

**NO. 49969-0-II**

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

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**DEL RAY PROPERTIES, INC.,**  
**dba DEL RAY MOBILE HOME PARK,**

**Respondent,**

**vs.**

**KIM ELLIOT,**

**Appellant.**

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**BRIEF OF APPELLANT**

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**John A. Hays, No. 16654**  
**Attorney for Appellant**

**1402 Broadway**  
**Suite 103**  
**Longview, WA 98632**  
**(360) 423-3084**

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## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court erred when it reversed its written ruling for defendant entered March 22, 2016, because respondent failed to seek timely reconsideration of that final order.

2. The trial court erred when it granted judgment for plaintiff because the court's finding that plaintiff acted in bad faith under RCW 59.20.020 precluded any grant of relief under the manufactured/mobile home landlord-tenant act.

3. Under RCW 59.20.110 and RAP 18.1 the appellant is entitled to costs and attorneys fees at the trial level and on appeal.

*Issues Pertaining to Assignment of Error*

1. Does a trial court err if, outside the time allowed for reconsideration under CR 59, it reconsiders and modifies or reverses its written ruling and judgment following a bench trial whether at the request of the losing party or *sua sponte*?

2. Does a trial court err if it grants relief to a landlord under the Manufactured/mobile Home Landlord-Tenant Act if it also finds that the landlord acted in bad faith under RCW 59.20.020?

3. Under RCW 59.20.110 and RAP 18.1 is the prevailing party entitled to costs and attorneys fees at the trial level and on appeal?

## **STATEMENT OF THE CASE**

In the May of 2014 defendant Kim Elliot's mother purchased the mobile home sitting on lot 2 of Del Ray Mobile Home Park (hereinafter "Del Ray"), which is owned by Del Ray Properties, Inc. RP 322-323; CP 47-48, 362-363. The defendant's mother paid the owner \$12,000.00 for the mobile home and put the title in the defendant's name. RP 329-220. In June of 2014, the defendant thereafter moved in and started paying the space rent to Del Ray. CP 362-363, 371-372. After a few months of paying rent a dispute arose between Del Ray and the defendant and Del Ray served the defendant with both an Eviction Summons and a Complaint for Unlawful Detainer upon an allegation that she was not a space tenant of the motor home park. CP 1-7. The trial court later entered findings and subsequently entered amended findings that the plaintiff had knowingly misstated both the amount it claimed the defendant owed the plaintiff as well the relevant facts underlying the claim for Unlawful Detainer and past due rents. CP 285 ("The Plaintiff in this case appears to have substantially misrepresented the facts regarding past due rent at the time. The Plaintiff obtained a summary judgment order of eviction for the Defendant."); CP 327 ("It is extremely troubling when a landlord alleges significant amounts of money due for which there is not basis."); CP 364 ("This court made a specific finding that the Landlord/Plaintiff did not act in good faith in these proceedings.")

Although Del Ray initially obtained a default judgment in the amount of \$3,107.00, the court later vacated that order upon the defendant's payment of money to the clerk of the court in an amount equal to the amount of contested rent. CP 8-10, 11. Plaintiff thereafter filed motions for summary judgment on March 30, 2015, and May 29, 2015, both with supporting affirmations and documents. CP 12-20-21-40, 49-57, 58-81. During this period of time Defendant filed responsive pleadings. CP 45-46, 47-48, 85-94. Following a hearing, Judge Evans of the Cowlitz County Superior Court granted Del Ray's Motion for Summary Judgment and issued a Writ of Restitution. RP 101-102. The sheriff served the writ on July 9, 2015. CP 363. The trial court later entered findings that Plaintiff Del Ray had obtained the writ of restitution in bad faith. CP 286 ("RCW 59.20.010 imposes a duty of good faith as a condition precedent for any exercise of right or remedy under the chapter. Obtaining an eviction order based upon false information would not be operating in good faith."); CP 328 ("It is the finding of the Court that the landlord did not act in good faith . . .")

Following entry of the order on Summary Judgment the defendant filed a Motion for Reconsideration. CP 103-168. On July 14, 2015, and July 29, 2015, respectively, the trial court entered orders denying the Motion for Reconsideration as well as the Motion to Stay the Writ of Restitution. CP 185-186, 214-215. While the trial court denied the Motion to Stay the Writ

of Restitution, it did order a trial on the issue of money damages. RP 1-13.

On July 30, 2015, the day after the court entered the order denying the motion to stay the writ, Plaintiff Del Ray filed a “Motion to Amend Order on Summary Judgment to Include Specific Amount Owed Under the Order” and supporting affirmation. CP 216-220, 221-223. Defendant responded with two declarations claiming that Plaintiff Del Ray had obtained the Writ of Restitution through fraud and that it had knowingly overstated the amount of monies owed. CP 224-229, 230-232.

