

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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NO. 35236-2-II

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION TWO

ROBIN L. HOLBROOK,
Appellant,

and

JAMES K. HOLBROOK,
Respondent,

BRIEF OF RESPONDENT

Trevor A. Zandell
of Morgan Hill, P.C.
Attorney for Respondent

MORGAN HILL, P.C.
2102 Carriage Drive SW, Bldg. C
Olympia, WA 98502
Tel: 360/357-5700
Fax: 360/357-5761

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A. STATEMENT OF THE CASE

Appellant and Respondent were married on March 26, 1990, at Tucson, Arizona. (CP 5 at 2). On March 9, 2004, Respondent filed a petition for dissolution, pro se, with the Thurston County Superior Court, seeking award of his military retirement benefits, among other items. (CP 5 at 3). On April 30, 2004, Appellant filed a response to the petition, pro se, denying the Respondent's proposed division of property, and specifically requesting a portion of the military retirement benefits. (CP 8 at 2).

Over the entire course of the dissolution action, the Appellant resided in California and the Respondent resided in Thurston County, Washington. (CP 36 at 1). On September 30, 2004, prior to the dissolution being finalized, Respondent was deployed to Iraq. (CP 34 at 2).

On July 27, 2004, Respondent retained attorney Clinton L. Morgan to represent him in the dissolution action. (CP 36 at 1). After several weeks of negotiation, Mr. Morgan and the Appellant reached an agreement in full settlement of the dissolution. (Id. at 1-2). Mr. Morgan's office reduced the agreement to writing in a Decree of Dissolution and Findings of Fact and Conclusions of Law, both of which the Appellant signed. (Id.).

Under the Decree, the Appellant was awarded, among other items, five thousand dollars (\$5,000) in cash and approximately forty three thousand eight hundred dollars (\$43,800) in spousal maintenance over the course of four years. (CP 19 at 2-3). The Respondent assumed liability for approximately twenty one thousand dollars (\$21,000) in community debts, which constituted all community debt other than any debt then remaining on property awarded to Appellant. (CP 19 at 3; CP 34 at 3). Respondent was awarded all military retirement benefits in his name. (CP 19 at 2). The agreed Decree was signed by the Court and entered on October 26, 2004. (CP 19 at 4).

Exactly one year later to the day, on October 26, 2005, Appellant, by and through her attorney, Erik Bjornson, filed a Motion and Declaration to Vacate Divorce Decree and Final Dissolution Documents, under CR 60(b), subsections (1), (3), (4) and/or (11). (CP 21). Appellant cited the following as grounds for vacation of the decree: (1) that she had no legal advice at the time the decree was entered, (2) that she had no idea of the nature of the property involved, (3) that Respondent told her if she failed to sign the decree that she would receive nothing, and (4) that Respondent had been physically abusive to her during their marriage and that she feared he would attack her

again if she did not sign the final documents. (CP 21 at 4). With regard to the alleged physical abuse, Appellant recounted an incident where she stated Respondent gave her a black eye and threw her against the room. (Id.). Appellant also stated she was seeking some personal items of little value that had been awarded to her in the Decree but that she alleged had not been delivered. (CP 21 at 4-5).

In his responsive declaration, Respondent denied threatening the Appellant in the divorce negotiations. (CP 34 at 2). He stated Appellant had spoken with a Washington attorney after being served with the Petition but did not retain him or her. (Id.). He alleged she had spoken with the Ft. Lewis Legal Assistance Office regarding her rights in the Respondent's military retirement and that she was fully aware of her rights in that property. (Id.). Finally, he acknowledged a single incident of mutual physical abuse occurring in 1992, but denied any physical contact or intimidation at any time since, including during the pendency of the dissolution. (CP 34 at 2-3).

After hearing oral argument of counsel for both parties, the Court denied the Appellant's motion. (RP at 3). The Court held Appellant was aware that she had an interest in the military retirement as evidenced by her request for an award of a portion of the same in her Response. (RP at 3-4).

The Court held that domestic violence and/or intimidation were not grounds to vacate the Decree because there was evidence of only one instance of mutual combat during the marriage and the parties had no physical contact during the pendency of the dissolution. (RP at 4). The Court stated that the division of property in the Decree appeared to be fair and equitable. (Id.). Finally, the Court ruled that Appellant had shown no mistake, inadvertent surprise, inexcusable excusable neglect [sic] or newly discovered evidence. (RP at 4-5).

