

FILED
SUPREME COURT
STATE OF WASHINGTON
11/27/2023 8:00 AM
BY ERIN L. LENNON
CLERK

Wash. Sup Ct # 1025556
Coa #569884-II

Washington State Supreme Court

Crystal McDowell,
Petitioner/Appellant

v.

David Zahradnik,
Respondant/Appellee

Motion To Amend Petition For Review

Crystal McDowell
15127 Main St E
Unit 104 #127
Sumner, WA 98390

Identity of Litigant

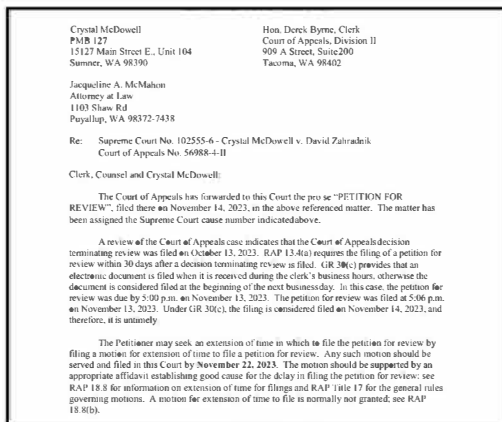
Crystal McDowell, Petitioner, unrepresented.

Order(s) Sought

Order granting motion to amend, per clerk letter, though this motion may not be necessary, as it is in part by direction of a clerk letter as shown herein, and which amending here is only to add the order(s) in question one per the clerks letter, one additional, and Appellant brief. This Petition must be further amended which Petitioner will motion to do so.

2. Motion

On Nov. 14th the clerk sent letter for McDowell to refile the petition for review with order attached, as screen captured here:



Accordingly Petition is attached with order, however no notation is made on the petition as Petitioner is having computer issues, and, also of note it will be today, however after court hours before Motion to Extend Time On Petition is filed.

As this is but a quasi motion due the clerks letter, of note:

Reduction of Time which states in part:

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice,

subject to the restrictions in sections (b) and (c).

McDowell also requests consideration by applying RAP 1.2

Interpretation and Waiver of Rules by Court which states in part:

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

Also McDowell, requests application of

the following;

“[t]he rights of pro se litigants require careful protection where highly technical requirements are involved.” *Garaux v. Pulley*, 739 F.2d 437, 439 (9th. Cir. 1984).

Conclusion

Though this motion may be insufficient and may be amended it nonetheless attaches the amended Petition as partly noted by the clerk's letter.

Declaration is here made per within laws on perjury in state of Washington the facts set forth herein are true to best of my knowledge as signed above at Edgewood, WA.

Appellant further certifies this document and attached certificate contains 521 words which count was obtained using the word count function in Microsoft Word.

Set forth this 22nd day of November 2023.

s/Crystal McDowell

Crystal McDowell

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Sumner, WA 98390

cmappeal8@

protonmail.com

Certificate of Service

The undersigned certifies correct copy of the forgoing document was transmitted to the following individual(s) on November 22nd 2023 by method noted:

s/Crystal McDowell

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Sent through the Court of
Appeals web portal as service on:
J. McMahan
purported lawyer
of David Zahradnik
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Puyallup WA 98372

CoA #569884-II

Washington Supreme Court

Crystal McDowell,
Petitioner

v.

David Zahradnik,
Respondant

Petition For Review
Amended Date And Attachments

Crystal McDowell
15127 Main St E
Unit 104 #127
Sumner, WA 98390

I.

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Of Intent to Amend Petition and Add Motion

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The judges, if there are any, should grant review to decide whether the order denying Petitioner's motion for reconsideration was made without jurisdiction, or without force of law, or improperly, and, whether the 'opinion' written by the individuals acting as court actors was justified or is in fact a violation of laws and rules, and, reverse or vacate each accordingly, and other issues to be added in amending of Petition.

E. Conclusion

Table of Authorities

Sherman v. State, 128 Wn.2d 164, 188, 905 P.2d
355 (1995))

Garoux v. Pulley, 739 F.2d 437, 439 (9th. Cir. 1984)

Washington Constitution

Other Authority

RAP 1.2 and to be amended

A. Identity of Petitioner And Decision Below

Crystal McDowell, Petitioner, for purpose of review, asks that if there are any actual judges in this court, that the court grant review of the opinion terminating review written Sept. 6th 2023, and an order dated October 13th 2023 denying a motion for reconsideration of said opinion made by Petitioner. Of note, Petitioner had a major theft occur, and, due to the number of malicious actors involving themselves in these matters, this Peition will be substantially amended and a motion added.

B. Issues for Review

(1) First, the individuals acting as judges should have recused themselves from McDowell's matters, without need of McDowell to file a motion, due to personal interests at prejudice to the Petitioner as will be further set forth in amending.

(2) Second, the act of the individuals acting or posing as judges in reviewing McDowell's motion to amend motion for reconsideration was improper, as they did not have jurisdiction to do so, having given that

jurisdiction away in other order, which was a deliberately biased order and specified, in response to a motion on reconsideration, that if McDowell wanted to amend any motions, she would have to file a motion to do so, and it would be – quote ,“reviewed by a commissioner, and, if necessary, a three judge panel”.

