No. 89962-2

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

DEANDRA GRANT,

Petitioner/Appellant

v.

NATIONAL COLLEGE FOR DUI DEFENSE, INC.,

Respondent

King County Superior Court No. 12-2-20411-0 SEA
The Honorable Theresa B. Doyle

RESPONDENT'S ANSWER & RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Plaintiff/Appellant/Petitioner Deandra Grant ("Grant"), an attorney, claimed Defendant/Respondent National College for DUI Defense ("NCDD") wrongfully refused to certify her as a DUI defense specialist because of her gender. The Superior Court dismissed her complaint: (1) for failure to state a claim; and (2) on *forum non conveniens* grounds. Grant appealed on *forum non conveniens* grounds only.

The Court of Appeals affirmed the Superior Court's dismissal, and Grant now seeks review of that decision. She identifies no decision by the Supreme Court with which the Court of Appeals decision conflicts, no significant question of law under the Washington or United States Constitution, and no substantial public interest at issue. Thus, her Petition is improper.

Instead, Grant challenges the form of the Superior Court's reasoned decision (given at oral argument), claims she did not waive a challenge to dismissal of her claims on 12(b)(6) (failure to state a claim) grounds because she contested the dismissal of her complaint on other grounds, and conflates the concepts of *forum non conveniens* and jurisdiction to contest the dismissal of her claims on *forum non conveniens* grounds.

Grant does not contend that the Gulf Oil factors relating to the convenience of parties and witnesses were misweighed. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947) (explaining the *forum non conveniens* factors). Rather, she argues that her case should not have been dismissed because the Superior Court had "jurisdiction" over her case, when lack of "jurisdiction" was neither the basis for the Superior Court's dismissal nor the Court of Appeal's affirmation.

Her "jurisdiction" argument rested on an allegation, raised after the Superior Court's dismissal in a motion for reconsideration, that NCDD allegedly requires disputes related to membership to be filed in King County. But she failed, and continues to fail, to explain how it was an abuse of discretion to find that this clause is irrelevant to a certification dispute (because that clause only applied to membership which is not required for certification) or that Grant presented no excuse for her failure to raise this irrelevant fact before the Superior Court's ruling on the motion to dismiss.

Although the Court of Appeals' decision neither terminated review nor denied a personal restraint petition on the merits, the only situations where a motion for reconsideration would be proper, Plaintiff filed one anyway. In that motion, and again here, Grant claims that NCDD also requires disputes related to certification to be filed in King County, while

again failing to explain why she did not raise this alleged clause at the time she filed her Complaint or establishing with admissible evidence that such a requirement actually existed at the time she filed her Complaint with the Superior Court.

Grant's arguments are without merit and her Petition should not be granted. Moreover, Grant has raised versions of the same frivolous "jurisdiction" argument: (1) in opposition to the motion to dismiss, (2) in a motion for reconsideration at the Superior Court level, (3) on appeal, (4) in a motion for reconsideration to the Court of Appeal, and (5) now here. Hers is an obvious attempt to harass, annoy and cause expense to NCDD. Accordingly, NCDD requests an award of its fees and costs pursuant to RAP 18.1(b) and 18.9 as reimbursement for the costs incurred in answering this frivolous Petition, and as a deterrent to further harassment.

II. IDENTITY OF PETITIONER & CITATION OF DECISION

Grant seeks review of the Court of Appeals' December 23, 2013 decision affirming the dismissal of her claims on *forum non conveniens* grounds. See Appendix A3-A8. She does not meaningfully challenge the Superior Court's dismissal of her claims for failure to state a claim or the December 23, 2013 Court of Appeal's affirmation of that dismissal. Id.

She does not appear to challenge Court of Appeal's denial on January 15, 2014 of her motion for reconsideration of that decision. Id.

III. ISSUES PRESENTED FOR REVIEW

The issues presented by Grant fail to conform with the Rules of Appellate Procedure ("RAP") because they do not state the basis for the appeal as required under RAP 13.4(b) and RAP 13.4(c)(7) (the petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument"). Nowhere does Grant, as she is required to do pursuant to RAP 13.4(b)(1)-(4), identify a Supreme Court or Court of Appeals decision in conflict with the decision by the Court of Appeals in this matter, a significant question of law under the state Constitution or the United States Constitution raised by the Court of Appeals decision or a substantial public interest affected by the Court of Appeals decision. Consequently, her Petition fails on its face.

