

No. 71422-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

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.

RESPONDENT VITO DeGRANDIS' RESPONSE BRIEF

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I. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Respondent Vito DeGrandis (“DeGrandis”) substantively denies and disputes that the Trial Court committed any error. DeGrandis also takes exception to Assignments of Error Nos. 1 and 2 and the corresponding Issues Nos. 1 and 2, in that they are directly and improperly seeking review of the merits of the judgment, and not the Trial Court’s ruling on Appellant Kristene Stanford’s (“K. Stanford”) motion to vacate the Judgment. M. O. Bjurstrom v. Campbell, 27 Wn.App. 449, 450-51, 618 P.2d 533 (1980) (“An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment.”)

II. STATEMENT OF THE CASE

DeGrandis respectfully disagrees with K. Stanford’s rendition of the evidence in this record, as it is incomplete and misstates the procedures that occurred. He therefore provides a supplemental Statement of the Case. RAP 10.3(b).

A. Procedures Associated With Entry of Judgment.

This matter was commenced on November 29, 2010, by DeGrandis to collect on an unpaid promissory note. CP 9-13. On

December 4, 2010, Defendant James Stanford (“J. Stanford”) was personally served with the Summons and Complaint for Collection on Promissory Note (“Complaint”) at his residence. CP 16. At the same time, K. Stanford was separately and independently served through substitution by delivery of a second copy of the Summons and Complaint to her through J. Stanford. CP 14. K. Stanford has admitted that she was married to J. Stanford at the time of this service, and, more importantly, that the house at which this substitute service occurred was her residence at that time: “On or around December 10, 2010, the Summons and Complaint for the above lawsuit were served to 414 Clark Ct., Lynden, Washington 98264, the home James Stanford and I shared.” (Emphasis added).¹ CP 52.

J. Stanford filed and mailed to DeGrandis’ counsel an “appearance” and/or “answer” on December 27, 2010, pro se, on letterhead that included the address 1841 Front Street, Suite B, Lynden, Washington 98264. CP 18 (“Response”). There is nothing in the Response that identifies that the “appearance” was on behalf of K.

¹ The statement that service occurred “on or around December 10, 2010” is an apparent attempt to misrepresent the facts to the Court. Service actually occurred on December 4, 2010, which is undisputed. CP 14. It is apparent that this slight of language is an attempt to suggest that service of the Summons and Complaint occurred after K. Stanford filed for separation from J. Stanford, which allegedly occurred on December 10, 2010. CP 84.

Stanford. Thereafter, DeGrandis filed a Motion for Summary Judgment seeking entry of a judgment for the principal of the Promissory Note (“Note”), interest, loan fees, and costs, all as allowed under the Note. CP 23-24. The Motion for Summary Judgment was mailed to the address on J. Stanford’s Response, i.e., 1841 Front Street, Suite B, Lynden, Washington 98264, and no other notice was provided. CP 21-22. No response or other opposition to the Motion for Summary Judgment was entered, or any other entry of an appearance, so judgment was entered against all Defendants on July 8, 2011, which included the following award:

PRINCIPAL JUDGMENT AMOUNT:	\$40,000.00
INTEREST TO SEPTEMBER 4, 2009:	\$ 4,000.00
INTEREST TO DATE OF JUDGMENT:	\$15,754.94
LOAN FEES:	\$ 2,000.00
ATTORNEY'S FEES:	\$ 250.00
COSTS OF SUIT:	N/A
PRINCIPAL JUDGMENT INTEREST:	18 percent (18%)

CP 45 (“Judgment”).

B. Procedures Relating to Motion to Vacate.

On December 2, 2013, K. Stanford filed the Motion to Vacate Judgment (“Motion”). CP 48-50. The Motion included K. Stanford’s Memorandum in Support of Motion to Vacate Judgment, CP 57-63, and a supporting Declaration of Kristene Stanford in Reply to Motion to Vacate. CP 88-92. In Plaintiff’s Response to Defendant Kristene Stanford’s Motion to Vacate Judgment, CP 70-78, DeGrandis pointed out the inadequacies/deficiencies in the Motion, including, inter alia, the absence of any facts, explanation, or pertinent information to establish that any request for vacation under CR 60(b)(4)-(11) was brought within a reasonable time, the lack of any basis to vacate, and K. Stanford’s improper attempt to challenge the Judgment. CP 73-74.

