Ramsdell granted Adams' motion to declare Bykov's lawsuit frivolous under RCW 4.84.185 and awarded attorney's fees to Adams in the amount of \$1,600.00. CP 69-70. A judgment was thereafter entered against Bykov for the \$1,600.00 on September 10, 2010. CP 88-89.

B. Dismissal of Bykov's First Appeal to the Court of Appeals.

Bykov appealed the August 19, 2010 order granting Adams' frivolous lawsuit motion and the associated judgment in *Bykov v. Adams*, Court of Appeals Case No. 659201 ("Bykov's first appeal"). CP 82-90. Bykov's first appeal was dismissed by a ruling made on December 3, 2010. CP 139. The mandate to the King County Superior Court issued on May 13, 2011. CP 139-140.

C. Bykov's Harassment and Cyberstalking Campaign Against Adams' Attorney and Subsequent Criminal Conviction.

On October 7, 2011, Bykov was convicted of criminally harassing David Adams' attorney, Brian Fresonke. CP 142-143. Following the conviction, Fresonke provided an October 25, 2011 letter to the City of Seattle Probation Department for consideration in conjunction with the sentencing recommendation. CP 143; 149-176. The letter describes the campaign of harassment and cyberstalking that Bykov perpetrated against Fresonke over the previous 15 months.

The campaign started with a July 23, 2010 pleading that Bykov filed in the trial court, wherein he first started attacking Fresonke personally. CP 154. On July 30, 2010 Bykov sent Fresonke an e-mail that stated, "Do you think I am a serial killer?"¹ CP 157. Bykov obtained Fresonke's social security number from some old publicly filed tax liens and began attacking Fresonke's integrity and musing about his financial affairs in a series of pleadings he filed in the trial court on August 1, 2010, August 14, 2010 and August 16, 2010. CP 154-156.

¹ Fresonke had previously asked Bykov, in a July 26, 2010 e-mail, to cease sending e-mails that did "not pertain to the business of the lawsuit that [he] brought against [David Adams]." CP 156-157.

After the trial court entered the \$1,600.00 judgment against Bykov on September 10, 2010, Bykov sent the following series of creepy and threatening e-mails to Fresonke:

Date and Time	Text of Bykov's E-Mail
Sept 17, 2010 at 8:11 a.m. (one week after entry of judgment)	"You will never be able to redeem your sins through vengeance and punishment against others. Think of this sentence day and night, night and day until you have punished yourself. Remember these thoughts as you further destroy and defile yourself."
October 24, 2010 at unknown time	"Do you know who this person is?" (with unopened attachment believed to be a photograph of Fresonke's father)
October 25, 2010 at 10:28 p.m. (Monday night)	"Is that photo I sent you of your father, I would like to talk to him. Please let him know I am interested in talking to him on the phone."
October 31, 2010 at 1:44 p.m. (Sunday afternoon)	"I will argue that you are mentally unstable and are unable to make any coherent arguments...."

CP 157.

Over the weekend of October 30 and 31, 2010, Bykov disseminated anonymous and defamatory e-faxes containing Fresonke's social security number to the law firm of K&L Gates, 3 attorneys and a doctor with offices in Fresonke's office suite, a doctor in Fresonke's office suite, and an immigration lawyer in Olympia. CP160-161. Bykov concocted bogus e-mail addresses containing Fresonke's name (such as brianfresonke@yahoo.com) and then used the fraudulent addresses to engage companies in

Canada that then e-faxed the defamatory material to Bykov's targets.² CP 160.

On November 2, 2010, Bykov sent Fresonke the following e-mail:

November 2, 2010	"I am writing to you this e-mail to warn you of the future. If something happens to you, always remember that you are responsible for it. For some unknown reason, you declared war against me, without any cause. I dismissed the case as you wanted me to, but you were not happy. Your ego and you desire for war led you to declare war against me. That was very evil. But, you will pay for it. You still have time to make amends, to make peace and settle the war. Its up to you. You probably feel very safe in your high office, but your high office will not protect you from harm."
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CP 157.

After receiving the November 2, 2010 e-mail, Fresonke warned David Adams and sent Bykov a letter directing him to cease and desist from sending further harassing and threatening communications. CP 157-158.

In early November 2010, Bykov filed meritless complaints against Fresonke with the Washington State Bar Association and the Seattle Human Rights Commission. CP 162. Both of these complaints were dismissed.³ CP 162; 433.

² The Canadian companies provided free e-faxing services. CP 160.

³ The WSBA received Bykov's complaint on November 3, 2010 and dismissed it 13 days later on November 16, 2010. CP 162. The assigned disciplinary counsel was afraid of Bykov and asked Fresonke if he had a photograph of Bykov to give to security personnel at 1325 Fourth Avenue building where the WSBA maintains its offices. CP 162.

