

No. 71422-8-I

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

VITO DeGRANDIS, an individual,

Plaintiff/Respondent,

v.

JAMES STANFORD and JANE DOE STANFORD, in their
individual capacities and as a marital community; and STANFORD
DEVELOPMENT, INC., a Washington corporation,

Defendants,

JANE DOE (KRISTENE) STANFORD, an individual,

Appellant.

KRISTENE STANFORD'S REPLY BRIEF

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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I. INTRODUCTION

Vito DeGrandis cannot deny that the Civil Rules were disregarded in order to surreptitiously obtain summary judgment and writ of attachment against Kristene Stanford. DeGrandis admits he did not serve notice of or obtain an order of default against Ms. Stanford. Then, he failed to serve her with any notice or pleadings regarding summary judgment. DeGrandis simply made no effort to notify Ms. Stanford in any way of the pending summary judgment. Then, Ms. Stanford was not informed a judgment had been entered against her. Now, DeGrandis makes the illogical argument that an individual who was not provided the required notice of a summary judgment hearing cannot appeal that judgment once she discovers the improperly entered judgment. In making these arguments, DeGrandis misstates court rules and the record in an attempt to justify his failure to serve Ms. Stanford. If DeGrandis' argument were accepted, it would be a blatant violation of due process.

Based on the “*gross irregularities*” committed by DeGrandis to obtain summary judgment against Ms. Stanford individually¹, this

¹ Namely, seeking summary judgment and a writ of attachment without serving notice of the hearing.

Court is authorized to review the merits of the summary judgment for the first time on appeal. Since the judgment entered was improper substantively and procedurally, it should be reversed. This Court may also reverse the Trial Court's decision and vacate the judgment against Ms. Stanford individually pursuant to CR 60, as the Trial Court abused its discretion by failing to address the irregularities in the judgment that were argued by Ms. Stanford.

II. ARGUMENT

There are three independent bases upon which Ms. Stanford should be relieved from the judgment. First, "*gross irregularities*" committed by DeGrandis in obtaining summary judgment and the writ of attachment prevented Ms. Stanford from becoming aware that judgment was pending or entered against her and being deprived of an opportunity to be heard. Thus, this Court is expressly authorized to address the merits of the judgment for the first time on appeal. Judgment was improperly entered against Ms. Stanford individually. Accordingly, it should be reversed.

Second, DeGrandis' failure to provide notice of or obtain an order of default against Ms. Stanford then having a summary

judgment hearing without any notice to her justifies “*relief from the operation of judgment*” pursuant to CR 60(b)(11). DeGrandis admits that he did not provide notice of or obtain an order of default against Ms. Stanford, and that he did not serve her with any notice of summary judgment as required by CR 5(a) and 56(c). Therefore, she could not be expected to know that judgment was pending or entered against her. When Ms. Stanford eventually found out about the judgment against her, she took immediate action to have it vacated.² The Trial Court abused its discretion on this point, because it never addressed DeGrandis’ failure to serve the summary judgment pleadings to Ms. Stanford. The Trial Court addressed only whether the summons and complaint were properly served. See VRP 5-7. Thus, the Trial Court should be reversed and the judgment entered against Ms. Stanford individually should be vacated under CR 60(b)(11).

² DeGrandis’ argument that Ms. Stanford failed to address in her Opening Brief that she acted within a reasonable time under CR60(b)(11) is simply not true. Ms. Stanford’s Opening Brief explained the standard to be used for determining whether a party acted within a reasonable time (Appellant’s Brief, pp. 18-19) and provided a timeline detailing when she first became aware of the judgment and her subsequent actions to vacate the judgment. Appellant’s Brief, p. 8.

Third, the record shows no indication that the Trial Court intended to include Ms. Stanford in her individual capacity on the judgment. Accordingly, the judgment against Ms. Stanford individually was a clerical error under CR 60(a). The Trial Court abused its discretion on this issue by incorrectly addressing it. Instead of determining whether it was clerical error to include Ms. Stanford **individually** on the judgment, the Trial Court held “*it seems to me that really this was not a clerical error, the inclusion of her name in my view is a clear indication that **relief was sought against the community.***” VRP 5. However, Ms. Stanford was not attempting to set aside the community liability. Thus, this Court should vacate the judgment pursuant to CR 60(a), as Ms. Stanford’s individual inclusion was a clerical error, and the Trial Court did not address it.