Rather, Grant's articulated "Issues Presented For Review" are frivolous. They are: (1) a continued complaint that she is entitled to a reasoned decision from the Superior Court, even though one page of the Court of Appeals opinion is devoted to quoting the reasoned decision by the Superior Court; (2) a continued complaint that because NCDD is incorporated in Washington and allegedly requires disputes not at issue in

this case to be litigated in Washington, Washington has "jurisdiction" over NCDD, even though "jurisdiction" was not the basis of the Superior Court's dismissal or the Court of Appeals' affirmation.

Buried in her Petition is also an argument that she did not waive her challenge to the Superior Court's dismissal for failure to state a claim because "[t]he motion to dismiss was ... the only one that Petitioner's opening brief addressed, even if the words "motion to dismiss" were not mentioned at every page in the brief." Of course, there is a difference between Grant's challenge to the Superior Court' dismissal on "jurisdiction" grounds and a challenge to the motion to dismiss on 12(b)(6) grounds, the latter of which was never made.

IV. STATEMENT OF THE CASE

As with Grant's "Issues Presented for Review," Grant's "Statement of the Case" is significantly flawed and fails to follow the rules. Grant's facts are not supported by record citations, as required. See RAP 10.3(a)(5); see also Petition, pp. 4-7. In fact, contrary to the rules, not one single "fact" cited by Grant is supported by record evidence. See id. Second, Grant's facts are utterly argumentative, which is strictly prohibited by the rules. See id. Accordingly, this Petition should be denied due to its failure to conform, even minimally, with the rules.

Nonetheless, NCDD provides the following Statement of the Case in support of its opposition.

A. NCDD Is A Voluntary Bar Association That Did Not Certify Grant as a DUI Defense Specialist.

NCDD is a voluntary bar association for DUI defense lawyers. CP 2; 42-43. NCDD administers a certification program allowing DUI defense lawyers to earn the designation of "Board Certified" by NCDD. CP 2; 42.

Grant is an attorney in Texas who practices DUI defense. CP 2; 42. Grant applied for certification by NCDD and was informed that she did not pass NCDD's certification test. CP 4. Although Grant was a member of NCDD, membership is not a requirement for certification. CP 63-64.

NCDD is incorporated in Washington, but Grant did not take the certification exam in Washington, and the witnesses and documents relevant to this certification dispute are not in Washington. CP 48.

B. Grant Complained to the Superior Court that NCDD's Decision Was Discriminatory and Gender-Based.

Grant alleged two causes of action against NCDD: (1) gender discrimination in violation of RCW 49.60.030(1)(g)(2); and (2) violation of the Washington Unfair Business Practices Act Pursuant to RCW 19.86. CP 1. She alleged that NCDD discriminated against her because of her gender when it did not certify her as a DUI defense specialist. CP 4.

C. The Superior Court Properly Granted NCDD's Motion to Dismiss on 12(b)(6) and *Forum Non Conveniens* Grounds.

NCDD filed a motion to dismiss based upon: (1) Civil Rule 12(b)(6) for failure to state a claim for which relief could be granted; (2) *forum non conveniens*; and (3) Grant's waiver of her claims against NCDD. CP 42; 44-45, 61. The Superior Court granted the motion on two grounds: (1) *forum non conveniens*; and (2) failure to state a claim upon which relief could be granted. RP 15-16.

Grant filed a motion for reconsideration in which she challenged the Superior Court's dismissal of her case on the grounds of *forum non conveniens*, but not the dismissal of her case on Civil Rule 12(b)(6) grounds (failure to state a claim upon which relief could be granted). CP 383-399. With respect to her *forum non conveniens* challenge, she did not claim that the Superior Court misapplied the Gulf Oil factors, but rather merged and confused the concepts of *forum non conveniens* and "jurisdiction", claiming that Washington had jurisdiction over her claims because: (1) NCDD is incorporated in Washington and: (2) after the court's ruling, she "discovered" on NCDD's website a rule that membership (not certification) disputes with NCDD were to be filed in Washington. CP 385. She offered no explanation for why the new "fact", the alleged rule regarding certification disputes, was not raised

before the Superior Court ruled on the motion to dismiss and, in fact, asserted that the language had been available on NCDD's website since at least December 2010. CP 411-418. The Superior Court denied her motion for reconsideration. CP 424.