At the hearing, the Trial Court denied the Motion based upon a more detailed explanation than revealed by K. Stanford:

Unfortunately I must deny the motion to vacate the judgment as well, however, I’ve reviewed the paperwork and frankly, Mr. Chambers, your client is in a sympathetic position and I’m sorry that she is in that position, but 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. I don’t see any impropriety in the entry of the judgment in this case.

There may be an error of law as you suggest, but I'm persuaded by the authorities that the plaintiff has cited that an error of law is not sufficient to overturn a judgment, especially when we are more than a year out, and at this point we're about two-and-a-half years. I think your client has some strong equity, but as I thought about it I realized that your client was properly served and if, and the fact that she was properly served doesn't have simply to do with the fact that the marital community was served, the process server went to her home and left the process with an adult of suitable age and discretion, and whether that adult was her husband, or her soon to be ex-husband, or some other unrelated adult, that constitutes valid service and so I don't believe that your client can fairly argue that she was not properly included here.

I think she may well have a claim against her former husband, who may now be her current husband, I don't know, but in my view the mistake was made by him in failing to let her know after he had been properly served.

I acknowledge that you make a good argument when you say that he told the Court and the plaintiff in his response that he filed as a pro se person that he was legally separated, but still the fact that they were legally separated doesn't in my view viciate [sic] the validity of service on her. And I think that if I were to find differently I would be in direct contravention of the service statute that provides the service on her was valid. So that's the basis for my denial of the motion despite the equities and sympathetic position your client was in.

You made a good argument the other way so now I feel kind of bad about doing it, but I think this is the law that, this is the result that the law clearly requires.

RP 5-7.

III. DISCUSSION

It is essential to initially recognize that the standard of review associated with this appeal is limited to determining whether or not the Trial Court abused its discretion in ruling on the Motion. Northwest Land and Inv., Inc. v. New West Federal Sav. and Loan Ass'n, 64 Wn.App. 938, 942, 827 P.2d 334 (1992). An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court, Ebsary v. Pioneer Human Services, 59 Wn.App. 218, 225, 796 P.2d 769 (1990) and where a decision is based upon “untenable grounds for untenable reasons.” Estate of Treadwell ex rel. Neil v. Wright, 115 Wn.App. 238, 250, 61 P.3d 1214 (2003). Appeal from a denial of a CR 60(b) motion is therefore “limited to the propriety of the denial.” State v. Santos, 104 Wn.2d 142, 145, 702 P.2d 1179 (1985).

A. K. Stanford’s Challenge to the Appropriateness of the Underlying Judgment Was Not Subject to Challenge or Review by the Trial Court or on Appeal.

The entirety of K. Stanford’s initial argument on appeal is devoted to a singular challenge to the merits of the Judgment itself: “Summary Judgment And A Writ Of Attachment Should Not Have Been Granted Against Kristene Stanford Individually.” Appellant Kristene Stanford’s

Opening Brief (“Appellant’s Brief”), pp. 10-13. This argument focuses exclusively upon the alleged legal error originally committed by the Trial Court when it entered the Judgment. This argument is not based upon any contention of “clerical error” or mistake, nor is any other provision of CR 60 referenced as supporting vacation. Instead, the argument is based exclusively on a challenge to the legal propriety of the Judgment being entered against her at all. As argued by K. Stanford:

Just as in Wells Trust, the Trial Court [originally] erred in holding Kristene Stanford individually liable for her husband’s business debt, when Washington law only permits James Stanford and the Stanford marital community to be liable for the debt. Accordingly, just as in Wells Trust, the Court should reverse the Trial Court’s decision and vacate the judgment issued against Kristene Stanford individually.”

Id. at p. 13 (emphasis added).

The breadth of what can be reviewed on a motion to vacate, and correspondingly, on appeal of such a motion, does not include legal challenges to the underlying judgment. In particular:

An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment. 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.

