

No. 49740-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JEFF VOLK-REIMER, Appellant,

v.

SHARON EVA, Respondent

BRIEF OF RESPONDENT SHARON EVA

49740-9-II

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I. INTRODUCTION

Sharon Eva (“Sharon”) and Jeff Volk-Reimer (“Volk-Reimer”) were once romantically involved and purchased a home together in 2007. After they had ended their romantic relationship, on March 28, 2011, Volk-Reimer signed a deed conveying his interest in home to Sharon via quit claim deed. CP 601, Paragraph 7. Sharon lived in the house for a few more years, and then started regularly renting it on www.airbnb.com at average nightly rate of about \$169 per night. CP 636- CP 644. In late 2015, Volk-Reimer broke into Sharon’s home and refused to vacate. Sharon immediately brought an action for ejectment. CP 564-568. Sharon requested the court confirm the deed Volk-Reimer signed in 2011 as valid, eject Volk-Reimer from her home, and order damages due to Volk-Reimer’s actions. CP 567-568. Volk-Reimer’s answer denied that he conveyed a deed to Sharon. CP 582.

Nonetheless, this matter was never decided on the merits because Volk-Reimer refused to participate in the litigation in good faith. CP 499, FF 23. This case was unable to proceed to trial because of Volk-Reimer engaged in litigation tactics tantamount to “stonewalling, foot-dragging

[and] obfuscation” to delay the case from proceeding forward in any meaningful way. CP 550, ll 20-22

Although the record is littered with bad faith filings, frivolous statements/arguments, and disrespect to the Court by Volk-Reimer, the Court found the following to be most important when she entered a default judgment against him:

- Volk-Reimer failed to show up for any scheduled depositions (CP 497, FF 2).
- Sharon’s motion for a court order deposition on August 12, 2016 was responded by Volk-Reimer that he would not attend any in person deposition, (CP 497, FF 3). His response states he cannot be available at any time, and he is unavailable indefinitely for an in-person deposition. CP 869-871. The Court found such statement to be a willful and intentional refusal to be deposed based on his sworn statement. CP 1074, FF 6.
- Volk-Reimer filed three bankruptcies during the pendency of this case for the purposes of delaying, harassing and causing unnecessary litigation costs to Sharon Eva. (CP 498, FF 17).

- Volk-Reimer filed two appeals during this case to seek stays for the purposes of delaying, harassing and causing unnecessary litigation costs to Sharon Eva. (CP 499, 18).
- Volk-Reimer presented frivolous arguments to the Court, including twice stating that the bankruptcy stay was in effect after the bankruptcy court has confirmed the statutory law. CP 499, FF 20.
- Volk-Reimer filed a [federal] removal action in bad faith. CP 1076, FF 25
- The Court found that because Volk-Reimer had failed to attend depositions Sharon was unable to adequately prepare for trial and she was substantially prejudiced. CP 1076, FF27.
- The Court considered less restrictive alternatives, including the conditional judgment proposed by Volk-Reimer's stand-in counsel¹ (CP 1113, ll 11-25), but the Court held that it did not think such order would cause Volk-Reimer to appear and would not uphold fairness to Plaintiff and deter Defendant's continuous bad faith conduct. CP 1076, FF28.

¹ Volk-Reimer, himself, never appeared. However, at the final hearing on November 29, 2016, James Turner made a limited appearance on his behalf and agreed that Volk-Reimer had not been acting in compliance with prior orders. CP 1069.

Volk-Reimer has only challenged one fact above. He challenges in his opening brief that Judge Serko signed the August 12, 2016 order that required him to appear for a deposition that he states he was “without any knowledge or copy of the order presented to him.” See Appellant’s Second Opening Brief with References to Court Papers and other Requests by Clerks of Court, pages 6-10.²

This argument is not truthful. Volk-Reimer not only knew the plaintiff sought the deposition date for August 12, 2016 as it stated on first page in **BOLD FACED CAPITAL LETTERS** on the motion, but Volk-Reimer responded to the motion and did not challenge the date or the time, only the idea that he would have to be orally deposed at all. CP 1074, FF 4; CP 842; and CP 869-870. Volk-Reimer proposed no alternate dates, he merely stated:

“I can only agree to a deposition by written question pursuant to CR 31(a)-(c).” CP 925, ll 12-14.

After receiving notice, the arguments by both sides, Judge Serko properly granted the motion to compel Volk-Reimer’s deposition. CP 874-876. Volk-Reimer choose for himself to not attend the hearing, and

² Volk-Reimer titles his brief his “second brief”, but it is his first brief after he corrected mistakes in his first submitted brief. Hereafter all references to this brief shall be stated as “Appellant’s Brief” with applicable page numbers and references.

thus ran the risk the Court would enter the motion exactly as proposed by Plaintiff.

On November 29, 2016, after months of bad faith filings of Volk-Reimer, Judge Serko sanctioned Volk-Reimer for failure to comply with discovery rules pursuant to CR 37(b). **However, Judge Serko also entered default based on CR 11 and the inherent authority of the Court based on other actions of Volk-Reimer.**

Volk-Reimer has not challenged the Court's authority to enter a default Judgment under either CR 11 or the Court's inherent authority. His only challenge is to CR 37(b). Even if this Court finds his argument correct that the Court abused its discretion in ordering default under CR 37(b), the November 29, 2016 should be upheld on the other two unchallenged biases. CP 1077, paragraph 29.

Volk-Reimer's litigation tactics are an independent factual basis for the November 29, 2016 order. CP 1077, Paragraph 2. As Judge Serko orally stated "[Volk-Reimer] in my opinion, really has treated the court system----including the Federal Court—with the most disrespect I have ever seen in 35 years almost of practicing law and being involved in the legal profession." CP 550, ll.14-17. The Court held that Volk-Reimer's bad faith litigation tactics were "stonewalling, foot-dragging [and]

obfuscation [and] bullying and misrepresentation in addition to the most extreme disrespect I've ever seen for the courts and violation of due process." CP 550, ll. 21-24.

Sharon was unable to have her day in Court, conduct discovery and was subjected to excessive legal fees due to Volk-Reimer's stalling and harassment tactics. The Court ultimately was left with no alternative other than to order Volk-Reimer ejected from Sharon's house, and award her attorney's fees for Volk-Reimer's tactics and harassment. The Court also awarded her reasonable rental value based on Sharon's declaration of her average rental rate of the home. CP 907, Paragraph 28. Her calculation was based on the amounts she had received from the prior year in renting the same home. CP 928-932. Volk-Reimer presented no alternate evidence of a fair rental amount, and he only stated that it was a "Ludacris [sic] claim." CP 47, ll 1-2.