This case finally came on for bench trial on November 3, 2015. RP 189. During that trial plaintiff called two witnesses, and defendant called five, including defendant Kim Elliott. RP 199-309. By the end of the day the defendant had not finished her direct testimony and the court continued the trial, eventually to February 12, 2016. RP 30-74, 377-379. On the second day of trial the defendant completed her testimony and the defense then rested its case. RP 61. Thereafter the parties presented their closing arguments. RP 63-74. Given the length of time between the two days of trial and the need to review the prior testimony, the court took the case under advisement. RP 74.

Finally, on March 22, 2016, a little over a month after the second day of trial, the court filed its written ruling and judgment for defendant. CP 284-288. The court found as follows:

**BRIEF OF APPELLANT - 5**

This matter having come before the Court for trial, the Court having reviewed the record and file and having considered the testimony and admitted evidence, the Court rules as follows:

**Procedural Background:**

The case was originally before the Court for an eviction in December of 2014, at which [time] the eviction was denied. The Court seeming found, and it was further demonstrated at the trial before this court, that rent was paid in full through December, 2014. Defendant incurred attorney's fees in defending that action in the amount of \$1,150.

The Plaintiff alleged that numerous guests were living in the mobile home and on that basis alleged that the rent due increased to an amount nearly double per month, going back to May of 2014. It should be noted here that the Defendant did not purchase the mobile home until June of 2014.

At the time that summary judgment was granted, allegations were that rent along with guest fees were past due back to May, 2014.

The Plaintiff in this case appears to have substantially misrepresented the facts regarding past due rent at the time. The Plaintiff obtained a summary judgment order of eviction for the Defendant.

Subsequent to the Summary Judgment, Commissioner Nelson ruled that the only issues left for trial were to determine how much rent was due, what fees and costs were due, and attorney's fees due to the Plaintiff.

After the Court had the opportunity to listen to evidence presented over two days of trial, and weighing the credibility of the witnesses and evidence presented, the Court rules as follows:

1. At the time the original Summary Judgment was granted, it appears that there was not past due rent upon which to enter that Judgment.
2. Norma McQueen clearly appeared to be acting as either an agent or employee of the Del Rey mobile home park (Del Rey), both

in her actions and in her written representations. It was reasonable for the Defendant to assume Ms. McQueen was acting in that capacity based upon those representations.

3. Neither party appears to have complied with RCW 59.20.073 in any substantial way.
4. At least as of October, 2014, the Defendant was properly listed on the title/registration of the mobile home, in conformance with the park rules.
5. Allegations were made at the time of the Summary Judgment that in excess of \$9,000.00 was due, which at time of trial proved to be a false assertion. It would appear that the Summary Judgment was granted without factual basis.
6. RCW 59.20.010 imposes a duty of good faith as a condition precedent to any exercise of right or remedy under the chapter. Obtaining an eviction order based upon false information would not be operating in good faith.
7. The Plaintiff through its manager filed a declaration of rents under penalty of perjury in support of its motion for a judgment. The alleged amount owed on July 30, 2015, was \$11,305.00. That included \$940.00 for the month of May 2014, which was prior to the defendant coming into the picture. That declaration alleged \$5,940.00 rent and fees due through December, 2014, nearly double the rental agreement amount without justification.
8. The monthly rent due under the contract was \$395.00 which appears to have been modified by written notice in September, 2014. That change was effective January 2015 to \$415.00 per month. It is of note that the admitted exhibit 4 does not include a copy of said notice of increase. An undated copy of an increase notice was admitted as Exhibit 3. This notice was NOT directed to the person who Del Rey asserted was the owner of the mobile home.
9. A number of money order receipts were provided which document the payment of rent from the Defendant to Del Rey. Del Rey does not apparently issue rent receipts or any other

documentation when rent is received in their drop box.

10. There were records introduced that during the December 2014 eviction proceeding that at least \$1,150.00 was paid to the Clerk by Defendant's attorney. There was also some evidence that approximately \$1,580.00 was actually paid to the Clerk of the Court. If that money is still in the Clerk's trust, its disposition should be credited under the terms of this order.
11. Subsequent to the Court granting the eviction, Del Rey, again without reasonable justification, increased the space cost to \$500.00 per month as "storage." It is presumed Del Rey is continuing to assert this amount is accruing.
12. During the court of this trial regarding rent, etc. due, the Defendant brought a CR 60 motion based upon, presumable, various interim findings by this Court that the asserted rent due for the Summary Judgment was incorrect. It appears that motion was denied with prejudice. The bench ruling was not reduced to a written order, there are no findings of fact or law for this court to consider. As the original summary judgment was about the eviction only, at this point the Court would be foreclosed from ordering restoration of the tenancy.
13. The lawsuit is between Del Ray Properties, Inc. an apparently valid Washington Corporation and the defendant. The plaintiff [h]as asked for fees to be awarded. However, all documentation provided to the Court is for fees paid by Larry Foster, [a]n individual. There is no evidence those bills were paid by the Corporation. There is a certificate indicating that the work paid for by Mr. Foster was on behalf of the corporation.

