NO. 97343-1

SUPREME COURT
OF THE STATE OF WASHINGTON

SAWYER LAKE VETERINARY HOSPITAL, INC., P.S., a Washington corporation; and DR. JAN WHITE,

Plaintiffs-Petitioners,

v.

PINE TREE VETERINARY HOSPITAL, a Washington limited liability company, and DR. BRIDGET FERGUSON,

Defendants-Respondents.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Douglas Davies—the first trial lawyer for Petitioners Sawyer Lake Veterinary Hospital, Inc. and Dr. Jan White (collectively *Dr. White*)—had health issues. Those issues may have caused Davies not to file an opposition to a summary-judgment motion seeking the dismissal of Dr. White's case or even to appear at the hearing on that motion.

Six days after the trial court granted the summary-judgment motion dismissing her case, Dr. White hired new counsel from a reputable Seattle-based law firm. Four days remained for seeking reconsideration. While the ten-day deadline to move for reconsideration cannot be extended, the ten-day deadline for filing affidavits in support of reconsideration can be extended for cause. *Compare* CR 59(c), *with* CR 6(b).

The Court of Appeals concluded that the declarations from Dr. White and her office manager, which had been prepared and signed before the summary-judgment hearing, presented compelling reasons to grant reconsideration. These declarations were admittedly available and should have been submitted as part of an opposition to the summary-judgment motion that Davies failed to file. Filed instead as support for reconsideration, they could have been supplemented with an additional declaration from Dr. White, explaining what she had learned so far about Davies' condition and requesting additional time to gather whatever further evidence would be needed for the trial court to make an informed decision on whether Davies' health issues prevented Dr. White from opposing the summary-judgment motion. This showing would have provided ample

"cause" for an extension under CR 59(c), and would have meant that the declarations ultimately submitted in support of Dr. White's CR 60(b) motion could have been submitted in support of reconsideration. But Dr. White's new counsel did not move for reconsideration and did not file a notice of appeal, choosing instead to rely on CR 60(b) as the sole avenue for relief from the summary-judgment dismissal of the lawsuit.

The Court of Appeals held that the trial court reasonably concluded Davies' health issues did not prevent Dr. White from prosecuting her case. Reconsideration was available, and Dr. White's failure to pursue reconsideration ultimately cost her the chance to have her case reinstated. The Court of Appeals thus concluded that the trial court correctly denied relief under CR 60(b)(9). The Court of Appeals also upheld the trial court's refusal to grant relief under CR 60(b)(11) because Dr. White failed to meet the stringent standard of showing a near-total abandonment by Davies so as to deprive Dr. White of any representation at all.

These conclusions are consistent with Washington case law, including decisions of this Court. Nothing about this case warrants this Court's review. Dr. White's petition for review should be denied.

II. RESTATEMENT OF THE ISSUES

1. A party may pursue relief under CR 60(b)(9) if an unavoidable casualty or misfortune prevented the party from prosecuting her case. Dr. White's first trial lawyer, Douglas Davies, did not oppose a summary-judgment motion seeking the dismissal of Dr. White's case and did not attend the hearing on that motion. Dr. White retained new counsel, who had time to prepare and submit a reconsideration motion. That motion could have been supported by declarations addressing the merits and showing good cause for extending the time under CR 59(c) for submitting

additional evidence to establish Davies had health issues that had prevented him from timely opposing the summary-judgment motion. But Dr. White and her new counsel did not move for reconsideration.

Did the trial court properly exercise its discretion by reasonably concluding that Davies' health issues did not prevent Dr. White from seeking reconsideration and thus did not prevent her from prosecuting her case? *Yes.*

2. A party may pursue relief under CR 60(b)(11) for extraordinary circumstances. That party must show near-total abandonment by her trial lawyer; the attorney–client relationship must have disintegrated to a point where there was no representation at all. Dr. White knew her trial lawyer Davies had missed court deadlines, but she did not want him to withdraw; she actively participated in discovery; she knew Davies was filing pleadings late; she knew a summary-judgment motion had been filed and a hearing was noted for early November; and she knew Davies had not opposed the motion.