B. ARGUMENT

1. OBJECTION TO CONSIDERATION OF APPELLANT’S “FACTS OF THE CASE” AND EXHIBITS AND REQUEST FOR SANCTIONS.

This Court should strike most of the allegations contained in Appellant’s “Facts of the Case” section of her brief and some of the exhibits she attached thereto because they were not contained in the record. Furthermore, the Court should sanction Appellant for such conduct in gross violation of the rules on appeal. The relevant provisions of RAP 10.3 states as follows:

RULE 10.3 CONTENT OF BRIEF

(a) Brief of Appellant or Petitioner. The brief of the appellant or petitioner should contain under appropriate headings and in the order here indicated:...

(5) *Statement of the Case.* A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

RAP 10.3(a)(5) (2006) (emphasis added). It is well settled that when an appellate court is reviewing a decision of a trial court for an abuse of discretion, it may only entertain facts contained in the record.

The appellate court must consider only those matters in the record in determining whether the trial judge abused his discretion.

Washington Education Ass'n v. Shelton School Dist. No. 309, 93 Wn.2d 783, 789, 613 P.2d 769 (1980) (citation omitted). Therefore, since the standard of review here is abuse of discretion (as will be shown below), this Court should strike and refuse to consider all facts and exhibits not contained in the record below.

The "Facts of the Case" section of Appellant's brief contains some twenty pages of what is essentially testimony of the Appellant herself, almost none of which was given at the trial court level. There was no trial nor any pretrial motions at the lower level. Therefore, there was no sworn testimony given until one year after entry of the Decree when Appellant filed a declaration in support of her Motion to Vacate Decree. Not only are much of the "facts" in the Appellant's brief not contained in the record, she makes

no citation to the record as required by RAP 10.3(a)(5) for many of the allegations. Even if her present testimony had been given at the trial court level, much of it would have been inadmissible as irrelevant and/or hearsay. Her commentary is provided in violation of the rules on appeal and is also potentially prejudicial to the Respondent. As such, this Court ought to sanction Appellant for such egregious violations of the rules under RAP 18.9(a).

2. THE COURT SHOULD AFFIRM THE RULING BELOW BECAUSE THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT APPELLANT WAS NOT ENTITLED TO VACATION OF THE DECREE.

The Appellant failed to sustain her burden below in persuading the trial court that there were compelling grounds to vacate the decree under CR 60(b). The lower court's denial of her motion did not present an abuse of discretion. Therefore, the ruling should be affirmed.

- a. Abuse of Discretion.

CR 60(b) allows a trial court to vacate a judgment on enumerated grounds due to some peculiarity or unfairness that may have occurred, essentially prejudicing one party from obtaining a full hearing of its case. CR 60(b) states in relevant part:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

...

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgement, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, excusable neglect or irregularity in obtaining the final judgment or order;...

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated extrinsic or intrinsic), misrepresentation, or other misconduct of an adverse party;...

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order or proceeding was entered or taken....

CR 60(b) (1977). The trial court is given the authority to grant what is essentially a very drastic equitable remedy in extreme cases. It is the trial court that is given the opportunity to invoke the remedy, and if it opts not to, its decision may only be overturned under the narrowest of circumstances.

Motions to vacate or for relief of judgment are addressed to the sound discretion of the trial court and will not be disturbed absent a showing of manifest abuse of discretion. In re Marriage of Tang, 57 Wn.App. 648, 653, 789 P.2d 118 (1990); Wilson v. Henkle, 45 Wn.App. 162, 166, 724 P.2d 1069 (1986). An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court. Ebsary v. Pioneer Human Servs., 59 Wn.App. 218, 225, 796 P.2d 769 (1990). Appeal from denial of a CR 60(b)

motion is limited to the propriety of the denial. State v. Santos, 104 Wn.2d 142, 145, 702 P.2d 1179 (1985).

Northwest Land and Investment, Inc. v. New West Federal Sav. and Loan Ass'n., 64 Wn.App. 938, 942, 827 P.2d 334 (1992); see also, In re Jaussaud's Estate, 71 Wn.2d 87, 91, 426 P.2d 602 (1967).

Moreover, on appeal, only the sufficiency of the denial of the motion to vacate is before the court, and not the judgement itself.