A. The Summary Judgment Entered Against Kristene Stanford May Be Reviewed On Appeal Based On DeGrandis’ Violations Of The Civil Rules.

DeGrandis’ argument that the summary judgment improperly entered against Ms. Stanford is beyond the scope of review of this appeal is incorrect. The Washington Supreme Court has expressly

held that “[t]he principle that an objection not taken in the trial court is not available on appeal or review” is “inapplicable where the record discloses a combination of gross irregularities, **including the filing of pleadings in violation of rules of court, the granting of relief upon fatally defective pleadings,** and the granting of relief in a second order which has already been granted in a former order.” Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 621-22 (1970) (emphasis added). Here, DeGrandis admits the notice requirements of CR 56(c) and CR 5(a) were not followed.

Additionally, RAP 2.5 provides “a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) **manifest error affecting a constitutional right.**” Service of process is a constitutional right. Wash. Const., Art. I, Sec. 3; Martin v. Triol, 121 Wn.2d 135, 144 (1993) (“Service of process requires adherence to due process requirements, and in its execution must provide ‘notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections.”); Topliff v. Chicago Ins. Co., 130 Wn. App. 301, 302-03 (2005) (“*Notice and opportunity to be heard are the basic pillars of due process. Without due process, our proceedings lack fundamental fairness.*”).

Ms. Stanford does not dispute that she was served the summons and complaint in this matter. However, she was not served notice of the summary judgment motion and hearing at issue. CR 56(c). DeGrandis himself admits he did not serve Ms. Stanford any subsequent pleadings after she was served the Complaint. Respondent’s Brief, pp. 3, 18-19. DeGrandis’ failure to serve notice of the proceedings deprived Ms. Stanford of the opportunity to object to them. When she discovered in 2013 that a judgment had been entered against her in 2011, the deadline to appeal had long expired. See RAP 5.2. In such situations, Maynard and RAP 2.5 expressly permit a party to raise substantive challenges to judgments for the first time on appeal, as they were wrongfully precluded from doing so at the Trial Court due to improper service.

Even after admitting his failure to serve Ms. Stanford or to obtain an order of default against her, DeGrandis claims Ms.

Stanford still “*should have appeared and argued this issue or appealed the judgment.*” Respondent’s Brief, p. 9. In other words, DeGrandis’ position is that despite his own disregard of the due process rules, Ms. Stanford was responsible to somehow find out about the summary judgment on her own in time to either argue it or timely appeal it. He further claims that her failure to do so now precludes her from challenging it. Maynard and RAP 2.5 explicitly prevent such inequitable results.

DeGrandis cites J.T. Haley v. Highland, 142 Wn.2d 135 (2000) to support the argument that the Court cannot consider the impropriety of the summary judgment in this matter. However, in J.T. Haley, the appealing party had been provided proper notice of the hearing at issue. In that case, the petitioner used CR 60 to appeal the merits of a judgment entered where the petitioner had been provided notice of the proceedings and had the opportunity to present counter arguments and objections to the Trial Court. See Id., 138-40. Despite doing so, the petitioner subsequently failed to timely appeal the judgment entered against him. Id. at 155-58.

Conversely, here, Ms. Stanford was not notified of the summary judgment proceedings, so she did not have an opportunity to present counter arguments or raise any objections. Unlike the petitioner in J.T. Haley, Ms. Stanford was unaware that judgment was pending or had been entered against her, and therefore, she had no reason to know of any deadlines regarding an appeal. Indeed, after the hearing, she was not provided the order, judgment, or notice of presentment. Accordingly, unlike the petitioner in J.T. Haley, Ms. Stanford is permitted to challenge the merits of the judgment entered against her for the first time in this appeal, as she did not have the opportunity to do so at the Trial Court level.

The summary judgment entered against Ms. Stanford was improper both procedurally and substantively. As discussed in detail in Ms. Stanford's Opening Brief, Washington law is clear that a non-acting spouse cannot be **individually** liable for the business debt unilaterally incurred by an acting spouse. RCW 26.16.010-030; Max L. Wells Trust v. Grand Central Sauna & Hot Tub Co., 62 Wn. App. 593, 604 (1991). Furthermore, Ms. Stanford cannot be individually liable, as no allegations were pleaded against her. See

Bates v. Glasser, 130 Wash. 328, 330 (1924) (entering individual judgment against a wife when her husband solely executed a promissory note was improper as “[t]here [was] no allegation in the complaint to justify a decree or judgment against [the wife] other than as a member of the community.”).