Did the trial court properly exercise its discretion by finding that Dr. White was not an unknowing client and that Dr. White's relationship with Davies had not disintegrated to the point where there was no representation at all? *Yes.*

III. RESTATEMENT OF THE CASE

The Court of Appeals' 19-page statement of the facts lays out in painstaking detail the factual reasons for why the Court of Appeals affirmed the trial court's discretionary decision denying Dr. White's CR 60(b) motion to set aside a summary-judgment dismissal of her lawsuit. A brief summary of those facts is set forth below.

A. Dr. Bridget Ferguson joined Sawyer Lake as one of the few board-certified bird veterinarians in Washington, with an established client base, and on the promise that she would become the owner.

Dr. Bridget Ferguson has treated animals for nearly two decades. CP 116. She is a licensed veterinarian and one of the few board-certified bird veterinarians in Washington. CP 116-17.

Dr. Ferguson joined Sawyer Lake Veterinary Hospital based on Dr. White's promise of future ownership. CP 117. At the time, Sawyer Lake was not profitable, but with the influx of Dr. Ferguson's clients, Sawyer Lake was soon thriving. CP 117.

About two years later, it became apparent Dr. White would not sell the veterinary clinic to Dr. Ferguson as promised. CP 117. Disheartened, she told Dr. White that she intended to resign to open her own practice; she offered to stay at the clinic for two more months to ensure a smooth transition. CP 117-18.

Dr. White fired Dr. Ferguson less than two weeks later. CP 118.

Four months later, Dr. Ferguson—with the help of a personal loan from her father—opened Pine Tree Veterinary Hospital. CP 118. Dr. Ferguson actively promoted her business in the local community, and even some community members voluntarily promoted her business on social media. CP 119, 134-38.

B. Dr. White and Sawyer Lake, represented by their long-time lawyer Douglas Davies, sued Dr. Ferguson and Pine Tree for purportedly poaching Dr. White's clients, only to discover that Dr. White's former clients left voluntarily because they preferred Dr. Ferguson.

Six months after Dr. Ferguson opened Pine Tree, Dr. White sued Dr. Ferguson and Pine Tree (collectively *Dr. Ferguson*). Dr. White retained her long-time lawyer, Douglas Davies, to represent her. RP (2/26/16) 11. Dr. White's principal theory was that Dr. Ferguson had improperly solicited Sawyer Lake's clients, supposedly causing lost profits. CP 5-10. All her claims stemmed from Dr. Ferguson's decision to open her own practice.

Dr. Ferguson denied the allegations and ultimately refuted them by filing 18 declarations from current Pine Tree clients. CP 47-59, 83-90, 130-55. The declarations unanimously attested that each person left Sawyer Lake voluntarily and was not solicited by Dr. Ferguson. CP 48, 50-51, 52-53, 54-55, 59, 86-87, 89, 131-32, 134-36, 140-41, 143, 155.

C. Contentious discovery ensued. Dr. White and her clinic staff actively participated in the discovery process. When Dr. Ferguson and Pine Tree moved for summary judgment, Davies neither filed an opposition nor attended the hearing. The trial court granted summary judgment to Dr. Ferguson and Pine Tree.

Throughout the litigation, Dr. White and her clinic staff actively participated in the contentious discovery process. They assisted each other in gathering documents and responding to discovery requests. CP 236-37. For instance, Dr. White signed at least six verifications or declarations for discovery. CP 236-37, 510-11, 540-45.

In early October 2016, Dr. Ferguson sought summary judgment, seeking to dismiss all of Dr. White's claims. CP 60-81. To support this motion, Dr. Ferguson submitted 18 declarations from former Sawyer Lake clients previously referenced, refuting Dr. White's poaching allegations. CP 47-59, 83-90, 130-55.

Dr. White reviewed the summary-judgment motion with Davies and expressed a "significant desire to know what the filing meant." CP 358. They discussed the merit and the "meaning of the motion." CP 358. Even though Dr. White apparently identified at least 170 former clients that she alleged Dr. Ferguson improperly solicited, Dr. White never produced any evidence from any former clients to refute Dr. Ferguson's evidence, including when she moved for relief under CR 60(b). CP 437, 1171-72.