The order was predatory and itself violated rules and law which Petitioner will further describe in amending, however for brief purpose here, when they made their ‘order’, they, no doubt inadvertently, cut their nose to spite their face so to speak, as while the court actors appear free to flounce around their rules any way they choose, or at least act as such, they are not free to violate a court order, be it their own or others, and of course they cannot arbitrarily ‘go back’ and ‘redecide’ an ‘order’ and do something other than specified.

The point of problem, and which was done deliberately, is that when McDowell filed motion for reconsideration, inasmuch as the order on motions to amend motions was predatory and biased, it was nonetheless a guide then, by which McDowell expected that, in filing a second

amended motion time-wise, that response by a commissioner on the motion would cue her, to then submit another amended form she was working on, but, that did not happen, and instead, as with other actions by said individuals, instead of a commissioner, some 'judges grabbed the motion, and 'decided it, both the amending and motion for reconsideration, doing so intentionally, as has been the course of actions at that court to commit acts against McDowell which are in scheme to in every way destroy her abilities, and property, and counting on that she does not have a lawyer, and knowing the more they attack, the harder yet that becomes.

In any event, it is fact that McDowell's motion was improperly reviewed and violated the court/'judges' own order, and this matter should be reviewed by the supreme court judges.

(3) Of other issue is the matter of the opinion set out by the individuals acting as judges or court actors, in that the level of malicious gross lying and omissions as to lie in the opinion is, as with other actions, not an opinion of any merit, as first, the claim that McDowell only appealed the

summary judgment order is grossly false, there were SEVEN ORDERS appealed in the Notice/Amended Notice of Appeal, only one of which they claimed to review, and the same time claimed to review, ignored pages of element facts and citations to the record, claiming there weren't any, and 'insufficient argument' and other claims which are not correct. For instance one only need look at page 14 of Appellant brief to clearly see fact elements, and citation to the record, and, argument. Then, further the law section was sufficient for purpose of review, had fair unbiased method been used, but was not, at detriment to McDowell and the over \$1200 fees she paid the court, to then be literally harassed, as in actionably harassed, and further, extortion attempted, a criminal act, and a list of acts long enough that are over seventy documents in the record – over seventy, of McDowell, an unrepresented litigant, having to defend herself against attack after attack by court actors 'derek byrne' 'cheryl quinn' and in scheme with McMahon, the individual posing as Zahradnik's lawyer.

Because of a significant theft that occurred, and other situations affecting the Petitioner, she has had difficulty sorting the matters noted here for review to extent best necessary, and so she will be amending this petition in hopefully short order, to fully, as to the opinion, and recusal denial, set forth additional issues in pursuit of review.

Statement of the Case and Argument

McDowell should be entitled to fair treatment by judges when she pays a court. The grabbing of her motion to reconsider, which should have gone to a commissioner, and then denying, was not proper, and with every other action by court individuals, served scheme for zahradnik, who has no sound position, not in any of the matters.

McDowell's Complaint for breach of contract was not properly dismissed, and the Appellant brief is clear, yet there is no review, and the decision, further, ignores the entire Appellant brief.

The judges should have recused themselves without motion from McDowell. -

"The appearance of fairness doctrine provides that `judges

should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned." Id. at 761-62 (quoting *Sherman v. State*, 128 Wn.2d 164, 188, 905 P.2d 355 (1995)).

Further, as used by court as reasons for existing, McDowell should have been entitled to consideration which she did not receive. – As state in case law;

Article 1 section 3 of the Washington Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment of the United States Constitution similarly provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law."

By not doing their job as judges, McDowell was not afforded the due process she should have been,

The statements above and herein McDowell requests be considered with and in combination of all sections for consideration as sought, and as will be amended, in good cause, and as no prejudice would result to any litigant. McDowell requests consideration of RAP 18.8 Waiver of Rules and Extension and

Reduction of Time which states in part:

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice,

subject to the restrictions in sections (b) and (c).

McDowell also requests consideration by applying RAP 1.2

Interpretation and Waiver of Rules by Court which states in part:

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Also though persons should not use the term pro se as to

McDowell, as change of meaning of the term appears to

have occurred over time as to some litigants, nonetheless as she

is unrepresented and per previous definition requests application of

the following;

“[t]he rights of pro se litigants require careful protection where highly technical requirements are involved.” *Garoux v. Pulley*, 739 F.2d 437, 439 (9th. Cir. 1984).

Conclusion

For the reasons given herein and applicable laws, the court should grant review of the order and opinion, and right what are wholly unjust actions as to Petitioner's appeal matters.

Declaration is here made per within laws on perjury in state of Washington the facts set forth herein are true to best of my knowledge as signed above at Edgewood, WA.

Appellant further certifies this document and attached certificate contains 1751 words which count was obtained using the word count function in Microsoft Word.

Set forth this 22nd day of November, 2023

s/Crystal McDowell

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Certificate of Service

The undersigned certifies correct copy of the forgoing document was transmitted to the following individual(s) on November 22nd, 2023 by method noted:

s/Crystal McDowell

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Puyallup WA 98372

FILED
Court of Appeals
Division II
State of Washington
2/27/2023 4:43 PM

No. 56988-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Crystal McDowell,
Appellant

v.

David Zahradnik,
Appellee

APPELLANT'S OPENING BRIEF

Crystal McDowell
Appellant
15127 Main St E
Unit 104 #127
Sumner, WA 98390

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Table of Authorities

Cases (location pages 16-19)

Baertschi v. Jordan, 68 Wn.2d 478, 482, 413 P.2d 657 (1966).