On review of an order denying a motion to vacate, only “the propriety of the denial *not* the impropriety of the underlying judgment” is before the reviewing court.

State v. Gaut, 111 Wn.App. 875, 881, 46 P.3d 832 (2002) (quoting, Bjurstrom v. Campbell, 27 Wn.App. 449, 450-51, 618 P.2d 533 (1980)).

Thus, review here will not take into account the justness of the underlying Decree.

b. The Trial Court did not Abuse its Discretion in Determining the Appellant was Under No Duress when she Stipulated to the Decree.

The trial court held that the evidence on the motion to vacate failed to show the Appellant was under duress when she voluntarily entered into the Decree. (RP at 4). That determination was certainly reasonable given the facts before that court on the motion to vacate.

Appellant stated in her declaration in support of the motion to vacate that the Respondent had been very physically abusive to her during their marriage. (CP 21 at 4). The Respondent admitted one incident of mutual physical abuse that occurred in 1992, but denied any physical violence against the Appellant since then. (CP 34 at 2-3). Moreover, it was undisputed in the record that the parties were thousands of miles away from one another during the entire pendency of the divorce proceedings. (CP 36 at 1; CP 34 at 2). The Appellant was residing in California during the proceedings and the Respondent was living in Thurston County, Washington, until he was deployed to Iraq on September 30, 2004. (Id.). The Respondent also specifically denied having threatened Appellant in any way during the divorce negotiations. (CP 34 at 2).

The trial court determined that these facts did not justify a vacation of the Decree. (RP at 4). The court found it compelling that the parties were physically separated by thousands of miles at all times and that they only communicated via telephone and e-mail. (Id.). Given that, the trial court stated that it did not believe the Appellant was afraid when she entered into the Decree. (Id.).

Given the evidence before the trial court on this point, its ruling was manifestly reasonable. There were conflicting allegations of abuse during the pendency of the divorce and all agreed they had no physical contact. It was therefore not an abuse of discretion to rule that the Appellant did not enter into the Decree under fear of physical harm.

c. The Trial Court did not Abuse its Discretion in Determining the Appellant was Fully Aware of the Nature of the Marital Property and Her Interest in the Same.

In his petition for dissolution, the Respondent sought to be awarded his military retirement, in full. (CP 5 at 3). Appellant responded by denying that request and specifically averring that she had an interest in the military retirement. (CP 8 at 2). Subsequent to that, Appellant negotiated a settlement of the divorce with Respondent's attorney under which she was awarded, among other items, five thousand dollars (\$5,000) cash and spousal maintenance payments over the course of four years totaling approximately forty three thousand eight hundred dollars (\$43,800), and Respondent was awarded, among other items, the military retirement. (CP 19 at 2-3). The Respondent further assumed liability for approximately twenty one thousand dollars (\$21,000) in community debts, which constituted all community debt other than any debt remaining on property that was awarded to Appellant. (CP

19 at 3; CP 34 at 3). The agreed Decree was signed by the Court and entered on October 26, 2004. (CP 19 at 4). Exactly one year later, Appellant filed a motion to vacate the decree and in her declaration in support, she stated she had no idea of the nature of the property involved. (CP 21 at 4).

The trial court ruled that Appellant had full knowledge and awareness of the nature of the marital property and her interest in the same, specifically the military retirement. (RP at 3-4). As such, the court held that there had not been mistake, inadvertence, surprise, nor newly discovered evidence such as would justify a vacation of the Decree under CR 60(b). (Id.). The fact that the Appellant requested a share of the military retirement in her response to the petition, and the fact that Appellant signed the final Decree and Finding of Facts and Conclusions of Law clearly awarding the retirement benefits to the Respondent definitively show that the Appellant was not unaware of the retirement benefits or her interest in the same. Accordingly, the trial court's denial of Appellant's CR 60(b) motion on this issue was reasonable and ought to be affirmed.

- d. The Court Ought not Entertain Appellant's Contention that the Ruling of the Trial Court Ought to be Reversed on the Basis of Fraud and/or Perjury Because Said Argument was not First Addressed to the Trial Court, and Even if the Issue Were to be Entertained Here, it Fails on the Merits.

In her brief, the Appellant argues that the Respondent perjured himself in his declaration opposing the motion to vacate the decree and such is grounds to reverse the trial court's denial of her motion. However, the Appellant did not raise any issue of perjury or fraud on the part of the Respondent at any point before the trial court, neither in her original motion and declaration, in any reply memorandum (none was filed), nor in oral argument. As such, the argument should not be entertained by this Court.