Davies did not file an opposition to the summary-judgment motion. Dr. White knew Davies had not opposed the motion; she also knew he had previously been late in filing responses and briefs. CP 438. Dr. White and Davies together participated in a mediation with Dr. Ferguson and her counsel just two days before the summary-judgment hearing. CP 510.

Davies contacted the trial court two hours before the hearing, stating that he was unable to attend in person. CP 192-93. The court responded by directing Davies to appear telephonically. CP 192. Davies did not do so.

The court granted Dr. Ferguson summary judgment and dismissed all of Dr. White's claims on the merits. CP 188-90, 201.

D. On the day the summary judgment was entered, Davies "fully informed" Dr. White of his health issues. She hired new counsel six days later. She still had four days to file a timely reconsideration motion, but did not do so. And she did not appeal from the summary-judgment dismissal of her case.

Dr. White learned of the summary-judgment dismissal later that afternoon, when Davies called her and "explained what happened." CP 362, 438. Dr. White stated at one point that, in that call, Davies "fully informed" her of his health issues. CP 240, 301, 344, 438.[1]

Six days after the hearing, Dr. White hired new counsel from a reputable Seattle-based law firm, who associated with Davies as co-counsel. CP 570-71. Dr. White and her new counsel had four days to seek reconsideration of the summary judgment, but did not do so.[2]

E. Three months later, Dr. White moved to vacate the summary judgment under CR 60(b)(9) and (11). The trial court denied the motion.

Dr. White sought to vacate the summary judgment under CR 60(b)(9) and (11). She argued Davies' health issues constituted an unavoidable casualty or misfortune that had prevented her from prosecuting her case, and that extraordinary circumstances also warranted relief.

The trial court denied the motion. In exercising its discretion, the court concluded that Davies' casualty or misfortune did not prevent Dr. White from prosecuting her case under CR 60(b)(9) because she could still

[1] The record is replete with evidence showing that Davies had disclosed health issues of some sort to Dr. White and to the court. But Dr. Ferguson does not dispute that eventually Dr. White would acquire evidence of a health issue different from the one Davies had previously disclosed.

[2] The facts concerning the viability of such a motion are addressed in the "Reasons Why Review Should Be Denied" section of this answer.

have filed a timely reconsideration motion in the timeframe provided by the Civil Rules:

> [T]he reality is the filing of such a motion to get that process started, to stop that clock ticking, is a step that counsel did not take. And again, that may or may not fall under the label of negligence. But as it relates to this hearing, certainly in the context of a motion to vacate and the policy considerations that the Court must consider in terms of the finality of judgment, it is something that the Court can and should consider in the context of determining whether or not there has been a failure of, or a prevention of a party from prosecuting or defending the case.
>
> And so I do find that the fact that there was, that is part of my decision, that the fact that such a motion was not timely filed is evidence as it relates to that . . . there was nothing that prevented a party from prosecuting or defending the case in that timeframe.

RP (3/3/17) 50-51. The court also found the record did not support such a "significant breakdown" in the attorney–client relationship as to constitute an abandonment to justify relief under CR 60(b)(11). RP (3/3/17) 47-49.[3]

F. The Court of Appeals affirmed the trial court's discretionary decisions under CR 60(b) in an unpublished decision.

In an unpublished opinion, the Court of Appeals affirmed the trial court's discretionary decision to deny Dr. White's motion to vacate the summary judgment under CR 60(b). It concluded the trial court's finding—that casualty or misfortune did not actually prevent Dr. White from pursuing her case by timely filing a motion to reconsider—was not manifestly unreasonable. *Sawyer Lake Veterinary Hosp., Inc., P.S. v. Pine Tree Veterinary Hosp.*, No. 76809-3-I, slip op. at 23 (Wash. Ct. App. May 20,

[3] The court later denied Dr. White's reconsideration motion on the order denying her motion to vacate. CP 334-38.

2019). It also concluded the record supported the trial court's findings that Dr. White was not an unknowing client and that the attorney–client relationship had not disintegrated to the point where there was no representation. *Id.* at 26-27.