Volk-Reimer's Appellant brief mentions earlier stayed orders of the first Judge, Judge Leanderson, whom Volk-Reimer filed an affidavit of prejudice against and he claimed her orders should be overturned. CP 1-3. Confusingly, Volk-Reimer filed a bankruptcy petition (CP 684-687) and affidavit of prejudice to Judge Leanderson CP 1-3 on the same day. Regardless, these orders became irrelevant because this Court of Appeals

stayed all of Judge Leanderson's order on August 3, 2016, and a new judge took over the case. See August 3, 2016, A Ruling by Commissioner Bearse, dated August 3, 2016 in Case #49110-9-II.³

Judge Serko did not consider these stayed orders in default Judgment on November 29, 2016. CP 1073. Nothing in Judge Serko's order states any reliance on Judge Leanderson's orders. CP 1072- 1079. Judge Serko's default order was based on Volk-Reimer's bad faith filings, his curious bankruptcy filings days before hearings, his removal action, his appellate stay requests all done before dispositive motions, and his failure to follow Judge Serko's own deposition order.

Finally, Volk-Reimer mentions new evidence that he has never presented and that should not be considered for the first time on appeal.

Sharon asks this Court to affirm the Orders of August 12, 2017 and November 29, 2016 as sound and reasonable decisions of Judge Serko.

³ Volk-Reimer has filed three appeals on this case.

The first appeal was Case #49110-9-II. The second was Case # appeal 49240-7-II. The third appeal was Case 49740-9-II.

Appeal 1 and 2 were consolidated on October 4, 2016 into Case #49110-9-II. Then the third appeal was consolidated with the other two appeals on March 17, 2017 into Case# 49740-9-II.

Because of Volk-Reimer's various appellate filings, all three appellate records are relevant in this appeal.

The three orders of Judge Leanderson may be vacated as they were either replaced by later orders or became moot.⁴ None of Judge Leanderson's orders affected the later orders made in this case by Judge Serko.

Sharon moves for attorney's fees on appeal due to Volk-Reimer's bad faith and misconduct that began at trial court, continued through the federal courts, and that he has continued in this Court. He has not challenged to ultimate disposition of this case, and this appeal is thus unnecessary and it is only done to increase Sharon's litigation costs.

II. RESTATEMENT OF ISSUES

(i) Did Judge Serko abuse her discretion in Granting Plaintiff's motion on August 12, 2016 that required Volk-Reimer to appear for a deposition when he received notice of the motion?

⁴ There are three orders by Judge Leanderson, a June 10, 2016 order that re-instated the case schedule after the first of three bankruptcies filed by Volk-Reimer.

A June 17, 2016 order that compelled written discovery and a July 8, 2016 order to compel Volk-Reimer's deposition.

This Court ordered so on August 3, 2016 A Ruling by Commissioner Bearnse under COA II 49110-9-II that all of these orders were stayed.

A new Judge, Judge Serko, later re-instated the case schedule and order Volk-Reimers deposition. CP 872-873 and CP 874-876.

(ii) Did Judge Serko abuse her discretion in Ordering a default judgment against Volk-Reimer on November 29, 2016 pursuant to CR 37(b)?

(iii) Did Judge Serko abuse her discretion in ordering a default judgment against Volk-Reimer on November 29, 2016 pursuant to CR 11?

(iv) Did Judge Serko abuse her discretion in Ordering a default judgment against Volk-Reimer on November 29, 2016 pursuant to the Court's inherent authority to ensure civility and respect for the Court?

(v) Was the rental value, determined by the Court in the November 29, 2016 Order, supported by evidence in the record?

(vi) Did any of the prior orders of Judge Leanderson have any effect on the ultimate disposition of this case? and

(vii) Should this Court award attorney's fees against Volk-Reimer on appeal pursuant to RAP 18.9?

III. RESTATEMENT OF THE CASE

A. Facts pertaining to possession of Sharon Eva's Home

1. Sharon Eva ("Sharon") and Jeff Volk-Reimer ("Volk-Reimer") purchased the Real Property of 8311 Golden Given Road E,

Tacoma, Washington (hereafter the “the home”) on November 9, 2007.
CP 600.

2. After acquisition, Sharon made all payments to Wells Fargo for mortgage payments from purchase date forward. CP 609-CP 629. There is no evidence of any mortgage payments by Volk-Reimer.

3. Sharon estimated that she has invested \$150,000 into the value into the home. CP 631.

4. In August 2010, Volk-Reimer and Sharon ended their romantic relationship, and Volk-Reimer left the home. Sharon was in sole possession of the home from 2010 until October 25, 2015 when Volk-Reimer broke into her home. CP 601

5. Volk-Reimer executed a quit claim deed on March 28, 2011, conveying his interest to Sharon. CP 633. His signature was witnessed by a public notary, Julie Post. CP 677-CP 681.

6. Sharon continued to make all payments from March 2011 on, until she was advised by a mutual legal representative to stop making payments in attempt to modify the home loan. CP 588. Later, the home fell into foreclosure. CP 574-575.

7. Sharon exclusively possessed the home from March 2011, as either an occupant or a landlord, until October 25, 2015. CP 905. When

not living in the home, she rented it on www.airbnb.com for an average \$169 per night. CP 928-932.

8. On October 25, 2015, Volk-Reimer entered the home and claimed it as his own, and refused to vacate. CP 588. Sharon filed a lawsuit following that action to eject him. CP 564-578.

B. Procedural History of this Case

9. In the Requests for Admission pursuant to Rule CR 36 dated January 4, 2016, Sharon asked Volk-Reimer to admit he signed the deed dated March 28, 2011. CP 669. Volk-Reimer failed to respond within the time to respond stated in CR 36. CP 664-CP 666.

10. Sharon then moved for summary judgment to be heard on March 31, 2016, that Volk-Reimer had executed said deed, and failed to deny that he conveyed his interest (and thus it should be treated as an admission). CP 586-CP 599.

11. On March 30, 2016, one day before summary judgment hearing, Volk-Reimer filed Chapter 13 Bankruptcy for the first time in this case. CP 684- CP 691.