Based upon the foregoing findings and analysis, the Court is left with an evidence that likely should not have been granted.

The landlord has acted throughout these proceedings in bad faith in contravention of RCW 59.20.010 which impacts its ability to pursue remedies under the chapter.

Restoration of the tenancy to the defendant is procedurally foreclosed, and under the circumstances would be a poor resolution.

The landlord remains in possession of the tenant's mobile home. It is unknown what the current condition of the mobile home is. No evidence was introduced to indicate the mobile home had declined in value from its purchase price of \$12,000 during the time prior to the evidence.

The tenant has lost the use and enjoyment of that property for approximately 10 months. It is unknown if the tenant has incurred additional rental expenses. The Court will need documentation of any rental expense incurred by the tenant that would be in excess of the \$415.00 per month.

In order to put these parties essentially back where they started at the time the evidence was granted, with restoration of the tenancy foreclosed by the earlier rulings, the Defendant will be granted a judgment against the Plaintiff in the base amount of \$12,000.00, the value of the mobile home. The Defendant will be granted ownership of said mobile home to dispose of as it chooses. Disposal is not mandated, and the defendant may simply retain ownership of the mobile home.

The court will entertain brief from the parties as to what, if any, credit against the judgment the landlord may be entitled to for storage. The court will also consider whether any credit should be offset by the tenant's loss of use.

As the Defendant is the prevailing party in this matter, she shall be entitled to reasonable attorneys fees in an amount to be determined by the Court upon submission of documentation of same.

CP 284-288 (emphasis and capitalization in original).

As part of this judgment the court invited the parties to present evidence on three remaining issues: (1) "documentation of any rental expense incurred by the tenant that would be in excess of the \$415.00 per month;" (2) "any credit against the judgment the landlord may be entitled to for storage" for which the court would "also consider whether any credit should be offset

by the tenant's loss of use," and (3) the amount of reasonable attorneys fees to which the defendant was entitled as "the prevailing party in this matter. . . ." CP 288. In response to this request, on February 12, 2016, appellant submitted an affirmation setting out her request for damages from the wrongful detainer action and her request for attorney's fees. CP 289-300. On the same day her attorney filed an affirmation and two financial summaries in support of the request for attorney's fees. CP 301-302, 303-315, 316-322.

Finally, on May 19, 2016, Plaintiff landlord filed a response asking the court to reconsider its written decision of March 22<sup>nd</sup>. CP 322-325. Specifically, Plaintiff argued that (1) there was no basis to grant judgment for the defendant, (2) that there was no basis to grant attorney's fees, and (3) that there was a typographical error in that part of the order that gave ownership of the mobile home to defendant in that it should have given ownership to the plaintiff since the order had required plaintiff to pay defendant its reasonable \$12,000.00, which was the reasonable value of the mobile home.<sup>1</sup> CP 323-325. Plaintiff also requested storage fees in the amount of \$10,000.00. *Id.* Plaintiff filed its request that the trial court reconsider its written decision on

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<sup>1</sup>Appellant concedes the Respondent landlord's argument that the trial court's original judgment contained the typographical error Respondent landlord claimed and that the intent of the court was to give title of the mobile home to the landlord while requiring that it pay Appellant the reasonable value thereof.

May 28, 2016. CP 322-325. That filing was 58 days after the March 22, 2016, date the court filed its written verdict and ruling in the case. 284-288. It was the first pleading plaintiff had filed since entry of that judgment. CP 284-325.

The trial court later granted plaintiff's request for reconsideration in part and filed the following modified ruling:

This matter having come before the court for trial, the court having reviewed the record and file and having considered the testimony and admitted evidence, the Court previously entered a ruling filed March 22, 2016. The ruling essentially ruled in favor of the defendant and was placed on the court's presentation docket on this date for entry of a judgment in conformance with that ruling.

Due to the briefing provided, and in review of the moneys available in the Clerk's trust account (which information had not been provided at trial), the Court must make a substantial change in the original ruling. The issue of how much had actually been paid into trust was never addressed at trial, and was presumed to be addressed at presentation.

The findings made previously that the base rent was paid in full through the month of December, 2015 when the court dismissed the eviction (the defendant was represented by Vince Penta at that hearing). This was the evidence that was advanced at trial, but appears to be erroneous.

It is clear from the evidence that was adduced at trial, that the plaintiff was alleging numerous additional charges which were never proven, making a request for rents and costs of \$13,045.00 when that amount should have been only been \$8,885.00. There was credit granted for \$1,580, which should have been \$1,975.00. There was no proven basis for a difference between the \$11,515.00 requested and the \$6,910.00 calculated by the Court after receiving the Clerk's trust records. (\$4,604.00 difference). It is extremely troubling when a landlord alleges significant amounts of money due for which there is

not basis.