IV. REASONS WHY REVIEW SHOULD BE DENIED

A trial court's denying a CR 60(b) motion to vacate a summary judgment is a discretionary decision.[4] *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979). A party must show on appeal that the trial court had "no tenable basis for refusing to vacate." *Marriage of Olsen*, 183 Wn. App. 546, 558, 333 P.3d 561 (2014).

The Court of Appeals correctly affirmed the trial court's denial of Dr. White's CR 60(b) motion to set aside the summary judgment. Dr. White was not prevented from prosecuting her case, despite her trial lawyer's health issues. The Court of Appeals' decision does not conflict with any Washington appellate decision. And strong public policy favors finality of judgments—a policy vindicated by the rulings at issue here. Review is thus unwarranted and should be denied.

A. Even if Davies' health issues caused him to suffer an unavoidable casualty or misfortune, those health issues did not prevent Dr. White from prosecuting her case under CR 60(b)(9).

CR 60(b)(9) requires the moving party to establish two things: (1) an unavoidable casualty or misfortune (2) prevented the party from

[4] While Washington courts apply CR 60(b) more liberally to judgments by default than those on the merits, the summary-judgment order here was a judgment on the merits. *Marriage of Olsen*, 183 Wn. App. 546, 553-56, 333 P.3d 561 (2014); *Stanley v. Cole*, 157 Wn. App. 873, 879-81, 239 P.3d 611 (2010).

prosecuting her case. An unavoidable casualty or misfortune alone is insufficient to allow relief under the rule. *Stanley v. Cole*, 157 Wn. App. 873, 882, 239 P.3d 611 (2010). The moving party must also show the unavoidable casualty or misfortune "actually prevented" the party from prosecuting her case. *Id.* at 883.

Dr. White asks this Court to review the sealed documents that were submitted in support of the CR 60(b) motion. CP 339-417. The Court of Appeals noted that the sealed documents describe Davies' legal, physical, and mental circumstances, and the trial court observed that Davies suffered very significant hardship and challenges. *Slip op.* at 14-15. Dr. Ferguson takes no issue with any of these conclusions. But those sealed documents, while arguably establishing that Davies was suffering from an unavoidable casualty or misfortune, are immaterial because his health issues did not prevent Dr. White from prosecuting her case.

Dr. White knew Dr. Ferguson had filed a summary-judgment motion. Dr. White knew the hearing had been set for November 4. She reviewed the motion with Davies and discussed the merits and opposing the motion. Dr. White and her office manager signed declarations on November 3 contesting Dr. Ferguson's assertion that she signed the noncompete agreement without consideration. CP 469-70, 472-73; *see also* CP 477-78 (unsigned declaration from Dr. White's intern dated November 3 challenging the merits of Dr. Ferguson's summary-judgment motion).

Dr. White has acknowledged that she knew the full extent of Davies' health issues on the day summary judgment was entered. *Pet. for Rev.* at 5-

6; CP 240, 301, 344, 438, 561.[5] Six days later, Dr. White hired new counsel from a reputable Seattle-based law firm. By that point Dr. White and her new counsel had four days to seek reconsideration.

A reconsideration motion must be filed within 10 days after the entry of the judgment or order. CR 59(b). This requirement is mandatory. *Metz v. Sarandos*, 91 Wn. App. 357, 360, 957 P.2d 795 (1998). A trial court cannot extend the 10-day deadline for a party to file a timely reconsideration motion. *Id.* at 359-60, 360 n.1 (citing CR 6(b)(2); CR 59(b)). But a trial court can "for cause" extend the deadline for a party to file affidavits supporting a reconsideration motion based on facts outside the record. *Compare* CR 59(c), *with* CR 6(b).[6]

Here Dr. White and her new counsel undisputedly could have filed—indeed, should have filed—a timely reconsideration motion. The record established at least four grounds on which Dr. White could have sought reconsideration. *Slip op.* at 24 (citing CR 59). Dr. White had the evidence she needed to oppose the summary-judgment motion on the merits at least a day before the hearing. CP 469-70, 472-73 (declarations signed

[5] What Dr. White did not know was the particular cause of Davies' health issues, which was something that required additional time to investigate and uncover. But, as Dr. Ferguson will discuss more fully later in this answer, CR 59(c) allowed Dr. White to show cause for why she could have been granted additional time to develop those facts.