12. One day later, Volk-Reimer filed an Declaration of Jeff Volk-Reimer in Support of affidavit of a prejudice. CP 682- CP 683. Of course, the trial court matter was already stayed as a matter of law under

11 USC 362. Volk-Reimer never presented the affidavit of prejudice to Judge Leanderson at that time or at any time thereafter. He never appeared in Court.

13. On May 12, 2016, the bankruptcy court granted relief from stay to Sharon. CP 694-CP 696. Sharon alleged the filing was solely to delay the proceedings. The bankruptcy granted the order for relief from stay. CP 696. By filing bankruptcy and requiring Sharon to move for relief from stay in bankruptcy court, Volk-Reimer essentially obtained a 6-week continuance.

14. On June 10, 2016, Sharon's counsel sent Volk-Reimer a notice of oral examination to appear on June 21, 2016 at 9:00AM. CP 823.

15. Volk-Reimer did not appear for the deposition on June 21, 2016. CP 819.

16. On July 8, 2016, Judge Gretchen Leanderson ordered Volk-Reimer to appear for a deposition on July 29, 2016. CP 42-44. Volk-Reimer did not appear. CP 1074, FF 5.

17. Volk-Reimer then filed an appeal stating that he filed and served an affidavit of prejudice under RCW 4.12.050 prior to Judge

Leanderson's rulings, and all her prior rulings should have been stricken⁵.
CP 830-834.

18. On July 26, 2016, Volk-Reimer asked the Court of Appeals to stay the entire Superior Court case because Judge Gretchen Leanderson ruled on 3 orders, which Volk-Reimer alleges were improper because he claimed he filed and served the affidavit of prejudice properly and Judge Leanderson ignore him.

19. Sharon choose not to fight over the affidavit of prejudice issue (whether it was actually presented to the court) and on August 3, 2016, Sharon's counsel responded to the appellate court that although Volk-Reimer's appeal could be denied outright, Sharon would concede Judge Leanderson orders, and have them heard by the newly appointed Judge Susan Serko.⁶ Judge Serko was reassigned the case through an unrelated judicial reassignment and had taken several cases of Judge Leanderson. CP 41.

⁵ His main argument for this was that he emailed Judge Leanderson's Judicial assistant the day of the hearing with said notice, and thus he claims he "delivered" the notice to Judge Leanderson before she made a ruling.

⁶ This Response was filed in Appeal No. 49110-9-II on August 3, 2016 and is titled "Response to Deny Emergency Motion to Stay, Request for Attorney's fees and Counter-motion to vacate three orders and have new trial Judge Serko Consider the Matters to Resolve Appeal." This Court ruled the same day to stay all three orders. See August 3, 2016 Ruling of Commissioner Bearnse in then case # 49110-9-II.

20. On the same day, August 3, 2016, The Court of Appeals stayed Judge Leanderson's orders (and not the case).⁷ Sharon believed she would obtain the same orders from any Judge, and in fact did obtain the same orders. CP 867- 868. Sharon did not present Judge Leanderson's orders as a basis for default before Judge Serko in November, 2016. CP 1072.⁸

21. On August 3, 2016, Sharon moved for an order to compel Volk-Reimer's deposition before the new Judge, Judge Serko. The first page of the motion in **BOLD FACED CAPITAL LETTERS** states Sharon's desire to have the deposition conducted on **AUGUST 12, 2016**. CP 842-856.

22. Volk-Reimer's responded to the motion stated he would "only agree to a deposition by written question[s]," but provided absolutely no basis why an oral deposition date proposed would not be appropriate. CP 869- 870. He provided a one page, unsigned and unsworn document, from someone purporting to be his employer saying he was indefinitely unavailable. CP 871. He made no objection to the date

⁷ A Ruling by Commissioner Barse was made on August 3, 2016 in then Case #49110-9-II.

⁸ The only ordered deposition mentioned in the order of default is the Order to compel deposition on August 12, 2016 that Judge Serko herself ordered on Volk-Reimer. CP 1072, paragraph 4.

proposed by Sharon, only that he would not attend any in-person deposition, but that he would agree to written questions. CP 869- 870; CP 925.

23. On August 12, 2016, Judge Serko granted an order compelling Volk-Reimer to appear to have his deposition taken at the same date and time Sharon had proposed on the first page of her motion. CP 874-876.

24. Counsel for Sharon appeared for the deposition on August 12, 2016, and Volk-Reimer failed to appear. CP 920-924.

25. Based on Volk-Reimer's refusal to comply with Court Orders, Sharon moved the state court for a motion for default and sanctions to be heard on September 16, 2016. CP 889-903.

26. Volk-Reimer then filed a second appeal with the Western District of Washington on September 12, 2016, and sought an emergency stay.⁹ The Court of Appeals denied his stay request promptly.¹⁰ Volk-Reimer then refiled the same motion again, and told this court it was no

⁹ This motion was filed under then second appeal, COA-II. Case #. 49240-7-II.

¹⁰ A ruling by Commissioner Schmidt on September 13, 2016 in Case #. 49240-7-II.

longer an emergency and to reconsider it as a non-emergency motion to stay the case. *See Court file Case # No. 49240-II.*

27. Two days later, Volk-Reimer filed bankruptcy for a second time. CP 977-978. This bankruptcy petition allowed Volk-Reimer to avoid a default judgment motion set to be heard on September 16, 2016. CP 987, ¶ 11-20.

28. This Court ordered the two appeals consolidated (Case # 49740-9-II and Case # No. 49240-II) at that point, and that Volk-Reimer's existing motion in the appeal was stayed due to this second bankruptcy.¹¹

29. On October 14, 2016, the bankruptcy court dismissed Volk-Reimer's second bankruptcy. CP 981. He was dismissed in bankruptcy for failure to appear at the 341 meeting of creditors. CP 981.

30. Since Volk-Reimer's second bankruptcy filing had been dismissed, Sharon re-filed her motion for default in state court on October 28, 2016, a second time. CP 982-1006. On October 26, 2016, Volk-Reimer filed his third bankruptcy in seven months. CP 1007-1008.

¹¹ See Ruling by Commissioner Schmidt filed on October 4, 2016 in COA-II 49110-9-II; and 49240-7-II.

31. At the time of filing his third bankruptcy, Volk-Reimer filed a removal action to federal court. CP 1011- 1014; CP 1018-1026. Sharon believes he did this because the automatic stay no longer applied in bankruptcy court after filing more than twice. 11 USC 362(D); CP 278, ll 16-21. The effect of this removal filing prevented the superior court from imposing any sanctions on Volk-Reimer and again delayed the case.