The applicable rule states as follows in pertinent part:

**RULE 2.5 CIRCUMSTANCES WHICH MAY
AFFECT SCOPE OF REVIEW**

(a) Error Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, 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...

RAP 2.5 (a) (1994). This rule has been applied countless times to limit review of matters raised for the first time on appeal.

The court need not address an issue which was not raised in the trial court.

Haueter v. Cowles Publishing Co., 61 Wn.App. 572, fn. 4, 811 P.2d 231 (1991) (citing, Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982); Ronald Sewer Dist. v. Brill, 28 Wn.App. 176, 622 P.2d 393 (1980).

Here, the issue of alleged perjury in the Respondent's declaration was raised for the first time on appeal. Since this is not an issue affecting trial court jurisdiction or a constitutional right, this Court ought not hear that issue.

Even if this Court were to entertain the new issue of perjury here, the Appellant has not shown she is entitled to vacation of the decree on that basis. To be entitled to vacation of the decree on the basis of fraud and/or perjury, Appellate would have the following burden:

[O]ne who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the assertion through clear and convincing evidence. Plattner v. Strick Corp., [102 F.R.D. 612 (N.D. Ill. 1984)] *supra* at 614.

The rule is aimed at judgments which were unfairly obtained, not at those which are factually incorrect. For this reason, the conduct must be such that the losing party was prevented from fully and fairly presenting its case or defense.

Peoples State Bank v. Hickey, 55 Wn.App. 367, 372, 777 P.2d 1056 (1989), rev. denied, 113 Wn.2d 1029 (1989) (citations omitted). To begin with, it would have been very difficult for the Appellant to show the trial court that perjury or fraud on the part of Respondent prevented a full and fair

presentation of her case because she consented to settling her case without a trial at all. Secondly, the Appellant has asserted no perjury or fraud on the part of Respondent in the underlying divorce proceeding, but rather on the motion for vacation of decree itself. The standard above relates only to the underlying action, not to the motion to vacate.

Respondent did not perjure himself, nor did he defraud the Appellant in any way. Appellant's contention to the contrary on appeal for the first time ought not be entertained, and her contention fails on the merits in any event.

e. The Court Should not Entertain Appellant's Claim of Ineffective Assistance of Counsel and if the Issue is Entertained, It Is Not a Basis for Reversal.

Appellant argues that this Court ought to reverse the trial court's denial of her motion to vacate decree because her attorney did not provide her with adequate assistance. First of all, the Appellant did not raise this issue at the trial court level and thus this Court ought not entertain the issue here on appeal due to RAP 2.5 cited above.

Even if this Court were to entertain such an argument, ineffective assistance of counsel is not a basis for reversal of a civil ruling:

Generally, the incompetence or neglect of a party's own attorney is not sufficient grounds for relief from a judgment in a civil action.

Lane v. Brown & Haley, 81 Wn.App. 102, 107, 912 P.2d 1040 (1996) (citing, Haller v. Wallis, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978); Winstone v. Winstone, 40 Wash. 272, 274, 82 P. 268 (1905); In re Marriage of Burkey, 36 Wn.App. 487, 490, 675 P.2d 619 (1984)).

Here, any incompetence on the part of Appellant's lawyer would not be grounds for vacating the divorce decree given the above rule. Furthermore, Appellant's lawyer presented a motion and declaration with appropriate citations to the court rules, and he also argued the matter to the trial court. While one might adjudge he could have done a better job presenting her motion, it certainly cannot be argued that his performance amounted to incompetence. Finally, any relief on this issue is properly addressed in a suit for legal malpractice and not here on an appeal of a denial of a motion to vacate a decree.

f. The Trial Court was not Required to Hold an Evidentiary Hearing on the Motion to Vacate, and thus the Court's Opting not to Hold such a Hearing is not Grounds for Reversal.

Appellant cites authority in support of her argument that the trial court was required to hold an evidentiary hearing with live testimony before ruling on her CR 60(b) motion to vacate the decree. However, Appellant has misquoted case authority. In fact, a trial court is not required to hold an

evidentiary hearing on a CR 60(b) motion, and its determination of whether to hold one is purely discretionary.