[6] The federal courts apply the same standard under the federal analog, Federal Rules of Civil Procedure 6(b) and 59(c), which is consistent with Washington's Civil Rules. *See Anderson v. Thompson*, 144 F.R.D. 393, 395-96 (E.D. Wash. 1992) (granting leave to all counsel to file supplemental materials and concluding that once a timely motion for new trial under Rule 59 is made, a party may later file supplemental materials to support the motion for new trial) ("As to Rule 59(c), fixing the time for serving affidavits on motion for new trial, it is believed that the court should have authority under Rule 6(b) to enlarge the time, because, once the motion for new trial is made the judgment no longer has finality, and the extension of time for affidavits thus does not of itself disturb finality.").

and dated on November 3, challenging the merits of the motion). These signed declarations, according to the Court of Appeals, were sufficient to raise a genuine issue of material fact to contest Dr. Ferguson's assertion that she signed the noncompete agreement without consideration. *See slip op.* at 24-25 (noting the "compelling reasons" presented by these declarations for the trial court to consider granting a reconsideration motion); CP 469-70, 472-73.

So why should Dr. White have been excused from her obligation to submit those signed declarations in a timely opposition to the summary-judgment motion? The answer to that question, in Dr. White's view, is the disabled state of her first trial lawyer, Mr. Davies. But the fact of her first trial lawyer's disabled state undisputedly could have been brought to the trial court's attention as part of a timely reconsideration motion.

That leaves the issue of Dr. White's inability to present the full story of Davies' health issues to the trial court, when a reconsideration motion had to be timely filed.

To be sure, when the reconsideration motion was due, Dr. White did not know enough of Davies' health issues beyond describing that he seemed to have suffered from some sort of a mental breakdown. But Dr. White could have requested more time under CR 59(c) to prepare additional affidavits that would have provided the full picture of Davies' health issues, which caused him not to oppose the summary-judgment motion or to appear at the hearing. A reconsideration motion then would have functioned as a placeholder, remaining pending while Dr. White gathered the facts about

the extent and severity of Davies' health issues. And—again—it is undisputed that Dr. White's new lawyer could have put together the request for more time in the four days before the reconsideration motion was due, based on what Dr. White and her new counsel did know at the time.

Dr. White and her new counsel's failure to seek reconsideration, despite their ability to do so, ultimately proved fatal to Dr. White's CR 60(b) vacation efforts. Seeking both reconsideration and an extension of time to file affidavits to explore the circumstances of Davies' health issues—that's all Dr. White needed to do to prosecute her case. Because the trial court could reasonably conclude that Davies' health issues, even if they constituted an unavoidable casualty or misfortune, did not actually prevent Dr. White from seeking reconsideration and thus prosecuting her case, the Court of Appeals correctly affirmed the trial court's decision to deny CR 60(b) relief. Review is unwarranted.

B. The Court of Appeals' decision does not conflict with this Court's decision in *Adams v. Adams,* because Dr. White failed to show how her trial lawyer's health issues prevented her from prosecuting her case.

CR 60(b) largely tracks its federal counterpart. *Stanley*, 157 Wn. App. at 881. But several subsections, including CR 60(b)(9), were instead derived from RCW 4.72.010. *Id.*[7] CR 60(b), which superseded that statute, now provides the exclusive basis for vacating judgments or orders. *Id.* at 881 n.12; *State v. Scott*, 92 Wn.2d 209, 212, 595 P.2d 549 (1979).

[7] That statute, in turn, dates back to the territorial days, at least as far back as 1875. Laws of 1875, ch. 1, § 1 at 20-21.

To be entitled to CR 60(b)(9) relief, the party must show (1) an unavoidable casualty or misfortune that (2) prevented the party from prosecuting her case.