32. On November 15, 2016, the bankruptcy Court remanded these proceedings back to state court and denied Volk-Reimer's removal action. CP 1027-CP 1029. Sharon then set her motion for default again, for the third time, to be heard by Judge Serko. CP 273-292.

33. Altogether, Volk-Reimer had filed 3 bankruptcies, 2 appeals (including 2 efforts for this court of appeals to stay the case), and a federal removal all within eleven months of litigation.

34. Sharon's original motion for default based on failing to comply with Judge Serko's August 12th order to be deposed now included two additional arguments that Volk-Reimer had litigated in bad faith and violated CR 11, which were also independent biases to impose default judgment. CP 273-292.

35. Volk-Reimer then hired counsel, James Turner, to be present at the hearing on November 29, 2016. CP 1073. Volk-Reimer has

never attended any hearing in superior court or bankruptcy court, not his own motions, not plaintiff's motions, not court ordered hearings, not status conferences. CP 1073, FF 5.

36. The Court listed all pleadings considered in its order, and listened to arguments of Plaintiff and counsel for Volk-Reimer on the hearing. Volk-Reimer did not appear. CP 1074, FF4.

37. Judge Serko found Volk-Reimer's refusal to appear for a deposition had substantially prejudiced Sharon Eva in preparation for trial, in preparing witnesses, and in her own testimony. CP 1074, FF7.

38. The Court found that his filing of three bankruptcies and a removal action was done for the purposes of delaying, harassing and causing unnecessary litigation costs to Sharon Eva. CP 1075, FF17. She also found that he had litigated in bad faith. CP 1075, FF 23.

39. The Court found that Volk-Reimer's two requests to the appellate court to stay the case was done to delay, harass, and cause unnecessary litigation to Sharon Eva. CP 1076, FF18. The Court found that Volk-Reimer had harassed Eva throughout the case with procedural tactics. CP 1076, FF 19.

40. The Court found that Volk-Reimer had presented frivolous arguments to the Court, including twice stating falsely that the automatic

stay pursuant to 11 USC 362 was in effect, when it was not. CP 1076, FF 20.

41. The Court found that trial was unable to proceed due to these harassing filings and that he litigated in bad faith. CP 1076, FF 21-25.

42. The Court considered less restrictive alternatives explicitly on the record, but found that none of the other options, including a “conditional judgment” proposed by Volk-Reimer’s stand in attorney would ensure fairness to Eva. CP 1111, ll. 9-19; CP 1076, FF 28.

43. The court found that Sharon had been substantially prejudiced. CP 1114, ll 1-12.

44. The Court ordered a default judgment under CR 37(b); CR 11; and the Court’s own inherent authority. CP 1077-1078.

45. Even after the default judgment was entered, Volk-Reimer continued his tactics by trying to get the sheriff to increase the bond amount to eject him solely to increase Sharon’s expenses. CP 1080-1086.

46. Volk-Reimer then brought this appeal of the November 29, 2017 Order (in addition to the other two appeals brought during the case). His notice of appeal states that the order violated “bankruptcy law” and that he was challenging it based on the CR 37(b) determination.

47. Sharon moved to consolidate all three appellate matters, and this Court agreed. March 17, 2017 Ruling by Commissioner Schmidt consolidated the three appeals into this case number. *See* March 17, 2017 Ruling by Commissioner Schmidt.

48. Volk-Reimer then proceeded to delay in filing his brief for nine months, and finally after three different orders from this Court giving him one last chance to file, he filed his brief late. His brief is 18 pages in substance, and over 220 pages in miscellaneous and random exhibits, which violate RAP 9.1.

IV. ARGUMENT

1. STANDARD OF REVIEW: ABUSE OF DISCRETION

A trial court exercises broad discretion in imposing discovery sanctions under CR 26(g) or 37(b), and its determination will not be disturbed absent a clear abuse of discretion.” *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) citing *Washington State Physicians Insurance Exchange & Associations v. Fisons Corporation*, 122 Wn.2d 299, 355–56, 858 P.2d 1054 (1993).

“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Fisons*, 122 Wn.2d at 339.

“A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is ‘**manifestly unreasonable**’ if ‘**the court, despite applying the correct legal standard**’ to the supported facts, adopts a view ‘**that no reasonable person would take.**” *Mayer*, 156 Wn.2d at 684. (Emphasis added).

2. THE ORDER OF AUGUST 12, 2016 SHOULD BE AFFIRMED

Sharon scheduled a deposition of Volk-Reimer for June 21, 2016 in Pierce County, Washington. CP 841. On June 20, 2016, Volk-Reimer told Sharon’s counsel he would not attend. CP 843. Counsel and Volk-Reimer then tried to find a date when Volk-Reimer could be available, but Volk-Reimer would not agree to anything that Plaintiff felt reasonable as she was concerned he was intentionally stalling. CP 843-844.

Sharon moved for an order of the Court pursuant to CR 37(a) for Volk-Reimer to be ordered to appear for a deposition, and that should he fail to appear a default judgment should be entered. CP 846. The first page of the motion lists the location, time and the date proposed. The proposed date and time are in bold faced capital letters **AUGUST 12, 2016 AT 11:00AM.**

Volk-Reimer responded to the motion with two arguments: 1) that Sharon's counsel did not confer in good faith and 2) that he "advised [counsel] he could depose me by written questions pursuant to CR-30(a)(7) or CR 31 Deposition by Written Question. Volk-Reimer then states "due to my work schedule I can only agree to a deposition by written question pursuant to CR 31(a)-(c)." CP 870. He makes no further arguments and says nothing about the proposed date of August 12, 2016. Volk-Reimer includes one exhibit, an unsigned letter from someone purportedly named Todd Jensen that states "The 1st available date that Jeff will be available cannot be determined at this time." CP 871.

The Court granted Plaintiff's motion for the deposition date proposed in the motion. Additionally, the Order states that the "Court shall also entertain an order of default against Defendant at Plaintiff's request and other appropriate sanctions." CP 874-876. This language was not as strong as Plaintiff proposed, but Judge Serko modified as she deemed appropriate.

CR 37(a) states the following:

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, and upon a showing of compliance with rule 26(i), may apply to the court in the county where the deposition

was taken, or in the county where the action is pending, for an order compelling discovery”

In this case, Volk-Reimer was given notice of the date and time for the deposition, and he himself did not object to that date or time, but only to the idea that he had to do an oral deposition at all. He argued he was indefinitely unavailable.

