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COURT OF APPEALS
DIVISION II

2017 SEP 25 AM 9:05

STATE OF WASHINGTON

BY _____
CLERK

Washington State Court of Appeals Division II



In re the Marriage of:

STEVEN WOLFE THOMPSON,
Appellant/Cross-Respondent,

vs.

ROBERT TEDDY THOMPSON,
Respondent/Cross-Appellant.

Case No. 50564-9-II

Superior Court: 14-3-01500-1

JOINT OPENING BRIEF OF APPELLANT AND CROSS- APPELLANT

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US Priority 9/20/17

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... ii

INTRODUCTION..... 2

ASSIGNMENTS OF ERROR & ISSUES..... 2

 I. Assignments of Error..... 2

 II. Issues Pertaining to Assignments of Error 3

STATEMENT OF THE CASE 3

ARGUMENT..... 5

 I. The commissioner abused her discretion in denying the joint motions..... 5

 II. The Commissioner erroneously determined that vacation of the stipulated judgment was not supported under CR 60(b)(6). . 6

 III. The Commissioner erroneously determined that vacation of the stipulated judgment was not supported under CR 60(b)(11)..... 7

CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

Ackermann v. United States, 340 U.S. 193, 200, 95 L.Ed. 207, 211,
71 S.Ct. 209, 212 (1950) 7

Barr v. MacGugan, 119 Wn. App. 43, 46, 78 P.3d 660 (2003) 8

Dix v. ICT Grp., Inc., 160 Wn.2d 826, 833, 161 P.3d 1016 (2007) ... 5

Gustafson v. Gustafson, 54 Wn. App. 66, 75, 772 P.2d 1031 (1989) 7,
8

Halev v. Highland, 142 Wn.2d 135, 156, 12 P.3d 119 (2000) 5

In re Marriage of Flannagan, 42 Wn. App. 214, 221, 709 P.2d 1247
(1985), review denied, 105 Wn.2d 1003 (1986) 7

Neary v. Regents of the University of California, 834 P.2d 119 (Cal.
1992)..... 5

State v. Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982) 7

Suburban Janitorial v. Clarke American, 72 Wn. App. 302, 863 P.2d
1377 (1993) 8

Wright v. B&L Props., Inc., 113 Wn. App. 450, 456, 53 P.3d 1041
(2002)..... 5

Other Authorities

7 J. Moore, Federal Practice ¶ 60.27[1]..... 7

Rules

CR 2A 4

CR 41 4

CR 60(b)..... 5

CR 60(b)(11)..... 7, 8

CR 60(b)(6)..... 6

INTRODUCTION

The parties filed a Stipulation and “Joint Ex Parte Motion for Order Vacating Decree of Dissolution of Marriage & Dismissal with Prejudice.” The Superior Court Commissioner refused the stipulation of the parties and unilaterally altered the proposed agreed order to deny the joint motions and do exactly the opposite of what the parties jointly agreed and intended although CR 60(b)(6) and (11) support the relief requested.

ASSIGNMENTS OF ERROR & ISSUES

I. ASSIGNMENTS OF ERROR

1. The Superior Court Commissioner erred in refusing to grant the joint motions of Steven Wolfe Thompson and Robert Teddy Thompson, Petitioner and Respondent herein, to (a) vacate the Decree of Dissolution of Marriage and (b) to dismiss the action with prejudice.
2. The Superior Court Commissioner erred in sua sponte altering the proposed agreed order and entering the “Exparte [sic] Order Denying Request to Vacate

Decree of Dissolution of Marriage & Dismissal with Prejudice.” (See attached Exhibit 1)

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should a Superior Court Commissioner unilaterally refuse to vacate a judgment and dismiss a case when all parties affected by the judgment stipulate and jointly move for the judgment to be vacated and the case dismissed? (Assignment of Error #1)
2. Should a Superior Court Commissioner unilaterally alter an order stipulated to by the parties to defeat the result agreed to by the parties? (Assignment of Error #2)

STATEMENT OF THE CASE

Steven Wolfe Thompson filed a Petition for Dissolution of Marriage on July 24, 2014.¹ Robert Teddy Thompson joined in the Petition. Id.

¹ CP 2-13

Steven Wolfe Thompson presented an uncontested default resolution hearing on October 31, 2014.² Findings of Fact & Conclusions of Law were presented and signed on the same day.³ The court then signed a default Decree of Dissolution.⁴

In May 2017, the parties reconciled and jointly stipulated, pursuant to CR 2A, and moved to vacate the Decree of Dissolution and dismiss the divorce action pursuant to CR 41.⁵ The parties also submitted a joint agreed order to

² CP 46-50

³ CP 35-44

⁴ CP 45-50

⁵ CP 69-71. The joint motion signed by both parties was as follows: "The undersigned Petitioner and Respondent jointly move to vacate the Decree of Dissolution entered in this case on October 31, 2014. The parties further jointly move to dismiss this case with prejudice. This motion is based on the filed stipulation of the parties and CR 60 (6), (11). The parties hereby waive notice and hearing on the motion." The notarized Stipulation upon which the motion was based was as follows: "The undersigned Petitioner and Respondent hereby agree to vacate the Decree of Dissolution of Marriage entered in this case on October 31, 2014. The parties understand that Petitioner need not prepare nor file a Satisfaction of Judgment in this matter. Petitioner declares that he is not averse to the Decree in this matter being vacated, and, thereafter, the case being dismissed with prejudice. The parties waive notice and hearing."

implement the motions, but the Superior Court Commissioner unilaterally altered and filed the “agreed” order to the exactly opposite effect of what the parties had agreed and intended.⁶

ARGUMENT

I. THE COMMISSIONER ABUSED HER DISCRETION IN DENYING THE JOINT MOTIONS.

A court's decision to deny a motion to vacate under CR 60(b) is reviewed for abuse of discretion. *Halev v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds. *Dix v. ICT Grp., Inc.*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). Review of a decision on a motion to vacate is limited to the decision on the motion, not the underlying judgment. *Wright v. B&L Props., Inc.*, 113 Wn. App. 450, 456, 53 P.3d 1041 (2002).

