No. 101086-9

SUPREME COURT
OF THE STATE OF WASHINGTON

JON MORRONE,

Respondent,

v.

NORTHWEST MOTORSPORT, INC., a Washington nonprofit corporation; NORTHWEST MOTORSPORT, LLC, a Washington limited liability company,

Appellants.

ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

True to his pattern, Morrone brings this petition for review in an attempt to avoid having to prove the merits of his claims against Northwest Motorsport ("NW Motorsport") at all costs. He overblows the facts, misrepresents Division II's opinion, and hyperbolizes the effect this single, unpublished decision will have.

The Court should deny review because Division II properly applied long well-settled principles of law that govern motions to vacate default judgments under CR 60(b)(1). It created no conflicts in decisional law, and its decision will have *zero effect* beyond the two parties in this case. That effect, that Morrone will now have to prove his case on its merits rather than rely on a hurried default judgment obtained by outside counsel's unilateral mistake, is consistent with this state's public policy of liberally setting aside default judgments, as this Court has held repeatedly. Review is not warranted. RAP 13.4(b).

B. STATEMENT OF THE CASE

Division II's opinion summarizes the facts of this case, but certain facts bear emphasis.

Jon Morrone resigned his position as in-house general counsel for NW Motorsport in Puyallup to take a position in Seattle at Holland America Group, a much larger, multinational corporation closer to his home in Mercer Island. CP 262. He resigned before his contract term with NW Motorsport expired. CP 264. In his resignation letter, Morrone praised NW Motorsport management for their "good vision for th[e] company," letting them know he was "rooting for [their] success." CP 264.

A year and a half later, Morrone filed a complaint, alleging that NW Motorsport breached the employment contract and willfully withheld wages by failing to pay a bonus for a case he had litigated during his tenure that included a damage award in NW Motorsport's favor. CP 1-17. The contract, which Morrone unilaterally drafted, provided, "Employee shall

be entitled to salary and benefits during the three-year Contract Term regardless of whether Employee's employment is terminated…*unless Employee resigns his position before the end of the Contract Term*." CP 135 (emphasis added). He also alleged that NW Motorsport wrongfully terminated him – even though he *resigned* – and retaliated/discriminated against him after he chose to take time off (with NW Motorsport's approval) following his wife's pregnancy complications that led to the loss of his daughter. *Id.*

NW Motorsport engaged outside counsel to represent it in the matter, Sheryl J. Willert, an experienced partner at a well-respected and sophisticated law firm, Williams Kastner & Gibbs, PLLC. CP 198. Unfortunately, Willert did not file a notice of appearance because of a miscommunication at her office. CP 199, 239. NW Motorsport played no role in that miscommunication; it was entirely outside counsel's fault. *Id.*

On March 4, exactly 21 days after serving the lawsuit, the minimum time necessary under the civil rules, Morrone

moved on shortened time for an order of default against NW Motorsport for failing to appear and answer the complaint. CP 22-21. The trial court entered an order of default the same day. CP 74-76. Within days, the Court heard (and granted) Morrone's motion to shorten time and motion for default judgment for an amount certain. CP 157. The court entered judgment for $407,272.34 in double damages for wages, plus interest, attorney fees, and costs for the alleged willfully unpaid litigation bonus. CP 160-62. An evidentiary hearing was held the very next day where Morrone testified about the uncertain damages amounts claimed in his complaint related to his other employment claims. CP 164. The Court granted Morrone's motion for default judgment at 2:27 p.m. on March 9, entering a second default judgment for $1,345,900 plus interest, attorney fees, and costs. CP 165-82.