Counsel for Sharon verified that he complied with CR 26(i) by trying to reach Volk-Reimer who did not answer nor return counsel’s call. Volk-Reimer states that Eva’s counsel did not confer in good faith or accept his argument that he only had to appear for written deposition questions. Volk-Reimer’s admission show they did confer, through email, but only because Volk-Reimer refused to speak by phone or return phone calls made by Sharon’s counsel.

CR 30(a)(7) says parties can agree to a deposition by telephone or other means or by written questions CR 31. Sharon did not agree to a written deposition.

The Court Order was properly ordered. Sharon had a right to depose Volk-Reimer, and Volk-Reimer had a duty to appear and answer questions. Volk-Reimer received notice of the proposed date and time, and responded to the motion without taking issue with the date or time.

3. THE ORDER OF NOVEMBER 29, 2016 SHOULD BE AFFIRMED

A) Sanctions were appropriate under CR 37(b).

CR 37(b)(1) and CR 37(b)(2)(c) permits a Judge the discretion to impose sanctions, including default judgment against a Defendant for violation of discovery orders:

Sanctions by Court in County Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, **the failure may be considered a contempt of that court.** CR 37(b)(1) (emphasis added).

Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, **including an order made under section (a) of this rule or rule 35, or if a party fails to obey an order entered under rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:**

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, **or rendering a judgment by default against the disobedient party.** CR 37(b)(2)(c). (Emphasis added).

The courts have said that a sanction must not be so minimal that it undermines the purpose of discovery, and that sanctions need to be severe

enough to deter attorneys and others from participating in the same kind of conduct in the future. *Fisons*, 122 Wn. 2d at 356.

A trial court has broad discretion as to the choice of sanctions for violation of discovery order. *Burnet v. Spokane Ambulance*, 131 Wn. 2d 484, 494, 933 P.2d 1036 (1997), as amended on denial of reconsideration.

When “a party fails to obey an order entered under rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just[.]” CR 37(b)(2). Among the sanctions available for violations of this rule is “[a]n order refusing to allow the disobedient party to support ... designated claims ... or prohibiting him from introducing designated matters in evidence[.] CR 37(b)(2)(B)...**Such a “discretionary determination should not be disturbed on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.”** (Emphasis added). *Id* at 493-494.

When a trial court imposes a default judgment as a sanction under CR 37(b) for violation of a discovery order, it must be apparent from the record that (1) the party's refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed. *Peterson v. Cuff*, 72 Wn. App. 596, 601-602 865 P.2d 555 (Div. 2 1994). Judge Serko engaged in this three-part *Peterson* analysis.

Judge Serko stated orally that while this remedy should only be used in extreme cases “I think this is absolutely a perfect case for these rules.” CP 1120 ll 8-9.

In this case it is clear the court has the authority and considered all three parts of the legal analysis of *Peterson* to impose a default judgement and Volk-Reimer:

(i) *Volk-Reimer willfully refused to be deposed.* Volk-Reimer stated that he would not appear for any oral deposition. He then did not appear for the ordered deposition. In fact, he never appeared for any deposition Sharon set or Court ordered. His actions and his own statements indicated he would not appear for any oral deposition, and in fact did not appear for the deposition he knew Plaintiff sought. The Court found that his refusal to appear was willful. CP 1074, FF 6. His refusal to attend the hearing where Plaintiff sought the exact relief proposed, was his own risk to take.

(ii) *Volk-Reimer’s refusal to appear has substantially prejudiced the Plaintiff.* Plaintiff was not given the opportunity to adequately prepare for trial. In this case, the only reason this dispute had to go to trial was because Volk-Reimer claimed his signature was not authentic. His credibility was the central issue in the case. In this case, his

refusal to appear for a deposition substantially harmed Sharon's ability to prepare her case or to ask Volk-Reimer simple questions about his whereabouts the day the deed was signed, or about text messages he sent asking if third parties could buy the house from Sharon. The Court explicitly found that Sharon was substantially prejudiced in Volk-Reimer's refusal to be deposed. CP 1076, FF27.

(iii) Less appropriate sanctions would not have been just.

Judge Serko believe[d] strongly that there is no less restrictive remedy or sanction that will send a message to this person other than using the remedy under CR 37(b). CP 1119 ll 20-25 and CP 1120 ll 1-7. The court considered less appropriate remedies such as the proposal that Volk-Reimer's stand-in counsel proposed that essentially was the same order as what the Judge had already ordered on August 12, 2016 should be ordered that if Volk-Reimer did not comply he would be punished. Volk-Reimer already faced that threat in the August 12th order, and he risked it with refusing to follow order then. Again, Judge Serko explicitly considered alternatives in the oral record and final order. CP 1076, FF 28.

Other cases are instructive for the appropriateness of a discovery violation.

In the *Peterson* case, a suit for specific performance and damages for breach of an earnest money agreement, the plaintiff repeatedly avoided efforts by the defendants to take his deposition. *Peterson*, 72 Wn. App. 596 (1994). On at least three occasions, depositions were scheduled, but the plaintiff declined to appear at the last minute, citing inconvenience and other various reasons. After several unsuccessful attempts to schedule the deposition when the plaintiff could attend, the defendants obtained a court order requiring the plaintiff to appear for a deposition on a specified date. The order further specified that if the plaintiff again failed to appear, his complaint would be dismissed with prejudice. The defendant again sought to schedule a deposition at a time convenient to the plaintiff, but the plaintiff again failed to appear, and his complaint was eventually dismissed. The trial court also awarded defendants \$3,780 in attorney's fees pursuant to CR 11. The Court of Appeals affirmed, saying the plaintiff's actions were willful and deliberate, that the plaintiff substantially prejudiced the defendants' ability to prepare for trial, and that given the plaintiff's recalcitrance over a period of several months, it was reasonable to infer that his complaint had no basis. In this case, Volk-Reimer's only defense is "I didn't sign the deed", but he refuses to talk about the circumstances of where this deed came from, why other

statements made by him inconsistent with his awareness Sharon owned the house and he appears to refuse to put such statements under oath.

An example of a case in which a default judgment was granted, *RCL Northwest, Inc. v. Colorado Resources, Inc.*, 72 Wn. App. 265, 864 P.2d 12 (Div. 3 1993), a shareholder derivative suit, in which the shareholders sought an accounting from the corporation's president, the trial court ordered the president to furnish the shareholders with certain receipts and other documents. The president refused to comply, after which the shareholders amended their complaint by adding new allegations and demanding damages in addition to equitable relief. The president again refused to comply with the court's order and, in addition, refused to respond to interrogatories and requests for production. The shareholders then sought and obtained an order compelling discovery, which the president ignored. As a sanction for refusing to comply with its discovery orders, the trial court entered a default judgment against the president for a total of \$639,732.30.