On page 25 of her brief, Appellant cited Marriage of Maddix, 41 Wn.App. 248, 252, 703 P.2d 1062, as stating, verbatim, the following:

It is ultimately clear that the court when faced with a Motion to Vacate and controverting affidavits, the court must hold an evidentiary hearing for the purposes of resolving the factual issues presented to the court.

The case of Marriage of Maddix, supra, does not contain that quote, neither at 41 Wn.App. 252, or at any other page of the opinion. While it is true that the Court of Appeals there reversed a trial court's vacation of a decree of dissolution and ordered that the trial court hear live testimony, such was the ruling because vast amounts of conflicting evidence of fraud and misrepresentation had been presented to the trial court in support of the CR 60(b) motion. Maddix, 41 Wn.App. at 252. The Court of Appeals actual relevant comments were as follows:

The affidavits raise an issue of fact which cannot be resolved without the taking of testimony. See Wood v. Copeland Lumber Co. 41 Wash.2d 119, 247 P.2d 801 (1952); Baer v. Lebeck, 126 Wash. 576, 219 P. 22 (1923); Whidby Land & Dev. Co. v. Nye, 5 Wash. 301, 31 P. 752 (1892); see also CR 60(e)(2), which contemplates a show cause hearing. The court erred in vacating the judgment without first hearing and weighing testimony regarding fraud, misrepresentation or other misconduct.

Id. Therefore, the appellate court in Maddix ruled that the trial court (in that specific case) abused its discretion in failing to conduct an evidentiary hearing when presented with such conflicting evidence.

Yet CR 60 does not require an evidentiary hearing, nor does it even reference such a potentiality. The rule only contemplates a show cause hearing following a motion supported by affidavits:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

...

(e) Procedure on Vacation of Judgment.

(1) *Motion.* Application shall be made on motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) *Notice.* Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

CR 60(e) (1977). In construing the above-quoted procedure, the courts have ruled that an evidentiary hearing with live testimony is not a requirement:

CR 60(e) sets forth the procedure for vacating judgments. It provides that the party seeking such relief must file a motion with supporting affidavit. CR 60(e)(1). A show cause hearing on the motion does not require live testimony; rather, “oral testimony is not the general rule and is discretionary.”

Roberson v. Perez, 123 Wn.App. 320, 331, 96 P.3d 420 (2004) (quoting, In re Marriage of Irwin, 64 Wn.App. 38, 61, 822 P.2d 797 (1992)); see also, Stoulil v. Edwin A. Epstein Jr., Operating Co., 101 Wn.App. 294, 298, 3 P.3d 764 (2000).

Here, the trial court did not abuse its discretion in opting not to conduct an evidentiary hearing. Unlike in Maddix, supra, the trial court here was not faced with conflicting evidence in the supporting declarations. With regard to the time period following the filing of the dissolution action but preceding her signing of the agreed decree, the Appellant stated, “The threat of being hit or abused again was frequently [sic] present while we were married including the time I signed the final documents.” (CP 21 at 4). However, the Appellant never alleged that the parties were in close physical proximity while the dissolution was being negotiated, nor that the Respondent threatened her or intimidated her via telephone or other device during that time. (Id. at 3-5). She merely alleged that she continued to be afraid that the Respondent would abuse her if she failed to sign the final documents. (Id. at 4).

In his responsive declaration, the Respondent acknowledged one incident of mutual spousal abuse that occurred in 1992. (CP 34 at 2). He

denied any other abuse during the marriage, stated that the parties had not had physical contact since November 2003 (one year before the final papers were signed), and denied threatening her during the negotiations. (Id. at 1-3).

Therefore, the trial court was not presented with contradictory statements. The only point on which the statements differed was whether there was more than one incident of abuse during the marriage. That there had been no physical contact nor threats via telephone or e-mail was undisputed. The trial court ruled that it did not feel the Appellant was under the duress of physical abuse when she signed the final documents merely because she had allegedly been abused by the Respondent at times during their marriage. (RP at 4). Absolutely no evidence was presented to the trial court proving that the Respondent had engaged in any abusive, coercive or otherwise improper conduct during the final divorce negotiations. As such, the trial court's decision not to hold a live evidentiary hearing was reasonable and should not be disturbed on appeal.

g. Appellant's Request for Monies and Property Awarded in the Decree are not Property Before this Court on Appeal.

