

FILED
2020 JUN 10 10:13 AM
CLERK OF COURT
BY: *[Signature]*
DIVISION II

36449-2-II
No. **366449-2-II**

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

L.S., and individual,
Respondent-Cross-Appellant,

vs.

TITUS-WILL FORD SALES INC., a Washington Corporation, d/b/a MALLON
FORD, BILL HANFORD, HENRY KREBBS,

Cross-Appellants,

BRODERICK LaDRAE GORDON,

Defendant,

RICHIE CARTER,

Cross-Respondent,

MICHAEL R. DOLAJAK,

Appellant,

RESPONDENT-CROSS-APPELLANT'S OPENING BRIEF

John R. Connelly, Jr, WSBA No. 12183
Lincoln C. Beauregard, WSBA No. 32878
CONNELLY LAW OFFICES
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100
Fax (253) 593-0380
Attorneys for L.S.

 **ORIGINAL**

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ASSIGNMENTS OF ERROR..... 1

III. STATEMENT OF THE CASE..... 2

**IV. OPPOSITION ARGUMENT RE: VACATING
JUDGMENT AGAINST DOLAJAK 8**

**A. Under Established Washington Law Substance
Should Prevail Over Form Under the Civil Rules..... 8**

**B. On the first day of trial, the trial court was presented
with sufficient evidence from which to enter findings
of fact, conclusions of law, and to enter judgment
against Salesman Dolajak and Salesman Carter in
accordance with CR 40(a)(5) thereby constituting a
final determination on the merits..... 10**

**C. The trial court entered findings of fact and
conclusions of law in accordance with CR 52 from
which this Court can conduct an appellate review
based upon the evidence that was of record and
presented prior to the entry of judgment. 14**

**D. The negligence and/or incompetence on the part of
Salesman Dolajak and Mr. Bridges is not a proper
basis upon which to vacate the judgment which was
entered on the merits. 18**

**E. Salesman Dolajak’s arguments about wanting to
receive more notice concerning proceedings about
which he was already aware should not be well taken..... 24**

**F. Salesman Dolajak has failed to present evidence to
support a meritorious defense as is required under
CR 60(e)(1) before a court can vacate a judgment on
the merits after a defendant has disregarded the legal
process..... 25**

G.	The emotional impact upon L.S. in relation to these civil proceedings has been tremendous and weighs heavily against vacating the judgment(s).....	26
V.	CROSS APPEAL RE: REINSTATING JUDGMENT AGAINST CARTER.....	26
A.	If a judgment is entered on the merits in accordance with CR 40(a)(5), whether or not the adverse party filed an answer is irrelevant.....	26
B.	Because Mr. Bridges acted neglectfully while in a fiduciary and attorney/client type capacity to Salesman Carter, it was reversible error for the trial court to vacate the judgment against Salesman Carter.....	27
C.	Salesman Carter failed to demonstrate any showing of a meritorious defense which is a requirement under the circumstances.....	28
VI.	OPPOSITION ARGUMENT RE: DAN'L BRIDGES'S MOTION & APPEAL FOR ATTORNEY FEES.....	29
A.	Mr. Bridges continues to represent the interests of either Salesman Dolajak , Salesman Carter, and/or himself in an effort to obtain attorney fees for his work on the motions to vacate the judgment that was entered by the trial court.	29
B.	The attorney fee request and appeal which is being pursued by Mr. Bridges should be denied.....	30
C.	According to the version of events admitted to by Mr. Bridges, the judgment against Salesman Dolajak and Salesman Carter still should not be vacated.	31
D.	L.S. moves the Court for an award of attorney fees against Mr. Bridges for his ongoing irresponsible and irrational conduct.	32
VII.	CONCLUSION.....	33

TABLE OF AUTHORITIES

CASES

1 R. Mallen & J. Smith § 11.2 n.18; 7 Am. Jur. 2d <i>Attorneys at Law</i> § 118 (1980)	19
<i>Bohn v. Cody</i> , 119 Wn.2d 357, 364, 832 P.2d 71 (1992).....	19, 20
<i>Bowman v. Webster</i> , 42 Wn.2d 129, 253 P.2d 934 (1953).....	14
<i>Brown & Haley</i> , 81 Wash. App. 102, 104, 912 P.2d 1040 (1996)10, 18	
<i>Commercial Courier Service, Inc. v. Miller</i> , 13 Wn. App. 98, 106, 533 P.2d 852 (1975)	25, 28
<i>Farmers Insurance Co. v. Waxman Industries, Inc.</i> , 132 Wn. App. 142, 130 P.3d 874 (2006).....	25
<i>First Federal Savings & Loan v. Ekanger</i> , 93 Wn.2d 777, 781, 613 P.2d 129 (1980)	8, 9, 13
<i>George E. Miller Lumber Co. v. Holden</i> , 45 Wn.2d 237, 273 P.2d 786 (1954).....	14
<i>In re Marriage of Olson</i> , 69 Wn. App. 621, 626, 850 P.2d 527 (1993)18, 27	
<i>In re McGlothlen</i> , 99 Wn.2d 515, 522, 663 P.2d 1330 (1983).....	19, 20
<i>In the Matter of the Marriage of Daley</i> , 77 Wn. App. 29 (1994)10, 11, 27	
<i>Lane v. Brown & Haley</i> , 81 Wash. App. 102, 105-6, 912 P.2d 1040 (1996)	passim
<i>Le Maine v. Seals</i> , 47 Wn.2d 259, 287 P.2d 305 (1955)	14
<i>Malott v. Randall</i> , 83 Wn.2d 259, 517 P.2d 605 (1974).....	8
<i>Moore v. Burdman</i> , 84 Wn.2d 408, 526 P.2d 893 (1974)	8
<i>Northern Pac. & P.S.S.R. Co. v. Black</i> , 3 Wash. 327, 330, 28 P. 538, 540 (1891)	18

<i>Penfound v. Gang</i> , 172 Wash. 311, 20 P.2d 17 (1933)	25
<i>Seattle Ass'n of Credit Men v. Green</i> , 45 Wn.2d 139, 273 P.2d 513 (1954)	14
<i>State v. Carson</i> , 2 Wn. App. 104, 466 P.2d 539 (1970)	8, 13, 19
<i>Tinker v. Kentucky Fried Chicken</i> , 95 Wn. App. 761, 977 P.2d 627 (1999)	29
<i>White v. Holm</i> , 73 Wn. 2d 348, 438 P.2d 581 (1968)	26

I. INTRODUCTION

This appeal arises out of the defendants' failure to defend during two years of discovery and/or appear for the first day of the civil rape trial allegations that were being pursued by L.S. in the underlying litigation. Salesman Michael Dolajak failed to ever file answer to the complaint, failed to ever appear during the underlying proceedings, admitted to being aware of the impending trial, but then decided to go on vacation based upon a voicemail message that he received from an attorney, Mr. Dan'L Bridges, who was formally retained to represent his former employer, Mallon Ford. It is now established that Mr. Bridges was substantively representing Salesman Dolajak's interests at the same time.