On November 4, 2010 at 9:47 p.m., Bykov sent Fresonke the following e-mail:

November 4, 2010 at 9:47 p.m.	"Why did you call me on my cell phone and, knowing I was driving, begin arguing with me about discovery? I told you the court had lost jurisdiction, yet you continued to argue with me and threatening to compel discovery. Have you apologized to me? You have called yourself Rasputin. As you know, Rasputin was evil and he was destroyed. Rasputin was an officer of the court just like you. He used his power in evil ways. As you know, a woman that he had offended "rushed forward and struck him with a dagger, inflicting a severe wound in the abdomen." Mr. Brian K. Fresonke, do you wish such harm upon yourself? Expect the unexpected. Mr. Fresonke, make peace before it is too late. I invite you to make peace with me. The ball is in your court, Mr. Fresonke."
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CP 159. An hour later, Bykov sent Fresonke another e-mail as follows:

November 4, 2010 at 10:47 p.m.	"Do you understand that you are continuing to take vengeful action against me?"
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When Fresonke read the November 4, 2010 e-mails the following day, he reported Bykov's threats to the police. CP 159-160.

On November 5, 2010, Bykov filed a pleading in the trial court that consisted entirely of an *ad hominem* attack upon Fresonke and included his social security number.⁴ CP 440-450.

⁴ This pleading was filed in the trial court while Bykov's first appeal (Bykov v. Adams, Division I Case No. 659201) was pending in the Court of Appeals.

It also included a photograph of Fresonke's parent's house. CP 450.

Over the weekend of November 6 and 7, 2010, Bykov disseminated a second batch of defamatory e-faxes to through the free e-faxing companies in Canada to large Seattle law firms and Fresonke's clients, friends, professional colleagues and family members. CP 164-166. When Fresonke learned that Bykov was continuing to harass him, he called the police a second time. CP 166. Fresonke was also contacted by security personnel at his office building because of the bizarre e-faxes that Bykov had sent to law firms in the building over the preceding weekend.⁵ CP 166.

Sometime in early November 2010, Bykov opened a phony website with the name "http://brianfresonke.yolasite.com/" through a company in San Francisco called Yola, Inc. and used it to smear Fresonke and broadcast his social security number over the world wide web. CP 167.

Bykov was arrested and jailed for harassing Fresonke on November 8, 2010. CP 167. He continued to harass and

⁵ The building security personnel asked Fresonke to obtain a photograph of Bykov. Fresonke obtained photographs of Bykov outside the courtroom just prior to his November 3, 2011 Seattle Municipal Court sentencing hearing. CP 235-236.

Fresonke during his trial in the Seattle Municipal Court and after his conviction. CP 168-170.

D. Court of Appeals Commissioner's Ruling in Bykov's First Appeal Ordering Redactions of Social Security Number.

After the Court of Appeals dismissed Bykov's first appeal, Adams moved to redact Fresonke's social security number from pleadings that Bykov had filed in the Court of Appeals. The motion was granted in a Commissioner's ruling entered on March 29, 2011. CP 144; 178. The Commissioner ruled as follows:

The social security number of attorney Brian Fresonke has no relationship to this matter and Petitioner Vladik Bykov shall not file any additional documents containing the social security number of attorney Brian Fresonke.

CP 178.

After the Commissioner's ruling became final, Bykov failed to make an effort to procure the redaction of Fresonke's social security number from the pleadings he had filed in the trial court.

E. Show Cause Hearing and Judge Doerty's November 15, 2011 Order.

On November 3, 2011, Adams obtained an order directing Bykov to appear and show cause why the case should not be reopened for the trial court to: (1) order the disbursement of

\$1,600.00 on deposit in the court registry to Adams; (2) determine the amount of prejudgment interest that Bykov owed on the September 10, 2010 judgment; (3) order the redaction of Fresonke's social security number from Bykov's November 5, 2010 pleading (CP 440-450); and (4) order the imposition of CR 11 sanctions upon Bykov "because of plaintiff's filing of a pleading intended as an act of harassment against defendant's counsel that needlessly increased the cost of the litigation." CP 135-178.

Bykov was personally served with the order to show cause and the related pleadings at his November 3, 2011 sentencing hearing in the Seattle Municipal Court. CP 236-237. Bykov's responsive pleadings consisted primarily of a renewed (and immaterial) attack upon Fresonke and irrelevant arguments with respect to a previously issued court order (an order that was effectively affirmed when the Court of Appeal's dismissed Bykov's first appeal on December 3, 2010). CP 224-234.

Bykov failed to explain a reason why he included Fresonke's social security number in the pleadings he filed with the trial court. Following the November 15, 2011 show cause hearing,⁶ Judge

⁶ Bykov failed to provide the Court of Appeals with a verbatim report of the November 15, 2011 show cause hearing before Judge Doerty.

James Doerty issued an order: (1) directing the Clerk to disburse the money in the court registry to Adams; (2) determining prejudgment interest in the amount of \$224.00; (3) directing the Clerk to redact Fresonke's social security number from Bykov's November 5, 2010 pleading; and (4) entering a judgment against Bykov for \$731.50 in CR 11 sanctions for harassing Fresonke by including his social security number in his pleading. CP 320-322; 333-334.

F. Judge Doerty's December 8, 2011 Order Denying Bykov's Motion to Vacate Judgment and Assessing Additional CR 11 Sanctions.