The Court of Appeals' decision is consistent with this Court's decision in *Adams v. Adams*, 181 Wash. 192, 42 P.2d 787 (1935). Dr. Ferguson agrees that Davies—at least when he failed to appear for the hearing on Dr. Ferguson's summary-judgment motion—suffered from what could be termed an unavoidable casualty or misfortune. But "an unavoidable casualty or misfortune alone is insufficient to allow relief under the rule." *Stanley*, 157 Wn. App. at 882. And unlike the husband in *Adams*, whose health issues did prevent him from defending against the relief sought by the wife in the dissolution action, Davies' health issues did not prevent Dr. White from prosecuting her case. She and her new counsel together could have but failed to bring a motion for reconsideration that could have resulted in the vacation of the summary judgment and the reinstatement of her case. Nothing about Davies' difficulties, however remarkable the circumstances that caused him to default on his obligations on November 4, prevented Dr. White and her new counsel from seeking reconsideration within the deadline for doing so.

The statute under which this Court decided *Adams* is the predecessor to the statute that ultimately was superseded by CR 60(b), and specifically by subsection (9) of that rule that incorporated the statutory provision about relief for unavoidable casualty. *Compare Adams*, 181 Wash. at 195 (citing Rem. Rev. Stat. § 464), *with Scott*, 92 Wn.2d at 212-13 (citing RCW

4.72.010), *and* CR 60(b). This Court admittedly has not visited the issue of unavoidable casualty since adopting CR 60(b)(9). But this Court does not take up an issue simply because the Court has not addressed it in some time. This Court will take up an issue when there is a call for reconsideration of old precedents, like in *Deggs v. Asbestos Corp. Ltd.*, 186 Wn.2d 716, 381 P.3d 32 (2016), in which this Court granted review to consider whether to overrule several of this Court's decades-old decisions that placed a restrictive gloss on wrongful-death actions. But Dr. White does not contend there is a need to change the established understanding of unavoidable casualty laid down in *Adams*. Dr. White instead contends the Court of Appeals' decision conflicts with that understanding, and should be reviewed for that reason. And because Dr. White is wrong, and there is no conflict, nothing about *Adams* warrants granting review in this case.

C. The Court of Appeals' decision does not conflict with *Marriage of Olsen*, because Dr. White's filing a timely reconsideration motion was not futile.

The Court of Appeals' decision is also consistent with its prior decision in *Marriage of Olsen*, 183 Wn. App. 546, 333 P.3d 561 (2014).

In *Olsen*, either the husband or his counsel did not show up for trial at various times. On the third time, the trial court heard the wife's evidence and later entered orders resolving the parties' issues. The husband failed to file a reconsideration motion. He instead sought vacation under CR 60(b)(1) due to his counsel's health issues, which was denied. *Id.* at 551-52. The wife argued that the husband had to seek reconsideration, rather than vacation. *Id.* at 552-53. The Court of Appeals in *Olsen* concluded that

the husband's filing a reconsideration motion would have been futile because he could not present evidence within the ten-day reconsideration window to challenge the trial court's orders on the merits. *Id.* at 552-53.

Unlike in *Olsen*, it would not have been futile for Dr. White to seek reconsideration of the summary judgment. Dr. White and her office manager signed declarations on November 3—the day before the summary-judgment hearing—challenging Dr. Ferguson's assertion that she signed the noncompete agreement without consideration. CP 469-70, 472-73. This evidence, in the Court of Appeals' view, would have raised a genuine issue of material fact sufficient to deny Dr. Ferguson's summary-judgment motion. *Slip op.* at 23-25. And that distinction means there is no conflict with *Olsen*.

D. The Court of Appeals' decision does not conflict with *Barr v. MacGugan*, because Dr. White was not an unknowing client and Dr. White's relationship with her trial lawyer had not disintegrated to the point where there was no representation.

The Court of Appeals' decision is also consistent its prior decision in *Barr v. MacGugan*, 119 Wn. App. 43, 78 P.3d 660 (2003).

CR 60(b)(11) allows the trial court to vacate an order for "[a]ny other reason justifying relief from the operation of the judgment." It is confined to "extraordinary circumstances" not covered by any other section of the rule. *Metro. Park Dist. of Tacoma v. Griffith*, 106 Wn.2d 425, 439 n.3, 723 P.2d 1093 (1986); *Barr*, 119 Wn. App. at 46.