In another case, *Delany v. Canning*, 84 Wn. App. 498, 929 P.2d 475 (Div. 3 1997), a dispute between investors and a real estate development partnership, the trial court properly granted the plaintiff a default judgment after the defendant repeatedly failed to answer

interrogatories, failed to attend settlement conferences, and failed to comply with earlier orders to allow discovery. Quoting from the trial court's findings, the appellate court said the defendant had “kept facts from the court and impeded the determination of this case,” and that the defendant had engaged in “stone walling, foot dragging, and obfuscation . . . from beginning to end in this case.” The Court of Appeals also assessed attorney's fees against the defendant for the appeal—saying that the defendant's brief cited no authorities and that the appeal was “totally without merit” and “frivolous.” Similarly, in this matter, Volk-Reimer didn't appear for a single hearing, did not respond to matters timely, and attempted to continue and stay this case over and over again (through various federal filings, while refusing to provide Sharon with discovery.

B) Sanctions were appropriate also because the court has inherent authority to control and administrate the justice of its own court.

Volk-Reimer fails to challenge the Court's inherent authority of the Court, which the Court has authority to sanction bad faith misconduct.

As we recognized in *Roadway Express*, outright dismissal of a lawsuit, which we had upheld in *Link*, is a particularly severe sanction, yet is within the court's discretion. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44-46, 111 S. Ct. 2123, 115 L .Ed.2d 27 (1991) *citing Roadway Express. Inc v. Piper*, 447 U.S. 752, 764, 100 S. Ct 2455, 2463 65 L.Ed.2d 488 (1980).

The *Roadway Express* Court explained that “inherent powers” of a court are when a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court . . .” *Roadway Express*, 447 U.S. 752, 765, 100 S.Ct 2455, 2463 65 L.Ed.2d 488 (1980).

[A] trial court has inherent authority to sanction litigation conduct upon a finding of bad faith.... The court's inherent power to sanction is “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. *Geonerco, Inc. v. Grand Ridge Properties IV, LLC*, 159 Wn. App. 536, 544, 248 P.3d 1047 (2011).

Further, “Sanctions may be appropriate under trial court's inherent power to control litigation if an act affects the integrity of the court and, if left unchecked, would encourage future abuses.” *State v. S.H.* 102 Wn. App 468, 476, 8 P.3d 1058 (2000).

In this case, the Court found an express finding of bad faith by Volk-Reimer in litigating. Volk-Reimer does not challenge this fact on appeal. An unchallenged finding is a verity on appeal. *State v. Charm*, 165, Wn. App. 438, 267 P.3d 528 (2011).

In this case, there is overwhelming evidence of Volk-Reimer's bad faith. He filed bankruptcy petitions on the eve of hearings, he made no effort to pursue those bankruptcies, he filed appeals merely to request appellate court stays, he filed a federal removal action when he no longer had the ability to stay proceedings with a bankruptcy filing on the eve of having a default entered against him for failure to follow court orders. Volk-Reimer did so for the sole purpose of to delay and to maintain possession of home that he did own. His stalling tactics did not help explain his position, and did not change any of the underlying facts. It did only one thing: it stalled the Superior Court action and allowed him to live in Sharon's house longer. It was done in bad faith to harm Sharon through excessive litigation costs, to harass and cause unnecessary delay. Volk-Reimer does not challenge any of these findings on appeal.

Volk-Reimer never pursued any of his bankruptcies with any substantial effort, it was only to delay adjudication of this matter. Certainly, a party has a right to declare bankruptcy, but a debtor does not have the right to harm and harass the other party or to simply delay state court cases. Most of his filings were one day prior to dispositive motions or hearings and seemed to be a strategy to harm Sharon. Judge Serko,

found his actions were taken in bad faith with the intent to harm, and he needed to be sanctioned appropriately.

The Court has the authority to sanction Volk-Reimer to ensure order and she did so. Volk-Reimer doesn't challenge this authority or any of the facts regarding his ad faith litigation conduct, which were an independent basis for the Order of November 29, 2016, and it should be affirmed as an appropriate exercise of the inherent power of the court.

C) Sanctions were appropriate because the court has the authority to sanction under CR 11.

Volk-Reimer fails to challenge the Court's authority under CR 11, which the Court has authority to sanction his litigation misconduct.

Court Rule 11 provides in pertinent part as follows:

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. . . . The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: **(1)** it is well grounded in fact; **(2)** it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; **(3)** it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of

litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, . . . If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

CR 11(a) (Emphasis added).

The rule imposes four enumerated requirements on the attorney who signs the pleading, motion, or legal memorandum.

CR 11 sanctions are available against a pro se litigant for filing a claim for an improper purpose, or if the claim is not grounded in fact or law and the signing litigant failed to conduct a reasonable inquiry. *In re Recall of Lindquist*, 172 Wn.2d 120, 137, 258 P.3d 9 (2011).

If a pleading, motion, or legal memorandum is signed in violation of CR 11, the court, upon motion or upon its own initiative, may impose upon the person who signed it, an appropriate sanction, which may “include an order to pay to the other party or parties the amount of the reasonable expenses incurred” because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee. *King County Water Dist. No. 90 v. City of Renton*, 88 Wn. App 214, 231, 944

P.2d 1067 (1997). In this case, the Court found Volk-Reimer made arguments that were false, such as that the bankruptcy stay was in effect after the bankruptcy court had ruled it was not. The Court also found Volk-Reimer had filed bankruptcy petitions to delay and stall the case, and not actually to pursue bankruptcy.

CR 11 permitted the Court to enter the attorney's fees permitted against Volk-Reimer, and for the reasonable expenses she incurred, such as lost rent, while Volk-Reimer possessed her home.

CR 11 is a basis for the Order of November 29, 2016 and should be affirmed due to improper court filings that Volk-Reimer made.

D) The rental value for the time period Sharon's house was occupied is supported by undisputed evidence of prior rental income.

Volk-Reimer challenges the \$66,586.00 judgment amount entered in the November 29, 2016 Order issued by the Court in lost rental value in the default judgment. He makes no issue of the attorney's fees awarded which were found reasonable by the Court or the fact he was ejected from the home.