Similarly, Salesman Richard Carter failed to substantively defend the case during the underlying proceedings, did not take his responsibility to the Court, the litigants, and the judicial system seriously, and then failed to appear for trial on the first day based upon a similar basis as that of Salesman Dolajak. As scheduled, on May 7, 2007, the trial court reviewed evidence and entered a judgment in accordance with the rules of civil procedure including CR 40 and 52. Salesman Dolajak and Salesman Carter are now trying to undo those proceedings and avoid culpability. As is set forth herein, the judgment against both Salesman Dolajak and Salesman Carter must stand.

II. ASSIGNMENTS OF ERROR

Cross-Issue No. 1: The trial court erred in vacating the judgment against Salesman Carter after the hearing on the merits simply because he had filed a document that could be construed as an answer to the complaint.

III. STATEMENT OF THE CASE

On or about May 11, 2003, L.S. was gang raped by three Mallon Ford salesmen.¹ This horrible crime stemmed from a relationship that developed during the sale of a used car to L.S. L.S. believed that Mallon Ford and its salesman could be trusted only to find out that she was she was sold a car by a convicted felon, Salesman Carter, who also had a known propensity for hurting women.² The Mallon Ford supervisors and management fostered and encouraged a sales atmosphere that led directly to the objectification of female customers, and contributed to the salesmen's illegal behavior and propensity to harm L.S.³

The case against three individual Mallon Ford salesmen, Salesman Dolajak, Salesman Gordon, and Salesman Carter, was properly initiated by the filing of the summons and complaint on May 10, 2005 in Pierce County Superior.⁴ Salesman Dolajak and Salesman Carter did not appear and/or did not defend this case for nearly two years. A separate complaint was filed against Mallon Ford, Bill Hanford, and Henry Krebbs (hereinafter Mallon Ford defendants) in a different Court.⁵ These matters were subsequently consolidated under Pierce County Cause No. 05-2-07726-9.⁶ Mr. Dan'L W. Bridges filed a notice of appearance and officially represented the Mallon Ford defendants. L.S.

¹ Declaration of L.S. is supplemental Clerk's Papers.

² Id.

³ Id.

⁴ Docket.

⁵ Id.

⁶ Id.

and the Mallon Ford defendants engaged in extensive discovery while Salesman Dolajak and Salesman Carter remained completely uninvolved in the litigation.⁷

Unbeknownst to L.S., as trial approached, Mr. Bridges began coordinating a defense with Salesman Dolajak and Salesman Carter.⁸ According to Salesman Dolajak and Salesman Carter, Mr. Bridges offered to provide advice about how to handle the assorted legal proceedings and was keeping Salesman Dolajak and Salesman Carter updated about the status of the case.⁹ Salesman Carter describes an eight month long fiduciary relationship with Mr. Bridges.¹⁰ Salesman Dolajak explains having initiated contact with Mr. Bridges sometime shortly before the trial.¹¹ For all intents and purposes, Mr. Bridges was acting as a fiduciary to the Mallon Ford defendants' former employees, Salesman Dolajak and Salesman Carter, throughout the course of the underlying litigation.¹²

As the trial date approached, settlement negotiations between L.S. and the Mallon Ford defendants were ongoing.¹³ Trial was set for Monday, May 7, 2007, and the parties were negotiating up until Friday, May 4, 2007, the last business day immediately preceding the first day of trial.¹⁴ For tactical reasons, the undersigned counsel at one point indicated an intention to non-suit Salesman

⁷ Id.

⁸ CP 21-50, 269-79, 248-53, 306-316

⁹ Id.

¹⁰ CP 306-316

¹¹ CP 248-53

¹² CP 21-50, 269-79, 248-53, 306-316

¹³ CP 359-62

¹⁴ Id.

Dolajak and Salesman Carter as defendants to the lawsuit premised upon the notion that the trial strategy and judgment that moving forward against the Mallon Ford defendants alone would be better situated for presentation to the jury.¹⁵ The intent to non-suit was communicated to Mr. Bridges but was never conveyed by L.S. or her counsel directly to Salesman Dolajak or Salesman Carter based upon their failures to properly appear and defend in the proceedings.¹⁶

Evidently, and unbeknownst to L.S. or the undersigned counsel, Mr. Bridges communicated the possibility of the non-suit to Salesman Dolajak and Salesman Carter sometime prior to the case settling with the Mallon Ford defendants.¹⁷ After the case settled with the Mallon Ford defendants on Friday, May 4, 2007, the following communication between Mr. Bridges and the undersigned counsel ensued:

From: Dan Bridges [mailto:Dan@mcbdlaw.com]
Sent: Friday, May 04, 2007 10:00 PM
To: John Connelly
Subject: RE: Non-suit issues.

Interesting.

Well, if you give it some more thought let me know. But, it looks like I will need to show up on Monday.

Thank you,
Dan'L W. Bridges
McGaughey Bridges Dunlap, PLLC
325 - 118th Avenue Southeast, Suite 209
Bellevue, WA 98005
425 462 4000

From: John Connelly [mailto:JConnelly@connelly-law.com]
Sent: Friday, May 04, 2007 5:00 PM

¹⁵ Id.

¹⁶ Id.

¹⁷ CP 21-50, 269-79, 248-53, 306-316

To: Dan Bridges
Subject: RE: Non-suit issues.

Dan: We are looking at this issue and trying to determine the route we would take. We were going to dismiss them and proceed against Mallon. In light of the dismissal of Mallon, Krebs and Handford it might be a good idea to go forward against the individuals.

Jack Connelly

From: Dan Bridges [mailto:Dan@mcbdlaw.com]
Sent: Friday, May 04, 2007 3:15 PM
To: John Connelly
Subject: RE: Non-suit issues.

It just occurred to me; I assumed but perhaps should not have, that you are not going to trial on Monday against the 3 individual salespeople. Arguably, your notice of non-suit is not complete until it is signed off on by the judge.

Thank you,

Dan'L W. Bridges

McGaughey Bridges Dunlap, PLLC
325 - 118th Avenue Southeast, Suite 209
Bellevue, WA 98005
425 462 4000

From: John Connelly [mailto:JConnelly@connelly-law.com]
Sent: Friday, May 04, 2007 2:35 PM
To: Dan Bridges
Cc: Glenn Reid; Lincoln Beauregard
Subject: RE: Non-suit issues.

Yes Dan. We were directed us to accept the offer of \$100,000.

We will notify the court and will forward a notice of settlement.

Jack Connelly

From: Dan Bridges [mailto:Dan@mcbdlaw.com]
Sent: Friday, May 04, 2007 2:29 PM
To: John Connelly
Cc: Glenn Reid
Subject: RE: Non-suit issues.

I just stepped out of a meeting and took a call from Glenn Reid.

Am I to understand there is a settlement in this matter? If so, would you please confirm that so we may reasonably rely and advise the court.

Thank you.