Subsequent to that calculation (October 2015) there has been an additional 7 months that have passed, leaving an additional \$3,500.00 plus \$525.00 late charges having accrued through May 2016.

Had the court had the information regarding the actual trust account transactions with the Clerk, this case likely would have been far simpler. **At this point, it appears that the prior ruling needs to be amended.**

The total amount of rent/storage due through May 2016, appears to be \$10,935.00 which is still less than the amounts alleged to be as a basis for the summary judgment. It is also the finding that the eviction was obtained using substantially inflated numbers. However, using the corrected numbers determined this date, the eviction was not legally wrongful and would have issued had the correct values been used.

It is the revised order of this court, that the plaintiff will be granted a judgment of \$10,935.00 which shall bear interest at 12% statutory rate.

The defendant retains legal ownership of the mobile home and may retrieve or move it to a new location.

**It is the finding of the court that the landlord did not act in good faith**, and further based upon the final judgment, both parties have prevailed on some of their claims. Based upon the case law provided at presentation, specifically Seashore Villa Ass'n v. Hugglund Family Ltd. Partnership, 163 Wash.App. 531 (Sept 7, 2011), each party will bear their own fees and costs.

This ruling incorporates by reference the procedural history of the prior ruling by reference and wholly supplants the prior ruling.

The parties can consider this a final ruling from which to file the motions to reconsider discussed at today's presentation, so the CR 59 timelines will commence this date.

CP 326-328 (emphasis added).

Following entry of this amended order upon reconsideration Plaintiff filed a “Motion and Declaration for Clarification and Supplemental Judgment.” CP 329-331. Defendant then filed “Defendant’s Objections to Plaintiff’s Proposed Orders” as well as responsive declarations. 332-334, 335-361. The trial court thereafter entered the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. The Plaintiff Del Ray Properties Inc. (“Del Ray”) is the owner and manager of the mobile home park (“the park”) located at 5600 Mount Solo Rd., Longview, Cowlitz County Washington.

2. The Defendant Kim Elliott (“Elliott”) was an occupant of a mobile home placed on space number two (“the mobile home”) in the park.

3. Elliott purchased and moved into the mobile home in June 2014. Written notification of the sale of the mobile home was not provided to Del Ray. A proper application for tenancy was not completed and approved prior to Elliott’s occupancy. Neither party appears to have complied with RCW 59.20.073 in any substantial way.

4. Through various rulings and orders that are of record, Elliott was required to vacate the mobile home. A Sheriff’s Return on Writ of Restitution was filed in Cowlitz County Superior Courter on July 9, 2015.

5. With the issue of possession resolved, this cause was reduced by Court Commissioner David Nelson to the issue of a factual question of how much the Plaintiff is entitled to for damages. A bench trial on the issues of damages was conducted over multiple days resulting in a written ruling. (see Court’s Ruling at CP 91 [CP 284-288 on appeal]). In response to the Court’s ruling, the Plaintiff submitted briefing and argument that disputed the appropriateness of

portions of the Court's ruling. The Court issued a supplemental ruling that substantially changed the original ruling. (See Court Supplemental Ruling at CP 99 [CP 326-328 on appeal]. The rulings of the Court at CP 91 which are not inconsistent with CP 99 remain in effect.

6. The monthly rent for space number two in the mobile home park was \$395.00 from June 2014 through December 2014. The court dismissed Del Rey's eviction proceeding in December of 2014 based upon money's paid into the Clerk's registry. The money held in trust by the clerk should be release to the Plaintiff to complete that payment. Based upon the ruling, there is not additoinal money owing for 2014 to the Plaintiff.

7. The monthly rent for space number two in the mobile home park was \$415.00 per month from January 2015 through June 2015. The notice of increase of rent was not properly sent to the defendant, but rather was sent to her mother. The late fee requested for this period was \$95.00 per month. Said amounts were not paid by Elliott to Del Ray. As of July 1, 2015, Elliott was no longer in the mobile home.

8. The monthly storage charge requested for space number two in the mobile home park is \$500.00 per month from July 2015 to present. No notice of that charge in monthly amount was given to the defendant prior to trial. The late fee requested for this period is \$75.00 per month. Said amounts were not paid by Elliott to Del Ray.

9. The total amount of unpaid monthly rent from January 1, 2015 through June of 2015 is \$2,490. The late fees for unpaid rent for that period total \$570.00.

10. The total amount of unpaid monthly storage charges from July of 2015 through October of 2015 is \$2,000.00. The total amount of requested late storage fees is \$300.00 for that period.

11. The amount of unpaid storage charges since the Court's ruling is \$6,500.00. (13 months - November 2015 through November 2016). Requested late fees for that period is \$975.00.

12. The grand total of rent and storage charges from January

2015 though November 2016 is \$1,845.00. The grand total of all amounts due for that period is \$12,835.00.