Volk-Reimer lived in Sharon's house for nearly a year and paid no rent or any mortgage payments. Sharon provided the Court with evidence that she had rented the home at an average rate of about \$169 per night. Volk-Reimer presented no evidence of any other rental value at

any time, and his stand-in counsel did not present any evidence on November 29, 2016. The only evidence presented to the Court was that of Sharon's evidence, which was based on her records obtained from www.Airbnb.com. The Court merely took that rate and multiplied it by the days Volk-Reimer wrongfully occupied her house, which the court found to be over 399 days. CP 1078, 4(c). The record supports the Court's determination.

4. THE ORDERS OF JUDGE LEANDERSON HAD NO EFFECT ON THE AUGUST 12, 2016 ORDER OR THE NOVEMBER 29, 2016 ORDER

Volk-Reimer challenges three orders by Judge Leanderson.¹²

None of these orders affected the outcome of this case. Volk-Reimer got to make the same arguments a second time in front of a second

¹²June 10, 2017 Order to reinstate the case schedule. CP 759-760. This order was only necessary due to Volk-Reimer's first bankruptcy filing. After the parties and this Court agreed to stay this scheduling order by Judge Leanderson, Sharon brought a new motion before Judge Serko on August 3, 2017 to reinstate the case schedule. CP 857-861. This order was replaced with a later scheduling order by the second Judge, Judge Serko. CP 872-873.

June 17, 2017 Order that compelled Volk-Reimer to answer the first set of interrogatories and awarded \$500 in attorney's fees to Sharon. CP 808-811. Sharon never renewed this motion with Judge Serko because the issue became moot.

July 8, 2016 Order that compelled Volk-Reimer to appear to be deposed. Sharon agrees the Court may vacate this order as well. Of course, Sharon brought a later motion and obtained a new order to compel Volk-Reimer's deposition in August, 2016, making this order moot.

judge.¹³ The outcome was the same with Judge Serko because Sharon had a clear right to depose Volk-Reimer and a clear right to have the case schedule re-instated after frivolous bankruptcy filings were dismissed.

Neither Sharon nor the court ever argued or relied on the orders of Judge Leanderson as a basis for Court's final judgment.

Volk-Reimer's argument concerning the vacation of the Judge Leanderson's orders is a "red herring" because they have no outcome on the ultimate disposition of this case.

5. VOLK-REIMER'S ARGUMENT CONCERNING NEW EVIDENCE SHOULD BE DISREGARDED BY THIS COURT

Volk-Reimer argues in his opening brief that the trial court should consider "new evidence" that he has never presented to the trial court. Although Sharon questions the credibility of this "new evidence," it should not be considered in this appeal since it has never been presented to the trial court at any time.

¹³ Except over the order compelling interrogatories (July 17, 2016 order), which Sharon did not bring another motion for and the issue became moot.

V. ATTORNEY FEES ON APPEAL

In addition to affirming Judge Serko's August 12, 2016 and November 29, 2016 Orders, this Court should also award Sharon attorney's fees on appeal because Volk-Reimer has presented an appeal that that has no reasonable possibility to reverse the trial court's default judgment.

RAP 18.9 states that this Court has authority to sanction and award attorney's fees:

The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, 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. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award. (Emphasis added).

Attorney fees are appropriate both because Volk-Reimer filed a frivolous appeal and because failed to comply with this Court's rules and

delayed his filing for over 9 months while disregarding at least seven orders of this court.

First, Volk-Reimer challenges the August 12, 2016 Order because he claims he did not get notice. Appellant's Brief, Assignment of Error #5, Page 8. Volk-Reimer not only received notice, he responded. CP 869-871. His response to the motion states he will not appear for any oral deposition. CP 870, ll 12-15. Yet in this appeal argues it would be impossible for him to appear just that day. Appellant's Brief, Pages 15-17. It would not be impossible for him to hire an attorney to appear for him, it would not be possible for him to go to court (or appear by phone), and it would not have been impossible for him to propose any alternate date. He did none of those. He is not truthful when he says it was impossible. The truth is that he chose not to go to court or the deposition or do anything more than what he did.

Volk-Reimer then challenges Judge Serko's November 29, 2016 Order and only challenges the order on CR 37(b) and he argues the Court didn't consider the three-part *Peterson* analysis but the Court's final order and report of proceedings are clear that she did. Volk-Reimer does not challenge that he engaged in bad faith litigation, and thus ignores the court's ability to sanction him under CR 11 or the court's own authority.

He also states that the Court erred in its calculation of judgment (*See Appellant's brief, Page 7, Error 8*) but provides no details of any miscalculation. Volk-Reimer ignores the evidence Sharon presented of the rental value that Volk-Reimer saw prior to final hearing, and choose not to state any evidence to the contrary, except that it was a "Ludacris [sic] claim." CP 47, ll 1-2.

Finally, Volk-Reimer challenges orders of Judge Leanderson that occurred prior to most of his misconduct, and that were not part of Judge Serko's final decision. He ignores the fact that this Court ordered on August 3, 2016 that Judge Leanderson's orders were stayed, and thus not to be considered. *See August 3, 2016 Ruling of Commissioner Bearse*. The orders of Judge Leanderson may be vacated as they are not material to the outcome of this case.

This Court should award fees when an appeal is frivolous, which means there is no debatable issues which reasonable minds might differ. *Hernandez v. Stender*, 182 Wn. App. 52, 61 358 P.3d 1169 (2014).

In this case, there is no question Judge Serko had the legal authority to order a deposition. There is evidence Volk-Reimer knew of the proposed date and time (he responded!) or that his noncompliance with court orders is sanctionable under 37(b). Judge Serko considered the

three-part test both orally on the record and in the written order. Additionally, Volk-Reimer does not challenge the CR 11 or his bad faith misconduct. Volk-Reimer did not even challenge the findings of Judge Serko that his actions were in bad faith; or the findings that his bankruptcy filings were interposed to harass, delay and harm!

Additionally, Volk-Reimer has acted inappropriately in this Court as well. There is quite a bit of history here, too.