M. O. Bjurstrom v. Campbell, *supra*, 27 Wn.App. at 450-51. This means that an error of law in the judgment cannot be the basis to set aside a judgment. As long recognized:

‘The power to vacate judgments, on motion, is confined to cases in which the ground alleged is something extraneous to the action of the court or goes only to the question of the regularity of its proceedings. It is not intended to be used as a means for the court to review or revise its own final judgments, or to correct any errors of law into which it may have fallen. That a judgment is erroneous as a matter of law is ground for an appeal, writ of error, or certiorari according to the case, but it is no ground for setting aside the judgment on motion.’

Kern v. Kern, 28 Wn.2d 617, 619, 183 P.2d 811 (1947) (quoting 1 Black on Judgments (2d ed.), § 329).

The facts in J.T. Haley v. Highland, 142 Wn.2d 135, 158, 12 P.3d 119 (2000) are instructive and analogous. Similar to this case, a party there sought to set aside a judgment under CR 60(b)(1) and (4) based upon the contention that the court erroneously found the obligation of the moving defendant to be separate, and therefore did not subject his community assets to liability. Rather than appeal this ruling, the aggrieved party sought to vacate, which was denied and upheld by the Washington Supreme Court:

Highland contends these activities constitute an ‘irregularity’ or ‘fraud’ of such severity that the trial court

abused its discretion in failing to vacate its December 16, 1996, order on the basis of CR 60(b)(1)(4). Highland is incorrect. The facts fail to support Highland's characterization of Haley's actions. The trial court did not determine that Haley had mischaracterized its rulings. In fact, the court continued to reiterate its prior statements, despite the fact that it was well aware of all the facts in this case.

Highland is merely attempting to use the appeal of his motion to vacate under CR 60(b) to reach the merits of an issue that was not appealed. As the trial court stated in its original denial of the CR 60(b) motion:

The error claimed by defendant is not an irregularity but a conclusion of law, and as such is not properly to be vacated [u]nder Civil Rule 60....

RP (Aug. 12, 1997) at 2. We agree and affirm the trial court's denial of Highland's CR 60(b) motion to vacate.

Id.

The exact same situation exists here. As presented, K. Stanford maintains that the Trial Court made an error of law in entering the Judgment against her, citing Max L. Wells Trust v. Grand Central Sauna and Hot Tub Company of Seattle, 62 Wn.App. 593, 604, 815 P.2d 284 (1991). She should have appeared and argued this issue or appealed the Judgment. CR 60 is simply not available as a substitute for this process and did not provide a basis to vacate, or a basis for this Court to reverse the Trial Court's decision on the motion to vacate. See also Presidential

Estates Apartment Associates v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996) (Court cannot correct legal errors in judgment under CR 60(a)).

B. K. Stanford Did Not Raise a CR 60(a) Argument in Her Motion, Nor Does the Alleged Legal Error Resulting in the Judgment Constitute a Basis for Relief Under CR 60(a).

Perhaps in recognition of the inability to raise legal errors in the Judgment as a basis to seek relief under CR 60, K. Stanford then uses the alleged legal error upon which she first seeks reversal of the Judgment, i.e., the imposition of personal liability upon her, and repackages it as a “clerical mistake” subject to relief under CR 60(a). CR 60(a) only allows relief under the following narrow circumstance:

Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

The totality of argument made in K. Stanford’s Motion to the Trial Court under this provision was to quote the provision, which was then followed by an evaluation of the legal error made when the Judgment was entered. CP 60-62. There was therefore no analysis whatsoever or

argument that CR 60(a) applied in her Motion. She did, however, make an argument under CR 60(a) in her reply materials, thereby precluding DeGrandis the opportunity to substantively address the issue. Id. at 82-84. Because CR 60(a) was not asserted in her Motion, the issue was not properly raised at the Trial Court level, and should not be considered on appeal. Allison v. Boondock's Sundecker's & Greenthumb's, Inc., 36 Wn.App. 280, 284, 673 P.2d 634 (1983).