Dan'L W. Bridges
McGaughey Bridges Dunlap, PLLC
325 - 118th Avenue Southeast, Suite 209
Bellevue, WA 98005
425 462 4000¹⁸

It is not disputed that after this email exchange between Mr. Bridges and the undersigned counsel occurred on Friday, May 4, 2007, that over the following weekend Mr. Bridges failed to update Salesman Dolajak and Salesman Carter about the nature of the ongoing proceedings.¹⁹ Mr. Bridges apparently failed to tell Salesman Dolajak and Salesman Carter to be present for trial on May 7, 2007.²⁰ In fact, it is believed that Salesman Dolajak left on vacation to Mexico over the weekend.²¹

The undersigned counsel and Mr. Bridges appeared as scheduled for trial at 9:00 a.m. on May 7, 2007.²² Salesman Dolajak and Salesman Carter failed to appear.²³ The undersigned counsel presented the trial court with a declaration from L.S. and medical records documenting the gang rape and moved for the entry of judgment against them.²⁴ The trial court entered judgment in the amount of \$2.5 million based upon the gang rape that was perpetrated against L.S.²⁵

Thereafter, Salesman Dolajak and Salesman Carter retained counsel and

¹⁸ CP 359-62

¹⁹ CP 15-20

²⁰ CP 21-50, 269-79, 248-53, 306-316

²¹ CP 15-20

²² Transcript of Proceedings dated May 7, 2007

²³ Id.

²⁴ Id.

subsequently moved the trial court for an order vacating the judgment.²⁶ Even though the Mallon Ford defendants had settled and had been dismissed as parties, Mr. Bridges continued to participate in the litigation and prepared extensive briefing and declarations in support of Salesman Dolajak and Salesman Carter's motions.²⁷ Salesman Dolajak and Salesman Carter argued that the default judgment rules were not followed and that, therefore, the judgments should be vacated.²⁸ L.S. argued that the entry of judgment under CR 40(a)(5) was proper, and that the arguments being offered by Salesman Dolajak and Salesman Carter were purely form over substance based upon the fact that the undersigned counsel cited the wrong civil rule, CR 55, when moving for the entry of judgment.²⁹

When ruling on the motions to vacate, the trial court expressly held on page 34 of the corresponding transcript that "there was a hearing on the merits" and denied the motion to vacate against Salesman Dolajak, but granted the motion to vacate the judgment against Salesman Carter.³⁰ Salesman Dolajak appealed arguing that, as directly contrary to the trial court's express finding, there purportedly was no hearing on the merits. L.S. cross-appealed because it was error to vacate the judgment against Salesman Carter under these circumstances and after a hearing on the merits had already taken place. Mr. Bridges appealed

²⁵ Id.

²⁶ Transcript of Proceedings dated June 9, 2007

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

asking for attorney fees.

IV. OPPOSITION ARGUMENT RE: VACATING JUDGMENT AGAINST DOLAJAK

A. Under Established Washington Law Substance Should Prevail Over Form Under the Civil Rules.

According to the Washington State Supreme Court, “whenever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form.” *First Federal Savings & Loan v. Ekanger*, 93 Wn.2d 777, 781, 613 P.2d 129 (1980); *cf. also Moore v. Burdman*, 84 Wn.2d 408, 526 P.2d 893 (1974); *Malott v. Randall*, 83 Wn.2d 259, 517 P.2d 605 (1974). In this instance, Salesman Dolajak and Salesman Carter entirely relying upon the “form” of the proceedings below, and more specifically an inadvertent citation to the incorrect civil rule regarding default judgments, while completely ignoring the “substance” of what actually occurred – which was a hearing on the merits. This hearing on the merits was based upon the evidence that was presented to the trial court and is recorded in the trial court transcript. During the proceedings leading up to the entry of the judgment which are now at issue, the undersigned counsel cited to the incorrect civil rule in relation to the entry of judgment. Formatively, the undersigned admittedly cited to the wrong civil rule, CR 55(b)(2), but substantively the judgment was proper and in complete compliance with CR 40(a)(5).

Salesman Dolajak and Salesman Carter are arguing against the trial court’s express finding on page 34 of the transcript dated June 8, 2007 that “there was a

trial on the merits.”³¹ Moreover, CR 40(a)(5) explains:

Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take dismissal of the action, or verdict or judgment, as the case may require.

Under Washington law substance prevails over form. *First Federal Savings & Loan, supra*. L.S. was the victim of a horrible and brutal gang rape. She deserves to have this case put behind her and should not be forced to endure a second lawsuit and trial simply because the three salesmen have decided that only after a judgment was entered against them it would be prudent for them to retain counsel. For these reasons, and because the trial court properly entered a judgment on the merits in accordance with CR 40(a)(5) which included findings of fact and conclusions of law as set forth under CR 52, Salesman Dolajak and Salesman Carter’s arguments fail, and the judgment against each of them must stand. *Id.*

The “form” over “substance” distinction is of particular importance in this instance to the extent that the judgment is being characterized by Salesman Dolajak and Salesman Carter as a being based upon “default” principles versus as by L.S. as being based upon a hearing on the merits:

The vacation of a default judgment is distinguishable from the vacation of a judgment on the merits in two ways. First, a court must apply a different set of equitable factors when considering a motion to vacate a default judgment as opposed to a motion to vacate a judgment on the merits...Second, the law favors resolution of cases on their merits and, accordingly, favors their finality...Therefore, an appellate court will review the vacation of a default judgment more leniently than the vacation of a judgment on the merits.

³¹ Transcript of Proceedings dated June 9, 2007

Lane v. Brown & Haley, 81 Wash. App. 102, 105-6, 912 P.2d 1040 (1996). The more stringent manner of review is applicable in this instance because the trial court was presented with evidence and a judgment was entered on the merits. It is true that a full blown trial did not take place with all of the typical theatrics, but, instead, a declaration supporting the facts of the case and medical records supporting both liability and the medical damages were presented to the trial court for consideration. A trial with witnesses and formal procedures was not necessary because the adverse parties were not present, were not prepared to defend the case, and did not offer evidentiary objections. Moreover, unlike in the context of a default judgment, the trial court did not just “rubber stamp” a judgment without reviewing the evidence. Instead, the trial court reviewed the evidence that was presented before it, evidence that had already been presented at least once in the proceedings leading up to the trial, entered findings of fact and conclusions of law in accordance with CR 52, and, then properly entered a judgment on the merits against Salesman Dolajak and Salesman Carter.

B. On the first day of trial, the trial court was presented with sufficient evidence from which to enter findings of fact, conclusions of law, and to enter judgment against Salesman Dolajak and Salesman Carter in accordance with CR 40(a)(5) thereby constituting a final determination on the merits.

According to the trial court, “there was a hearing on the merits,” and entry of judgment against Salesman Dolajak and Salesman Carter was in full accordance with CR 40(a)(5) and case law. *See In the Matter of the Marriage of Daley*, 77 Wn. App. 29 (1994). In *Daley*, the trial court granted a default judgment against a no-show party on the first day of trial without supporting

evidence having been presented on the record. *Id.* On appeal, the *Daley* Court noted that entry of default judgment was not proper based upon the lack of evidence in the record to support the judgment. *Id.* The party that obtained the judgment argued that, pursuant to CR 40(a)(5), entry of judgment was proper irrespective of the default provisions set forth under CR 55. *Id.* Though the moving party was ultimately unsuccessful on appeal, the appellate court reversal was based upon the failure of the moving party to present evidence for review in accordance with CR 40(a)(5). *Id.* In that regard, the *Daley* Court explained:

The situation would certainly have been different had Linda proceeded with her case. Specifically, **if she had proceeded to trial and presented evidence on the record**, then the trial court would have had the authority under CR 52 to enter findings, conclusions, and judgment **without notice to Dan**. The record does not reflect, however, that the trial court had evidence before it at the time it entered judgment.