D. The Court of Appeals Properly Affirmed the Superior Court's Dismissal.

On appeal, Grant challenged the Superior Court's dismissal of her case: (1) complaining that she is entitled to a reasoned decision, ignoring the fact that the Superior Court articulated, at great length, its reasoning at the hearing and the Court of Appeals quoted that reasoning in its opinion; and (2) conflating the concepts of jurisdiction and *forum non conveniens*, complaining that because NCDD is incorporated in Washington and allegedly has a rule requiring membership (but not certification) disputes to be filed in Washington, Washington has jurisdiction over this dispute and therefore Washington cannot be an inconvenient forum. See generally Grant's opening brief filed with the Court of Appeals.

The Court of Appeals, applying the correct standard of review, abuse of discretion (see Klotz v. Dehkhoda, 134 Wash. App. 261 (2006) and River House Development Inc. v. Integrus Architecture P.S., 272 P.3d 289 (2012)) affirmed the Superior Court's dismissal of Grant's claims on both 12(b)(6) and *forum non conveniens* grounds.

With respect to the dismissal on 12(b)(6) grounds, the Court stated:

> Grant does not identify or brief any issue related to CR 12(b)(6). She does not demonstrate that her complaint stated a claim. By failing to assign error to and argue against the court's decision to dismiss for failure to state acclaim, Grant waives this argument. [citations omitted] We therefore affirm the order of dismissal insofar as it is based on CR 12(b)(6). Appendix, A5.

With respect to Grant's erroneous argument that the Superior Court dismissed her case on jurisdictional grounds, the Court of Appeals stated:

> Grant contends the court's discretion to dismiss on grounds of forum non conveniens rested on an erroneous determination that the trial court lacked "jurisdiction" to hear the case. But the court's ruling nowhere mentions jurisdiction. To dismiss a case on forum non conveniens grounds presupposes that the dismissing court had jurisdiction. Appendix, A6.

With respect to the Superior Court's dismissal of Grant's claims on *forum non conveniens* grounds, the Court observed:

> Grant does not contend that the trial court misweighed the Gulf Oil factors. Instead, she focuses on [NCDD's] Rule 8 which requires that disputes related to membership ... must be filed in King County. ... This argument was first raised in Grant's motion for reconsideration. Grant did not offer an excuse for failing to bring up Rule 8, a new fact, before the trial court ruled on the motion to dismiss. She does not offer one now. Additionally, Rule 8 on its face does not apply to certification disputes but rather only to membership disputes. Appendix, A6-A8.

Grant then filed a motion for reconsideration, in which she included another new "fact", an alleged rule (accompanied by no admissible evidence) that NCDD required (at some unknown point in

time) certification disputes to be filed in Washington. As a motion for reconsideration is only proper pursuant to RAP 12.4 when there is a decision terminating review or denying a personal restraint petition on the merits, neither of which happened in this case, the Court of Appeals summarily denied her motion for reconsideration. See Appendix A9-A10.

Grant now recycles these specious arguments in her frivolous Petition.

V. ARGUMENT

A. Grant's Complaint Regarding the Form of the Reasoned Decision by the Superior Court is Frivolous.

Grant complains that she is entitled to, but did not receive, a reasoned decision from the Superior Court. She does not dispute that a lengthy, reasoned decision was given at oral argument and then quoted in the Court of Appeals decision. Rather, her complaint is that it was not also included in the Superior Court's order dismissing her claims.

In so complaining, Grant does not, as she is required to do pursuant to RAP 13.4(b)(1)-(4), identify a Supreme Court or Court of Appeals decision in conflict with the decision by the Court of Appeals in this matter, a significant question of law under the state Constitution or the United States Constitution raised by the Court of Appeals decision or a substantial public interest affected by the Court of Appeals decision. Consequently, the argument is frivolous.