Dietze v. Kelley, No. 71098-2-I (Wash. Ct. App. Jun. 8, 2015)

Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir. 1984)

Marriage of Black 188 Wn.2d 114, 137, 392 P.3d 1041 (2017)
(quoting *State v. McEnroe*, 181 Wn.2d 375, 387, 333 P.3d 402
(2014)).

Miller v. City of Tacoma, 61 Wn.2d 374, 390, 378 P.2d 464
(1963)

State v. Watson, 155 Wn.2d 574, 579, 122 P.3d 903 (2005).

. *In re Custody of C.D.*, 188 Wn. App. 817, 828, 356 P.3d 211 (2015).

Trummel v. Mitchell, 156 Wn.2d 653, 670, 131 P.3d 305 (2006)

Other Authority

Rap 1.2.....

Judicial rules to be added

Introduction

First, unfortunately, there was a last minute loss of McDowell's original brief she was working on, and this version is a hasted put-together of pieces from different page folders, and so is sparse and unfinished. McDowell inputs parts, and intends to file supplement and other motions to salvage as able. This will be repeated at conclusion, the law citations and premises otherwise stated should be applied to the statements herein made, and where the record though not as cited herein as McDowell would like, is nonetheless provided in plenty to the Court, at cost to her, and further in compliance with rule, will motion

to further supplement the record with important documents, that will make the matters clear for review.

Assignments of Error

1. The adjudicator erred in engaging in ex parte schematics with Zahradnik's lawyer against McDowell.
2. The adjudicator erred in not recusing himself, sua sponte, before engaging in calculated prejudicial actions, outside rule of law, against McDowell, with and to benefit Zahradnik and his purported lawyer and other cohorts.
3. The adjudicator erred in ignoring, thereby denying, McDowell's request of a continuance to respond on Zahradnik's first summary judgment motion.
4. The adjudicator erred, in bringing, without notice, a motion McDowell had (only) filed to dismiss her complaint, in the hearing that was supposed to be on Zahradnik's summary judgment motion.
5. The adjudicator erred in making prejudicial actions against McDowell to coerce McDowell to dismiss her complaint, and then dismissing McDowell's complaint in the hearing.
6. The adjudicator erred, by sua sponte, also without notice to McDowell, offering, without request by Zahradnik's lawyer, and without justification, a continuance to Zahradnik lawyer McMahan to 'remove' pages from their motion, but actually was to write a new summary judgment motion, which continuance was six days.

7. The adjudicator erred, in sua sponte, then pressuring McDowell to only have very short time of three days for McDowell to respond on a second, new, large, summary judgment motion, concocted by Zahradnik's lawyer.

The adjudicator erred, in engaging ex parte schematics with zahradnik's lawyer and his purported court reporter, in altering the hearing transcript from Jan. 14, 2022 to benefit Zahrandik and his lawyer against McDowell.

The adjudicator erred, in the (second) summary judgment hearing, in attempting to get McDowell to name herself, against herself, on Zahradnik's summary judgment motion, in further ex parte schematics with Zahradnik's lawyer against McDowell.

The adjudicator erred, in prejudicially refusing to grant McDowell a reasonable continuance to respond on Zahradnik's large new summary judgment motion.

The adjudicator erred in allowing McMahan and Zahradnik to commit fraud in the hearing, claiming they made no new claims in the motion, as means to (also) deny a continuance to McDowell to respond the new large motion.

The adjudicator erred, in also throwing out both of McDowell's partial summary judgment opposition filings, despite already having accepted one of them in the previous hearing, after 'using' it along with McMahan to benefit McMahan and Zahradnik to 'fix' their motion, removing their admission of false claims, along with write a new motion with more new claims, prejudicially rendering McDowell without any defense whatsoever.

The adjudicator erred in schematic calculation with McMahan and Zahradnik to falsely use and abuse 'family law' in arbitrary and capricious actions against McDowell,

despite the fact the litigants had been divorced for **over twenty three years** and had since had a **platonic** business association and he had just dismissed a contract as to that association.

The adjudicator erred in committing ex parte (again) between the time of the hearing and signing and entering the orders.

The adjudicator erred in granting and entering Zahradnik's summary judgment motion claims, and other claims, without basis in law, and without legal evidence, to extent of schematics including a false and violent 'injunction' scheme to remove McDowell from her property, to hand Zahradnik her half property ownership entirely, and otherwise 'bury' McDowell in false monetary claims beyond that confiscation, also with zero basis in law or facts. (CP 400-406).

3. The adjudicator erred in denying McDowell's motion for reconsideration of dismissal of McDowell's complaint and ordering short time to respond Zahradnik second new summary judgment motion. (CP 415-417).

4. The adjudicator erred in, engaging the false use of a defunct trial date, after entering the summary judgment as final in the record, as both cases dismissed, and, each litigant stating to the adjudicator in email, there was to be no trial.

5. The adjudicator erred in pretending to preside over a trial day, with no actual litigants, and, outside time rule time of rule 56 for a trial, and permitting Zahradnik and McMahon to commit said fraud on the court that entire day.