On that same date, NW Motorsport's counsel appeared a little over *one hour* later. CP 199. Within two days, NW

Motorsport moved to vacate the default order and judgment. CP 183-94.[1]

NW Motorsport's motion to vacate the default documented the fact that its failure to appear was not willful; it resulted from a unilateral calendaring mistake made by its outside counsel. CP 199, 239; RP 56-57; Op. at 10. NW Motorsport laid out *prima facie* defenses, including the plain contract language above showing that premature resignation would affect his entitlement "salary and benefits" including his bonus, supported by declarations and exhibits showing that he was not terminated, discriminated, or retaliated against for any perceived disability or FMLA. CP 187-91, 198-204, 234-40, 242-68. Nor was he terminated, constructively or otherwise; he *voluntarily* resigned his position to take an arguably more

[1] Although there were two default judgments entered, this answer refers to them collectively as a single default judgment for simplicity's sake.

attractive job at Holland America that was located closer to his home.[2]

The Pierce County Superior Court, the Honorable Judge Michael E. Schwartz, denied NW Motorsport's motion to vacate the default. CP 301-02. It found that the mistake was inexcusable because it was nothing "more than a breakdown in office procedures" and that NW Motorsport did not present a substantial enough prima facie defense. *Id.*

On appeal, Division II reversed in an unpublished opinion. Applying well-settled principles regarding default judgments, Division II held that NW Motorsport showed valid defenses to Morrone's claims, its failure to appear was not willful, but rather a mistake by outside counsel, it moved speedily to vacate the default, and Morrone would experience no hardship, he merely would have to prove the merits of his

[2] NW Motorsport also documented several half-truths and false statements Morrone made in his complaint and in his testimony to obtain to the default judgment. CP 242-46.

case. *See generally,* Op. Division II also denied Morrone's motion to publish. *See* appendix.[3]

Now still seeking to avoid the merits at all costs, Morrone petitions for review to this Court. His arguments are baseless. Division II's unpublished opinion creates no conflicts in law, nor does it raise issues of substantial public importance. It raises no issues beyond this single civil lawsuit over a disputed employment relationship that should be resolved on its merits and not in a hurried default proceeding that only occurred due to outside counsel's unilateral mistake. The Court should deny the petition.

C. ARGUMENT

(1) <u>There Is No Need for This Court to Clarify the Scope and Limitations of Re-Opening a Default Judgment</u>

Morrone is wrong that "the time has come for this Court to clarify the scope and limitations of re-opening a default

[3] The principles for publication are set forth in RAP 12.3(e). The denial of the motion is evidence of the fact that Division II's opinion was a routine application of existing law.

judgment." Pet. at 1. These standards are *well-settled* over the years, and the Court of Appeals' well-reasoned, unpublished decision does not raise issues that warrant this Court's attention, nor does it create any conflicts in law. The Court should deny review. RAP 13.4(b)(1), (2), (4).

(a) The Standard of Review on Appeal from a Default Judgment Is Well-Settled and Favors Liberally Setting Aside Defaults so Cases Can Be Heard on their Merits

At the outset, any discussion of the standards for evaluating default judgments must begin with the fundamental maxim that "Washington courts favor resolving cases on their merits over default judgments." *Sacotte Const., Inc. v. Nat'l Fire & Marine Ins. Co.*, 143 Wn. App. 410, 414, 177 P.3d 1147, *review denied*, 164 Wn.2d 1026 (2008). For over a century it has been the policy of this state to set aside default judgments liberally. *E.g.*, *Hull v. Vining*, 17 Wn. 352, 360, 49 P. 537 (1897). This Court has reiterated that Washington courts "liberally set aside default judgments pursuant to CR 55(c) and

CR 60 and for equitable reasons in the interests of fairness and justice." *Morin v. Burris*, 160 Wn.2d 745, 749, 161 P.3d 956 (2007).

This Court has also made it clear that while a defendant should not be permitted indefinite delays to appear or answer a complaint, "[j]ustice will not be done if hurried defaults are allowed." *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979). "Default judgments are normally viewed as proper only when the adversary process has been halted because of an essentially unresponsive party." *Colacurcio v. Burger*, 110 Wn. App. 488, 495, 41 P.3d 506, *review denied*, 148 Wn.2d 1003 (2002) (quotation omitted). Thus, a default judgment normally requires the moving party to show a "willful intent to ignore the lawsuit." *Showalter v. Wild Oats*, 124 Wn. App. 506, 514, 101 P.3d 867 (2004).