Furthermore, the only law Grant cites in support of her argument is neither precedential nor relevant to the facts. Instead, she cites two Ninth Circuit cases discussing situations where the United States District Court provided *no reasoning* and the 9th Circuit therefore had no basis on which to evaluate its exercise of discretion. See, Gov't Employees Ins. Co. v. Dizol, 133 F.3d 1220 (9th Cir. 1998) (no reasoned decision in any form); Couveau v. American Airlines, Inc. 218 F.3d 1078 (2000) (same). Of course that is not the case here. In fact, in its six page order, the Court of Appeals spent a page quoting the Superior Court's detailed reasoning, laid out at oral argument, for dismissing Grant's complaint. See Appendix A4-A5.

B. Grant's Argument That The Court of Appeals Erred in Affirming the Superior Court's Dismissal of Her Claims on 12(b)(6) Grounds is also Frivolous.

The Court of Appeals affirmed the Superior Court's dismissal of Grant's claims on 12(b)(6) grounds, explaining that Grant waived a challenge to dismissal on these grounds by failing to challenge this grounds for dismissal on appeal. Grant complains that she did not waive this argument, although she concedes she never mentioned 12(b)(6) in her opening brief to the Court of Appeals, because she *is* complaining about her case being dismissed in general.

In so complaining, Grant does not, as she is required to do pursuant to RAP 13.4(b)(1)-(4), identify a Supreme Court or Court of Appeals decision in conflict with the decision by the Court of Appeals in this matter, a significant question of law under the state Constitution or the United States Constitution raised by the Court of Appeals decision or a substantial public interest affected by the Court of Appeals decision. Consequently, the argument is frivolous.

Furthermore, Grant misses the point. Appealing the dismissal on "jurisdiction" grounds (in which argument she confuses the concepts of jurisdiction, which was not a basis for dismissal, and forum *non conveniens*, which was) is not the same thing as appealing the dismissal of her claims pursuant to 12(b)(6) for failure to state a claim. Not only does she not mention 12(b)(6) anywhere in the appellate record, nor does she make an argument in any way explaining how she did state a claim pursuant to WLAD or the CPA. In fact, Grant articulates the following on page 8 of her Petition: "The underlying case involves a motion to dismiss based on *subject matter jurisdiction* ... and a motion to dismiss based upon *personal jurisdiction*" (emphasis added). She continues to ignore the dismissal of her claims on 12(b)(6) grounds which, as the Superior Court articulated, and the Court of Appeals quoted, were as follows:

> I also find that there just is no unlawful act that's been pled that occurred here. I see that there – what we have here is arguments that there are potential injuries under – that would be actionable or could be actionable under both the Consumer Protection Act and the Washington State Act Against Discrimination. But your client doesn't allege that anything actually occurred here, and something more is required than what's been pled. In addition, under the CPA, it's fairly restrictive. You have to have an unfair deceptive act in Washington in trade or commerce in Washington impacting the public interest in Washington and injury to the plaintiff and there has to be a connection between factors three and four. And that's just not been pled, and there are no facts supporting those elements. And similarly, the Court finds that there's just not been sufficient injury pled under the Washington State Act Against Discrimination.

Appendix, A4-A5. Because the dismissal on those grounds has not been challenged, her challenges to the dismissal on other grounds are moot and frivolous.

C. Grant's Argument That The Court of Appeals Erred in Affirming the Superior Court's Dismissal of Her Claims on *Forum Non Conveniens* Grounds is also Frivolous.

At the Superior Court, NCDD presented evidence that Washington was an inconvenient forum because none of the witnesses or documents relevant to Grant's dispute were located in Washington. Grant never contested these facts. Instead, conflating the concepts of jurisdiction and *forum non conveniens*, Grant argued that because NCDD is incorporated in Washington, Washington has "jurisdiction" over NCDD. Because "jurisdiction" and *forum non conveniens* are not the same thing, and Grant presented no argument opposing the evidence that the relevant witnesses

and documents were located elsewhere, the Superior Court granted NCDD's motion, stating:

> Aside from the defendant corporation [] having been incorporated here, there's just no other connection whatsoever. They – nobody lives here; no injury occurred here; plaintiff doesn't live here; plaintiff doesn't practice here; the defendant organization doesn't seem to maintain any presence here beyond just having been incorporated here.