Even if considered, however, there was no “clerical mistake” upon which a vacation could be based. Again, the “clerical mistake” alleged by K. Stanford on appeal is the same legal mistake upon which she generally seeks to reverse the Judgment. CR 60(a) is only available to correct “clerical errors,” not judicial or legal errors. A “clerical mistake” is ordinarily mechanical in nature, such as an arithmetical miscalculation or a minor, unintentional mistake in property description. See e.g., Entranco Engineers v. Envirodyne, Inc., 34 Wn.App. 503, 662 P.2d 73 (1983). In contrast, a judicial error is one of substance, and may not be corrected under CR 60(a). Marchel v. Bunger, 13 Wn.App. 81, 84, 533 P.2d 406 (1975). In determining whether an alleged mistake is “clerical” or “judicial,” “a reviewing court must ask itself whether the judgment, as amended, embodies the trial court’s intention, as expressed in the record at

trial.” Presidential Estates Apartment Associates v. Barrett, *supra*, at 326. If the answer is “yes,” “it logically follows that the error is clerical in that the amended judgment merely corrects language that did not correctly convey the intention of the court, or supplies language that was inadvertently omitted from the original judgment.” *Id.* If, on the other hand, the answer is “no,” “the error is not clerical, and, therefore, must be judicial.” *Id.*

Here, the Trial Court specifically concluded that there was no “clerical mistake,” but at best, K. Stanford presented an error of law:

There may be an error of law as you suggest, but I’m persuaded by the authorities that the plaintiff has cited that an error of law is not sufficient to overturn a judgment, especially when we are more than a year out, and at this point we’re about two-and-a-half years.

RP 5. K. Stanford has not pointed to any evidence or basis that this conclusion was based upon “untenable grounds or untenable reasons” because there is not any. Indeed, she never considers the Trial Court’s ruling or evaluates it under the proper “abuse of discretion” standard. There is also nothing in the record to indicate that the Trial Court made a clerical mistake in entering the Judgment against both parties individually, or that it did not intend to do so.

K. Stanford instead appears to implore this Court to exercise its right to correct the “clerical mistake,” citing Entranco Engineers v. Envirodyne, Inc., 34 Wn.App. 503 (1983) and relying upon Malotte v. Gorton, 75 Wn.2d 306, 311, 450 P.2d 820 (1969) as presenting a factually similar situation.² However, Malotte has nothing to do with the underlying issues here, nor do the facts here present a “clerical mistake.” First, the appeal in Malotte was a direct appeal of the judgment itself, not an order under CR 60(a) or (b).³ Moreover, in that case, the judgment’s application was changed from the married couple as individuals to their marital community only because (1) the trial court specifically instructed the parties to prepare the judgment “against the defendants as a community”; and (2) the “plaintiff made no such claim in the trial court or on this appeal” against the defendants individually. Id. at 307 and 311.

Here, on the other hand, judgment was sought against the Defendants, both individually and in their marital community, when the

² It is interesting to note that this case was never cited by K. Stanford in the pleadings at the Trial Court level, again evidencing the lack of proper presentation of this argument below.

³ K. Stanford seems to argue that the ruling should be applied under a CR 60(a) analysis because the court noted that the at-issue change could have been obtained without need of an appeal of the judgment, but instead a request to counsel and the trial court. Again, unlike in this case, the trial court in Malotte specifically instructed entry of the judgment in a manner inconsistent with the rendered judgment, and the plaintiff never requested judgment directly against the individuals. This dicta does not render the case applicable to CR 60(a).

parties were named in the caption as “James Stanford and Jane Doe Stanford, in their individual capacities and as a marital community.” Nor was there any instruction by the Trial Court to limit entry of the Judgment to the marital community, or otherwise indicate any intent for the final judgment to not be against K. Stanford individually.

K. Stanford maintains that this is not the case because the Motion for Summary Judgment did not identify her in particular as the focus of the demanded remedy and entry of judgment. Appellant’s Brief, pp. 16-17. On the contrary, the Motion for Summary Judgment leading to entry of the Judgment was against all “Defendants,” CP 23, and the underlying memorandum referenced all of the Defendants as being liable for the unpaid promissory note. CP 33-34. Therefore, there is nothing in the record to indicate a clerical mistake, or that the Judgment was inconsistent from what was demanded or what was intended to be entered by the Trial Court. At best, as noted by the Trial Court, there was a judicial or legal error. In the end, K. Stanford herself recognizes the nature of the alleged “mistake” as a judicial one, just as the Trial Court concluded, even in arguing for application of CR 60(a): “Kristene Stanford’s absence from the pleadings, coupled with the fact that Washington law expressly precludes a non-acting spouse from incurring individual liability of an

acting spouse's separate business debt..." Appellant's Brief, pp. 17-18 (emphasis added). The Trial Court did not abuse its discretion in concluding that no clerical mistake existed.