13. Elliott has paid \$1,975.00 into the registry of the Court toward the amounts owed to Plaintiff. That amount is entirely consumed by the amount owed in 2014 so does not reduce the amount in #12 above.

14. The amount originally demanded by the Plaintiff was \$13,045.00 which is more than the Court's award for the same period of time on which the Plaintiff's original demand was made. (See paragraph 9 above).

**15. This court made a specific finding that the Landlord/Plaintiff did not act in good faith in these proceedings.**

#### CONCLUSIONS OF LAW

1. Defendant's obligation to pay rent and charges in this matter come from her being a *de facto* tenant of Plaintiff.

2. The purpose of trial in this cause was to determine the amount of rent and charges owed by Defendant to plaintiff.

3. The Defendant failed to pay space rent and storage charges amount of \$5,360.00 through October, 2015. As this matter has extended through various motions for reconsideration, presentations and other proceedings, the additional storage and late fees added to the original brings the total amount due through November of 2016 to \$12,835.00.

[4.] The Defendant's failure to pay space rent, storage charges and late charges entitles the Plaintiff to a judgment in the amount of \$12,835.00 through the end of November, 2016. (that amount is adjusted to take into account the period of time between the trial, various rulings, and the entry of a final order.) At the time of the trial, the plaintiff would have been entitled to a judgment in the amount of \$5,360.00 through October, 2015.

5. The Defendant is entitled to a credit against the 2014 rental amounts in the amount of \$1,975.00 upon transfer of said amount

from the registry of the Court to the Plaintiff. The withdrawal shall not affect the amount of the judgment set forth in paragraph 4 above. The Plaintiff should be authorized to withdraw such funds from the registry of the Court immediately.

[6.] the Plaintiff's demand for \$13,045.00 exceeds the award of the Court for the same period of time in the amount of \$7,685.00. Neither party is a prevailing party for purposes of awarding attorney fees. Each party should pay their own fees and costs.

CP 362-365 (*emphasis added, italics in original*).

Based upon these findings and conclusions, the court entered a judgment against the defendant in the amount of \$12,835.00 at 12% interest.

CP 366-367. Defendant thereafter filed timely notice of appeal. CP 364-386.

## ARGUMENT

### **I. THE TRIAL COURT ERRED WHEN IT REVERSED ITS WRITTEN RULING FOR DEFENDANT ENTERED MARCH 22, 2016, BECAUSE RESPONDENT FAILED TO SEEK TIMELY RECONSIDERATION OF THAT FINAL ORDER.**

Motions for Reconsideration of a jury or court's verdict following either a jury or bench trial are governed by CR 59, which state as follows concerning the rights of an "aggrieved party" to bring a motion for reconsideration or a motion for a new trial:

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

CR 59(a) (in part).

As the rule states in its text, a motion brought under the rule is not limited to a request to seek reconsideration from "all issue" inherent in the "verdict" as a whole. Rather, a "party aggrieved" may also seek reconsideration "on some issues when such issues are clearly and fairly separable and distinct."

Subsection (a) of the rule goes on to list nine separate reasons under which the trial court may grant either a motion for reconsideration or a motion for a new trial. Subsections (6) through (9) include the following four

bases of relief:

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

CR 59(a)(6)-(9).

While subsection (a) of the rule sets out the grounds for which a “party aggrieved” may obtain reconsideration of or new trial from a trial court or jury’s verdict or a portion thereof, subsection (b) sets out a time limit for filing the motion. This section of the rule states:

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

CR 59(b).

Although CR 59(a) speaks in terms of seeking reconsideration from all or some of the issues arising from “a verdict,” section (b) of the rule clarifies that a motion for reconsideration may also be brought within the 10

day time limit specified after entry of a “judgment, order, or other decision, unless the court directs otherwise.”

By its language, CR 59(a) only gives a trial court authority to grant a motion for reconsideration or a new trial brought by an “party aggrieved.” However, under section (d) of the rule a trial court may, *sua sponte*, order a hearing on the court’s own proposed order reconsider its own verdict or granting a new trial. This section of the rule states:

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

CR 59(d).

While this section of the rule grants a trial court the authority to initiate a motion for reconsideration or a motion for a new trial, it explicitly imposes the same 10 day time limit for bringing the motion that the rule under section (c) imposes upon a “party aggrieved” for bringing the motion.

While a trial court’s oral decision is always preliminary and is not subject to the 10 day time limit found in CR 59(b), once the court reduces its ruling to a written decision, the 10 day time limit goes into effect for seeking reconsideration. *Hubbard v. Scroggin*, 68 Wn.App. 883, 887, 846 P.2d 580

(1993); *see also State v. Collins*, 112 Wn.2d 303, 308, 771 P.2d 350 (1989).