Thus, granting summary judgment against Ms. Stanford individually for a promissory note entered into between James Stanford dba Stanford Development and Vito DeGrandis was contrary to Washington law and should be reversed.

B. DeGrandis Did Not Obtain An Order Of Default And Failed To Properly Serve Kristene Stanford, So Relief Under CR 60(b)(11) Is Appropriate.

DeGrandis’ failure to adhere to the Civil Rules makes enforcement of the judgment entered against Ms. Stanford inequitable. CR 5(a) is clear: “***every pleading*** subsequent to the original complaint...***shall be served*** upon ***each*** of the parties.” (Emphasis added). Although an exception to the otherwise mandatory service rule exists where a party is considered in “default” for failure to answer or appear, that exception is inapplicable. “Default” is a term of art. Before a party can be in

default, a motion must be filed with the Court and the Court must issue an order stating the party is in default. C. Rhyne & Associates v. Swanson, 41 Wn. App. 323, 325-26 (1985) (a party is entitled to notice of proceedings until “*properly adjudged to be in default*” under CR 55).

Accordingly, DeGrandis’ bald claim that “*K. Stanford was not entitled to any service or notice of the Motion for Summary Judgment because she otherwise did not appear after being properly served [the Complaint]*” is inaccurate. Respondent’s Brief, p. 18 (emphasis in original). Pursuant to Washington law, Ms. Stanford was entitled to all pleadings subsequent to the Complaint until DeGrandis obtained an order of default, and he did not do so. CR 5(a); CR 55(a); CR 56(c).

DeGrandis attempts to justify his failure to obtain an order of default by taking the position that “default” is nothing more than a unilateral designation one party assigns to another who fails to appear or respond. Respondent’s Brief, p. 19. To support this erroneous claim, DeGrandis misrepresents the language of CR 55(a)(3) by paraphrasing it. DeGrandis states that CR 55(a)(3)

does “not require an actual entry of an order or judgment of default.” Respondent’s Brief at 19-20. This is not even remotely accurate. CR 55(a)(3) provides:

*Any party who has appeared in the action for any purpose **shall be served with a written notice of motion for default** and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in rule 55(f)(2)(A).*

CR 55(a)(3) emphasis added. In no way does this provision alleviate the requirement that a party must obtain an order of default from the court. See CR 55(a)(1). In fact, CR 55(a)(3) expressly recognizes that a motion to obtain an order of default must still be presented to the court. CR 55(a)(3) simply allows the moving party to forego serving notice of the motion for default to a party who has not appeared. It does not excuse the requirement to obtain an order of default.

DeGrandis admits he did file for or obtain an order of default against Ms. Stanford. Respondent’s Brief, pp. 19-20. Accordingly, Ms. Stanford was entitled to service of all pleadings subsequent to the Complaint. DeGrandis admits he failed to serve the summary

judgment pleadings to Ms. Stanford. Respondent's Brief, pp. 18-19. Thus, he violated CR 5. The Trial Court did not address DeGrandis' failure to serve Ms. Stanford the summary judgment pleadings but considered only whether the summons and complaint were properly served. VRP 5-6. Accordingly, the Trial Court abused its discretion and this Court should vacate the judgment against Ms. Stanford individually pursuant to CR 60(b)(11).

C. Kristene Stanford's Individual Inclusion On The Judgment Was A Clerical Error, So Relief Under CR 60(a) Is Proper.

A clerical error is an oversight or omission in the judgment that does not reflect the Trial Court's intention. See CR 60(a); Presidential Estates Apartment Associates v. Barrett, 129 Wn.2d 320, 326 (1996). Such errors can be corrected at any time. CR 60(a). There are no facts, allegations, pleadings, arguments, or otherwise anywhere in the record to indicate the Trial Court intended to hold Ms. Stanford individually liable. In addressing this argument below, the Trial Court determined that there was "*clear indication that relief was sought against the community.*" VRP 5. However,

the Trial Court did not address whether the record reflected an intention to hold Ms. Stanford individually liable. See VRP 5.