(c) The adjudicator erred in, during the false 'trial' day, in absconding a 'pre trial order' from another case he had, and

manipulating said document, and forging signature to said altered document, then, entering said 'pre trial order' in the record, from another case, as if were part of the case. (CP 410-414) and Exh --

6. The adjudicator erred in then further schematics with McMahon to scrawl further false orders and entering Findings of Fact and Conclusions of Law without basis in law or fact (evidence), in false use of the court on the defunct 'trial' day. Error is assigned to each judgment. (CP 423-433).

(b) Similarly, the adjudicator erred in entering the Judgment Summary granting the claims/amounts therein. Error is assigned to each judgment. (CP 421-422).

Issues in Assignments of Error

1. Did the adjudicator err in bringing McDowell's motion to dismiss her complaint, without notice to McDowell, in a hearing which was to be on Zahradnik's summary judgment motion (McDowell had scheduled motion hearing two weeks away due concerns on dismissing) violating McDowell's due process right of notice and right to impartial tribunal.

Did the adjudicator err in the same hearing, ignoring and thereby denying McDowell's motion for continuance to respond Zahradnik's (first) summary judgment motion.

Did the adjudicator err, in at the same time denying McDowell's motion for continuance, sua sponte without notice to McDowell, and without request by Zahradnik's lawyer, and without justification, offering Zahradnik continuance to write a new motion.

Did the adjudicator err in offering Zahradnik and his lawyer six days to rewrite their motion, under pretense of only 'editing' to significantly reduce the motion, and unequal attempt to give McDowell only three days for McDowell to respond on a new summary motion, instead of the number of days in rule CR56.

Did the adjudicator err in denying McDowell's request(s) of continuance made timely before the first summary judgment hearing.

Did the adjudicator err in the hearing, when Zahradnik's lawyer engaged in predatory action against McDowell to infringe McDowell's right of litigation privilege in writing in her pleadings, and first amendment rights therein, the same time ignoring McMahan and Zahradnik's false spewing claims in their own filings, and per McDowell responding, joining with Zahradnik's lawyer, against McDowell, to oppress McDowell, in bias and prejudice, and engage in otherwise convoluting actions indicating ex parte schematics with McMahan.

Did the adjudicator err in 'setting up' McDowell with McMahan and Zahradnik, to false apply and abuse 'family law' in arbitrary and capricious actions against McDowell, despite knowing the litigants had been divorced over twenty three years and had since had a platonic business association, having just dismissed a contract as to that association.

Did the adjudicator err, in also throwing out both of McDowell's partial summary judgment opposition filings, despite already having accepted one of them in the previous hearing, after 'using' it along with McMahan to benefit McMahan and Zahradnik to 'fix' their motion, removing their admission of false claims, along with write a new

motion with more new claims, prejudicially rendering McDowell without any defense whatsoever.

Did the adjudicator err in engaging in multiple ex parte communications with McMahan, Zahradnik's lawyer.

Did the adjudicator err in granting Zahradnik's summary judgment claims without basis in law or evidence.

Did the adjudicator err, after summary judgment, said to be final by both McMahan and the adjudicator, in pretending to preside over a trial day.

Did the adjudicator err in sending McDowell an email to dictate a 'trial', using a defunct trial date, and despite both litigants days before having both stated no trial, and being outside time per rule CR56.

Did the adjudicator err in absconding a 'pre trial order' from another case, and manipulating said document to put McDowell's name on it, and forging his signature, and entering it to the record during the claimed 'trial' day.

Did the adjudicator err in applying 'family law' and community property premise, to the orders and case despite the litigants 'divorce' settlement agreement' being **satisfied, fully, over twenty years ago**, and in calculated ignorance of the litigant's platonic business association and severance contract he dismissed, by bringing and coercing McDowell's motion without notice to McDowell.

Did the adjudicator err in not applying any principles of evidentiary rule or law in his findings or conclusions.

Did the adjudicator err in these instances violate Washington state rules of judicial conduct directing judges

to be impartial and honest and not engage in ex parte schematics against a litigant or allow his judicial assistant or others in his sphere do so.

Did the adjudicator abuse discretion, or position, or as to due process against McDowell, at damage to McDowell.

STATEMENT OF THE CASE

On July 20, 2020 McDowell filed breach of contract complaint against Zahradnik. CP

On discovery her complaint had been served late per statute law, assuming an untenable issue, she assumed she had to dismiss the complaint, and contacted Zahradnik's lawyer, who had appeared a day before McDowell discovered the flaw, assuming it would be simplest to co-sign a motion to dismiss. Instead of simply sign the dismissal motion, the lawyer Memahon and Zahradnik scrawled on McDowell motion fraudulent claims about McDowell's complaint in attempt to abscond McDowell's property rights. (CP and Ex tbn)

McDowell then emailed the lawyer a No Contact notice limiting any communication to service, only, if any, informed them she would be dismissing her complaint without their involvement. (CP and Ex tbn)