Appendix, A4. In her motion for reconsideration at the Superior Court, Grant introduced a new, irrelevant, fact: that NCDD allegedly requires membership (not certification) disputes to be litigated in Washington, and that therefore Washington has "jurisdiction" over NCDD -- even though "jurisdiction" was not the basis of the Superior Court's dismissal or the Court of Appeals' affirmation.

At the Court of Appeals, she made both arguments again, and the Court of Appeals affirmed, stating:

> Grant contends the court's discretion to dismiss on grounds of forum non conveniens rested on an erroneous determination that the trial court lacked "jurisdiction" to hear the case. But the court's ruling nowhere mentions jurisdiction. To dismiss a case on forum non conveniens grounds presupposes that the dismissing court had jurisdiction.
>
> ...
>
> Grant does not contend that the trial court misweighed the Gulf Oil factors. Instead, she focuses on [NCDD's] Rule 8 which requires that disputes related to membership ... must be filed in King County. ... This argument was first raised in Grant's motion for reconsideration. Grant did not offer an excuse for failing to bring up Rule 8, a new fact, before the trial court ruled

> on the motion to dismiss. She does not offer one now. Additionally, Rule 8 on its face does not apply to certification disputes but rather only to membership disputes.

Appendix A7-A8.

Grant then filed a motion for reconsideration with the Court of Appeals, in which she included another new "fact," an argument (accompanied by no admissible evidence) that NCDD allegedly required (at some unknown point in time) certification disputes to be filed in Washington. As a motion for reconsideration is only proper pursuant to RAP 12.4 when there is a decision terminating review or denying a personal restraint petition on the merits, neither of which happened in this case, the Court of Appeals summarily denied that motion for reconsideration. See Appendix, A9-A10.

Grant raises the same arguments in her Petition. In so complaining, Grant does not, as she is required to do pursuant to RAP 13.4(b)(1)-(4), identify a Supreme Court or Court of Appeals decision in conflict with the decision by the Court of Appeals in this matter, a significant question of law under the state Constitution or the United States Constitution raised by the Court of Appeals decision or a substantial public interest affected by the Court of Appeals decision. Consequently, the argument is frivolous.

Forum non conveniens analysis presumes jurisdiction, and determines the most convenient location among appropriate jurisdictions based on the Gulf Oil factors. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947); Johnson v. Spider Staging Corp., 87 Wn.2d 577 (1976); Werner v. Werner, 84 Wn.2d 360 (1974). Grant has presented nothing at the Superior Court level or at the Court of Appeal level addressing the Gulf Oil factors. Thus, no error can be assigned based on the Superior Court's dismissal on *forum non conveniens* grounds or the Court of Appeals affirmation of that dismissal.

New issues may be raised for the first time in a motion for reconsideration at the Court of Appeal level, thereby preserving them for review, *only where they are not dependent upon new facts and are closely related to and part of the original theory.* Reitz v. Knight, 62 Wash.App. 575, (1991) (citing Newcomer v. Masini, 45 Wash.App. 284, 287 (1986)). Because Grant raised NCDD's alleged rule regarding membership disputes in an untimely manner, and continues to offer no excuse for doing so, because Grant has offered no explanation of the relevance of a membership dispute provision when hers is a certification dispute, and because the Superior Court and Court of Appeals articulated independent grounds for the dismissal of her case -- a failure to state a claim -- no error

can be assigned based on the trial court's denial of her motion for reconsideration at the Superior Court or the Court of Appeals affirmation.

Similarly, a motion for reconsideration at the Court of Appeal is only proper pursuant to RAP 12.4 when there is a decision terminating review or denying a personal restraint petition on the merits, neither of which happened in this case. Thus, there can be no error assigned to the Court of Appeals when it denied her motion for reconsideration there.