Id.

In contrast to *Daley*, here, the trial court *did* have sufficient evidence presented before it to support the judgment, so, pursuant to CR 40(a)(5), the entry of judgment was proper. As in *Daley*, entry of judgment “without notice” beyond what was already provided was not required before moving forward with the underlying proceedings. To cite directly from the record of what occurred on the first day of trial:

[By Mr. Beauregard] I have before the Court a declaration of my client explaining what was a very vicious assault and battery upon her, also known as a gang rape, by the defendants.

* * *

The evidence presented to the Court is presented pursuant to CR 55(b)(2) [here, the undersigned counsel admittedly should have cited to CR 40(a)(5) and then Salesman Carter and Salesman

Dolajak would have no basis to appeal] *with respect to amounts uncertain with respect to default judgment. The evidence has already been seen by Mr. Bridges clients and it already of record in the ER 904's or other court records. The evidence supports the fact that my client was sexually assaulted by the defendants, supports the fact that she was viciously assaulted by the defendants, and the nurses evidentiary documentation, the medical records, show that she had lacerations to her private areas. And there is also evidence in the record which was submitted by Mr. Bridges' clients in the form of medical records, extensive medical records, documenting her history from the treating physician over and extended period of time, demonstrating that she had extreme emotional distress as a result of being sexually violated by these three individuals.*³²

* * *

*The Court: All right. You can go ahead and send your materials forward. Clearly by the time that I got everything read, and then the word that the case settled...I have reviewed the materials, and I am going to require Mr. Beauregard, that having entered this judgment against these two defendants...*³³

On the first day of trial, as scheduled and was known to all parties, an adversarial hearing on the merits occurred. Additionally, at the time that the evidence was presented to the trial court, Mr. Bridges argued the facts of the case on the record noting that there “*are substantial mitigating factors in this case including multiple stories by the Plaintiff to the Tacoma Police Department*” and that, on the issue of damages, “*she already had major depression, and she had a hard life.*”³⁴ Both sides of the case were presented and argued to the trial court. Moreover, the determination of liability and damages was not just “rubber

³² Id

³³ Id

³⁴ Id

stamped” but were left to the trial court’s discretion as was consistent with the evidence that was presented on the record:

*Should the Court elect a different amount, we are prepared. We have an actual empty judgment which we would defer to the Court, but we do think that in this matter this would be a just amount in light of what my client has been through.*³⁵

Based upon the evidence that was presented on the record, and the arguments of counsel for both sides in favor of and against liability and damages, the trial court exercised its discretion and entered a finding of fact and conclusion of law in accordance with CR 52 that L.S. had been raped. The proceedings concluded with entry of judgment on the merits with an express finding that a “battery” occurred and another finding that L.S. suffered “extensive emotional distress.”³⁶

Again, the “substance” of proceedings should always prevail over the “form” in the application of the civil rules. *See First Federal Savings & Loan, supra*. The underlying proceedings are the substantively the same as if L.S. had filed for affirmative summary judgment under CR 56 and noted the hearing for the first day of trial, or if L.S. moved for judgment as a matter of law under CR 50(a). Salesman Dolajak and Salesman Carter did not appear to offer an opposing view or evidence of the case or oppose the motion for entry of judgment. *See e.g. State v. Carson*, 2 Wn. App. 104, 466 P.2d 539 (1970) (hearsay objection waived if not made at trial). Mr. Bridges did not object as to the sufficiency of any of the evidence that was presented to the trial court against the Mallon Ford salesmen.

³⁵ Id

Id. It is not disputed that the other parties were on full notice that a trial was set to occur on May 7, 2007 at 9:00 a.m. and either elected not to show up, or made neglectfully bad decisions about how to defend, or not defend, the case during the underlying proceedings. Given the circumstances, the trial court rendered a determination on the merits, and the judgment should not be vacated.

C. The trial court entered findings of fact and conclusions of law in accordance with CR 52 from which this Court can conduct an appellate review based upon the evidence that was of record and presented prior to the entry of judgment.

Salesman Dolajak erroneously argues that the trial court did not enter findings of fact and conclusions of law in accordance with CR 52. The trial court did enter findings of fact and conclusions of law which specifically explained that the judgment was

*...premised upon the Court's finding that these defendants committed the tort of battery upon L.S. from which L.S. suffered extensive emotional distress.*³⁷

Under the law, the trial court's findings of fact and conclusions of law are more than sufficient to support the judgment against Salesman Dolajak and Salesman Carter because the court is not required to make a finding of fact on every point, only those concerning material issues. See *Bowman v. Webster*, 42 Wn.2d 129, 253 P.2d 934 (1953); *George E. Miller Lumber Co. v. Holden*, 45 Wn.2d 237, 273 P.2d 786 (1954); *Seattle Ass'n of Credit Men v. Green*, 45 Wn.2d 139, 273 P.2d 513 (1954); *Le Maine v. Seals*, 47 Wn.2d 259, 287 P.2d 305 (1955). The purpose

³⁶ Judgment dated June 9, 2007

³⁷ Judgment dated June 9, 2007

for findings of fact and conclusions of law are for the appellate court, and the litigants, to understand what evidence and legal theory the case was decided upon. Here, based upon L.S.'s declaration and the medical evidence in the record, the trial court expressly found that Salesman Dolajak and Salesman Carter committed "battery" and also found that L.S. suffered "*extensive emotional distress*."³⁸ Therefore, because the facts and legal theory underlying the judgment are clear, the findings of fact and conclusions of law are sufficient to support the judgment and proper under CR 52.

Additionally, Salesman Dolajak subtly, and inconsistently, acknowledges on pages 17 to 19 of his opening brief that there *is* evidence in the record supporting the judgment while, at the same time, challenging that evidence as a matter of degree to the extent it supports the amount being \$2.5 million. In Salesman Dolajak's words, on page 19 of his opening brief, "*there is simply no support for an award of such magnitude*." Put another way, Salesman Dolajak acknowledges the evidence and challenges the sufficiency as a matter of degree with respect to the amount.

In contrast to Salesman Dolajak's erroneous assertions about no evidence being of record, on the first day of trial, the Court had already reviewed and was familiar with L.S.'s recollection of the events from her declaration which was filed for the first time with the court almost a month prior on April 11, 2007, and was presented a second time for the trial court's review immediately before the judgment was entered:

³⁸ Judgment dated June 9, 2007

...Mr. Carter was openly sexually aggressive towards me. He began making direct physical advances. He began touching me in a sexual manner, and I did not know how to react. I believed that I trusted Mr. Carter, and I liked him as a person. He is even somewhat of an attractive man. Even though I was very uncomfortable with his initial advances, in my mind, I had a combination of fear and other feelings I cannot describe running through my mind. I mean, here is this man that I met and developed what I believed to be a trusting relationship was not suddenly being outwardly and unexpectedly sexual towards me. Mr. Carter was quick in his actions. He had removed my legging and was trying to penetrate me. Based upon my lack of outward resistance, the sexual acts up to that point could be described as consensual, even though, I was being overcome and was very confused and beginning to become scared.