Although courts review a trial court's decision on a CR 60 motion to set aside a default judgment for abuse of discretion, courts do not hesitate to find such an abuse when it

comes to defaults.[4] An appellate court's "primary concern" on review is that "a trial court's decision on a motion to vacate a default judgment is just and equitable." *Showalter*, 124 Wn. App. at 510. Thus, an appellate court does not merely defer to the trial court's ruling, but must "evaluate the trial court's decision by considering the unique facts and circumstances of the case." *Id.* at 511.

Morrone bemoans the Division II opinion, claiming it resembles *de novo* review. Pet. at 10, 25. But the more searching standard of review in default appeals requiring an appellate court to "evaluate…the unique facts and circumstances of [each] case" aligns with this Court's command that default judgments should be liberally set aside. *Morin*, 160 Wn.2d at 749. It also aligns with appellate courts' policy of

[4] *See, e.g.*, *Duryea v. Wilson*, 135 Wn. App. 233, 236, 144 P.3d 318 (2006) (default vacated on appeal); *Norton v. Brown*, 99 Wn. App. 118, 126, 992 P.2d 1019, 1023 (1999), *amended*, 3 P.3d 207 (2000) (accord); *Calhoun v. Merritt*, 46 Wn. App. 616, 622, 731 P.2d 1094 (1986) (accord). This answer contains also many more examples of defaults overturned on appeal.

liberally interpreting court rules to resolve cases on their merits. RAP 1.2(a). It is well-settled that a more nuanced standard of review is required in case like this, as courts have long held that an appellate court is more likely to overturn a decision to uphold a default judgment than one setting it aside. *Showalter*, 124 Wn. App. at 510; *Griggs*, 92 Wn.2d at 582 ("abuse of discretion is less likely to be found if the default judgment is set aside").

These principles are well-settled, yet Morrone omits them from his petition because they so clearly deflate his argument. Division II did not create any conflict in law by evaluating the unique facts and circumstances of the case to effect Washington's policy that default judgments are liberally set aside, rather than simply rubber stamping the trial court's flawed decision, as Morrone would have preferred. Rather, Division II properly applied existing law that is well-settled. Review of this unpublished decision affecting a single default judgment is not warranted under RAP 13.4(b)(1), (2), or (4).

(b) The Legal Test for Overturning a Default Is Well-Settled and Division II Properly Applied it in this Case

In addition to the settled standard of review, the legal test for evaluating a motion to vacate a default judgment is also settled. This Court does not need to review this unpublished case where Division II applied the proper standard to the "unique facts and unique facts and circumstances" of this particular case.

NW Motorsport moved to vacate the hurried default judgment pursuant to CR 60(b)(1), which allows relief from orders for "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." Since 1968, for fifty-four years, a party moving to vacate under CR 60(b)(1) must show that (1) there is substantial evidence supporting a *prima facie* defense; (2) the failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) the defendant acted with due diligence after notice of the default judgment; and (4) the plaintiff will not suffer a

substantial hardship if the default judgment is vacated. *White v. Holm*, 73 Wn.2d 348, 352, 438 P.2d 581 (1968). Factors (1) and (2) are primary; factors (3) and (4) are secondary. *Id.* As this Court stated, "This is not a mechanical test; whether or not a default judgment should be set aside is a matter of equity." *Little v. King*, 160 Wn.2d 696, 704, 161 P.3d 345 (2007).

Both parties cited this test below in their briefing. And this is exactly the test Division II used to evaluate the appeal. It determined that NW Motorsport presented evidence of *prima facie* defenses, that its failure to appear on time was unintentional, that it moved very quickly to set aside the default, and that Morrone would suffer no hardship, he would merely have to prove his case on its merits. That was not error, as discussed below, and Morrone is wrong that courts need any additional "clarity" when applying these factors, which by their very nature are "not mechanical" and turn on each case's individual facts and balance of equities.