Finally, all of Grant's arguments regarding how a forum selection clause may or may not affect the analysis of the Gulf Oil factors can be ignored because no admissible evidence of a forum selection clause governing certifications disputes at the time Grant filed her dispute is in the Superior Court or Appellate Court record – because no such clause was, in fact, in place. Per Keystone Masonry, Inc., v. Garco Const., Inc., 135 Wash.App. 927 (2006), it is only when there are *no disputed facts* regarding whether the parties have selected a forum, that the court's approach to the balancing test regarding the convenience factors is different. Here, there is no evidence in this matter of the parties having agreed on a forum and, in fact, there is no admissible evidence in the record that a forum selection clause mandating Washington as the location for certification disputes existed when Grant filed her Complaint.

D. NCDD Requests and Is Entitled To Attorneys' Fees and Costs.

NCDD requests its fees and costs in accordance with RAP 18.1(b), 18.1(j), and 18.9. WLAD provides for a prevailing party to receive attorneys' fees and costs. See RCW 49.60.030(2); Collins v. Clark County Fire Dist. No. 5, 155 Wash.App. 48 (2010) (the "prevailing party," for purposes of an award of attorney fees under WLAD, is the party who receives an affirmative judgment in his or her favor). Consequently, NCDD should receive its attorneys' fees and costs associated with the defense of Grant's WLAD claims since it received an affirmative judgment, received an affirmation of that judgment, and is entitled to a denial of this Petition. Furthermore, as is detailed above, Grant's appeal to the Court of Appeal and this Petition are frivolous and NCDD should be awarded fees and costs associated with these proceedings. See RCW 4.84.185; Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 330 (1996). When a party files a frivolous appeal and/or petition, the respondent is entitled to its attorneys' fees and costs related to that appeal/petition. Primarily for an award of attorneys' fees, the Court considers "[a]n appeal [to be] frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of

merit that there is no possibility of reversal." Advocates for Responsible Development, et al., v. Western Washington Growth Management Hearings Board, et al., 170 Wash.2d 577, 579 (2010) (citing Tiffany Family Trust Corp. v. City of Kent, 155 Wash.2d 225, 241 (2005)). Moreover, a respondent is entitled to attorneys' fees and costs as a sanction when an appellant's appeal raises no debatable issues and when her arguments lack support in the record or are precluded by binding precedent. See Andrus v. State Dept. of Transp., 128 Wash.App. 895, 900 (2005), review denied 157 Wash.2d 1005 (2006); See also In Re Marriage of Penry, 119 Wash.App. 799 (2004) (an appeal is frivolous and worthy of sanctions if there is no debatable issues upon which reasonable minds may differ and there is no reasonable possibility of reversal). That is precisely the case here. Grant had a reasoned decision articulating as the basis for the dismissal of her claims: a failure to state a claim upon which relief can be granted and *forum non conveniens* based on application of the Gulf Oil Factors. She failed to challenge the first basis for dismissal, and for the second, ignored the Gulf Oil factors altogether and only after the fact made a convoluted "jurisdictional" argument on the basis of an inapplicable rule regarding membership disputes and an alleged rule regarding certification disputes where there is no record evidence that governed the parties at the time she filed her Complaint.

VI. CONCLUSION

This frivolous Petition fails to identify a Supreme Court or Court of Appeals decision in conflict with the decision by the Court of Appeals in this matter, a significant question of law under the state Constitution or the United States Constitution raised by the Court of Appeals decision, or a substantial public interest affected by the Court of Appeals decision. Rather, it raises a series of frivolous arguments intended to harass, annoy, and cause expense to NCDD. Grant's Petition should be denied and NCDD should be awarded its fees and costs.

March 13, 2014

Respectfully submitted,

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NATIONAL COLLEGE FOR DUI DEFENSE, INC.,

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APPENDIX TO RESPONDENT'S ANSWER & RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEANDRA GRANT, an individual, Appellant, v. NATIONAL COLLEGE OF DUI DEFENSE, a Washington corporation, Respondent.	No. 69691-2-I DIVISION ONE UNPUBLISHED OPINION FILED: December 23, 2013

BECKER, J. — The plaintiff, an attorney, claims the defendant College wrongfully refused to certify her as a specialist. The trial court dismissed the complaint with prejudice for failure to state a claim and also on grounds of forum non conveniens. We affirm.

Appellant Deandra Grant is a Texas attorney whose practice consists of defending individuals who are charged with driving under the influence (DUI). Respondent National College of DUI Defense, a Washington corporation, has a program recognized and approved by the American Bar Association for certifying DUI defense specialists.