While Mr. Carter and I were in the bathroom, the two other salesmen, Mr. Gordon and Mr. Dolajak, began trying to push their way in the room. The door opened, and I was startled. The other two salesmen began expressing sexual interest in me, and Salesman Carter began making comments to the effect of "We are all family here" in way that suggested that he wanted the other two salesmen to engage in sexual behavior too. I became very apprehensive and scared at this point, and Mr. Carter forced me to the bedroom. Then, once in the bedroom, all three salesmen overpowered me and gang raped me as I repeatedly said "no" to these men on numerous times: "no...no...no...no..." I actively resisted, and they forced my head over the side of the bed and took turns with me...³⁹

The trial court had abundant evidence from which to support the liability finding of "battery" against Salesman Dolajak and Salesman Carter.

As was described in L.S.'s declaration, she was gang raped by Salesman Dolajak, Salesman Carter, and others, and on the first day of trial the undersigned counsel identified the plethora of other evidence which is in the record also supporting the amount the judgment:

...The evidence supports the fact that my client was sexually assaulted by the defendants, supports the fact that she was

³⁹ Declaration of L.S. in supplemental Clerk's Papers.

*viciously assaulted by the defendants, and the nurses evidentiary documentation, the medical records, show that she had lacerations to her private areas....*⁴⁰

The above referenced evidence was presented to and reviewed by the trial court, and is even contained in exhibits attached to Mr. Bridges' declaration in the Clerk's Papers in the form of medical records from the sexual assault center at the Tacoma General Hospital and Group Health Cooperative.⁴¹ In the aforementioned medical records from the Tacoma General Hospital, L.S. describes a vicious gang rape on the part of Salesman Dolajak, Salesman Carter, and others, and the treating nurse notes "lacerations" and "redness" on her labia, and that she "begins to shake while telling story."⁴² The psychiatric evaluation records from the Group Health Cooperative describe a victim that is severely depressed and in need to professional assistance.⁴³

L.S. was gang raped by Salesman Dolajak, Salesman Carter and others, and the vicious assault is well documented in the evidence of record that was reviewed by the trial court. In that regard, L.S. suffered severe emotional distress and a devastating blow to her dignity and humanity which the trial court conservatively quantified in the judgment that was entered. In the eyes of L.S., the \$2.5 million judgment which will likely prove uncollectible is not adequate compensation for having been gang raped and never will be enough. In sum, the trial court entered proper findings of fact and conclusions law in relation to and

⁴⁰ Transcript of Proceedings dated May 7, 2007

⁴¹ CP 15-20

⁴² Id

consistent with the vicious sexual assault which was perpetrated by Salesman Carter and Salesman Dolajak. Therefore, the judgment should not be vacated.

D. The negligence and/or incompetence on the part of Salesman Dolajak and Mr. Bridges is not a proper basis upon which to vacate the judgment which was entered on the merits.

Based upon the fact that evidence was presented on the record, the argument was presented by counsel, the findings of fact and conclusions of law were entered in accordance with CR 52, and, the fact that there was a hearing on the merits, the trial court properly refused to vacate the judgment against Salesman Dolajak. Under well established Washington law, “attorney negligence does not provide grounds for vacation of [a] judgment.” *Lane v. Brown & Haley*, 81 Wash. App. 102, 104, 912 P.2d 1040 (1996); *see also Northern Pac. & P.S.S.R. Co. v. Black*, 3 Wash. 327, 330, 28 P. 538, 540 (1891) (mistake or inadvertence on the part of counsel is insufficient to warrant opening of a judgment). And a *pro se* party is bound by the same rules of procedure and substantive law as an attorney. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). “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*, 81 Wn. App. at 107. Salesman Dolajak’s decision not to show up for his own trial based upon Mr. Bridges’ failure to keep him properly informed of the proceedings constitutes negligence and, as illustrated in *Lane*, does not provide a proper basis upon which to vacate the judgment.

⁴³ Id

By comparison, in *Lane*, the “Lanes argued that their attorney’s failure to inform them of the pending summary judgment proceeding represents a mistake or irregularity in obtaining the judgment that warrants vacation of the judgment.” *Lane*, 81 Wn. App. at 106. This Court rejected the Lanes’ argument explaining that, under CR 60, this sort of “attorney negligence does not provide grounds for vacation...” *Id.* at 104. This Court also noted that the “Lanes’ attorney, acting on behalf of the Lanes, appeared in a fully adversarial setting in which the merits of the case were fully addressed” and that given the circumstances the corresponding summary judgment should not be vacated. *Id.* at 108. In this instance, this Court should follow the precedent and principles set forth in *Lane*, and the judgment should not be vacated based upon Salesman Dolajak and/or Mr. Bridges’ neglect and/or incompetence.

It should be noted that Salesman Dolajak and Mr. Bridges are in agreement that an attorney/client type relationship existed between them as is in accord with Washington law. According to the Washington State Supreme Court, the “essence of the attorney/client relationship is whether the attorney’s advice or assistance is sought and received on legal matters.” *Bohn v. Cody*, 119 Wn.2d 357, 364, 832 P.2d 71 (1992), citing, 1 R. Mallen & J. Smith § 11.2 n.18; 7 Am. Jur. 2d *Attorneys at Law* § 118 (1980). The relationship need not be formalized in a written contract, but rather may be implied from the parties’ conduct. *In re McGlothlen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983). The establishment of the existence of an attorney/client relationship “turns largely on the client’s subjective belief that it exists”. *McGlothlen*, at 522. The client’s subjective belief, however,

does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney's words or actions. See 1 R. Mallen & J. Smith § 8.2 n.12; *Fox v. Pollack*, 181 Cal. App. 3d 954, 959, 226 Cal. Rptr. 532 (1986); *In re Petrie*, 154 Ariz. 295, 299-300, 742 P.2d 796 (1987).