Bykov filed a motion to vacate the order and judgment entered by Judge Doerty on November 15, 2011. CP 323-331. The motion to vacate included Bykov's request for an evidentiary hearing, which he failed to request in his response pleadings to the show cause order. CP 323-331. In support of his motion, Bykov renewed his irrelevant attack upon Fresonke.

Bykov's motion to vacate failed to identify any ground under CR 60 that would permit the vacation of the November 15, 2011 judgment. CP 431.

Judge Doerty considered Bykov's motion to vacate without oral argument and on December 8, 2011 issued an order denying

the motion and assessing an additional \$1,000.00 in CR 11 sanctions against Bykov. CP 434. Judge Doerty's order includes findings that the motion "fail[ed] to conform to the show cause requirements of CR 60 and fail[ed] to meet the substantive requirements for relief." CP 434. Judge Doerty's order concluded that Bykov's motion to vacate was "not well grounded in fact and [was] not warranted by existing law." CP 434.

G. Bykov's Second and Third Appeals.

On December 2, 2011, Bykov appealed Judge Doerty's November 15, 2011 order, but not the judgment entered on the same date. CP 426. On December 21, 2011, Bykov appealed Judge Doerty's December 8, 2011 order. CP 435-439.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING CR 11 SANCTIONS AGAINST APPELLANT BYKOV BASED ON ITS UNCHALLENGED FINDINGS THAT BYKOV INTENTIONALLY INCLUDED RESPONDENT'S ATTORNEY'S SOCIAL SECURITY NUMBER IN A PLEADING AS AN ACT OF HARASSMENT.

1. A trial court's decision to impose CR 11 sanctions is reviewed under the abuse of discretion standard.

The trial court's decision to impose CR 11 sanctions is reviewed for abuse of discretion. Engstrom v. Goodman, 166

Wn. App. 905, 917, 271 P.3d 959 (2012), *rev. denied*, 175 Wn.2d 1004, 285 P.3d 884 (2012). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” Washington State Physicians Ins. Exchange & Ass’n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

2. The trial court’s findings of fact are verities on appeal.

The trial court made the following findings of fact in support of its November 15, 2010 order granting respondent’s motion for CR 11 sanctions:

Plaintiff had no legitimate reason for including defense counsel’s social security number in his pleading (Sub No. 102).⁷

Plaintiff intended to harass defendant’s attorney by including the social security number in plaintiff’s ... pleading.

Plaintiff caused a needless increase in the cost of this litigation due to his act of harassment because defendant had to move the Court to redact his attorney’s social security number.

⁷ Sub No. 102 is Bykov’s pleading entitled Motion to Admit Additional Evidence for Appeal, CP 440-450. The trial court’s order identifies this pleading by its title, but erroneously stated that the pleading was filed on November 5, 2011. It was actually filed with the trial court on November 5, 2010, while Bykov’s first appeal was pending in the Court of Appeals.

Defendant has already had to file a motion to redact his attorney's social security number from pleadings that plaintiff caused to be filed in the appellate court, and plaintiff thereafter has failed to take the initiative to move this Court to make the same redactions.

CP 321-322.

Because appellant Bykov did not assign error to these findings of fact, they are verities on appeal. Moreman v. Butcher, 126 Wn.2d 36, 39, 891 P.2d 725 (1995); see also, Pellino v. Brink's Inc., 164 Wn. App. 668, 682, 267 P.3d 383 (2011).

3. The trial court properly sanctioned Bykov for filing pleadings that he intended to harass Adams' attorney.

"The purpose behind CR 11 is to deter baseless filings *and to curb abuses of the judicial system*. Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992) (emphasis supplied). The Bryant Court further described the dual function of CR 11 as follows:

CR 11 addresses two types of problems relating to pleadings, motions and legal memoranda: filings which are not "well grounded in fact and ... warranted by ... law" and filings interposed for "any improper purpose."

Bryant, 119 Wn.2d at 217; see also, Harrington v. Pailthorp, 67 Wn App. 901, 912, 841 P.2d 1258 (1992) (holding that there are 2 types of filings that may violate CR 11).

Unlike the attorneys in Bryant who were sanctioned for filing pleadings which were not “well grounded in fact and warranted by law,” appellant Bykov was sanctioned for filing his pleading for an “improper purpose.” Specifically, the trial court sanctioned Bykov for filing a pleading it found to have been intended to harass the opposing party’s attorney for no legitimate reason.⁸

“The purposes of sanctions orders are to deter, to punish, to compensate and to educate.” Fisons, 122 Wn.2d at 356, *citing* Miller v. Badgley, 51 Wn. App. 285, 753 P.2d 530 (1988) (reversing trial court order denying sanctions pursuant to CR 11), *rev. denied*, 111 Wash.2d 1007 (1988).⁹

“In fashioning an appropriate [CR 11] sanction, the trial judge must of necessity determine priorities in light of the deterrent, punitive, compensatory, and educational aspects of sanctions as

⁸ Bykov has never provided a legitimate reason for putting attorney Fresonke’s social security in his pleadings. Bykov has failed to submit a verbatim report of proceedings of the November 15, 2011 trial court hearing before Judge Doerty.