That review should be denied is apparent in the second paragraph of Morrone's petition. He cites another unpublished case issued the same day for the proposition that the Court of Appeals is "dysfunction[al]" at providing guidance to trial courts. Pet. at 1. This is nothing but hyperbole, and certainly does not warrant granting review.

To begin with, even if there were a conflict among unpublished decisions, it would not be grounds for review in this Court. RAP 13.4(b)(1), (2). But even if it were, the unpublished decision Morrone cites, *Adam Laneer Constr., Inc. v. Foster Bros., Inc.*, 2022 WL 1467658 (Wash. Ct. App. May 10, 2022), falls perfectly in line with this case. In both, a plaintiff obtained a default judgment within a matter of weeks, and the defendant appeared within a matter of hours – just over one hour in this case and 72 in *Adam Laneer*. Both quickly filed a motion to set the judgment aside under CR 60(b)(1); NW Motorsport's was filed two days after its appearance. Both showed mistake or excusable neglect – the complaint in *Adam*

Laneer was filed in the first few months of COVID-19 which made finding a lawyer more difficult. And both presented *prima facie* defenses supported by declarations from company officers. The Court explained how vacating default was consistent with the policy that "default judgments generally are disfavored because courts prefer to resolve cases on their merits." (quotation omitted).

The only relevant difference between the cases is that the trial court in *Adam Laneer* vacated the default judgment, and that decision was affirmed on appeal. Here, too, the trial court should have granted NW Motorsport's CR 60(b)(1) motion, according to settled precedent. As discussed below, Division II got it right reversing the trial court's decision.

Morrone's petition for review is baseless. There is no need for additional guidance where Division II properly applied a well-settled test that is by its very nature "non-mechanical" and based on the facts and equities of each individual case. The Court should deny review.

(2) Division II Properly Applied the Law, Creating No Conflicts or Implicating Issues of Public Importance

The Court should deny review because Division II applied the proper legal test that has been well-established for decades. Because Division II's unpublished decision creates no conflicts in law and does not raise any issue of public importance, review should be denied. RAP 13.4(b)(1), (2), (4).[5] Although mere error correction is not a basis for review under RAP 13.4(b), Morrone takes various pot shots at Division II's ruling, trying to justify his grasp for review. Division II did not err.

(a) Division II Did Not Err in Evaluating Defenses to Morrone's Family Leave Act Claim

Morrone claims that the "easiest" and most "obvious" error was Division II's determination that NW Motorsport had a defense to the Family Leave Act claim because that Act was

[5] It is difficult to discern how an unpublished opinion with its effect described by GR 14.1 can meet the test of RAP 13.4(b)(4) in any event.

repealed absent a savings clause, therefore divesting Morrone of a cause of action. Pet. at 13-15; (citing op. at 16-19). For the first time in his petition for review, Morrone cites a savings clause the Legislature retroactively added under RCW 50A.05.125. Pet. at 14. Not only is this newly raised issue not worthy of this Court's review, but no error even occurred.

Morrone never cited RCW 50A.05.125 before because *it did not exist* when this case was before the trial court. Laws 2021 c 59 § 3. This new statute and its savings clause's effective date was April 16, 2021, which occurred *after* the trial court's final orders and *after* NW Motorsport filed its notice of appeal. CP 273-302. The very fact that the Legislature had to add this retroactive savings clause shows that at the time NW Motorsport moved to vacate the default, it had a strong defense to Morrone's claims and vacation should have been granted.

Division II did not err in so ruling, certainly considering Morrone never made this argument until now.[6]

And Morrone's concerns over the effect on the public are completely overblown, given the unique facts of this case where NW Motorsport's defense was valid at the time it raised it, given that there was no savings clause in place at the time. RCW 50A.05.125 is now effective for future and past cases. Review Division II's unpublished opinion is not necessary or warranted under RAP 13.4(b)(4) on an issue that has no larger public ramifications given the Legislature's actions.