When Volk-Reimer filed his second of three appeals with this Court, he challenged Judge Serko's August 12, 2016 order that he had to appear for a deposition. He filed that notice of appeal on August 22, 2016. With a default hearing looming before Judge Serko on September 16, 2016, Volk-Reimer filed an emergency ex parte motion to stay the case in this court on September 13, 2016, because he did not want to have to appear and explain his actions before Judge Serko. *See Appellant's Ex Parte Emergency Motion to Stay Response Request by 09/13/2016 Please.* [sic] His own motion to this Court says that the default hearing is scheduled for September 16, 2016 at 9:00 AM with Judge Serko, and his argument is that Judge Serko can't entered a CR 37 default because it would derail him of his right to defend on the merits. *Id page 4.* Essentially, his argument is that he shouldn't have to a CR 37(b) sanction

ordered against him, and he shouldn't have to comply with the Judge's discovery orders.

Of course, this Court denied him, noting that it had been about 21 days since filing his appeal, and he waited until 4 days before Judge Serko's hearing to file an "emergency motion". *See September 13 Ruling by Commissioner Schmidt in Case No. 49240-7-II*. Volk-Reimer then filed bankruptcy the next day after he filed to get an appeal in this Court to avoid the September 16th hearing. CP 977-978.

Then he filed his third appeal on December 12, 2016, and continued to drag his feet through this appeal.

December 28, 2016 Requirements. This Court set deadlines for this appeal on December 28, 2016 that Volk-Reimer was to file his designation of clerk's papers and statement of arrangements by January 11, 2017. He filed his Clerk's Papers on January 31, 2017. He filed his statement of arrangements on February 12, 2017.

February 21, 2017 Ruling. On February 21, 2017, this Court ordered him to respond to the motion to consolidate and provide an update on his bankruptcy within 14 days, and "failure to respond will result in dismissal of both cases." Twenty-one days later, he responded, seven days after the deadline.

March 17, 2017 Ruling. On March 17, 2017, this Court ordered the verbatim report of proceedings due by April 14, 2017. On April 24, 2017, Volk-Reimer filed the verbatim report of proceedings.

May 25, 2017 Motion to Dismiss/June 19, 2017 Ruling. After Volk-Reimer had done nothing for over 31 days, Sharon moved for dismissal. This Court ordered him to respond by no later than June 21, 2017. On June 25, 2017, he filed again a verbatim report of proceedings, and ignored the motion to dismiss. He did request the Court to give him until July 12, 2017 to file his brief in the “Jeff Volk Reimer Response to COA-II Letter of June 19, 2017.”

July 5, 2017 Ruling. This Court denied the motion to dismiss and gave Volk-Reimer until July 12, 2017 to submit his brief as requested by Volk-Reimer. The Court said no additional extensions will be granted absent a showing of extraordinary circumstances. On July 17, 2017 Volk-Reimer filed his brief.

July 20, 2017 letter. The Court sent Volk-Reimer a letter noting three violations of Rules of Appellate Procedure and giving him until July 31, 2017 to refile his brief. On August 1, 2017, Sharon received notice through the Court’s email service (not from Volk-Reimer) that he filed an ex parte motion requesting that the Court should ignore the Rules of

Appellate Procedure, and lower the bar for Volk-Reimer or alternatively grant him even more time to follow the rules and submit a proper brief.

August 14, 2017 Ruling by Commissioner Bearse. This Court denied Volk-Reimer's request to accept a non-compliant brief and gave him 10 days to file a conforming brief. He filed it 11 days later.

August 25, 2017 Volk-Reimer files his brief. Volk-Reimer filed his brief ignoring most of what this Court order. His brief is 18 pages long with 125 pages of exhibits. This Court explicitly told him exhibits that are not part of the record are not subject to review but he included them anyway.

The Court told him to cite his facts to the record, and he did so by citing hundreds of pages as his reference. For example:

Error (1). As far back as September 13, 2016, Sharon Eva Plaintiff in PCSC case no. 15-2-14079-1 Made false statements about Reimers request for admissions. The court erred as not to consider Plaintiff's unclean hands¹⁴ and her false statement to the Court. CP 45-272.
Appellant's Brief, Page 6.

Nonetheless, this Court accepted his brief even though Volk-Reimer ignored many of the Court's instructions. At least seven orders in

¹⁴ Volk-Reimer argued "unclean hands" throughout the case, but Sharon provided all discovery requested, including agreeing to be deposed in January, 2016, which Volk-Reimer cancelled. This stipulated order was filed with the Court by Volk-Reimer.

this appeal process alone where violated by Volk-Reimer. While perhaps on its own, these would be forgivable mistakes, they are not mistakes. Volk-Reimer lacks respect for this Court. He lacks respect for Court orders which he has demonstrated over and over in state and federal court.

Combined with the refusal to follow this Court's orders by presenting an appeal that does not fully challenge the ultimate outcome of the case, Volk-Reimer should be responsible for Sharon's costs and fees. This was an unnecessary appeal done to increase fees to Sharon when Volk-Reimer has no reasonable chance to succeed.

This Court should elect to deter his conduct of filing frivolous appeals, and his conduct of intentional not following this court's orders.

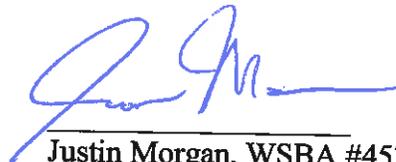
VI. CONCLUSION

Volk-Reimer refused to be deposed. Volk-Reimer chose to file pleadings for no reason except to cause delays, harm Sharon and cause unnecessary expenses. He chose to litigate in bad faith. He chose to ignore Judge Serko's August 12, 2016 Order and he choose to file federal pleadings to try and stall the case and prevent Sharon from having her day in court within the rules provided to her by law including discovery. This Court should hold him accountable and not allow this kind of disrespect to go unchecked.

The trial judge exercised her authority to control her courtroom, order compliance with discovery and her orders should be upheld. This court should also sanction Volk-Reimer on appeal for not presenting an argument that could reasonable overturn Judge Serko's essential orders and Volk-Reimer's own non-compliance with this court's orders on at least seven occasions should also be deterred.

Dated: October 16, 2017

Respectfully submitted,



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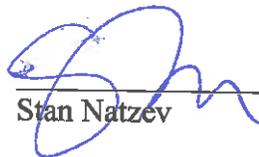
PROOF OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on this 16th day of October, 2017, I caused a true and correct copy of this Brief of Respondent to be mailed and emailed as follows:

Jeff Volk-Reimer
9913 Waller Rd E
Tacoma, WA 98446

jeffvreimer@yahoo.com

Dated at Everett, WA this 16th day of October, 2017.



Stan Natzev

TUOHY MINOR KRUSE PLLC

October 16, 2017 - 11:13 AM

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