Disappointed that McDowell had misunderstood the time required for service, and loss of the complaint and over a hundred thousand dollars business severance, it took a month and half for McDowell to put together a proper dismissal motion. Upon going to file the motion, she noted the day before that Zahradnik had filed 'counterclaims', which had no basis in fact nor law, and were brought to both harass McDowell and destroy her name on the internet, in

predatory actions by both Zahradnik and McMahan and others, and to 'route' harassment claims that Zahradnik knew McDowell could bring against him due six such actions by Zahradnik previous to McDowell serving complaint. The non-substance of the claims are evident at first glance of first page and at bottom, attached, as McMahan and Zahradnik caption label Zahradnik a 'third party' though obviously there are only two persons in the case, and to end of the paper dump, as McMahan makes knowingly bald face false claims that a letter McDowell sent with the summons, to though very hesitantly due to Zahradnik's harassment, offer to discuss settlement, which McMahan fraudulent repeatedly claims McDowell was 'demanding' Zahradnik not talk to anyone and 'demanding' Zahradnik sign a confidentiality agreement etc. This brief would be a mile long if McDowell reviewed all the slobbering false claims of Zahradnik and McMahan and so to keep short on the balance due to the loss of original brief mentioned and short time, uses as example that from the first glance of the claims to the end, everything in between is of the same, false and predatory frankly psychotic malice in attempted theft and destruction of McDowell, and here important to note again, the association of the litigants was platonic and business over decades, and it was McDowell who ended the association due to Zahradnik's refusal to honor an agreement to do activism one month with McDowell. That is clear on the 2014 Agreement attached to the complaint, per the words payment.. and 'upon demand by CM.

To quickly move through the most critical of the case, on Dec. 15th 2021 Zahradnik and McMahan filed a motion to continue hearing dispositive motions, and attempt to short rule CR 56 against McDowell, and a day later filed a 'summary judgment motion', with mass additional false claims and in further attempt to incite violence against

McDowell, by their false claims, and references to 'the property'.

The scheme of McMahon and Zahradnik, was and is to, flog around an old and long since null 'divorce decree', and picking out a stand alone phrase on each litigant paying their own living expenses, and knowingly fraudulently claiming that McDowell, in her complaint, 'made claims on the divorce decree', which, as the judges can see is a bald face lie, as to then, commence to spewing claims as to Appellant 'not paying living expenses in every other sentence, this though again twenty four years as separate legal entities, not living together, not married, not dating, and McDowell being former vice president of Zahradnik's company Aqua Brite. A The psychotic, fraudulent spewing is tactic also of Jacqueline McMahon, which is –accusatory inversion or projection, in other words, accusing McDowell of what Zahradnik and McMahon are doing, in their whole theft and destruction actions, and in part as to McMahon, because McDowell is an very sacrificing activist and her property though zoned commercial is green, and McMahon is involved in earth destruction schemes in Orting. Now to the base points:

The wrongdoing by the adjudicator in the January 14, 2021 hearing are grossly apparent in the transcript. Of note, there are omissions in the transcript, and false additions, however for purpose of reference here, is sufficient for use. McDowell abbreviates as partial verbatim report of proceedings, see PVRP pages 4, to conclusion. the first words from adjudicator G. Johnson Quote "I have here in my hand" is not McDowell bringing her motion, it is Johnson bringing McDowell's motion, and he then further engages in gross false statements, pretending to talk to 'mcmahon' but is clearly aimed at and intended to mislead McDowell, as he basically claims and repeats 'most of Zahradnik's claims would be resolved if McDowell

dismissed'. McDowell was caught completely off guard and did not recognize the setup being done, to defend against Johnson. McDowell doubted his claims, but at that moment remember McDowell is completely distracted by Johnson bringing McDowell's motion, then, proceeding to coerce McDowell into dismissing her complaint, and over a hundred thousand dollars. PAGE 5 see Johnson attempt to claim McDowell's motion was 'only' to dismiss with prejudice, which is false, and LINE 20 where McDowell says JUST A MINUTE. At that moment Johnson should have ceased speaking, but instead, he goes on to coerce and interrupt McDowell despite she says three times 'I was going to amend my dismissal', and specifically notes Zahradnik and McMahon preying on McDowell previously, and the need to be clear that dismissal was only due to late service, nothing else.

Note, McDowell had sensed something wrong with Zahradnik and McMahon filing a counterclaim being able to file 'counterclaims' against a complaint that was served late, yet of seven lawyers only one questioned that McDowell's complaint was actually active, by their filing of claims, but couldn't put her finger on it exactly. They were active, and will be once the 'orders' by Johnson are voided and vacated, which, McDowell asserts is the case.

McDowell apologizes she is not able to better separate the statement of case and argument sections more, she is simply crunched on time because of losing her work. Please view the partial VRP by Thompson, the matter is clear, McDowell did not bring her motion, and, the dismissal of her complaint due lack of notice should be void, and Johnson abused his position or discretion by ignoring and thus denying McDowell a continuance, and instead handing Zahradnik and his lawyer a continuance, violating WA judicial rules of conduct, as to fairness and law below on discretion. Further the gross scheme by McMahon and

Johnson to distract McDowell as McMahan is handed six days to write a new motion, that Johnson says on page '4' is supposed to be 'mostly resolved' then tell McDowell she only has six days to respond. to ram another forty six pages of motion to response

Reference: Transcript of hearing Jan. 14, 2023. Then compare the first 'summary judgment motion dated Dec. 16th (CP 1546-169) and the second dated January 20, 2022 (CP 36-383).