Barr recognized a limited exception to the general rule that an attorney's negligence or neglect does not constitute grounds for vacating a

judgment under CR 60(b). *Barr*, 119 Wn. App. at 46. In *Barr*, the trial court dismissed the plaintiff's case with prejudice after the plaintiff's lawyer failed to comply with an order compelling responses to discovery requests. *Id.* at 45. The plaintiff left several phone messages with her lawyer to check on the status of her case, but the lawyer never responded. The plaintiff learned nine months later from a third party that her case had been dismissed and that her attorney had been suffering from severe clinical depression. The plaintiff hired new counsel and filed a motion to vacate the dismissal order under CR 60(b)(11). The trial court granted the motion, and the Court of Appeals affirmed.

Acknowledging the general rule that an attorney's negligence is binding on the client, *Barr* concluded that this rule did not apply where the plaintiff's lawyer experienced severe depression and the attorney–client relationship had "disintegrated to the point where as a practical matter there is no representation." *Barr*, 119 Wn. App. at 48; *see also Olsen*, 183 Wn. App. at 557 (citing *Maples v. Thomas*, 565 U.S. 266, 282, 132 S. Ct. 912, 181 L. Ed. 2d 807 (2012) (holding that a client may be excused from responsibility for her lawyer's procedural defaults in the case of abandonment, but only where there is evidence of near-total abandonment)). *Barr* limited the exception to the general rule to "situations where an attorney's condition effectively deprives a diligent but unknowing client of representation." *Barr*, 119 Wn. App. at 48.

This case is a far cry from the type of abandonment found in *Barr* sufficient to justify CR 60(b)(11) relief.

Here Davies had represented Dr. White "for years." RP (2/26/16) 11. Dr. White knew by February 2016 that Davies was facing health issues and had missed court deadlines, but she supported him and did not want him to withdraw. CP 358, 646-49; RP (2/26/16) 11, 13. Between February 2016 and October 2016, Dr. White reviewed and signed six verifications or declarations for discovery. CP 236-37, 510-11, 540-45. Dr. White knew Davies was late in filing responses and briefs. CP 438. Dr. White knew Dr. Ferguson had filed a summary-judgment motion in October 2016, with a hearing noted for November 4; Dr. White reviewed the motion with Davies and expressed a desire to know what the filing meant. CP 358, 438. Dr. White and Davies discussed filing a CR 56(f) motion to continue the hearing, and she knew Davies planned to file motions to compel additional discovery on damages. CP 358. At the mediation two days before the summary-judgment hearing, Davies told Dr. White he had not filed an opposition to the summary-judgment motion. CP 244, 300, 438, 511. Davies assured Dr. White during the mediation that he planned to file a CR 56(f) motion to continue before the November 4 hearing. CP 358-59, 438. Dr. White reminded Davies multiple times to file the CR 56(f) motion. CP 358. Davies called Dr. White on November 4 to tell her the trial court had dismissed the case and to explain the full extent of his health issues. CP 362, 438-39. A few months later, Davies even filed a notice of acceptance of service on her behalf in another case and continued to represent Dr. White in the vacation proceedings. CP 219-31, 272-73, 418-29.

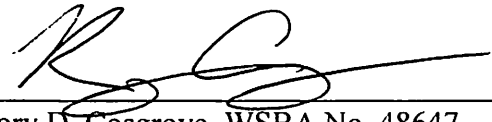
The Court of Appeals here correctly affirmed the trial court's discretionary determinations that the attorney–client relationship between Davies and Dr. White had not disintegrated to the point where there was no representation and that Dr. White was not an unknowing client. *Slip op.* at 26-27. There is no conflict with *Barr*.

V. CONCLUSION

This Court should deny review. Washington has a strong public policy favoring the finality of judgments on the merits. *Stanley*, 157 Wn. App. at 887. Allowing Dr. White to pursue CR 60(b) relief here would have frustrated that policy. The Court of Appeals' unpublished decision correctly affirmed the trial court's discretionary decision to deny Dr. White's motion to vacate the underlying summary-judgment order. Nor does it conflict with any Washington appellate decision.

Respectfully submitted: August 26, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By 

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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CARNEY BADLEY SPELLMAN

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