⁹ The Fisons Court discussed the sanctions principles embodied in CR 26(g), CR 37(d) and CR 11. See, In re Firestorm, 129 Wn.2d 130, 139, 916 P.2d 411 (1996) (discussing Fisons). The Fisons Court cited Miller, which involved only CR 11, for its holding regarding the 4 purposes of sanctions.

punitive, compensatory, and educational aspects of sanctions as required by the particular circumstances." McDonald v. Korum Ford, 80 Wn. App. 877, 891, 912 P.2d 1052 (1996).

In the instant case, it was necessary for David Adams to obtain and serve an order to show cause upon Appellant Bykov to obtain relief as against Bykov, including the redaction of his attorney Fresonke's social security number from a pleading Bykov filed while the case was on appeal. Fresonke submitted a fee declaration wherein he reported, "I have spent 2.1 hours reviewing the Clerk's file to locate the places in the record where Mr. Bykov improperly inserted my social security number *and in preparing this motion to redact.*"¹⁰ CP 145 (emphasis supplied). Fresonke estimated that he would spend another 2.0 hours obtaining an *ex parte* order to show cause and appearing for the show cause hearing and further estimated that 1/3 of this 2.0 hours (or .66 of one hour) was attributable to the defendant's motion to redact the social security numbers from Bykov's pleading. CP 145. Finally,

¹⁰ Bykov's statement that Fresonke asked the court to award sanctions for "2.1 hours he allegedly spent looking for his social security number" is disingenuous. Brief of Appellant, p. 8.

Fresonke accurately stated his hourly rate in November 2011 as \$275.00 per hour.¹¹ CP 145.

Adams moved the trial court to assess sanctions against Bykov based on the value of the professional time that was expended in November 2011 to remedy the harm that Bykov had caused. CP 145. Adams had the right to decide what he wanted to do in this litigation and Bykov has no right to obstruct Adams' exercise of his rights.

The trial court made findings that Bykov "intended to harass defendant's attorney by including the social security number in [his] pleading" and that this resulted in "a needless increase in the cost of this litigation ... because defendant has had to move the Court to redact his attorney's social security number." CP 321-322. The trial court further found that the \$731.50 in CR 11 sanctions assessed against Bykov was "equal to the value of defense counsel's time spent to procure this order." CP 322.

¹¹ Bykov's statement that "back in 2010 [Fresonke] indicated that he charges \$175.00 per hour" is disingenuous. Brief of Appellant, p. 8. Fresonke accurately reported in a previously filed fee declaration that his hourly rate was \$250.00 in July 2010 and that he was charging Adams at the discounted rate of \$175.00 per hour because he was a member of a labor union that Fresonke represents. CP 36. Bykov's statement that "back in 2010 [Fresonke] indicated that he charges \$175.00 per hour" is disingenuous. Brief of Appellant, p. 8. On November 5, 2010, the same date that he filed his pleading with Fresonke's social security number with the trial court, Bykov mailed a letter to Adams' labor union (the

4. **Respondent Adams had standing to seek CR 11 sanctions against Bykov because the rule affords a party the right to seek an order to discourage an abusive party's filing of pleadings interposed for an "improper purpose."**

CR 11 provides in pertinent part as follows:

A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. [....] The signature of a party ... constitutes a certificate by the party or attorney ... that to the best of the party's ... knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it ... an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

By its express terms, CR 11 affords a party to a lawsuit the right to file a motion for an order sanctioning another party to the lawsuit who has filed a pleading "for any improper purpose, such as

Seattle Police Officers Guild) containing false statements about Fresonke in an effort to harass and smear Fresonke's reputation with his client. CP 164.

to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

When *pro se* plaintiffs like Bykov file pleadings for an improper purpose, such as harassment, a represented party like Adams incurs attorney’s fees because the attorney has to spend additional time reading through the abusive material in the improper pleadings and this in turn causes “needless increase in the cost of litigation” to the represented party. Bykov has filed numerous pleadings in this case for the improper purpose of maliciously harassing Adams’ attorney, and these pleadings (including the pleading for which Bykov was sanctioned on November 15, 2010) caused legal injury to Adams that afforded him standing to seek relief under CR 11.

Respondent Adams also had standing to bring his motion to redact or seal his attorney’s social security number from Bykov’s pleading pursuant to GR 15, which provides that “any party may request a hearing to seal or redact the court records.”¹² GR 15(c)(1).

¹² A trial court may grant such a motion upon a finding that the sealing or redaction is justified by “compelling privacy or safety concerns that outweigh the public interest in access to the court file.” GR 15(c)(2). “Sufficient privacy or safety concerns that may be weighed against the public interest include [a finding] that ... (E) The redaction includes only restricted personal identifiers

David Adams, a party to this lawsuit, had the right to seek appropriate relief from the court under CR 11 and GR 15 when Vladik Bykov filed a pleading intended to harass Adams' attorney. Adams submits that the same result would hold true if Bykov filed a pleading intended to harass one of Adams' witnesses in this case. Adams' attorney should not be required to intervene in a lawsuit in order to mitigate the harm caused by Bykov's harassment in this case.¹³ If Adams is found to have lacked standing to pursue this remedy, Adams submits that the result for Bykov will be a CR 11 sanctions in a significantly higher amount than the modes \$731.50 that was assessed against him by the trial court.