While the rule sets a 10 day time limit for filing the motion for reconsideration, the rules does not require that the motion be served within that ten-day time limit. *In re Marriage of Smith*, 158 Wn.App. 248, 241 P.3d 449 (2010) . Thus motions for reconsideration filed within the 10 day time limit are timely even if served outside that time requirement. *Id.* Finally, the trial court has no authority under the rule to consider motions for reconsideration filed outside the 10 day time limit. *Griffin v. Draper*, 32 Wn.App. 611, 649 P.2d 123 (1982).

For example, in *Griffin v. Draper, supra*, the plaintiffs brought an action to create a prescriptive easement across a portion of the defendant's land. After a two day trial the court found for the prescriptive easement. The court's order did allow the defendant's to fence and gate the easement provided plaintiffs were given access through the gates. Defendant's later installed gates but did not give Plaintiffs either a key code or an access point to enter a key code. Plaintiffs thereafter brought an action in contempt against the defendants.

As part of the contempt proceeding the defendants filed a Motion for Reconsideration of the original judgment upon an argument that sufficient evidence did not support the finding of the prescriptive easement. At that time CR 59 had a five day filing requirement. The trial court denied the

Motion for Reconsideration as untimely and found the defendant's in contempt. Defendants then appealed, arguing in part that the trial court had erred when it found the motion for reconsideration untimely, arguing that the five day time limit ran from the filing of the contempt proceeding. The Court of Appeals rejected this argument, finding as follows concerning the time limits required under CR 59 on motions for reconsideration:

The five-day requirement stated in CR 59(b) establishes the maximum time within which a motion for reconsideration may be made. The time may not be extended. In the instant case the motion for reconsideration was filed ten months after entry of the judgment. It was not timely; the trial judge did not abuse his discretion in denying the motion. . . .

The Drapers contend the March, 1980 motion for reconsideration was necessary due to the continuing contempt citations. We do not agree. It is true that Mr. Draper has a right of appeal from the order of contempt, RCW 7.20.140; however, this does not bring forward the original judgment for review because the appeal is more than 30 days from the judgment.

*Griffin v. Draper*, 32 Wn.App. at 613–613 (citations omitted).

Similarly, in the case at bar the trial court filed its lengthy written verdict and judgment on March 22, 2016. After reviewing the procedural history and making a number of factual findings, the court entered the following judgment:

Based upon the foregoing findings and analysis, the Court is left with an evidence that likely should not have been granted.

The landlord has acted throughout these proceedings in bad faith in contravention of RCW 59.20.010 which impacts its ability to pursue

remedies under the chapter.

Restoration of the tenancy to the defendant is procedurally foreclosed, and under the circumstances would be a poor resolution.

The landlord remains in possession of the tenant's mobile home. It is unknown what the current condition of the mobile home is. No evidence was introduced to indicate the mobile home had declined in value from its purchased price of \$12,000 during the time prior to the evidence.

The tenant has lost the use and enjoyment of that property for approximately 10 months. It is unknown if the tenant has incurred additional rental expenses. The Court will need documentation of any rental expense incurred by the tenant that would be in excess of the \$415.00 per month.

In order to put these parties essentially back where they started at the time the evidence was granted, with restoration of the tenancy foreclosed by the earlier rulings, the Defendant will be granted a judgment against the Plaintiff in the base amount of \$12,000.00, the value of the mobile home. The Defendant will be granted ownership of said mobile home to dispose of as it chooses. Disposal is not mandated, and the defendant may simply retain ownership of the mobile home.

The court will entertain brief from the parties as to what, if any, credit against the judgment the landlord may be entitled to for storage. The court will also consider whether any credit should be offset by the tenant's loss of use.

As the Defendant is the prevailing party in this matter, she shall be entitled to reasonable attorneys fees in an amount to be determined by the Court upon submission of documentation of same.

CP 287-288 (emphasis and capitalization in original).

As part of this judgment the court invited the parties to present evidence on three issues: (1) "documentation of any rental expense incurred

by the tenant that would be in excess of the \$415.00 per month;” (2) “any credit against the judgment the landlord may be entitled to for storage” for which the court would “also consider whether any credit should be offset by the tenant’s loss of use,” and (3) the amount of reasonable attorneys fees to which the defendant was entitled as “the prevailing party in this matter. . . .” CP 288. However, the court made three points in its verdict clear. The first was that Del Ray was liable to the defendant for “any rental expense incurred in excess of \$415.00 per month based upon the wrongful eviction. The second was that defendant Elliot was entitled to compensation for the loss of use of her mobile home, although Del Ray could make a claim for an offset for reasonable storage fees. The third was that defendant Elliot was the prevailing party and was entitled to attorneys fees.