(b) Division II Properly Applied the Law on *Prima Facie* Defenses in a CR 60(b)(1) Motion

Morrone also inflates Division II's use of the phrase "strong prima facie" defenses, claiming it erred by applying

[6] Morrone moved to publish, but he did not move for reconsideration in Division I. He has waived this argument that he never raised until now. *E.g.*, *In re Disability Proceeding Against Diamondstone*, 153 Wn.2d 430, 442, 105 P.3d 1 (2005) (Supreme Court will not review issues raised "for the first time in this court"); RAP 2.5(a).

some "new" standard of review. Pet. at 15-18. Division II did not err, create conflicts, or establish any new precedent in its unpublished decision – it merely recognized (in what essentially amounts to *dicta*) that some of NW Motorsport's many proffered defenses appeared stronger than others. Op. at 13 ("NWMS raises stronger arguments on some defenses than others").

Division II properly recognized that NW Motorsport presented numerous possible defenses to Morrone's claims. On the contractual claims, where Morrone sought certain litigation bonuses, the employment contract, which Morrone drafted himself, stated in unambiguous terms that "Employee shall be entitled to salary and benefits during the three-year Contract Term regardless of whether Employee's employment is terminated…*unless Employee resigns his position before the end of the Contract Term*." CP 135. The term for a litigation bonus was listed in a section of the contract titled "Compensation and Benefits." CP 136-37. Morrone resigned

from his employment *before* the contract term ended. Thus, NW Motorsport had a *prima facie* defense to his claims for not paying this bonus, part of his salary and benefits under the contract.

At the very least, NW Motorsport presented enough to show a disputed question of fact existed regarding how his resignation affected his entitlement to benefits under the contract. *See*, *e.g.*, *Martinez v. Miller Indus.*, Inc., 94 Wn. App. 935, 943, 974 P.2d 1261 (1999) ("Determining a contractual term's meaning involves a question of fact and examination of objective manifestations of the parties' intent.").

Additionally, NW Motorsport showed strong defenses to the contractual damages Morrone recovered in default. It has long been established that a "prima facie defense that the damage award was excessive" is enough to vacate default. *Norton v. Brown*, 99 Wn. App. 118, 124, 992 P.2d 1019 (1999), *amended*, 3 P.3d 207 (2000). The bonus provision explicitly excluded any court-awarded attorney fees and made no

provision for interest, CP 136-37, yet Morrone requested and recovered both as part of his default. This, including the express bar to recovery of attorney fees, gave NW Motorsport a defense to Morrone's damages. CP 136-37.

On top of this defense, Morrone also received liquidated ("double") damages under RCW 49.52 for an alleged willful withholding of wages. But as this Court has reiterated, a withholding of wages is not willful where there is a *bona fide* dispute whether the wages must be paid. *Champagne v. Thurston County*, 163 Wn.2d 69, 81, 178 P.3d 936 (2008). Here, again, the plain language of the employment contract raised a *bona fide* question over whether Morrone was owed the bonus money related to the Sunset litigation at all. Thus, Division II properly determined that NW Motorsport had a valid defense to willful withholding and the amount of damages.

The defense to Morrone's extracontractual claims for retaliation and wrongful discharge essentially starts and ends

with the fact that he was not discharged, but voluntarily resigned, praising the company for its vision on his way out the door to a new job with Holland America. CP 264. He took that job because of its many apparent advantages, compared to NW Motorsport. These advantages included a more stable company compared to NW Motorsport which sold shortly after he left, less stress from litigation (Morrone previously stated that the stress he had to endure defending a trial as NW Motorsport's general counsel in Pasco "cannot be overstated" CP 5-7), and a potentially more desirable Seattle-based location.