C. The Trial Court Did Not Abuse Its Discretion in Refusing to Vacate Under CR 60(b)(11).

In a final attempt to obtain reversal, K. Stanford argues that this Court should vacate the judgment under CR 60(b)(11). It must first be noted that K. Stanford's entire argument on this point is directed at a first person request for de novo review, and in this, completely ignores, and therefore fails to establish, that the Trial Court abused its discretion in refusing to grant the motion on this point.

Nor is there any basis whatsoever to grant such relief or find that the Trial Court abused its discretion in refusing to vacate under CR 60(b)(11). CR 60(b)(11) authorizes vacation for "[a]ny other reason justifying relief from the operation of the judgment." This provision must, however, "be confined to situations involving extraordinary circumstances not covered by any other section of the rule." In re Marriage of Yearout, 41 Wn.App. 897, 902, 707 P.2d 1367 (1985) (quoting State v. Keller, 32 Wn.App. 135, 140, 647 P.2d 35 (1982)). In this, it should only be applied to circumstances that "relate to irregularities extraneous to the action of

the court or questions concerning the regularity of the court's proceedings." Id. (citing State v. Keller, supra, 32 Wn.App. at 141.)

The only alleged supporting "irregularity" relied upon by K. Stanford here was the alleged service of DeGrandis' Motion for Summary Judgment only on J. Stanford at the address on his "answer" and the absence of service on K. Stanford at her residence: "Here, DeGrandis' determination that James Stanford's *pro se* appearance included representation of Kristene Stanford calls into question the regularity of these proceedings. Additionally, DeGrandis' failure to serve Kristene Stanford with all pleadings in this matter, as required by the Civil Rules, was an improper denial of Kristene Stanford's right to due process." Appellant's Brief, p. 19. K. Stanford's contentions are misstatements of the facts and law as applicable, nor do they provide any basis to conclude that the Trial Court abused its discretion.

It must first be recognized that there is no dispute that the Complaint itself was properly served on K. Stanford. As conceded in her supporting affidavit: "On or around December 10, 2010, the Summons and Complaint for the above lawsuit were served to 414 Clark Ct., Lynden, Washington 98264, the home James Stanford and I shared." (Emphasis added). CP 52. Service was made on J. Stanford who is over

18, and this constituted proper substitute service. RCW 4.28.080(15). (“In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.”) Thus, the only issue relates to the alleged service, or lack of service, of the Motion for Summary Judgment.

Initially, relief under CR 60(b)(11) requires a preliminary showing that the request was made within a reasonable time. CR 60(b). In the Motion, K. Stanford did not present any evidence or explanation relating to the timing of her discovery of the Judgment and the filing of the Motion, which was duly pointed out in DeGrandis’ Response. CP 74. As predicted, K. Stanford attempted to remedy this deficiency by submitting a supplemental declaration explaining the circumstances of this timing, but this was too late. CP 89. Nor has she addressed this issue on appeal.⁴ Therefore, K. Stanford failed at the Trial Court level, and again on appeal, to establish a necessary element to support relief under CR 60(b)(11), and therefore there could be no abuse of discretion by the Trial Court.

⁴ Since K. Stanford failed to address this necessary element in her opening brief, DeGrandis need not, and does not, address it in this response. Any attempt by K. Stanford to satisfy this element in a reply brief will be too late.

Even if this deficiency is ignored, K. Stanford's alleged "service" error is non-existent. First, there was nothing improper in serving the Motion for Summary Judgment on J. Stanford at the address in his "answer." DeGrandis properly, and conservatively, treated the letter filed by J. Stanford as an "appearance" and then used the address on the document to serve him with subsequent pleadings as required by CR 5(a). RCW 4.28.210 (outlines methods to accomplish an appearance).

K. Stanford spends a great deal of time arguing that J. Stanford could not have appeared on her behalf, and therefore any attempt to serve her at the address on the "answer" was faulty. The long dissertation on whether J. Stanford could have represented her, or whether his answer could constitute her "appearance," is all irrelevant in the long run. If the "answer" was an appearance for her, then delivery by mail of the Motion for Summary Judgment at the address on the document was proper. CR 5(a).