The second summary judgment is completely rewritten, to extent the CAPTION names McDowell against herself, purposely by McMahan in malice. McDowell rightly did not answer any part of it knowing that the new dump of papers contained new claims and was right. See the end page of Zahradnik's

The matter of review on the summary judgment 'orders' is, the denial of continuance to McDowell, while McMahan committed fraud on the court claiming in the second hearing on January 2 there were no new claims in the motion, when there were new claims, and also claims not in their counterclaims, which would be barred by claim proclusion. McDowell didn't get to answer any of it, as setup by McMahan and the adjudicator. See VPR of Dirton, four times Johnson attempts to get McDowell to say 'plaintiff' to name herself against herself, four times, then, goes straight to McMahan and doesn't acknowledge McDowell's two requests for continuance, because of course, the plan was anything but justice.

Please view the VPR of Dirton, then the 'summary judgment order' (CP 407-409) and McMahan's part admission of 'case law' etc, and please view the two end pages of Zahradnik's fraudulent 'declarations'. (CP – 170-280 pg 280) and (CP – please see McDowell's third designation of papers, last page of Zahradnik decl).

Beside being entirely nonsense and vile claims they are not the same claims of 'loans' and whatever else. Not the same therefore McMahon lied in the hearing to deny McDowell's continuance. It was fraud on court which is an offense of law and renders an order voidable, and, which Johnson abused his position or discretion. It wasn't only McMahon, Johnson acted in every way in prejudice. NOTE he tells McMahon to 'send him any changes' – which of course they both knew it was whole 'change', and the transcript proves ex parte.

Ex parte, (CP 139-145) 'per linda schramm, was ex parte McDowell never received an email, yet notice the harassing email from Schramm to McDowell (CP 341-312) bias prejudice. McDowell asked for date, nothing, else, yet note Schramm taunts McDowell three times 'look at the rules trial date' – the same time ex parte handing McMahon a double motion to short rule 56 against McDowell. Prejudice bias by Johnson and crew against McDowell. Then further as said at end of 'second' summary judgment' hearing they met after that also. Then, the trial date was a fraud.

Emails evidence is necessary here and McDowell has made a final designation of clerks papers to show the court, though is no point to cite them here because McDowell is supposed to motion the court before putting them with a brief, and she could not do so before now for reasons she will explain in the motion. As place holders, the following represent emails proving McMahon and Zahradnik waived trial, and McDowell notified the court no trial, and proof of further ex parte in a false and harassing 'notice' sent to McDowell by McMahon saying they would use the old trial day for false purposed, and proof the court knew McDowell filed other complaint against Zahradnik so there was no 'settlement'.

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LAW CITATIONS

As McDowell is out of time, please apply the statements in assignments of error, as also statement of case, with argument law cites below.

the following are citations of law that McDowell asks be applied to the above, every and anywhere appropriate, and factored as to grant reversal or voiding of the orders and reassignment to a different judge.

In *In re Marriage of Black*, the Supreme Court stated that "[r]eassignment may be sought where `the trial judge will exercise discretion on remand regarding the very issue that triggered the appeal and has already been exposed to prohibited information, expressed an opinion as to the merits, or otherwise prejudged the issue.' *Marriage of Black* 188 Wn.2d 114, 137, 392 P.3d 1041 (2017) (quoting *State v. McEnroe*, 181 Wn.2d 375, 387, 333 P.3d 402 (2014)).

Johnson's actions were arbitrary and without law against McDowell's right to impartial tribunal.

"Arbitrary and capricious action has been defined as willful and unreasoning action, without consideration and regard for facts or circumstances." *Miller v. City of Tacoma*, 61 Wn.2d 374, 390, 378 P.2d 464 (1963)

Please also consider the following rule in review, and note that McDowell will motion the court to correct tables and supplement the emails and otherwise. RAP 1.2 Interpretation and Waiver of Rule By Court, states in relevant part:

RAP 1.2 (a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b)., and; RAP 1.2 (c) (c) Waiver. The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

Generally ex parte means "communications made by or to a judge, during a proceeding, regarding that proceeding, without notice to a party." State v. Watson, 155 Wn.2d 574, 579, 122 P.3d 903 (2005).

“[t]he rights of pro se litigants require careful protection where highly technical requirements are involved.” Garaux v. Pulley, 739 F.2d 437, 439 (9th Cir. 1984)

A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *In re Custody of C.D.*, 188 Wn. App. 817, 828, 356 P.3d 211 (2015). "In deciding a motion to continue, the trial court takes into account a number of factors, including diligence, due process, the need for an orderly procedure, the possible effect on the trial, and whether prior continuances were granted." *In re Dependency of V.R.R.*, 134 Wn. App. 573, 581, 141 P.3d 85 (2006).

Article 1 section 3 of the Washington Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." The Fourteenth

Amendment of the United States Constitution similarly provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law."

Fraud on the court by McMahon. – "To establish fraudulent misrepresentation one must prove nine elements by clear and convincing evidence: (1) representation of an existing fact, (2) the materiality of the representation, (3) the falsity of the representation, (4) the speaker's knowledge of the falsity of the representation or ignorance of its truth, (5) the speaker's intent that the listener rely on the false representation, (6) the listener's ignorance of its falsity, (7) the listener's reliance on the false representation, (8) the listener's right to rely on the representation, (9) damage from reliance on the false representation. - Baertschi v. Jordan, 68 Wn.2d 478, 482, 413 P.2d 657 (1966). We previously found that an element of fraudulent misrepresentation refers to a plaintiff's "reasonable reliance" on the representation. See Hawkins v. Empres Healthcare Mgmt., LLC, 193 Wn. App. 84, 100, 371 P.3d 84 (2016). An omission may constitute a misrepresentation if the party had a duty to disclose information and breached this duty. Landstar Inway Inc. v. Samrow, 181 Wn. App. 109, 124, 325 P.3d 327 (2014).