NW Motorsport presented evidence, including emails, communications, and declarations showing that he was not discharged, constructively or otherwise. CP 243, 249, 264. And contrary to his position on appeal that he subjectively believed working conditions to be intolerable, even during the time he claims was the worst while working at NW Motorsport, when he returned from bereavement leave, he "thank[ed]" the

company for the time away and wrote that he was "look[ing] forward" to getting back to work. *Id.*

This evidence is documented in the record and negates his claims. A plaintiff cannot prove constructive discharge when he or she left for some other reason (like taking a more desirable job). *Barnett v. Sequim Valley Ranch, LLC*, 174 Wn. App. 475, 489, 302 P.3d 500 (2013) (to prove constructive discharge an employee must show that he or she "quit because of the [intolerable] conditions and not for any other reason").[7] Instead, Morrone based all his claims on his own alleged

[7] Morrone also needed to show that he gave the employer an opportunity to address any intolerable condition, which he never even suggested he did. *See Tidwell v. Meyer's Bakeries, Inc.*, 93 F.3d 490, 494 (8th Cir. 1996) ("An employee who quits without giving his employer a reasonable chance to work out a problem has not been constructively discharged.") *Poland v. Chertoff*, 494 F.3d 1174, 1184 (9th Cir. 2007) ("We set the bar high for a claim of constructive discharge because federal antidiscrimination policies are better served when the employee and employer attack discrimination within their existing employment relationship, rather than when the employee walks away and then later litigates whether his employment situation was intolerable."). Instead, he resigned, praising management for their "good vision" for the company on his exit. CP 264.

"subjective belief that he had no choice but to resign," which is "*irrelevant*" because wrongful discharge is an objective claim. *Id.* (emphasis added).

Moreover, Morrone's claims for discrimination, retaliation, and wrongful termination all require a detailed and fact-specific showing to afford Morrone any recovery. Such claims necessarily turn on testimony and inferences drawn from that testimony, and ultimate decisions are routinely left to a jury to weigh that testimony. *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County*, 189 Wn.2d 516, 536, 404 P.3d 464 (2017); *Davis v. W. One Auto. Grp.*, 140 Wn. App. 449, 456-61, 166 P.3d 807 (2007) (reversing summary judgment because disputed questions involving employment conditions, retaliation, and wrongful discharge are fact questions for a jury). Morrone presented no such evidence, merely his own unsupported allegations that discrimination or retaliation occurred. On the other hand, as set forth above, NW Motorsport produced documentary evidence supporting the

reason that Morrone's employment truly ended – voluntary separation to pursue a more desirable job.

Finally, the duty to mitigate also extends to claims where a plaintiff seeks damages in connection with claims for discrimination, retaliation, wrongful discharge, and family leave. *Bernsen v. Big Bend Elec. Co-op., Inc.*, 68 Wn. App. 427, 433, 842 P.2d 1047 (1993) ("Failure to mitigate damages is an affirmative defense under CR 8(c)."); WPI 330.83. NW Motorsport raised substantial questions about the efforts that Morrone undertook to mitigate his alleged damages, and how much he suffered from them at all where he potentially had many reasons for taking a job at Holland America – a large, stable company close to his Mercer Island home where he would not be asked to endure the stress of litigation.

In sum, Division II properly weighed these defenses, and balanced them against the other factors for vacation under CR 60(b)(1). Division II's comments about the strength of each individual defense is irrelevant. It is well-established that a

court considering such a motion "need only determine whether the defendant is able to demonstrate any set of circumstances that would, if believed, entitle the defendant to relief." *VanderStoep v. Guthrie*, 200 Wn. App. 507, 519, 402 P.3d 883 (2017) (quotation omitted). "And the defendant's argument does not have to be particularly strong or conclusive; in some circumstances, even a tenuous defense may be sufficient to support a motion to vacate." *Id.* (quotation omitted). Essentially, the requirement to present a *prima facie* defense is a harmless error analysis, as it would be pointless to vacate a default judgment if there were no colorable defense. But where even a "tenuous" defense exists over disputed factual and legal questions, cases should be resolved on their merits. *White*, 73 Wn.2d at 353.

Division II applied these settled principles. Review is not warranted. RAP 13.4(b).

(c) Division II Did Not Err by "Ignoring CR 60's Affidavit Requirement"

Morrone claims that Division II "ignored CR 60's affidavit requirements." Pet. at 18-22. This is just not true. NW Motorsport documented its defenses with declarations and exhibits, including the employment contract itself. CP 135-38, 187-91, 198-204, 234-40, 242-68. The opinion expressly recognizes that both NW Motorsport's corporate officer, Don Fleming and its outside counsel, Sheryl Willert, submitted declarations documenting its defenses and the reasons it failed to appear. Op. at 9-10, 19.