Grant sued the College in June 2012. Her complaint alleged that she took the College's certification examination and passed it but was denied certification

on account of her gender. The complaint claims the College committed gender discrimination in violation of RCW 49.60.030, violated the American Bar Association standards for a certified program, and operates a monopoly in violation of RCW 19.86. Grant sought declaratory and injunctive relief and punitive damages.

The College moved to dismiss the complaint on various grounds, including failure to state a claim under CR 12(b)(6) and forum non conveniens. The trial court specified both grounds as the bases for the decision to grant dismissal:

> First of all, the forum non conveniens issue, weighing all the factors clearly weighs in favor of finding that Washington is not the appropriate forum. Aside from the defendant corporation and having been incorporated here, there's just no other connection whatsoever. They—nobody lives here; no injury occurred here; plaintiff doesn't live here; plaintiff doesn't practice here; the defendant organization doesn't seem to maintain any presence here beyond just having been incorporated here.
>
> So I find that aside from the fact of incorporation in Washington, there's just no other good reason for this claim to have been brought here rather than in either Texas or I guess there's some connection with Alabama. So for that reason, dismissal is appropriate.
>
> I also find that there just is no unlawful act that's been pled that occurred here. I see that there—what we have here is arguments that there are potential injuries under—that would be actionable or could be actionable under both the Consumer Protection Act and the Washington State Act Against Discrimination. But your client doesn't allege that anything actually occurred here, and something more is required than what's been pled.
>
> In addition, under the CPA, it's fairly restrictive. You have to have an unfair deceptive act in Washington in trade or commerce in Washington impacting the public interest in Washington and injury to the plaintiff, and there has to be a connection between factors three and four. And that's just not been pled, and there are no facts supporting those elements.
>
> And similarly, the Court finds that there's just not been sufficient injury pled under the Washington State Act Against

Discrimination.

The order dismissing the case with prejudice was entered on November 16, 2012.

Grant moved for reconsideration and submitted a printout of "Membership Eligibility Rules" from the College's web site. Rule 8 is entitled "Governing Law and Jurisdiction." It requires that all disputes "arising from or related to membership in the College" shall be filed in King County Superior Court at the Kent Regional Justice Center and decided under Washington law. Grant argued that in view of the College's insistence in its own rules that litigation arising from membership must occur in Washington, the College's forum non conveniens argument was made in bad faith. The trial court denied the motion. This appeal followed.

On appeal, Grant does not identify or brief any issue related to CR 12(b)(6). She does not demonstrate that her complaint stated a claim. By failing to assign error to and argue against the court's decision to dismiss for failure to state a claim, Grant waives this argument. See Smith v. King, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). We therefore affirm the order of dismissal insofar as it is based on CR 12(b)(6).

Grant does make an argument related to forum non conveniens. This court reviews forum non conveniens dismissals for abuse of discretion. Sales v. Weyerhaeuser Co., 163 Wn.2d 14, 19, 177 P.3d 1122 (2008). "Forum non conveniens refers to the discretionary power of a court to decline jurisdiction

when the convenience of the parties and the ends of justice would be better served if the action were brought and tried in another forum." Johnson v. Spider Staging Corp., 87 Wn.2d 577, 579, 555 P.2d 997 (1976). To decide whether dismissal is warranted, the trial court considers factors set forth in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508, 67 S. Ct. 839, 91 L. Ed. 1055 (1947). Spider Staging, 87 Wn.2d at 579.

In part, Grant contends the court's decision to dismiss on grounds of forum non conveniens rested on an erroneous determination that the court lacked "jurisdiction" to hear the case. But the court's ruling nowhere mentions jurisdiction.

To dismiss a case on forum non conveniens grounds *presupposes* that the dismissing court has jurisdiction. If not, resort to forum non conveniens would be unnecessary since the matter could be more easily dismissed by a motion under CR 12(b)(1) (lack of subject matter jurisdiction) or CR 12(b)(2) (lack of personal jurisdiction). The forum non conveniens doctrine gives courts the discretion to *decline to exercise* jurisdiction where the convenience of the parties and ends of justice so require. Werner v. Werner, 84 Wn.2d 360, 370, 526 P.2d 370 (1974); 3 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE CR 3 (6th ed. 2013).