"The appearance of fairness doctrine provides that `judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned.'" Id. at 761-62 (quoting Sherman v. State, 128 Wn.2d 164, 188, 905 P.2d 355 (1995)).

Johnson abused discretion against McDowell.

"Whether a motion for continuance should be granted or denied is a matter of discretion with the trial court, reviewable on appeal for manifest abuse of discretion." Trummel v. Mitchell, 156 Wn.2d 653, 670, 131 P.3d 305 (2006) (citing Balandzich v. Demeroto, 10 Wn. App. 718, 720, 519 P.2d 994 (1974)); see also Turner v. Kohler, 54 Wn. App. 688,693, 775 P.2d474 (1989) (reviewing CR56 motion for continuance for abuse of discretion); Davies v. Holv Family Hosp., 144 Wn. App. 483, 500, 183 P.3d 283 (2008) (reviewing CR 6 motion for continuance for abuse of discretion).

McDowell asserts CR 6 should have been applied

Dietze v. Kelley, No. 71098-2-I (Wash. Ct. App. Jun. 8, 2015)

The record does not establish facts that would allow the trial court to conclude under CR 19 that the lenders were necessary, let alone indispensable parties. We hold that, on this record, it was an abuse of discretion for the trial court to conclude that the lenders were both necessary and indispensable parties.

We therefore vacate the trial court's order granting SECU's and the neighboring owners' motion for summary judgment. We remand for further proceedings.

Relief Requested/Conclusion

For the reasons given herein and applicable laws, all orders listed on the Notice of Appeal should be reversed and/or voided/vacated and the case should be reassigned to an impartial judge.

The undersigned certifies this document and attached certificate contains 4545 words which count was obtained using the word count function in Microsoft Word.

Set forth this 27 th day of February, 2023.

s/Crystal McDowell
Crystal McDowell

15127 Main St E
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Sumner, WA 98390
cmappeal8@
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Certificate of Service

The undersigned Crystal McDowell certifies under penalty of perjury under laws of Washington state that she served correct copy of the forgoing document on the following person(s) on date of February 27, 2023 by method stated:

Service electronically through the
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J. McMahon
purported lawyer of David Zahradnik
1103 Shaw Rd
Puyallup WA 98372

s/Crystal McDowell
Crystal McDowell

15127 Main St E
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Sumner, WA 98390
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Certificate of Service:
Appellant Opening Brief 56988-4-II

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Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 56988-4
Appellate Court Case Title: Crystal McDowell, Appellant v. David Zahradnik, Respondent
Superior Court Case Number: 20-2-06976-6

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September 6, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CRYSTAL McDOWELL,

Appellant,

v.

DAVID ZAHRADNIK,

Respondent.

No. 56988-4-II

UNPUBLISHED OPINION

MAXA, J. – Crystal McDowell appeals the trial court’s order granting summary judgment in favor of David Zahradnik regarding Zahradnik’s counterclaims against her.

McDowell and Zahradnik were married for over nine years until December 1997, when their marriage was dissolved. Before finalizing their dissolution, they signed a property settlement agreement that addressed commercial property they jointly owned. In November 2020, McDowell filed a complaint against Zahradnik for breach of contract of a separate financial agreement that they allegedly signed before finalizing their dissolution. Zahradnik responded with various counterclaims. The trial court dismissed McDowell’s claims per her request and entered an order granting summary judgment in favor of Zahradnik on his counterclaims.

McDowell makes numerous claims challenging the trial court’s decisions. Because McDowell has provided insufficient argument or analysis to support her claims, we have no

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ability to address the issues she raises and decline to consider them. Accordingly, we affirm the trial court's order granting summary judgment in favor of Zahradnik.

FACTS

Background

McDowell and Zahradnik were married from June 1988 until December 31, 1997, when their divorce was finalized. They maintained an amicable relationship, and before their divorce was finalized they signed a separation and property settlement agreement.

In the agreement, McDowell and Zahradnik agreed to execute a quit claim deed to each other as joint tenants with right of survivorship for commercial property they owned on Meridian East in Puyallup. They also agreed that they would jointly manage the Meridian property, McDowell would receive all income from leasing the property, and Zahradnik would pay all mortgages, liens, and taxes on the property. McDowell and Zahradnik both would be responsible for the costs of all repairs on the property. Zahradnik later testified that there was an understanding that the Meridian property would be sold within two to four years and they would split the proceeds.

The agreement also stated that Zahradnik would pay spousal maintenance to McDowell of \$1,000 per month for a period of 18 months, beginning on January 1, 1998 and ending on June 1, 1999.

Complaint and Answer

In November 2020,¹ McDowell – representing herself – filed a complaint for breach of contract against Zahradnik. She claimed that Zahradnik had breached an agreement they had signed under which (1) McDowell could spend up to \$10,000 on Zahradnik's credit card to

¹ McDowell initially filed an unsigned complaint in July 2020.

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purchase supplies and personal goods; (2) Zahradnik would pay McDowell \$3,500 each month for two years and then \$1,500 each month for one year after that; (3) McDowell would receive one third of the gross proceeds from the sale of the Meridian property at such time it was sold, and if Zahradnik used the property himself he would pay one third of the rental value per month to McDowell; and (4) McDowell and Zahradnik would sign wills leaving all properties and assets to each other and excluding all other family.