The court’s written judgement and findings on the three issues from the trial were final, even if the amounts to be awarded awaited further evidence. Thus, for the purposes of CR 59, the time for filing a Motion for Reconsideration commenced upon the filing of the courts written ruling on March 22, 2016. Consequently, the time for filing a Motion for Reconsideration under CR 59 commenced on March 22, 2016, and ran out on April 1, 2016, ten days after entry of the judgment. In this case plaintiffs did not file any responsive pleadings until May 19, 2016, which was almost two months from the entry of the court’s written findings and verdict from the

trial. Although plaintiff did not denominate this pleading as a Motion for Reconsideration under CR 59, the reasons given in the request for relief mirrored the reasons found in CR 59(a)(6)-(9), which were that there was no evidence or reasonable inference from the evidence to justify the verdict or the decision, that the decision was contrary to law, and that it did not do substantial justice. *See* Response to Defendant's Proposed Judgment, CP 323-325. Thus, while not noted as a motion under CR 59(c), this was the only rule available for plaintiff under which it could obtain the relief it sought. Consequently, plaintiff's motion to set aside the court's ruling was untimely under CR 59(b) and the trial court's ruling granting that motion was entered without authority. Thus, this court should vacate the subsequent judgments the trial court entered in this case and remand this matter with instructions to reinstate the written judgment entered March 22, 2016.

**II. THE TRIAL COURT ERRED WHEN IT GRANTED JUDGMENT FOR PLAINTIFF BECAUSE THE COURT'S FINDING THAT PLAINTIFF ACTED IN BAD FAITH UNDER RCW 59.20.020 PRECLUDED ANY GRANT OF RELIEF UNDER THE MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT.**

Under RCW 59.20.020, a party subject to the provisions of the mobile home landlord tenant act who acts in bad faith is not entitled to relief under the act. This statute states:

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its

performance or enforcement.

RCW 59.20.020.

For example, in *Ethridge v. Hwang*, 105 Wn.App. 447, 20 P.3d 958 (2001), the tenant of mobile home park brought action against landlord of park, alleging violations of the Mobile Home Landlord Tenant Act (MHLTA) and the Consumer Protection Act (CPA) and tortious interference with contract. In a trial *de novo* following an arbitration award in favor of the tenant, the trial court enhanced the jury's verdict in favor of tenant, awarding a total judgment of \$72,759.52, including attorney fees, but also awarded the landlord \$1,140 on a counterclaim for rent and other charges.

Following entry of the judgment, the landlord appealed, arguing in part that (1) the fact that the tenant owed rent precluded recovery under MHLTA, and (2) the tenant's failure to give the landlord the right of first refusal on the sale of the mobile home pursuant to the lease agreement violated the requirement to act in good faith under RCW 59.20.020 and thus precluded plaintiff's recovery of any damages. The tenant responded that the landlord's failure to reasonably consent to the assignment of the space rental agreement to the person who purchased her mobile home constituted a violation of the good faith requirement under RCW 59.20.020, and thus precluded the landlord's right to assert its defenses.

On review the Court of Appeals first rejected the landlord's claim that

the tenant's failure to pay rent precluded her claims under the MHLTA:

The jury found that [the tenant] owed [the landlord] \$1,140 for "rent or other charges." CP 1186. Hwang argues that, under RCW 59.20.240, this finding precludes [the tenant's] recovery under the MHLTA. [The Landlord] is incorrect. [the tenant] did not seek MHLTA remedies, and in any case, she was current in her rent and utilities at the time the case was filed.

*Ethridge v. Hwang*, 105 Wn.App. at 453.

The court then rejected the landlord's claim that the tenant's failure to give the landlord the right of first refusal on the sale of the mobile home pursuant to the lease agreement violated the requirement to act in good faith under RCW 59.20.020 and thus precluded plaintiff's recovery of any damages. Rather, the court ruled that the landlord's failure to act in good faith precluded any reliance upon this as a defense. The court held:

In addition, [the landlord] argues that [the tenant's] failure to comply with RCW 59.23.040, which governs the park owner's right of first refusal, establishes her bad faith as a matter of law and bars her claim. However, RCW 59.23.040 provides that the remedy for a tenant's failure to comply with that statute is that the park owner may have the sale set aside. [the tenant's] failure to comply did not bar her claim. In addition, the right of first refusal is "forfeited" by a party that fails to act in good faith. RCW 59.23.010. The jury was instructed on good faith. Viewing the facts in the light most favorable to [the tenant], the jury could have reasonably found that [the landlord] forfeited her right of first refusal.

*Ethridge v. Hwang*, 105 Wn.App. at 454.

In the case at bar Del Ray brought an action for both unlawful detainer as well as for monies allegedly owed under the lease agreement

against defendant Elliott. At each point, from the entry of initial judgment to the entry of the modified judgment and to the entry of the final findings of fact, the trial court found that Respondent Del Ray had brought both of its claims in bad faith. The court's initial finding and interim findings of bad faith were as follows:

The Plaintiff in this case appears to have substantially misrepresented the facts regarding past due rent at the time. The Plaintiff obtained a summary judgment order of eviction for the Defendant.

CP 285.

It is extremely troubling when a landlord alleges significant amounts of money due for which there is not basis.

CP 327.