If the answer was not an appearance or entered on her behalf, then 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 entire basis for her challenge to the lack of service at her residence is based upon a purposeful misrepresentation to this Court

that DeGrandis was “required” to serve her with a copy of the Motion for Summary Judgment under CR 5(a). However, in her brief, K. Stanford quotes only a portion of CR 5(a), and excludes the actual relevant portion that is emphasized below:

Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.

CR 5(a) (emphasis added); Appellant’s Brief, pp. 21-22. A “default” occurs if a party defendant fails to file an answer or notice of appearance within 20 days after being served. K. Stanford concedes this point by strenuously arguing that J. Stanford’s submission was not filed on her behalf. CR 55(a)(1).

Thus, DeGrandis was relieved of any obligation to serve her with subsequent pleadings. Such relief was caused by the lack of appearance or an answer in a timely manner, and did not require an actual entry of an

order or judgment of default. See CR 55(a)(3) (party who fails to appear or answer need not be provided of notice of motion for order or judgment of default). Indeed, because K. Stanford takes the position that she had not “appeared,” she would actually have been precluded from responding to the Motion for Summary Judgment. CR 55(a)(2). (“If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court.”)

Again, in failing to recognize the proper standard of care, K. Stanford ignores the Trial Court’s conclusion on this point, which can only be reversed if there was an abuse of discretion:

I think your client has some strong equity, but as I thought about it I realized that your client was properly served and if, and the fact she was properly served doesn’t have simply to do with the fact that the marital community was served, the process server went to her home and left the process with an adult of suitable age and discretion, and whether that adult was her husband, or her soon to be ex-husband, or some other unrelated adult, that constitutes valid service and so I don’t believe that your client can fairly argue that she was not properly included here.

RP 5-6.

Finally, it should be noted that K. Stanford makes much, at least in her Statement of the Case, of the fact that she and J. Stanford were legally separated, and implies that this somehow taints the original service on her.

However, service of process upon her, which was independently accomplished from the service on J. Stanford, CP 14, occurred on December 4, 2010, while the “legal separation” was allegedly filed on December 10, 2010. CP 84. Accordingly, the legal separation had nothing to do with the service.

In the end, and at most, the alleged legal issue involving personal liability and K. Stanford’s failure to be advised of the Summons and Complaint by J. Stanford constituted an irregularity, mistake, or excusable neglect which would have allowed for potential relief under CR 60(b)(1). However, relief under this provision must be requested within one year, a deadline long passed by the time K. Stanford filed the Motion. Since this provision is substantively available, and because the Motion was filed more than a year after entry of the Judgment, CR 60(b)(11) cannot be relied upon, since “CR 60(b)(11) cannot be used to circumvent the one-year time limit applicable to CR 60(b)(1).” Friebe v. Supancheck, 98 Wn.App. 260, 267, 992 P.2d 1014 (1999).

D. K. Stanford Is Not Entitled to Attorneys’ Fees.

K. Stanford makes a claim for attorneys’ fees for obtaining reversal of the Motion, arguing that such are recoverable because the Judgment includes a writ of attachment, citing Rorvig v. Douglas, 123

Wn.2d 854, 862, 873 P.2d 492 (1994). This contention is incorrect for a variety of reasons, the most important of which is that the Trial Court's denial of the Motion should not be reversed.

Even if reversed, however, the Rorvig and pertinent cases do not support K. Stanford's proposition. The rule referenced in Rorvig relates to the scope of "damages" a party can recover in an independent lawsuit for a wrongfully sued out writ of garnishment or attachment:

[T]he general rule with reference to the recovery of damages where a writ of garnishment is wrongfully sued out is as follows: 'It is the general rule in cases of this character that the recoverable damages are only those which naturally flow from the result of the garnishment, and that unusual and speculative damages are not recoverable.

Olsen v. National Grocery Co., 15 Wn.2d 164, 171, 130 P.2d 78 (1942) (citing James v. Cannell, 135 Wn. 80, 237 P. 8 (1925)). Such potential recoverable damages have been found to include attorneys' fees. Taylor v. Wilbur, 170 Wn. 265, 16 P.2d 457 (1932). However, such damages are only recoverable where caused by reason of the attachment, and the attachment was "wrongfully, oppressively or maliciously sued out." RCW 6.25.080(3).