Clerical mistakes are not limited to “*arithmetical calculations or minor, unintentional mistakes in property descriptions.*” See Respondent’s Brief, p. 11. In Shaw v. City of Des Moines, 109 Wn. App. 896, 901 (2002), it was a clerical error under CR 60(a) for the Court to enter an order of dismissal based on the erroneous belief that the parties failed to attend a hearing. In Entranco Engineers v. Envirodyne, Inc., 34 Wn. App. 503, 507-08 (2002), it was a clerical error under CR 60(a) for a default judgment to be entered against a parent corporation named as a defendant, rather than its subsidiary “*whose activities were described in the complaint.*” In Mallotte v. Gorton, 75 Wn.2d 306, 311 (1969)³, although the Court does not cite to CR 60(a), it treated as a clerical error the individual inclusion of a wife on a judgment entered for her husband’s failure to pay on a promissory note that he signed alone and where no allegations had been asserted against the wife. Accordingly, the appellate court

³ DeGrandis’ claim that it is improper to cite to a case on appeal that was not cited at the Trial Court has no merit. In Walla Walla County Fire Protection Dist. No. 5 v. Washington Auto Carriage, Inc., 50 Wn. App. 355, 357-58, FN 1 (1987) the Court stated: “*There is no rule preventing an appellate court from considering case law not presented at the trial court level.*”

instructed that the judgment be amended to reflect the record. Id. at 310-11.

Here, the clerical error was individual inclusion of Ms. Stanford on a judgment where there were no allegations made against her in any of the pleadings, she did not sign the promissory note, had no knowledge of the transaction with DeGrandis, and notice of summary judgment and writ of attachment was served only to James Stanford's business address. Indeed, the record and pleadings shows only an intention to include James Stanford individually and the Stanford marital community. See Entranco, 34 Wn. App. at 507 (*"the commissioner intended to enter a default judgment against **the party whose activities were described in the complaint** [rather than the misidentified party]. Consequently, **this is not a 'judicial error' beyond correction pursuant to CR 60(a).**"* (emphasis added)).

DeGrandis unpersuasively argues that the record shows an intention to include Ms. Stanford individually, because he used the term "*Defendants*" in his Motion and Memorandum for summary judgment and writ of attachment. See Respondent's Brief, p. 14.

However, this argument is precluded by DeGrandis' own use of the term "*all Defendants*" in his proof of service of the same documents. CP 21. DeGrandis allegedly caused the Motion and Memorandum for summary judgment and writ of attachment to be served on "*all Defendants*" but sent them only to James Stanford at his business address. CP 21-22. DeGrandis clearly considered "*all Defendants*" to mean only James Stanford and Stanford Development, Inc. when he served the pleadings, so he cannot now claim "*Defendants*" meant something differently in the pleadings served.

Other than this one strained attempt, DeGrandis has been unable to reference a single allegation in the record evidencing an intention to include Ms. Stanford individually on the judgment. As the Court recognized in Entranco, the Court's intention regarding judgment is better determined by the allegations contained in the pleadings rather than the parties identified in the caption. See Entranco, 34 Wn. App. 505-07. None of the activities described in the pleadings lead to a conclusion that the Trial Court intended to enter judgment against Ms. Stanford individually.

Perhaps in recognition of the inability to point to anywhere in the record evidencing judgment was intended to be entered against Ms. Stanford, DeGrandis claims “*CR 60(a) was not asserted in [K. Stanford’s] Motion [to Vacate Judgment], the issue was not properly raised at the Trial Court level, and should not be considered on appeal.*” Respondent’s Brief, p. 11. This is not true. The very first sentence of Ms. Stanford’s Memorandum in support of her Motion quotes verbatim CR 60(a) and cites it as a basis for vacating the judgment against Ms. Stanford. CP 60. DeGrandis similarly attempted to mislead the Trial Court on this issue by blatantly misrepresenting that “*the only provision under CR 60 that K. Stanford identifies to support vacation is CR 60(b)(11).*” CP 73. The Trial Court rightfully did not consider DeGrandis’ argument on this point, and neither should this Court.

The inclusion of Ms. Stanford on the summary judgment and writ of attachment in her individual capacity does not embody the Trial Court’s intention. The pleadings address only James Stanford, Stanford Development, Inc., and the Stanford marital community. See CP 10, ¶ 1.2. The Trial Court did not address the clerical error

of Ms. Stanford's individual inclusion. Instead, the Trial Court only addressed whether inclusion of the Stanford marital community was a clerical error. Accordingly, the Trial Court abused its discretion and judgment against Ms. Stanford individually should be vacated pursuant to CR 60(a).

