

FILED

OCT 30 2014

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CRF

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

90952-1

STACEY KINCHEN,
Appellant,

vs.

AMIN KORAYTEM,
Respondent

) Court of Appeals Case No.: 70831-7-1

) Superior Court Case No.: 12-2-02451-9

) **NOTICE OF PETITION FOR REVIEW
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

) (Pursuant to RAP Rule 13.4(a))

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

NOTICE:

1.1 Identity.

COMES NOW, Stacey Kinchen, Appellant in the above-entitled cause and seeks review by the Supreme Court of the State of Washington of the order entered herein on 22 September 2014 by The Honorable Judge Leach J., in The Court of Appeals, affirming the decision entered on 28 August 2013 by Judge Bowen in Superior Court Snohomish County, denying Appellant's, Motion for Revision; also, affirming the decision entered on 9 August 2013 by Commissioner Tracy Waggoner in Superior Court Snohomish County, denying Appellant's, Motion for Order Vacating Judgment entered on 25 July 2012 by Judge Bowen;

(A copy of the Order is attached to this Notice of Petition for Review).

1 1.2 Decision:

2 Appellant ask that the Supreme Court review the following parts of Judge Leach J's
3 order:

4 A: Kinchen failed to address CR 60;

5 B: Kinchen failed to appreciate the scope of appellate review of an order denying
6 a motion to vacate;

7 C: Kinchen does not demonstrate that the trial court abused its discretion in denying
8 his motion;

9 D: The Court of Appeals has not ruled on any award of addition attorney fees at this
10 time. However; Appellant reserves his right and asks that the Supreme Court
11 review any award of additional attorney fees.
12
13

14 1.3 Appellant also ask that the Supreme Court review the Court of Appeal's failure to
15 address, consider and rule on Kinchen's RAP 9.11, Emergency Motion to Present Copies
16 of Checks and Respondent's August 9, 2013 Brief Served on Appellant, filed November
17 1, 2013.
18

19 1.4 Decision:

20 Appellant asks that the Supreme Court review the following parts of Judge Bowen's
21 order:

22 A. Judge Bowen considered Plaintiff's response when it was untimely and lacked no
23 service upon Defendant;

24 B. Defendant's Motion is based upon arguments which misconstrue the law ated;

25 C. Plaintiff is awarded supplemental Judgment for attorney fees and cost against
26 Defendant in the amount of \$3,641.20.
27
28


1 **(A copy of the Order is attached to this Notice of Petition for Review).**

2 1.5 Appellant asks that the Supreme Court review the following parts of Commissioner Tracy
3 Waggoner's order:

- 4 A. Notice and Service was given as received at every step of proceedings;
5 B. Defendant responded and participated;
6 C. There was no lack of notices;
7 D. The Court had Jurisdiction;
8 E. There is no basis to set aside Judgment;
9

10 **(A copy of the Order is attached to this Notice of Petition for Review).**

11 Dated this 22nd day of October, 2014.

12
13 
14 Stacey Kinchen, Defendant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AMIN KORAYTEM,)
)
 Respondent,)
)
 v.)
)
 STACEY A. KINCHEN,)
)
 Appellant,)
)
 JANE DOE OCCUPANT,)
)
 Defendant.)
 _____)

No. 70831-7-I

UNPUBLISHED OPINION

FILED: September 22, 2014

09/22/14 10:09 AM
CLERK OF COURT
JANIS L. HARRIS
COURT OF APPEALS
1000 4TH AVENUE
SEATTLE, WA 98101
PH: 206.462.3000
FAX: 206.462.3001
WWW.COURTAPPEALS.WA.GOV

LEACH, J. — In this dispute arising from an unlawful detainer proceeding, Stacey Kinchen appeals the denial of his CR 60(b) motion to vacate an order of summary judgment awarding damages to his former landlord. Kinchen, appearing pro se both below and on appeal, fails to address CR 60 and fails to appreciate the scope of appellate review of an order denying a motion to vacate. His appeal is merely an attempt to reach the substantive merits of the summary judgment order and other orders that he did not appeal. Because Kinchen does not demonstrate that the trial court abused its discretion in denying his motion, we affirm.