Zahradnik responded with various counterclaims. He claimed (1) ouster and injunctive relief because McDowell made the Meridian property her personal residence and posted a sign excluding Zahradnik; (2) breach of contract because McDowell refused to pay the utilities while living at the Meridian property and threatened to take his personal belongings; (3) conversion because McDowell took his personal property and the improvements he made to the Meridian property; (4) promissory estoppel because McDowell went against their agreement to hold the Meridian property as joint tenants with a right of survivorship; (5) unjust enrichment because he had paid the mortgage payments, property taxes, costs for the sewer, and utilities at the Meridian property; and (6) misrepresentation. Zahradnik also requested CR 11 sanctions against McDowell because she had filed a frivolous complaint based on false information.

Trial Court Proceedings

In December 2021, Zahradnik filed a motion for summary judgment. After opposing the summary judgment motion, McDowell filed a third amended motion for a voluntary dismissal of her breach of contract claims with prejudice in January 2022. The motion acknowledged that Zahradnik's counterclaims would remain regardless of the dismissal.

On January 14, 2022, at the summary judgment hearing, the trial court entered an order dismissing McDowell's breach of contract claims with prejudice and dismissing all of her other

claims without prejudice, per McDowell's request. The trial court continued the summary judgment hearing on Zahradnik's counterclaims to January 28. This continuance was granted to give Zahradnik time to file an amended motion for summary judgment that no longer addressed McDowell's dismissed claims. Zahradnik was ordered to file his amended summary judgment motion by January 20 and McDowell was ordered to file a response by January 24.

Zahradnik filed an amended motion for summary judgment that focused only on his counterclaims. McDowell filed a partially amended opposition to the summary judgment motion, stating that Zahradnik made false and fraudulent claims. She also requested another continuance of the summary judgment hearing, which the trial court denied. And McDowell requested reconsideration of the order dismissing her claims, which the trial court denied.

Summary Judgment Decision

The trial court granted summary judgment in favor of Zahradnik on his counterclaims. The court awarded Zahradnik damages for the rent owed when McDowell occupied the Meridian property, utility payments, real property taxes, sewer costs, \$140,000 that was loaned to McDowell for the purchase of a home, money that was loaned to McDowell for her father's estate, three quarters of the appraised value of the Meridian property, attorney fees, and CR 11 sanctions against McDowell.

In total, the trial court awarded Zahradnik damages in the amount of \$728,300 and attorney fees in the amount of \$33,825.17, with interest accruing at the rate of 12 percent.

McDowell appeals the trial court's order granting summary judgment in favor of Zahradnik.

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ANALYSIS

Litigants representing themselves are held to the same standard as an attorney and must comply with the rules of appellate procedure. *Winter v. Dep't of Soc. & Health Servs. on behalf of Winter*, 12 Wn. App. 2d 815, 844, 460 P.3d 667 (2020). RAP 10.3(a)(5) states that appellants should include references to the record in the "Statement of the Case" section and RAP 10.3(a)(6) states that appellants should support all arguments with "citations to legal authority and references to relevant parts of the record."

In addition, we generally decline to consider an issue when the appellant has failed to provide meaningful argument. *Billings v. Town of Steilacoom*, 2 Wn. App. 2d 1, 21, 408 P.3d 1123 (2017). " 'Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.' " *Samra v. Singh*, 15 Wn. App. 2d 823, 836, 479 P.3d 713 (2020) (quoting *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996)); see also RAP 10.3(a)(6).

McDowell makes numerous claims challenging the trial court's decisions. She claims that the trial court entered its findings of fact and conclusions of law without any basis in law or fact, and engaged in prejudicial actions, including improperly meeting ex parte with Zahradnik, allowing Zahradnik to commit fraud during the summary judgment hearing, and not considering her opposition filings. McDowell also claims that the trial court erred in (1) denying her request for a continuance to respond to Zahradnik's first summary judgment motion and her motion for reconsideration of dismissal of her complaint, (2) addressing her motion to dismiss her claims at the summary judgment hearing, (3) ordering a continuance for Zahradnik to amend his summary judgment motion and ordering an insufficient amount of time for McDowell to respond to

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Zahradnik’s amended summary judgment motion, and (4) granting summary judgment in favor of Zahradnik.


However, McDowell fails to support her many challenges to the trial court’s decisions with any meaningful argument. She relies on conclusory statements that are not supported by any analysis, citations to the record, or relevant legal authority. She lists numerous citations to cases, but she states only that they should “be applied to the above, [and] every and anywhere appropriate.” Br. of Appellant at 16.

Given that McDowell has provided insufficient argument or analysis to support her claims, we have no ability to address the issues she raises. Therefore, we decline to consider her claims.

CONCLUSION


We affirm the trial court’s order granting summary judgment in favor of Zahradnik.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

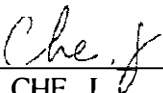


MAXA, J.

We concur:



CRUSER, A.C.J.



CHE, J.

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CRYSTAL MCDOWELL - FILING PRO SE

November 22, 2023 - 5:38 PM

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Appellate Court Case Title: Crystal McDowell v. David Zahradnik
Superior Court Case Number: 20-2-06976-6

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