5. Bykov was afforded ample notice that Adams was seeking CR 11 sanctions against him.

On November 3, 2011, Appellant Bykov was personally served with an order requiring him to appear and show cause why the court should not (1) order the redaction of Fresonke's social security number from Bykov's November 5, 2010 pleading and (2) impose CR 11 sanctions upon Bykov because he filed "a pleading

contained in the court record." GR 15(c)(2)(E). Social security numbers are one type of "restricted personal identifier." GR 15(b)(6); GR 22(b)(6).

¹³ If the Court holds that Adams did not have standing to obtain this remedy, and his attorney is required to intervene in the matter upon a remand, then Bykov will

intended as an act of harassment against defendant's counsel that needlessly increased the cost of the litigation. CP 135-178. Respondent Adams had no duty to notify Bykov of anything prior to serving him with the November 3, 2011 order to show cause.

Further, CR 11 itself afforded Bykov with notice that he would be subject to sanctions if he signed and filed a pleading that he intended as an act of harassment.

A litigant appearing *pro se* is bound by the same rules of procedure and substantive law as his or her attorney would have been had the litigant chosen to be represented by counsel.

Patterson v. Superintendent of Public Instruction, 76 Wn. App. 666, 671, 887 P.2d 411 (1994), *rev. denied*, 126 Wn.2d 1018, 894 P.2d 564 (1995).

Bykov chose to sign and file the pleading that resulted in the CR 11 sanctions on November 5, 2010, while his first appeal was pending in the Court of Appeals. The timing of this filing is instructive - it came at the height of Bykov's harassment campaign against Adams' attorney during the 2 week period between October 24, 2010 until Bykov's jailing on November 8, 2010. See, Section 1.C of the Brief of Responent, *supra*. As a *pro se* litigant, Bykov

likely be paying much more than the modest \$731.50 in CR 11 sanctions that were assessed against him on November 15, 2011.

was responsible for conforming his behavior in this litigation to that of an attorney and he was either unable or unwilling to do so.

Two weeks after the December 3, 2010 dismissal of Bykov's first appeal, he filed the November 5, 2010 Superior Court pleading containing Fresonke's social security number in the Court of Appeals on December 17, 2010.¹⁴ CP 255-258; CP 262-270. In granting Respondent Adams' motion to redact his attorney's social security number from this document, the Court of Appeals Commissioner ruled on March 29, 2011 that "[t]he social security number of attorney Brian Fresonke has no relationship to this matter." CP 178.

The March 29, 2011 ruling provided Bykov with notice that Fresonke's financial and personal information had no relationship to Bykov's lawsuit against Adams. Bykov did nothing, leaving Adams to reopen the lawsuit in the trial court following the May 13, 2011 mandate to procure the same relief that had been granted by the Court of Appeals with respect to Bykov's filing of the November 5, 2010 pleading there.

¹⁴ Bykov included the Superior Court pleading in a Court of Appeals pleading he termed "Appellant's Motion for Stay," wherein he asked the Court of Appeals to stay the \$1,600.00 judgment in the Superior Court until the Court of Appeals "decided the appeal on the merits." CP 239.

Bykov erroneously claims that Adams was required to provide him with notice that he was seeking CR 11 sanctions “promptly upon discovering a basis for doing so.” Brief of Appellant, p. 14. “[A] party should move for CR 11 sanctions as soon as it becomes aware they are warranted” because “[p]rompt notice of the possibility of sanctions fulfills the primary purpose of the rule, which is to deter litigation abuse.” North Coast Electric Co. v. Selig, 131 Wn. App. 636, 649, 151 P.3d 211 (2007).

The general rule in Selig does not apply to the facts in the instant case. Bykov filed his offensive pleading in the trial court on November 5, 2010, at which time the trial court had no jurisdiction due to the pendency of Bykov’s first appeal in the Court of Appeals. After filing the offensive November 5, 2010 pleading, Bykov filed no further pleadings in the trial court until nearly one year later on November 10, 2011 when he filed his responsive pleadings to Adams’ motion to show cause on November 10, 2011. CP 234.

The pleadings that Bykov filed on November 10, 2011 *included a resubmission of the offensive pleading that was the basis for the CR 11 motion* (CP 261-270) and additional documents and statements that had no relationship to the litigation. CP 224-319. Bykov refiled his offensive pleading in this case for the

second time 7 days after he received *actual notice* that Adams was seeking CR 11 sanctions against him. Bykov fails to explain how Adams' failure to provide him notice that he was violating CR 11 in November 2010 would have made any difference in the amount of the CR 11 sanction he was assessed in this case.¹⁵

B. THE TRIAL COURT PROPERLY AWARDED POSTJUDGMENT INTEREST TO ADAMS ON THE \$1,600.00 JUDGMENT.

Postjudgment interest accrues until the judgment debtor unambiguously and unconditionally directs the court clerk to apply funds in the court registry to the satisfaction of the judgment. Lindsay v. Pacific Topsoils, Inc., 129 Wn. App. 672, 679-80, 120 P.3d 102 (2005); In re Estate of Bailey, 56 Wn.2d 623, 628, 354 P.2d 920 (1960).