The trial court's last finding of bad faith came in its final findings of fact and conclusions of law filed January 13, 2017. It was:

This court made a specific finding that the Landlord/Plaintiff did not act in good faith in these proceedings.

CP 364.

As MHLTA explicitly states in RCW 59.20.020, the trial court's findings that Respondent Del Ray "did not act in good faith in these proceedings" precludes it from recovery just as the jury's implicit finding of bad faith in *Ethridge v. Hwang* supported the jury's finding against the landlord in that case. Thus, in this case, the trial court erred when it entered

a money judgment in favor of Respondent Del Ray because its continued actions in bad faith precluded recovery under RCW 59.20.020. As a result this court should vacate the judgment in favor of Respondent Del Ray.

**III. UNDER RCW 59.20.110 AND RAP 18.1 THE APPELLANT IS ENTITLED TO COSTS AND ATTORNEYS FEES AT THE TRIAL LEVEL AND ON APPEAL.**

Under RCW 59.20.110, the prevailing party in an action under MHLTA is entitled to an award of attorney's fees. This section states:

In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.

RCW 59.20.110; *see also Seashore Villa Ass'n v. Hugglund Family Ltd. P'ship*, 163 Wn.App. 531, 547, 260 P.3d 906 (2011). Under RAP 18.1, this statutory provision also allows for the reward of attorney's fees on appeal to the prevailing party. *See RAP 18.1 and Hartson P'ship v. Martinez*, 123 Wn.App. 36, 44, 96 P.3d 449 (2004).

In the case at bar, the trial court specifically found that the defendant Elliott was the prevailing party in this action and was entitled to attorney's fees. This finding was as follows:

As the Defendant is the prevailing party in this matter, she shall be entitled to reasonable attorneys fees in an amount to be determine by the Court upon submission of documentation of same.

CP 288.

As was set out in the first argument in this case, plaintiff's (and the

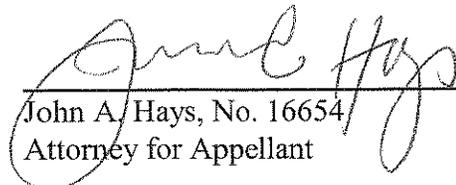
court's) failure to bring a timely motion for reconsideration under CR 59 made this the final judgment of the court. As a result, in this case the trial court erred when it denied the defendant attorney's fees at the trial level. If this court accepts this argument then under RCW 59.20.110 and RAP 18.1 Appellant Elliott is also entitled to costs and attorney's fees on appeal.

## CONCLUSION

The trial court erred when it entered an order on reconsideration modifying its verdict and findings of March 22, 2016. As a result, this court should vacate the subsequent orders and remand with instructions to reinstate the first order. In addition, the trial court erred when it granted judgment for the plaintiff because the court's finding that plaintiff acted in bad faith precluded entry of that judgment. Finally, appellant is entitled to attorney's fees and costs at the trial level and on appeal.

DATED this 7<sup>th</sup> day of September, 2017.

Respectfully submitted,

  
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John A. Hays, No. 16654  
Attorney for Appellant

## APPENDIX

### CR 59

#### NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from the juror's own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence

to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:

(1) Time of Hearing. Whether the motion shall be heard before the entry of judgment;

(2) Consolidation of Hearings. Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and/or

(3) Nature of Hearing. Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(h) Motion To Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made without leave of the court first obtained for good cause shown: (1) for a new trial, (2) pursuant to sections (g), (h), and (i) of this rule, or (3) under rule 52(b).

**RCW 59.20.020**

**Rights and Remedies – Obligation of Good Faith Required**

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

**RCW 59.20.110**

**Attorney's Fees and Costs**

In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs.

COURT OF APPEALS OF WASHINGTON, DIVISION II

DEL RAY PROPERTIES, INC.,  
DBA, DEL RAY MOBILE  
HOME PARK,

Respondent

vs.

KIM ELLIOT,

Appellant.

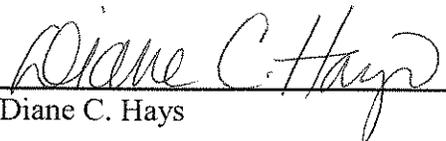
NO. 49969-0-II

AFFIRMATION  
OF SERVICE

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Craig McReary  
PO Box 2340  
Longview, WA 98632-8409  
bfreynolds@qwestoffice.net
2. Kim Elliot  
c/o Judith Crow  
331 Franklin Place  
Longview, WA 98632

Dated this 7<sup>th</sup> day of September, 2017, at Longview, WA.

  
Diane C. Hays

**JOHN A. HAYS, ATTORNEY AT LAW**

**September 07, 2017 - 4:18 PM**

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**Appellate Court Case Title:** Del Ray Properties, Inc., dba Del Ray Mobile Home Park, Respondent v. Kim Elliott, Appellant  
**Superior Court Case Number:** 14-2-01219-6

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