For all intents and purposes, Mr. Bridges was acting as counsel for Salesman Dolajak. In that regard, Salesman Dolajak explained his subjective belief that he could rely upon Mr. Bridges for counsel:

*Mr. Bridges indicated to me that he was the attorney for Mallon Ford and others and did not specifically represent me but he would help at trial and would give me pointers on what to do and what to say.*⁴⁴

And Mr. Bridges noted a similar expectation in relation to Salesman Dolajak:

*It does not take a seasoned veteran to know that defendants such as mine would be in close contact with defendants such as the three salespeople who were not represented, in order to secure their testimony at trial to present a defense of the "case within a case" regarding battery, to defend the issue whether a battery occurred in the first place. Knowing that, the plaintiffs sent a demand for non-suit and told me it had been communicated to the court, knowing full well that such information would be passed along to the individual salespeople.*⁴⁵

Based upon the subjective and objective expectations on the part of Salesman Dolajak and Mr., Bridges, and in accordance with the attorney/client relationship principles set forth under *Bohn* and *McGlothlen*, Mr. Bridges was acting as legal counsel for Salesman Dolajak. In relation to Salesman Dolajak and Mr. Bridges' assertion that notice of proceedings to Mr. Bridges also constituted notice of those same proceedings to Salesman Dolajak and the other

⁴⁴ CP 248-53

⁴⁵ CP 21-50

individual defendants, Salesman Dolajak and Mr. Bridges cannot fairly have it both ways. It would be fundamentally unfair, and inconsistent with Mr. Bridges' fiduciary obligations to Salesman Dolajak and the other individual defendants, to permit Mr. Bridges to use his responsibilities as fiduciary to Salesman Dolajak as a sword, to claim his actions were justified when it suits him, and a shield, to justify his neglect and incompetence, when it does not. Mr. Bridges established and embraced a fiduciary responsibility to Salesman Dolajak, and in that responsibility, he failed. As was delineated by the *Lane* Court, L.S. "should not be penalized for the quality of representation" on the part of Mr. Bridges. 81 Wn. App. at 108.

It is not disputed that at some point Mr. Bridges told Salesman Dolajak, via a voicemail, that the case may not go forward as scheduled. After the circumstances changed and it became evident that the proceedings were likely to go forward against Salesman Dolajak, according to page 14 of Salesman Dolajak's opening brief, it "*is uncontested that Mr. Bridges failed to re-contact Mr. Dolajak to advise him of the possible change in circumstances.*" As is in *Lane*, Mr. Bridges failure to give Salesman Dolajak proper legal advice and his and failure to provide updates about the impending trial is not a proper basis upon which to vacate a judgment. Moreover, by contrast, in *Lane*, the Lanes had no idea about the date and time of the botched summary judgment hearing whereas here, Salesman Dolajak was fully aware that the first day of trial was impending, but he just elected not to attend based upon his own neglect and/or incompetence based upon the part of Mr. Bridges. Thus, the equities weigh even heavier than in

Lane against vacating the judgment in this particular instance. In *Lane*, this Court explained that vacating a judgment on the merits premised upon attorney negligence and/or incompetence was reversible error.

In contrast to L.S.'s reliance upon *Lane*, Salesman Dolajak fails to offer any legal citation to any authority specifically delineating that under similar or analogous circumstances, failing to appear for trial constituted a basis to vacate a judgment. Salesman Dolajak summarily argues, without applicable citation, that in a general sense he feels aggrieved for having been held accountable for raping L.S. as was scheduled in open court, and that the judgment against him should be vacated. The failure on the part of Salesman Dolajak to identify persuasive authority to this appellate court on the issue should weigh heavily against Salesman Dolajak.

It is also important to consider and evaluate the practical realities of the precedent that Salesman Dolajak is asking this Court to embrace. Salesman Dolajak completely failed to defend this case, completely failed to even file an answer, and completely disregarded his obligations to the legal system. In lieu of showing up for the trial as was known and scheduled, Salesman Dolajak relied upon the best sounding advice to him from Mr. Bridges, a voicemail, rather than engaging the proceedings and demonstrating an interest in offering a defense. Salesman Dolajak never bothered to consult a warm body to ascertain whether or not he needed to appear before the trial court. According to Salesman Dolajak, prior to leaving on vacation that weekend, he never even made a confirmatory call

to Mr. Bridges, the trial court, or the undersigned counsel clarify the precise nature of the proceedings.

Beyond that, none of the actions on the part of Mr. Bridges can properly be characterized as either “misconduct”, “mischaracterizations”, “surprise” or otherwise on the part of a purportedly adverse party. None of the parties have contended, including Salesman Dolajak, that Mr. Bridges was acting with a deliberate intent to deceive and/or mislead Salesman Dolajak. In fact, the contrary is true. Mr. Bridges was simply acting, or better stated omitting, by virtue of neglect and/or incompetence.

Mr. Bridges built and encouraged a trusting relationship with Salesman Dolajak, and Salesman Carter too, in a fiduciary capacity. Salesman Dolajak and Mr. Bridges are in agreement that they were working in tandem to present a defense, and that Mr. Bridges was guiding Salesman Dolajak through the legal system’s hurdles. Salesman Dolajak and Mr. Bridges both contend that notice to Mr. Bridges constituted notice to Salesman Dolajak (*See* CR 5), and it is undisputed that through an omission of gross neglect and incompetence that Mr. Bridges failed in his responsibility to Salesman Dolajak. Under *Lane*, it is error to vacate a judgment based upon the neglect of legal counsel, so this judgment should not be vacated.

Additionally, Mr. Bridges was present and participating in the proceedings on the first day of trial when the undersigned counsel moved for the entry of judgment but failed to inform the trial court that he had told Salesman Dolajak and Salesman Carter whatever he did. Mr. Bridges could have informed the trial

court of the circumstances, but he elected to keep quiet on the record. Mr. Bridges could have moved for a continuance under CR 40, but he failed to do so.

Furthermore, instead of being in trial on May 7, 2007, Salesman Dolajak was on vacation. To the extent that Salesman Dolajak was acting *pro se* he is held to the same legal standard as an attorney, and no reasonable attorney would neglect an impending trial and get on a plane to Mexico based upon a voicemail under these circumstances. The facts and circumstances giving rise to the judgment do not warrant setting a precedent that it is “ok” to flout the legal system and then hide behind procedural rules arguing for more “notice” as to proceedings about which Salesman Dolajak was already aware. A trial is a day of reckoning, a fundamental component of the democratic ideals, a day of finality, and Salesman Dolajak’s day has now come and past.

E. Salesman Dolajak’s arguments about wanting to receive more notice concerning proceedings about which he was already aware should not be well taken.

Salesman Dolajak’s argument that he was entitled to additional notice in relation to the entry of any sort of a judgment is completely illogical and should not be well taken. It is not disputed that Salesman Dolajak was on notice and aware that a lawsuit was filed against him, and that, as recently as May 1, 2007, Mr. Bridges made him fully aware that the trial was set to begin on May 7, 2007. Salesman Dolajak was on notice of the impending proceedings and he was not entitled to additional notice after failing to show up for a scheduled trial. The spirit, letter, and purpose underlying the civil rules is not such that an adverse party can simply ignore proceedings for nearly two years, fail to show up an

defend at the scheduled trial, and then argue for more due process and notice to be heard in order to offer a belated defense. *See* CR 1. Because Salesman Dolajak was on notice that a judgment could be entered against him on the first day of trial, the arguments concerning affording additional notice prior to the entry of judgment are without merit.

F. Salesman Dolajak has failed to present evidence to support a meritorious defense as is required under CR 60(e)(1) before a court can vacate a judgment on the merits after a defendant has disregarded the legal process.