For example, in *Neary v. Regents of the University of California*, 834 P.2d 119 (Cal. 1992), the court held that, absent "extraordinary circumstances," courts of appeal should grant parties' requests to reverse trial court judgments, in order to effectuate a settlement agreement and terminate litigation. *Id* at

⁶ CP 72, EXH 1, attached.

125. Relying on the notion that "courts exist for litigants" and not the reverse, *Neary* staked out a "strong presumption in favor of allowing stipulated reversals." Id at 123.

Here, after reconciliation, both parties stipulated to vacate the Decree of Dissolution and to dismiss the action. The Commissioner both ignored the stipulation and joint motions of the parties and altered an agreed order vacating the Decree of Dissolution. The Commissioner erred as matter of law in determining that CR 60(b)(6) & (11) did not justify granting the joint motions of the parties. Because of the Stipulation of the parties, and for the following reasons, the Commissioner's decision was manifestly unreasonable and based on untenable grounds.

II. THE COMMISSIONER ERRONEOUSLY DETERMINED THAT VACATION OF THE STIPULATED JUDGMENT WAS NOT SUPPORTED UNDER CR 60(B)(6).

CR 60(b)(6) allows for vacation of a judgment where "it is no longer equitable that the judgment should have prospective application." When the parties jointly agree that the Decree herein should be vacated, CR 60(b)(6) directly supports

vacation of Decree. See also, *Gustafson v. Gustafson*, 54 Wn. App. 66, 75, 772 P.2d 1031 (1989).

III. THE COMMISSIONER ERRONEOUSLY DETERMINED THAT VACATION OF THE STIPULATED JUDGMENT WAS NOT SUPPORTED UNDER CR 60(B)(11).

CR 60(b)(11) applies when there are "extraordinary circumstances." *Ackermann v. United States*, 340 U.S. 193, 200, 95 L.Ed. 207, 211, 71 S.Ct. 209, 212 (1950)⁷. While the use of CR 60(b)(11) "should be confined to situations involving extraordinary circumstances not covered by any other section of the rule," here the stipulation of the parties that the Decree of Dissolution entered herein should have no prospective application should meet the standard suggested by the rule. Cf. *In re Marriage of Flannagan*, 42 Wn. App. 214, 221, 709 P.2d 1247 (1985), review denied, 105 Wn.2d 1003 (1986); *State v. Keller*, 32 Wn. App. 135, 140, 647 P.2d 35 (1982). See also 7 J. Moore, Federal Practice ¶ 60.27[1].

⁷ Interpreting the identical federal Rule, FRCP 60(b)(6).

CR 60(b)(11) is a catchall provision that allows a court to vacate a judgment for "[a]ny other reason justifying relief." CR 60(b)(11) is "confined to situations involving extraordinary circumstances not covered by any other section of the rule." *Barr v. MacGugan*, 119 Wn. App. 43, 46, 78 P.3d 660 (2003) (quoting *Gustafson v. Gustafson*, 54 Wn. App. 66, 75, 772 P.2d 1031 (1989)). Here, the parties' agreement that the decree should be vacated is a perfect example of "extraordinary circumstances" that the rule is intended to allow, particularly when the Decree was originally obtained by default. *Suburban Janitorial v. Clarke American*, 72 Wn. App. 302, 863 P.2d 1377 (1993).

CONCLUSION

The Exparte [sic] Order Denying Request to Vacate Decree of Dissolution of Marriage & Dismissal with Prejudice should be reversed and the Superior Court should be ordered to enter the proposed order vacating the Decree of Dissolution of

Marriage, filed October 31, 2014, and the case dismissed with prejudice.

Dated September 20, 2017



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Exhibit 1

FILED

MAY 31 2017 3:30pm

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

In re the Marriage of:

Case No. 14-3-04500-1

DENIED

STEVEN WOLFE THOMPSON,
Petitioner,

vs.

ROBERT TEDDY THOMPSON,
Respondent.

EXPARTE
Denying request to
**ORDER VACATING DECREE OF
DISSOLUTION OF MARRIAGE &
DISMISSAL WITH PREJUDICE**

IT IS HEREBY ORDERED that ~~the decree of dissolution herein be vacated; it is~~
~~further, there is no basis for vacating the Decree under CR 10.~~

~~ORDERED this case is hereby dismissed with prejudice.~~

Dated: 5/31/17


JUDGE/COMMISSIONER

DENIED

Presented by:
WOLFE THOMPSON PS

Approved as to form and content,
notice of presentment waived.


S. WOLFE THOMPSON, NSB 13986
Attorney for Petitioner


ROBERT TEDDY THOMPSON,
Respondent

ORDER VACATING DECREE OF DISSOLUTION OF
MARRIAGE & DISMISSAL WITH PREJUDICE- 1

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