In the instant case, Bykov never directed the court clerk to apply the funds he deposited in the court registry to the satisfaction of Adams' judgment. After the Court of Appeals issued its

¹⁵ Bykov ignored the other warnings he received that there would be consequences for harassing both David Adams and his attorney in this litigation. See, CP 156-157 (Fresonke's 7/26/2010 request to Bykov to cease sending e-mails that did not pertain to his lawsuit); CP 273 (Fresonke's 9/16/10 e-mail to Bykov in response to Bykov's creepy request to have Adams come to his apartment to receive a judgment payoff and advising Bykov of how he should properly tender a satisfaction of the judgment against him); CP 157-158 (Fresonke's 11/2/2010 letter to Bykov directing him to cease and desist from engaging in further harassing behavior and from sending further threatening communications).

mandate following Bykov's first appeal, Adams had to obtain an order to show cause and serve it upon Bykov to obtain a court order directing the court clerk to disburse the funds in the court registry.

Bykov also did not tender payment of the \$1,600.00 judgment to Adams' attorney, as the September 16, 2010 e-mails that he relies upon for his false statement to the contrary demonstrate:

Date	Text of E-Mail
September 16, 2010	<p>BYKOV TO FRESONKE: I hereby offer full payment for debt owed to David R. Adams in case #1-0-2-15463-9. Please have David R. Adams stop by my address to pick up the money owed to him. Please inform me the day and time he will stop by. CP 273.</p>
September 16, 2010	<p>FRESONKE TO BYKOV: You may tender payment of the judgment to me at my office. You can make your check or money order payable [sic] to David Adams and I will deliver it to him. There is no reason for Mr. Adams to stop by your address. When any payment has cleared, I will file a satisfaction of judgment with the court. How are you able to pay the \$1,600.00 judgment, yet claim to have no money to pay court filing fees? CP 273.</p>
September 16, 2010	<p>BYKOV TO FRESONKE Will you accept money? CP 273.</p>
September 16, 2010	<p>FRESONKE TO BYKOV: If you mean cash, I am sorry but I do not accept cash from adverse parties. I can only accept a check or money order made payable to David Adams. CP 273.</p>

The trial court did not err by determining that Bykov owed postjudgment interest on the \$1,600.00 judgment. The credibility

of Adams' attorney was immaterial to the trial court's rulings in this case.¹⁶

C. THE TRIAL COURT PROPERLY DENIED BYKOV'S CR 60 MOTION TO VACATE THE \$731.50 JUDGMENT AND THE COURT OF APPEALS SHOULD NOT REVIEW THIS RULING BECAUSE BYKOV FAILED TO ASSIGN ERROR TO THIS RULING AND FAILED TO PRESENT ARGUMENT OR LEGAL AUTHORITY AS TO THE TRIAL COURT'S RULING.

Motions to vacate are governed by CR 60. An appellate court's disposition of a CR 60(b) motion is reviewed under an abuse of discretion standard. Pederson's Fryer Farms, Inc. v. Transamerica Ins. Co., 83 Wn. App. 432, 454, 922 P.2d 126 (1996).

CR 60(b) lists the grounds upon which a party may properly move to vacate a court order. CR 60(a) and (b). Parties seeking to vacate a court order are required to file a motion setting forth the CR 60(a) or (b) grounds upon which relief is asked and also the applicant's affidavit "setting forth a concise statement of the facts or errors upon which the motion is based." CR 60(e)(1).

¹⁶ Based upon Bykov's frivolous lawsuit against Adams, his ongoing campaign to harass Adams's attorney, his arrest for harassing Adams' attorney, and the ambiguous pleading Bykov filed in the Court of Appeals (not in the Superior Court) on December 17, 2010, it is submitted that Bykov did not provide Adams' attorney with notice that there were funds in the Superior Court registry that Bykov was willing to pay to Adams.

On November 28, 2011, Bykov filed a motion to vacate the \$731.50 judgment entered against him on November 15, 2011. CP 323-415. Bykov's motion set forth the following grounds in support of his motion to vacate:

[B]ecause the Court did not have jurisdiction (case was dismissed on June 29, 2010); because this Court never entered an underlying order that supports the judgment; because the judgment was entered in error of law and fact and because it was unreasonable to grant \$731.50 as expense for redaction of three social security numbers from one page of a document that was submitted more than a year ago – and never opposed by opposing counsel [sic]. Furthermore, there was no evidentiary hearing to determine the propriety or veracity of the amount of expenses alleged.

CP 367.