Under CR 60(e)(1), A “court will not relieve a defendant from a judgment taken against him due to his willful disregard of process, or due to his inattention or neglect in a case such as this where there has been no more than a prima facie showing of a defense on the merits.” *Commercial Courier Service, Inc. v. Miller*, 13 Wn. App. 98, 106, 533 P.2d 852 (1975). “Affidavits supporting motions to vacate judgments must set out facts constituting a defense. It is insufficient to merely state allegations and conclusions.” *Id.* at 104; *Penfound v. Gang*, 172 Wash. 311, 20 P.2d 17 (1933). Even if there is a valid basis under CR 60 to vacate a judgment, it is reversible error to vacate a judgment absent a showing of a meritorious defense. *See Farmers Insurance Co. v. Waxman Industries, Inc.*, 132 Wn. App. 142, 130 P.3d 874 (2006).

In this instance, the only evidentiary defense offered by Salesman Dolajak is conclusive denials that are not sufficient to support vacating the judgment. In the declaration that was submitted by Salesman Dolajak, all that is offered is a general denial purporting that the group sex with L.S. was supposedly “consensual” without adding any context, without any explanation of the

surrounding circumstances, with a retort to the recollection on the part of L.S. offered in her declaration that was relied upon by the trial court. Because Salesman Dolajak has failed to demonstrate a sufficient showing of a meritorious defense to L.S.'s rape allegations, the judgment should not be vacated.

G. The emotional impact upon L.S. in relation to these civil proceedings has been tremendous and weighs heavily against vacating the judgment(s).

According to the controlling law, whether or not the aggrieved party will suffer a "substantial hardship" is a factor for consideration. *White v. Holm*, 73 Wn. 2d 348, 438 P.2d 581 (1968). Here, L.S. underwent nearly two years of litigation in order to obtain closure in relation to the gang rape which was perpetrated against her. This has been a traumatic ordeal, and the case was not brought for the sake of getting money. In reality, the judgment at issue is probably worthless as far as the salesmen's solvency is concerned. The truth is that the police made serious mistakes during the criminal investigation and, as a result, the salesmen escaped criminal prosecution. L.S. felt compelled to see to it that these salesmen were held accountable in open court which they were on May 7, 2007. The emotional trauma upon L.S. has been tremendous, and the trial on the merits and corresponding judgment should not be undone.

V. CROSS APPEAL RE: REINSTATING JUDGMENT AGAINST CARTER

A. If a judgment is entered on the merits in accordance with CR 40(a)(5), whether or not the adverse party filed an answer is irrelevant.

The trial court expressly noted on the record that "there was a hearing on the merits" in accordance with CR 40(a)(5) but evidently vacated the judgment

against Salesman Carter premised upon the fact that he filed a document that constituted some sort of an answer to the complaint. This was reversible error on the part of the trial court. Civil Rule 40(a)(5) delineates the process that is to take place when a party has notice of, but fails to attend a trial regardless of whether or not an answer to the complaint was filed. The *Daley* Court explained that additional notice is not required.

For purposes of this appeal, L.S. is not challenging the sufficiency of the answer which was filed by Salesman Carter. Instead, L.S. relies upon the dictates of CR 40(a)(5) and the trial court's finding that there was a hearing on the merits to which Salesman Carter neglectfully failed to appear. Because the filing of an answer to a complaint does not relieve a party of the duty to show up for trial, the judgment should be reinstated against Salesman Carter.

B. Because Mr. Bridges acted neglectfully while in a fiduciary and attorney/client type capacity to Salesman Carter, it was reversible error for the trial court to vacate the judgment against Salesman Carter.

The judgment against Salesman Carter should be reinstated for the same reasons that the judgment against Salesman Dolajak should not be vacated: negligence on the part of counsel is not a proper basis to vacate a judgment. *Lane, supra*. In *Lane*, this Court held that it is reversible error to vacate a judgment based upon the negligence of counsel. And a pro se party is held to the same standard as that of an attorney. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). In relation to Salesman Carter, the facts are again uncontested in that Mr. Bridges built a trusting and fiduciary relationship with Salesman Carter, and then failed to keep him properly apprised of the

circumstances. Without explanation, Mr. Bridges told Salesman Carter that he did not need to attend the first day of trial, and then Mr. Bridges failed to provide Salesman Carter updates over the weekend thereafter. Mr. Bridges attended the trial on the first day and described doing so as being a “prudent” act even though his own primary client, Mallon Ford, settled all claims with L.S. the week prior. At the time that Salesman Carter was evidently available and waiting for this civil trial to begin because he was also waiting for a criminal trial stemming from other rape charges from which he was convicted during the pendency of this appeal.

C. Salesman Carter failed to demonstrate any showing of a meritorious defense which is a requirement under the circumstances.

As was set forth in relation to Salesman Dolajak, according to CR 60(e)(1), a “court will not relieve a defendant from a judgment taken against him due to his willful disregard of process, or due to his inattention or neglect in a case such as this where there has been no more than a prima facie showing of a defense on the merits.” *Commercial Courier Service, Inc.*, 13 Wn. App. at 106. In this instance, Salesman Carter, by way of declaration, offers even less explanation and/or of a defense than Salesman Dolajak. Salesman Carter offered no explanation as to what occurred the night of the gang rape. In fact, during the underlying proceedings, Salesman Carter all together neglected his obligation to come forward with evidence of a meritorious defense.

Based upon Salesman Carter’s failure to present evidence of a meritorious defense, the trial court should not have vacated the judgment, and the judgment should therefore be reinstated.

VI. OPPOSITION ARGUMENT RE: DAN'L BRIDGES'S MOTION & APPEAL FOR ATTORNEY FEES

A. Mr. Bridges continues to represent the interests of either Salesman Dolajak , Salesman Carter, and/or himself in an effort to obtain attorney fees for his work on the motions to vacate the judgment that was entered by the trial court.

Mr. Bridges has taken the unusual step of filing a notice of appeal to take up the issue of his purported right to attorney fees in relation to the motions to vacate the judgments against Salesman Carter and Salesman Dolajak . During the motion to vacate hearing which occurred before the trial court, Mr. Bridges acknowledged that his primary client, Mallon Ford, did not have standing to interject into the proceedings pertaining to Salesman Dolajak and Salesman Carter. *See Tinker v. Kentucky Fried Chicken*, 95 Wn. App. 761, 977 P.2d 627 (1999). Mr. Bridges indicated that he was continuing to act as an advocate in defense of his own personal liability because he felt as though he was in the “cross-hairs” in relation to his representation of Salesman Dolajak and Salesman Carter and the corresponding allegations in relation to his negligence. It should be noted that according to *Tinker*, Mr. Bridges’ original client, Mallon Ford, has no standing to participate in this appeal and L.S. vigorously objects to allowing Mallon Ford to participate as a party to these proceedings. However, at oral argument, the undersigned counsel did not object to allowing Mr. Bridges to participate to the extent that he is representing the interests of Salesman Dolajak, Salesman Carter, and/or his own personal stake arising out of his own neglect.⁴⁶

⁴⁶ It should be noted that because Mr. Bridges has elected to participate individually in these proceedings and expressly to protect his personal interests, versus those of any client, any ruling from this Court as to the issues of fiduciary obligations, neglect under *Lane*, and the entry of judgment should have an estoppel effect in future proceedings between the salesmen and Mr.