D. Kristene Stanford Is Entitled To Attorney Fees Based On A Recognized Ground Of Equity.

DeGrandis' interpretation of Rorvig v. Douglas, 123 Wn.2d 854 (1994) is far too narrow. The rule stated in Rorvig identifies a ground of equity to award attorney's fees to a party required to bring legal action to remove a wrongfully entered writ of attachment. Rorvig specifically acknowledges that "*attorney fees are a 'necessary expense incurred'*" in obtaining relief from wrongful attachment. Id. at 862. Although it is typically a plaintiff who files suit for relief against wrongful attachment, the guiding principal in equity is whether a party was required to take legal action to obtain relief from the wrongful attachment. See James v. Cannell, 135 Wash. 80, 83-84 (1925) ("*It is held that the attorney's fee is a necessary expense incurred because of the suing out of the*

attachment and to get rid of it, and that for that reason it constitutes a part of the damages suffered.”).

Ms. Stanford is essentially in the same position as a plaintiff required to file suit to remove a wrongful attachment improperly obtained against her individually. Ms. Stanford did not have an opportunity to object to the writ of attachment, as she was not served notice of it. After she found out about the judgment and attachment, she asked DeGrandis to stipulate to removing her individually. DeGrandis refused to do so. Consequently, Ms. Stanford had to file this appeal to challenge the writ of attachment. Accordingly, the ground of equity recognized by Rorvig is applicable here, and attorney’s fees are permitted pursuant to RAP 18.1.

E. DeGrandis Is Not Entitled To Attorney’s Fees.

As stated by DeGandis, “[r]aising at least one debatable issue precludes finding that the appeal as a whole is frivolous.” Advocates for Responsible Development v. Western Washington Growth Management Hearings Board, 170 Wn.2d 577, 580 (2010). If a single debatable issue is raised, attorney fees are improper under RAP 18.9(a). DeGrandis furtively obtained a judgment against Ms.

Stanford by failing to serve her, yet claims “[t]here is not a single debatable point in this appeal.” Respondent’s Brief, p. 25.

DeGrandis’ failure to obtain an order of default or to serve Ms. Stanford with notice of the judgment against her prevented Ms. Stanford from raising any objections to the proceedings. Thus, she was permitted under Washington law to challenge the judgment for the first time on appeal. Accordingly, it is more than debatable that the Court is permitted to overturn the summary judgment based on its impropriety according to the merits or based on the irregularities that allowed for an unjust judgment pursuant to CR 60(b)(11). Furthermore, the Trial Court did not address DeGrandis’ failure to serve the summary judgment pleadings to Ms. Stanford, making an appeal necessary.

Additionally, Ms. Stanford has established that there was no intention of the Trial Court to include her individually in the judgment. DeGrandis was unable to reference a single pleading that contains even the slightest implication that Ms. Stanford was involved in wrongdoing. Therefore, her individual inclusion is a clerical error than can be corrected under CR 60(a). Again, the Trial

Court did not address the individual inclusion of Ms. Stanford, making this appeal necessary.

Indeed, Ms. Stanford has not only raised debatable issues but has established that the judgment against her individually should be vacated. Thus, DeGrandis is not entitled to attorney fees under RAP 18.9(a).

III. CONCLUSION

Based upon the foregoing, Appellant Kristene Stanford respectfully requests that the Trial Court's denial of Kristene Stanford's Motion to Vacate Judgment against her individually be reversed, and that Appellant Kristene Stanford be awarded reasonable costs and attorney fees on appeal.

DATED this 19th day of May, 2014.

DUNN BLACK & ROBERTS, P.S.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of May, 2014, I caused to be served a true and correct copy of the foregoing document to the following:

- | | | |
|-------------------------------------|------------------|----------------------------|
| <input type="checkbox"/> | HAND DELIVERY | Mark J. Lee |
| <input checked="" type="checkbox"/> | U.S. MAIL | Brownlie Evans Wolf & Lee, |
| <input type="checkbox"/> | OVERNIGHT MAIL | LLP |
| <input type="checkbox"/> | FAX TRANSMISSION | 230 E. Champion Street |
| <input type="checkbox"/> | EMAIL | Bellingham, WA 98225 |
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| <input type="checkbox"/> | HAND DELIVERY | James Stanford |
| <input checked="" type="checkbox"/> | U.S. MAIL | 5072 E. Bit Circle |
| <input type="checkbox"/> | OVERNIGHT MAIL | Wasilla, AK 99654 |
| <input type="checkbox"/> | FAX TRANSMISSION | |
| <input type="checkbox"/> | EMAIL | |


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