But even if this were not the case, this Court has already rejected a similar argument that formal declarations are always required to vacate default in *Griggs*, 92 Wn.2d 576. There, the Court reversed an appellate decision that reinstated a default judgment for a perceived lack of evidence supporting the vacation factors. This Court held that while presenting evidence in sworn affidavits is the "better practice" and technically required by CR 60, detailed affidavits are not necessary to vacate a default where the facts can be inferred

from the rest of the court "file," based on the circumstances of the case. *Id.* at 583-84.

In *Griggs*, there was *no affidavit* in the file, but the Court still found sufficient grounds to vacate default because the moving party submitted a "memorandum of facts and law" at an earlier hearing detailing the evidence in favor of vacating default. *Id.* at 584. The Court explained that reversing default was necessary, even considering a technical violation of CR 60's evidentiary requirements, because the "the [civil] rules are to be construed to secure the just determination of every action." *Id.* at 583 (citing CR 1). Trial courts must not "operate in a vacuum" by confining themselves only to the facts neatly presented in sworn declarations attached to motions to vacate, which by their very nature should be brought as quickly as possible to mitigate prejudice. *Id.*

Here, NW Motorsport submitted declarations, exhibits, and evidence, and Willert further explained in oral argument and in memoranda of law where she owed a duty of candor to

the court under RPC 3.3 and had "the authority to speak for and bind the client in any legal proceedings." *Turner v. Stime*, 153 Wn. App. 581, 594, 222 P.3d 1243 (2009); RCW 2.44.010 (lawyer has authority to bind his or her client in any proceeding made in open court). Thus, there was more than enough evidence before the Court to grant vacation, and Division II committed no error finding as such. Review is not warranted. RAP 13.4(b).

(d) No Other Ground for Review Exists

The rest of Monroe's baseless petition simply bemoans the fact that the trial court was overturned, consistent with the liberal policy that defaults must be set aside, and he claims that this issue is of substantial importance. Pet. at 22-29. Division II did not err, it applied well settled standards of review and legal tests, as described above. NW Motorsport will not repeat those arguments except to reiterate that this unpublished case will have *zero effect* beyond these two litigants. The unique facts, equities, and factors that apply to each individual motion

under CR 60(b)(1) simply do not make for a Supreme Court case. Certainly not here, where Division II properly followed this Court's well-established precedents. Review should be denied.

D. CONCLUSION

For these reasons the Court should deny review. Division II properly determined that this case should be tried on its merits rather than through a hurried default obtained by mistake that NW Motorsport *immediately* moved to vacate showing many *prima facie* defenses. In doing so, it created no conflicts or raised any issues with an effect beyond this case, let alone on the public at large.

This document contains 4,926 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 15th day of August, 2022.

Respectfully submitted,

/s/ Aaron P. Orheim

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APPENDIX

Filed
Washington State
Court of Appeals
Division Two

June 15, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JON MORRONE, Respondent, v. NORTHWEST MOTORSPORT, INC., a Washington corporation; NORTHWEST MOTORSPORT, LLC, a Washington limited liability company, Appellants.	No. 55920-0-II ORDER DENYING MOTION TO PUBLISH

Respondent, Jon Morrone, filed a motion to publish this court's opinion filed on May 10, 2022. After consideration, the motion to publish is denied. Accordingly, it is

SO ORDERED.

FOR THE COURT

PANEL: Jj. Worswick, Glasgow, Price

Worswick J

PRESIDING JUDGE

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of a ***Answer to Petition for Review*** in Supreme Court Cause No. 101086-9 to the following parties:

Stephanie Bloomfield, WSBA #24251
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

Original E-filed via appellate portal:
Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: August 15, 2022 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

August 15, 2022 - 4:15 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,086-9
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Superior Court Case Number:	21-2-04572-5

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