B. The attorney fee request and appeal which is being pursued by Mr. Bridges should be denied.

At the hearing relating to the motions to vacate, the trial court denied Mr. Bridges' motion for attorney fees. It should be noted that even though Mallon Ford had already settled and had no interest in the ongoing proceedings, Mr. Bridges did in fact file voluminous briefing and extensive declarations in support of Salesman Dolajak and Salesman Carter. Mr. Bridges drove from his office in Bellevue all the way to Tacoma to attend the oral argument and weigh in before the trial court on the issues. In essence, it appears as though Mr. Bridges was/is representing the interests of Salesman Dolajak and Salesman Carter.

Before the trial court, Mr. Bridges seemed to be arguing that somehow his failure to keep Salesman Dolajak and Salesman Carter informed of the proceedings was all the fault of the undersigned counsel thereby warranting an award of attorney fees. Mr. Bridges blamed the undersigned counsel for his own failure to call Salesman Dolajak and Salesman Carter over the weekend and inform them the proceedings were likely to move forward against them. Mr. Bridges even expressly acknowledged that it was "prudent" under the circumstances to appear for the first day of trial on behalf of Mallon Ford, even though that portion of the case had resolved. Mr. Bridges has acted irrationally throughout the course of these proceedings.

Bridges. Mr. Bridges is likely to come out trying to, through appellate briefing, blast and blame other parties for his own mistakes and the undersigned counsel respectfully requests that Mr. Bridges ongoing irresponsible, self-serving, disrespectful, incompetent, and arguably unethical behavior be taken into consideration in relation to the ultimate disposition of this appeal. The undersigned counsel has almost never encountered a more offensive litigator and virtually never, absent this warranted exception, offer such a notation for the Court.

Mr. Bridges' appeal for attorney fees is not properly grounded in any of the civil rules and was properly denied by the trial court. Moreover, this particular request for attorney fees as some sort of a sanction for purported wrongdoing on the part of the undersigned counsel is particularly offensive to the equities and process in that the errors giving rise to these issues are predominantly a direct result of the individual failings of Mr. Bridges. To the extent that any attorney fees should be awarded, that award should be against Mr. Bridges. Any request on the part of Mr. Bridges should summarily be denied.

C. According to the version of events admitted to by Mr. Bridges, the judgment against Salesman Dolajak and Salesman Carter still should not be vacated.

Mr. Bridges filed a self serving declaration in support of the motion to vacate claiming that he only told Salesman Dolajak and Salesman Carter that they were no longer needed as "witnesses" in support of Mallon Ford's defense while simultaneously implying that he did not tell them not to attend the first day of trial. It is interesting to note that the position being taken by Mr. Bridges arguably weakens the position being taken by Salesman Dolajak and Salesman Carter in that it pushes the nature of the conversations between them into some level of dispute. Put another way, Mr. Bridges is now filing briefing, declarations, and offering arguments in proceedings to which his original client has no standing in such a way that compromises the merits of the arguments on the part of Salesman Dolajak and Salesman Carter. Mr. Bridges is actively undermining the respective positions of Salesman Dolajak and Salesman Carter in matters to which his original client in order to mitigate the consequences of his

own errors which is questionable conduct under the Rules of Professional Conduct.

The interjections on the part of Mr. Bridges raise novel procedural issues on appeal in that a non-party, and fiduciary to Salesman Dolajak and Salesman Carter, is actively trying to retool what would otherwise be undisputed facts. As between the actual litigants, L.S, Salesman Dolajak, and Salesman Carter, the facts are in relative agreement in that Mr. Bridges failed to provide proper updates about the status of the case. However, even taking the version of facts being offered by Mr. Bridges as true, the judgment against Salesman Dolajak and Salesman Carter should not be vacated. According to Mr. Bridges' version of the facts, Salesman Dolajak and Salesman Carter failed to attend the trial based upon a comment that they were purportedly no longer needed as "witnesses" for the defense of Mallon Ford. It is clearly neglectful for a party to fail to attend a trial based upon having heard from a purported opponent that that the party at issue was no longer needed as a witness for that opponent. And so it follows that under any version of the facts as pitched by Salesman Dolajak, Salesman Carter, or Mr. Bridges, the judgment should stand.

D. L.S. moves the Court for an award of attorney fees against Mr. Bridges for his ongoing irresponsible and irrational conduct.

Pursuant to RAP 18.1, CR 60, and CR 11, the undersigned counsel moves for the imposition of sanctions and attorney fees against Mr. Bridges payable to all of the other parties including Salesman Dolajak and Salesman Carter. There is no legal basis rationally supporting Mr. Bridges' request for attorney fees, and he was the cause of all of these unusual legal proceedings. Even on appeal, and in

light of the fact that the record clearly reflects that Mr. Bridges is at fault, he continues to try to blame other parties and individuals for his own mistakes. It should be known to the Court that during the underlying proceedings, Mr. Bridges consistently missed deadlines, forgot to file a summary judgment motion, and would always blame someone else for his own errors and omissions. Mr. Bridges filed frivolous discovery motions, and was needlessly contentious throughout all of these proceedings. For these reasons, an award of attorney fees against Mr. Bridges is appropriate.

VII. CONCLUSION

For the reasons set forth herein, the judgment against Salesman Dolajak and Salesman Carter should stand, and terms should be imposed against Mr. Bridges in relation to his neglect and involvement in these proceedings.

RESPECTFULLY SUBMITTED this 27 day of September, 2007

CONNELLY LAW OFFICES

By _____

John R. Connelly, Jr., WSAB #12183
Lincoln C. Beauregard, WSBA #32878
Attorney for L.S.

COURT OF APPEALS
DIVISION II
07 SEP 27 PM 1:56
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

L.S., a single woman,

Plaintiff,

vs.

RICHIE CARTER and "JANE DOE CARTER"
husband and wife; BRODERICK LaDRAE
GORDON and "JANE DOE GORDON",
husband and wife; MICHAEL R. DOLAJAK
and "JANE DOE DOLAJAK" husband and
wife; and TITUS-WILL FORD SALES, INC., a
Washington corporation, d/b/a MALLON
FORD,

Defendants.

Court of Appeals No. 36449-2-II

AFFIDAVIT OF SERVICE

THE UNDERSIGNED, pursuant to CR 5(b), affirms that on the 27th day of
September, 2007, she sent by ABC Legal Messenger a copy of Respondent-Cross-Appellant's
Opening Brief to the following at their respective address set forth below:

Edward S. Winskill
Davies Pearson, P.C.
920 Fawcett
Tacoma, WA 98403

AFFIDAVIT OF SERVICE - 1 of 2
(36449-2-II)

 ORIGINAL

CONNELLY LAW OFFICES

2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Zenon Olbertz
Law Offices
1008 South Yakima Ave. Ste. 302
Tacoma, WA 98405

Dan'L Bridges
McGaughey Bridges Dumlap, PLLC
325 - 118th Ave. SE Ste. 209
Bellevue, WA 98005

DATED this 27^m day of September, 2007.



Vickie Shirer
Connelly Law Offices