The affidavit that Bykov submitted in support of his motion to vacate set forth the following statement of the facts and errors upon which his motion to vacate was based:

2. On November 5th, 2010 I properly served Brain [sic] K. Fresonke a copy of the motion titled "MOTION TO ADMIT ADDITIONAL EVIDENCE FOR APPEAL" (Exhibit #3). However, Brian Fresonke never responded to that motion.

3. Brain [sic] Fresonke never contacted me in any way to inform me that he wanted me to redact his social security number from that motion, or that he would be filing a CR 11 motion.

The only facts and errors set forth in Bykov's affidavit pertained to his claim that the trial court erred in entering a judgment against him because Adams' attorney did not respond to a motion he filed in the trial court while the case was on appeal to the Court of Appeals and because Adams' attorney did not contact him to inform him that he did not want his social security number included in Bykov's pleadings. Bykov's affidavit did not provide any explanation as to why Adams was required to file responsive pleadings to a motion that Bykov had no right to file and the trial court had no jurisdiction to consider. Bykov's affidavit did not provide any explanation as to why Adams's attorney would contact Bykov for any purpose whatsoever in the midst of Bykov's bizarre and criminal harassment campaign against him. CP 432.

The trial court properly denied Bykov's motion to vacate the November 15, 2011 judgment after finding that his motion failed to meet the substantive requirements for CR 60 relief and that he had also failed to conform to the show cause requirements of CR 60.¹⁷ CP 434.

¹⁷ Bykov failed to procure an order to show cause and properly serve it upon David Adams as is required by CR 60(e)(a) and (c).

An appellate court will not consider an issue for which no assignment of error is made and no argument or legal citation is presented. State v. Olson, 126 Wn.2d 315, 321, 893 P.2d 629 (1995). Bykov has failed to assign error to the trial court's denial of his motion to vacate and he has failed to present argument or legal citation as to the trial court's ruling. This Court should not review the trial court's denial of the motion to vacate.

D. THE COURT OF APPEALS SHOULD INDEPENDENTLY REVIEW THE TRIAL COURT RECORD AND MAKE A FINDING THAT BYKOV FAILED TO CONDUCT A REASONABLE INQUIRY INTO THE FACTUAL AND LEGAL BASIS OF HIS CR 60 MOTION TO VACATE AND DETERMINE WHETHER THE MOTION VIOLATED CR 11.

After the trial court in the instant case denied Bykov's CR 60 motion to vacate, it *sua sponte* assessed \$1,000.00 in CR 11 sanctions against Bykov. CP 434. This CR 11 ruling was based upon the trial court's findings that Bykov 's motion "fails to conform to the show cause requirements of CR 60" and "fails to meet the substantive requirements for relief." Bykov did not challenge these findings, which are now verities on appeal. Moreman, 126 Wn.2d at 39.

The trial court did not make a finding with respect to whether Bykov failed to conduct a reasonable inquiry into the

vacate. CP 434. The Supreme Court has held that a court may not impose CR 11 sanctions unless it makes a finding of a failure to conduct a reasonable inquiry. Bryant, 119 Wn.2d at 220. When the trial court record consists entirely of written documents and a trial court does not make a finding required to make a CR 11 determination, an appellate court may independently review the evidence and make the required finding. Id., at 222, citing Lobdell v. Sugar 'N Spice, Inc., 33 Wn. App. 881, 887, 658 P.2d 1267, rev. denied, 99 Wash.2d 1016 (1983).

The trial court in the instant case neither heard testimony nor oral argument and was in no better position to evaluate the written evidence than the appellate court. See, Bryant, *supra*. at 222. Accordingly, this Court should conduct an independent review of the written record to determine whether Bykov conducted a reasonable inquiry into the factual and legal basis of his motion to vacate rather than remand the case to the trial court to make this determination. Id.

A motion “may be subject to CR 11 sanctions if it is both (1) baseless and (2) signed without a reasonable inquiry. Engstrom, 166 Wn. App. at 916. CR 11 sanctions should be imposed only

David Adams as is required by CR 60(e)(a) and (c).

when it is “patently clear” that a motion has “absolutely no chance of success.” Skimming v. Boxer, 119 Wn. App. 748, 755, 82 P.3d 707 (2004).

Bykov failed to assign error to the trial court’s denial of his motion to vacate and failed to present argument or legal citation as to the trial court’s ruling. The Court of Appeals should not review the trial court’s denial of the motion to vacate, but rather whether his motion had “absolutely no chance of success.” State v. Olson, 126 Wn.2d at 321.

Bykov’s motion to vacate does not mention CR 60. CP 367-377. Instead, the motion lists 11 “issues.” Bykov’s 1st issue alleges that the judgment should be vacated because the trial court lacked jurisdiction after it granted Bykov’s motion to dismiss his own claims against Adams on June 29, 2010. CP 370. Bykov’s contention ignored the state law that provided Adams a period of 30 days after the voluntary dismissal to file his motion pursuant to the frivolous lawsuit statute, RCW 4.84.185. It further ignored Bykov’s own motion filings after it granted Adams’ RCW 4.84.185 motion - including his motion to vacate that he filed in the trial court on November 28, 2011. CP 367.