Thus, the general rule relied upon by K. Stanford is not a "fee shifting" right, but instead merely a basis to recover damages if she were

to file a separate lawsuit for a wrongfully sued out writ of attachment. Here, K. Stanford has not filed a lawsuit to recover damages for a wrongfully sued out writ of attachment, but instead sought to vacate the Judgment, which contains a limited writ of attachment, under CR 60.⁵ In this, there is no “claim” providing an avenue to recover attorneys’ fees. The inapplicability of the Rorvig case is emphasized by the absence of any avenue or actual proof of the reasonableness or legitimacy of the sought-to-be recovered attorneys’ fees, which is essential when such are a component of damages. Newport Yacht Basin Ass’n of Condominium Owners v. Supreme Northwest, Inc., 168 Wn.App. 86, 102, 285 P.3d 70 (2012).

Nor has DeGrandis “sued out” the limited writ of attachment included within the Judgment, which provided a limited benefit “over all settlement or judgment proceeds any one or more of the Defendants may receive, or be entitled to receive, from any claim, demand, or action that one or more Defendants may have against the City of Bellingham.” CP 46. DeGrandis never asserted this right by taking any funds from any

⁵ K. Stanford’s reliance upon Rorvig provides further proof that the Motion and this appeal are nothing more than an attempt to attack the underlying Judgment itself, as the availability of attorneys’ fees as damages only applies based upon the substantive legitimacy of the underlying writ of attachment. Thus, K. Stanford is seeking in the end to litigate the legitimacy of the Judgment itself, a matter she could only have addressed on a direct appeal.

recovery or settlement with the City of Bellingham. Moreover, since this is merely a proceeding on a CR 60 motion, and not a lawsuit filed by K. Stanford on a wrongfully sued out attachment, she has not argued or established that the underlying writ was “wrongfully, oppressively or maliciously sued out.” Finally, even if all of these procedural irregularities did not exist, recovery of attorneys’ fees could not be allowed because the writ of attachment was only a component of the underlying action. See Cecil v. Dominy, 69 Wn.2d 289, 293-94, 418 P.2d 233 (1966) (attorneys’ fees only recoverable in damages to defeat preliminary injunction, only if injunction is sole purpose of suit).

E. DeGrandis Should Be Awarded Attorneys’ Fees and Costs on Appeal.

Pursuant to RAP 18.1, DeGrandis requests that he be awarded attorneys’ fees and costs for this appeal pursuant to RAP 18.9(a), which provides this Court with the right to award attorneys’ fees and costs as a sanction for, inter alia, the filing of a frivolous appeal. Such an evaluation is guided by the following principles:

In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be

resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not for that reason alone frivolous; (5) an appeal is frivolous if there are no debatable issues on which reasonable minds might differ, and the appeal is so totally devoid of merit that there was no reasonable possibility of reversal.

Carrillo v. City of Ocean Shores, 122 Wn.App. 592, 619, 94 P.3d 961 (2004) (citing Streater v. White, 26 Wn.App. 430, 434-35, 613 P.2d 187 (1980)). Under this standard, “[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, 245 P.3d 764 (2010).

There is not a single debatable point in this appeal for the following reasons:

- Nowhere does K. Stanford evaluate the Trial Court’s decision pursuant to the well-recognized abuse of discretion standard, but instead attempts to obtain relief only under a de novo analysis.

- All of K. Stanford’s contentions are contrary to long-recognized legal standards, including the prohibition to use CR 60 to challenge the merits of a judgment, the inapplicability of CR 60(a)(1) to judicial errors, and the prohibition to attempt to use CR 60(b)(11) as a way to avoid the one-year limitation of CR 60(b)(1).

- K. Stanford's contention in seeking reversal under CR 60(b)(11) that she was entitled to notice of the Motion for Summary Judgment is based upon a misrepresentation of CR 5(a).

For these reasons, DeGrandis requests recovery of attorneys' fees and costs incurred on appeal.

IV. CONCLUSION

For the above reasons, the Trial Court's order denying K. Stanford's Motion should be upheld and attorneys' fees awarded to DeGrandis.

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