The trial court clearly had the correct legal framework in mind when making its ruling.

Grant does not contend that the trial court misweighed the Gulf Oil factors.

Instead, she focuses on the College's Rule 8 which requires that disputes related to membership in the College must be filed in King County. Grant argues that a corporation should not be able to maintain a rule that requires litigation in a particular forum while at the same time taking the position that the forum is inconvenient. This argument was first raised in Grant's motion for reconsideration.

A trial court's denial of a motion to reconsider is reviewed for abuse of discretion. River House Dev. Inc. v. Integrus Architecture, P.S., 167 Wn. App. 221, 231, 272 P.3d 289 (2012). Such discretion "extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." River House, 167 Wn. App. at 231. Also, a motion for reconsideration is preserved for appellate review only where it is "not dependent upon new facts." Reitz v. Knight, 62 Wn. App. 575, 581 n.4, 814 P.2d 1212 (1991).

Grant did not offer an excuse for failing to bring up Rule 8, a new fact, before the trial court ruled on the motion to dismiss. She does not offer one now. Additionally, Rule 8 on its face does not apply to certification disputes but rather only to membership disputes. Grant does not explain how the College's rules governing membership are relevant to a dispute about whether the College properly denied certification.

We conclude that Grant did not preserve the Rule 8 issue for appellate review, and in any event, dismissing the motion to reconsider was not an abuse of discretion because it was dependent on a new fact. We therefore affirm the

order of dismissal insofar as it is based on forum non conveniens grounds.

Affirmed.

Becker, J.

WE CONCUR:

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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January 15, 2014

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CASE #: 69691-2-I
Deandra Grant, App. vs. National College for DUI Defense, Inc., Resp.
King County No. 12-2-20411-0 SEA

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

Enclosure

c: The Hon. Theresa B. Doyle
Reporter of Decisions

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

DEANDRA GRANT, an individual, Appellant, v. NATIONAL COLLEGE OF DUI DEFENSE, a Washington corporation, Respondent.	No. 69691-2-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Deandra Grant, has filed a motion for reconsideration of the opinion filed December 23, 2013, and the court has determined that said motion should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

DONE this 15th day of January, 2014.

FOR THE COURT:

Becker, J.

Judge

FILED
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STATE OF WASHINGTON
2014 JAN 15 PM 4:20

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

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March 6, 2014

LETTER SENT BY E-MAIL ONLY

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Hon. Richard Johnson, Clerk
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Re: Supreme Court No. 89962-2 - Deandra Grant v. National College for DUI Defense, Inc.
Court of Appeals No. 69691-2-I

Clerk and Counsel:

The Court of Appeals has forwarded the petition for review and related Court of Appeals case files in the referenced matter. The matter has been assigned the Supreme Court cause number indicated above.

The parties are directed to review the provisions set forth in RAP 13.4(d), regarding the filing of any answer to petition for review and any reply to answer.

The petition for review will be set for consideration without oral argument by a Department of the Court; see RAP 13.4(i). If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

Usually there is approximately four months between receipt of the petition for review in this Court and consideration of the petition. This amount of time is built into the process to allow an answer to the petition and for the Court's normal screening process. At this time it is not known on what date the matter will be determined by the Court. The parties will be advised when the Court makes a decision on the petition.

It is noted that any amicus curiae memorandum in support of or in opposition to a pending petition for review should be served and received by this Court and counsel of record for the parties and other amicus curiae by not later than 60 days from the date the petition for review was filed; see RAP 13.4(h).

The parties are referred to the provisions of General Rule 31(e) in regards to the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

It is noted that for attorneys, this office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.

Sincerely,

Ronald R. Carpenter
Supreme Court Clerk

RRC:lm

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on March 13, 2014, I caused the foregoing to be filed via legal messenger with:

Clerk of the Supreme Court
Supreme Court
415 12th Avenue SW
Olympia, WA 98501-2314

and

Clerk of the Court
Court of Appeals, Division I
600 University Street
One Union Square
Seattle, WA 98101-1176

and a true and correct copy of the same to be mailed via U.S. Postal Service to:

Attorneys for Petitioner:
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