FACTS

In January 2012, Amin Koraytem filed an eviction summons and complaint for unlawful detainer proceeding against Stacey Kinchen, who occupied a duplex in Everett

owned by Koraytem.¹ Kinchen answered the complaint and also filed a separate “response” to the complaint, together with several exhibits.

After a show cause hearing in March 2012, the parties signed an agreed order settling the unlawful detainer action. The agreed order restored possession of the premises to Koraytem but allowed additional time for Kinchen to remove his personal possessions. The order also reserved for future proceedings the financial issues of unpaid rent, late charges, damages, and attorney fees and costs.

In May 2012, the trial court granted Koraytem’s motion to convert the unlawful detainer complaint to a civil action. In June 2012, Koraytem filed a motion for summary judgment, seeking \$9,433 in unpaid rent and fees, reimbursement for repair and cleaning costs, and legal fees and costs. Kinchen filed a late response and failed to appear at the hearing on the motion. On July 25, 2012, the court granted the motion and entered judgment for \$9,433.

Exactly one year later, on July 25, 2013, Kinchen filed a motion under CR 60(b) to vacate the judgment. The court commissioner denied the motion, concluding that Kinchen had not shown any reason to set aside the judgment. Kinchen filed a motion to revise the commissioner’s order. The superior court denied the motion. Kinchen appeals.

¹ Michelle Jackson Kinchen cosigned the lease in 2010, but it does not appear she was living at the leased premises at the time of the 2012 unlawful detainer action. The complaint names a “Jane Doe Occupant.”

ANALYSIS

Kinchen's briefing before this court raises numerous claims pertaining to (1) the commencement of the unlawful detainer proceeding, (2) conversion of the proceeding under the unlawful detainer statute to a civil claim, and (3) various aspects of the 2012 judgment for damages. However, the scope of this appeal is limited to the orders denying his motion to vacate and his motion for revision.

CR 60(b) provides that a "court may relieve a party . . . from a final judgment, order, or proceeding" under specified circumstances. The rule exists to prevent injustices based on "reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings."²

Generally, we will not reverse the superior court's denial of a motion to vacate under CR 60(b) unless the court manifestly abused its discretion.³ A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds.⁴ CR 60(b)(5) addresses the vacation of a void judgment. Because courts "have a mandatory, nondiscretionary duty to vacate void judgments," we review de novo the trial court's decision to grant or deny a CR 60(b) motion to vacate a void judgment.⁵ When a party appeals an order denying revision of a court commissioner's decision, we review only the decision of the superior court.⁶

² State v. Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982).

³ Haley v. Highland, 142 Wn.2d 135, 156, 12 P.3d 119 (2000).

⁴ Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

⁵ Dobbins v. Mendoza, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997).

⁶ In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010).

Unlike an appeal, a CR 60(b) motion is not a means of correcting errors of law.⁷ Thus, contrary to Kinchen's apparent belief, his appeal of the order denying his motion to vacate does not allow him to raise legal issues about the summary judgment order he seeks to vacate.⁸

Kinchen does not address CR 60 in this appeal or explain how the alleged errors he raises relate to any specific provisions of the rule. He mentions, in passing, the discretionary standard of review for appellate review of the superior court's decision on such a motion but fails to apply that standard.

In his motion to vacate filed below, Kinchen cited CR 60(b)(1), (5), (6), and (11). Kinchen asserted that the judgment was void. He claimed he was entitled to relief from judgment on account of "excusable neglect" and "unavoidable casualty" due to his pro se status and unfamiliarity with timelines for responses to motions and because circumstances beyond his control—bad traffic—caused him to miss the summary judgment hearing. Kinchen argued that he had "justiciable" defenses to the claim for damages. Specifically, he claimed that the landlord's failure to provide a "move-out checklist" prevented the landlord from retaining his security deposit or seeking additional damages. Kinchen also alleged that the landlord was not entitled to recover funds paid for repair and clean-up work because a handyman, not a registered contractor, performed the work. In an accompanying declaration, Kinchen asserted that Koraytem failed to notify him properly of the summary judgment hearing and challenged

⁷ Burlingame v. Consol. Mines & Smelting Co., 106 Wn.2d 328, 336, 722 P.2d 67 (1986).