Bykov's 2nd issue erroneously stated that there was no order underlying the judgment entered by the trial court on November 15, 2010. CP 370. The underlying order was entered with the judgment on November 15, 2010. CP 320-322.

The 3rd issue claimed that there was no evidence that Adams' attorney spent 2.6 hours and that the evidence showed Adams' attorney knew about the unredacted social security numbers in November 2010. CP 370. Adams submitted evidence of his attorney's time spent on the motion to redact by way of a fee declaration submitted with the moving papers that were served on Bykov on November 3, 2010. CP 144-145. Also, the Court of Appeals' mandate for the dismissal of Bykov's first appeal did not issue until May 13, 2011 (CP 139-140) and Bykov was continuously harassing and cyberstalking Adams' attorney until his harassment conviction in October 2011. CP 143; 149-176.

Bykov's 4th issue was that the trial court did not provide Bykov with an evidentiary hearing so that he could question Adams' attorney regarding 2.66 hours of attorney time that he had provided to his client. CP 370. But Bykov never requested such a hearing prior to the trial court's entry of judgment on November 15, 2010. See CP 224-317 (Bykov's responsive pleadings).

Bykov contended in his 5th issue that there could have been no attorney's fees incurred by Adams because there were no fees and no costs associated with the redaction of the social security numbers. CP 370. But Adams' attorney's fee declaration was evidence of the fees incurred.¹⁹ CP 144-145. Bykov's 5th contention ignores that it takes time to investigate, research, prepare moving papers and appear in court for hearings in conjunction with the redaction and CR 11 components of Adams' show cause motion.

Bykov's 6th contention was that Adams should not be entitled to recover CR 11 sanctions for the November 5, 2010 pleading containing his attorney's social security number because Adams did not file a response to the motion. CP 370. Bykov's contention ignores the fact that his first appeal of the case was pending in the Court of Appeals when he improperly filed his motion in the trial court. Adams elected to remedy the harassment that Bykov had perpetrated in the Court of Appeals and then return to the trial court to remedy the harassment that Bykov had perpetrated there after

¹⁹ Adams did not request an award of the costs that were incurred to obtain the show cause order in the Ex Parte Department and to personally serve Bykov with the moving papers on November 3, 2011.

his criminal conviction gave a modicum of assurance that he would not continue to file social security numbers in the trial court.

Bykov's 7th contention was that the trial court could not impose CR 11 sanctions on Bykov for filing a pleading for the improper purpose of harassing Adams' attorney. The trial court had ruled that the filing was intended as harassment and the Court of Appeals later agreed with the trial court that the social security number had no relationship to the case. CP 144; 178; 320-322.

The 8th contention was that Bykov had a First Amendment right to file pleadings with the trial court that were intended to harass Adams's attorney even though the pleadings had nothing to do with the lawsuit. CP 370-371. Bykov failed to brief the issue of his purported unlimited First Amendment right to harass other people. He also failed to brief the issue of why he claims his many false statements and insinuations about Adams' attorney's character were admissible as evidence under ER 404.

Bykov's 9th contention was that he was denied his Fourteenth Amendment rights to due process when he claims he was not told about a law (he does not identify the law) that required him to not file pleadings with Adams' attorney's social security number in order to harass him. CP 371. He again failed to explain

how his many false statements and insinuations about Adams' attorney were admissible as evidence under ER 404.

The 10th contention was that the CR 11 sanctions were a "taking" in violation of Bykov's constitutional rights (which he did not identify).

Bykov's 11th and final contention was that \$731.50 was an unreasonable amount of CR 11 sanctions. CR 371. Bykov's pleadings ignore the fact that this was an extremely minimal CR 11 sanction given his continuous harassing behavior throughout this litigation.

The exhibits that Bykov attached to his motion display Bykov's lay bare his ongoing intention to submit pleadings for the purpose of harassing Adams' attorney. See, CP 398-401 (resubmission of portions of Adams' attorney's social security number); CP 402 (picture of Adams' attorney's parent's house); CP 407-410 (more copies of portions of Adams' attorney's social security number); CP 411-412 (old deferred prosecution paperwork). Again, these materials had no relationship to the litigation and were inadmissible as evidence it is clear that Bykov was filing these pleadings to harass Adams' attorney in violation of CR 11.

Bykov did not conduct a reasonable investigation into the facts and law that he included in his motion to vacate. The Court of Appeals should independently review Bykov's pleadings and make the finding that he did not conduct a reasonable investigation of the facts and law before filing these pleadings, which had no basis in law or in fact contrary to CR 11. A remand to the trial court will result in Bykov's 4th appeal in this case.

The Court of Appeals should also affirm the trial court's determination that \$1,000.00 is a reasonable sanction for Bykov's filing of the motion to vacate or, in the alternative, substitute another amount that the Court deems reasonable based on the record in this case. A remand on this issue will likely result in a higher CR 11 sanction against Bykov and his 4th appeal to the Court of Appeals in this case.

Dated this 14th day of January, 2013.


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