The Appellant in her brief asks this Court to compel the Respondent to deliver to her monies and property awarded in the decree which she alleges he has yet to deliver. Those issues are not properly before this Court on

appeal. Such a request should properly be made at the trial court level on a motion to enforce decree or for a writ of replevin. No such motion has been made, and thus those issues would not be ripe for appeal at present.

3. MOTION FOR ATTORNEYS FEES, COSTS AND/OR SANCTIONS ON APPEAL.

Respondent moves this Court for an order compelling the Appellant to pay to Respondent terms in the amount of his reasonable attorney's fees and court costs, or in the very least sanction the Appellant, because she has filed a frivolous appeal without basis in fact and she has failed to comply with the Rules on Appeal in several serious and prejudicial ways. The applicable rule states in relevant part:

RULE 18.9 VIOLATION OF RULES

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel...who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

RAP 18.9(a) (1998). The above rule gives this Court discretion to fashion an appropriate remedy in cases of frivolous appeal and violation of the rules.

Here, the appeal filed by Appellant is frivolous in that it lacks basis in fact. There were no factors in the record that would have justified vacating the decree in the first place. Appellant argued she was mistaken in failing to realize her interest in the military retirement when she had requested an award of the same in her original response. She claimed she was under duress when she signed the final documents, yet tacitly admitted the Respondent had not threatened her, abused her, nor even been physically near her during the entire pendency of the divorce proceedings. Since the original CR 60(b) motion was not supported by the Appellant's own evidence, an appeal from a denial of that motion can only be frivolous and brought for an improper purpose.

In addition, the Appellant submitted a brief which contained several pages of allegations not contained in the record and without citations thereto. Such are violations of RAP 10.3(a)(5) and RAP 10.4(f). Appellant attached exhibits to her brief which were also not contained in the record in violation of those same rules. Much of the alleged facts which were not in the record tend to show the Respondent in a very negative light. Many, even if true, would not be relevant in any shape or form to the CR 60(b) motion, or to this appeal. Appellant seems to be

using this appeal as an opportunity to air her frustrations regarding the divorce. This Court is certainly not the appropriate forum for such conduct.

The Appellant misquotes precedent in the legal argument section of her brief in violation of RAP 10.4(c). If the Appellant were an attorney, she would not only be sanctioned, but would be disciplined and potentially disbarred for such egregious conduct. Her argument rambles for pages making several, difficult to follow requests on appeal. One of the several requests seeks this Court to compel delivery of property, even though she had made no similar motion to the trial court from which she was appealing, and this Court would likely lack such authority in any event. As scattered and as scrambled as Appellant's brief was, Respondent was, nevertheless, forced to employ counsel to respond to each and every issue raised at great expense to him.

Given the Appellant's frivolous appeal and serious violations of the rules on appeal, this Court ought to order her to pay the Respondent's reasonable attorney's fees and costs. If the Court grants this request, Respondent shall file and serve a cost bill pursuant to RAP 14.4 and an affidavit of fees and expenses pursuant to RAP 18.1(d).

C. CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court affirm the ruling of the trial court and order that Appellant pays sanctions to the Respondent in the amount of his reasonable attorney's fees and costs.

RESPECTFULLY SUBMITTED this 19 day of July, 2007.

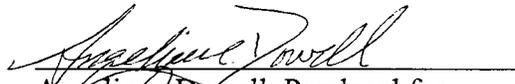

Trevor A. Zandell (WSBA #37210)
MORGAN HILL, P.C.
Of Attorneys for Respondent

Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA 98402-4454

I further certify that on July 19, 2007, a true and correct copy of the
aforementioned Reply Brief of Respondent and the Transcript of
Proceedings which was provided by the Appellant were mailed by U.S.
First Class Mail, postage prepaid to:

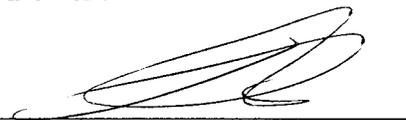
Ms. Robin L. Holbrook
PO Box 724
Pearblossom, CA 93553

DATED this 19th day of July, 2007, at Olympia,
Washington.



Angelique Dowell, Paralegal for
MORGAN HILL, P.C.

SUBSCRIBED AND SWORN to before me this 19th day of
July, 2007, by Angelique Dowell.



Notary Public in and for the State of
Washington, residing at Olympia
My commission expires 8/31/09