⁸ See Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980).

the unlawful detainer proceeding on the basis that Koraytem, rather than a disinterested third party, served him with the three-day pay or vacate notice.

The court did not abuse its discretion in determining that Kinchen's unawareness of deadlines and unexpected traffic were not circumstances that amount to a mistake, inadvertence, surprise, excusable neglect, or irregularity under CR 60(b)(1); nor did those issues rise to the level of extraordinary circumstances under CR 60(b)(11).⁹ The court also did not abuse its discretion in denying his motion to the extent it was based upon CR 60(b)(5) because he stated no basis for his assertion that the judgment is void. The other arguments Kinchen raised implicate the superior court's interpretation of provisions of the Washington Residential Landlord-Tenant Act of 1973, chapter 59.18 RCW, and other alleged legal errors underlying the judgment. As explained, the "exclusive procedure to attack an allegedly defective judgment is by appeal from the judgment, not by appeal from a denial of a CR 60(b) motion."¹⁰ "Said another way, an unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and appealing the denial of the motion."¹¹

In essence, Kinchen claims that the entry of summary judgment is premised on various legal errors. This claim does not fall within the scope of appellate review of an order denying a motion to vacate. Kinchen has not identified any grounds under CR 60(b) that warrant relief or established that the trial court abused its discretion in

⁹ See In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985) (relief under CR 60(b)(11) is limited to extraordinary circumstances not covered by any other section of the rule).

¹⁰ Bjurstrom, 27 Wn. App. at 451.

¹¹ State v. Gaut, 111 Wn. App. 875, 881, 46 P.3d 832 (2002).

denying the motion to vacate.¹² In addition, Koraytem is entitled under the lease to reasonable costs and attorney fees on appeal.¹³ Upon compliance with RAP 18.1, a commissioner of this court will enter an appropriate order.

Affirmed.

Leach, J.

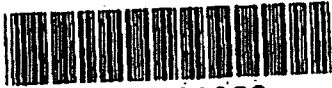
WE CONCUR:

Trickey, J.

Becker, J.

¹² Kinchen filed several motions that this court has addressed in previous rulings and orders. On November 6, 2013, a commissioner of this court referred Kinchen's motion to supplement the record under RAP 9.11 to the panel. Having considered that motion, we deny it. Some of the evidence Kinchen identifies is, in fact, included in the record on appeal. Kinchen otherwise fails to satisfy the standards for supplementing the record under the rule.

¹³ The lease provision provides that "in the event it becomes necessary for any party to institute any litigation to enforce any of the terms and provisions of this Agreement, the prevailing party in such litigation shall be entitled to recover the reasonable costs and expenses of such litigation, including but not limited to reasonable attorney's fees."



CL16211669

FILED

13 AUG -9 AM 11:19

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

Koraytem,
PLAINTIFF / PETITIONER

and
Stacey A. Kinchen
DEFENDANT / RESPONDENT

NO. 12-2-02451-9

ORDER DENYING MOTION TO
VACATE JUDGMENT

IT IS HEREBY ORDERED: Defendant Present, pro se. Plaintiff
represented by James R. Hawer. On Defendant's Motion
to VACATE Judgment, the Court finds Notice and Service
was Required at every step of Proceeding, and Defendant
responded and participated. There was No Lack of Notice, the
Court has Jurisdiction, there is No Bankruptcy stay and
there is no basis to Set Aside Judgment. MOTION IS
Denied.

DONE IN OPEN COURT this date: _____

Presented By:

AUG 09 2013

James R. Hawer #11684

Attorney for Plaintiff

Copy Received:

Stacey Kinchen

JUDGE / COURT COMMISSIONER

61