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NO. 50685-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BRADFORD BALINT & DANICE BALINT,
husband and wife,

Appellants,

v.

MICHAEL J. WYNNE & MARY S. WYNNE,
individually and as husband and wife,
and MICHAEL J. WYNNE, P.S.,

Respondents.

BRIEF OF RESPONDENTS

Ross C. Taylor, WSBA #48111
FAIN ANDERSON VANDERHOEF
ROSENDAHL O'HALLORAN
SPILLANE, PLLC
Attorney for Respondents

1301 A Street, Suite 900
Tacoma, WA 98402
253-328-7800

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I. INTRODUCTION

The trial court dismissed Bradford and Danice Balint's legal malpractice claims against attorney Michael J. Wynne on summary judgment when, more than eleven years after the events at issue and nearly six years after filing their case, the Balints failed to produce expert testimony establishing either the standard of care of a trust and estate attorney practicing in Washington in 2005, or that Mr. Wynne had breached any applicable duty. Fourteen days after the court granted summary judgment by written order, the Balints moved for reconsideration, providing an affidavit from a purported expert. The court exercised its judgment and declined to consider this tardily produced evidence and entered judgment of dismissal.

Appellants' four claims of error can be generally placed in two categories. First, they contend that their case, despite its legal complexity with issues of real estate law, estate law, and alleged duties to former clients, current clients, and intended beneficiaries, is the exception to the general rule requiring expert testimony in legal malpractice cases and, accordingly, the court erred in dismissing their claims based on the evidence available at the time of the ruling. Second, Appellants contend that the trial court manifestly abused its discretion in denying their motion for reconsideration filed fourteen days after the decision they wished to

have reconsidered, and also by declining to consider an affidavit of an alleged expert witness as part of their reconsideration motion.

Because the trial court neither erred in ruling dismissal was required as a matter of law when the Balints failed to present evidence to establish essential elements of their claims, nor manifestly abused its discretion in denying the late motion for reconsideration with untimely evidence, the trial court's summary judgment order and denial of reconsideration should be affirmed.

II. COUNTERSTATEMENT OF THE ISSUES PRESENTED

(1) Was summary judgment dismissal proper when Appellants failed to provide expert testimony in support of their complex legal malpractice allegations, which were beyond the common knowledge of a layperson, as is the requirement in Washington?

(2) Did the trial court manifestly abuse its discretion in denying an untimely motion for reconsideration filed fourteen days after the order they sought to be reconsidered, or by declining to consider evidence that could have been produced had Appellants exercised reasonable diligence at any time during the eleven years following the events at issue or six years after filing their suit?

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

This case arises out of a family dispute between two brothers over real property in 2005. (CP 17-31). Appellants Bradford and Danice Balint are the son and daughter-in-law of decedent, David M. Balint. (CP 17). In 2004, David was diagnosed with esophageal cancer and told he had eighteen months to live. (CP 19). In September of that year, he executed a power of attorney placing Bradford and Danice in charge of his personal and financial affairs. (CP 19). In November, David's mother gave him 9 acres of property located in Ridgefield, Washington (the "Ridgefield Property"). (CP 19-21). That same month, Bradford and Danice moved on to the Ridgefield Property with David. (CP 21). After a brief hospitalization in September 2005, David was discharged to hospice care at his home on the Ridgefield property. (CP 23).

On September 22, 2005, at his father's request, Bradford called Respondent, Attorney Michael J. Wynne, to assist David in conveying title of the Ridgefield Property from David to Bradford and Danice. (CP 35-36). Mr. Wynne had previously represented David Balint in other land transactions. (CP 24). He also had done limited work for Bradford and Danice years before. (CP 124). On September 27, Mr. Wynne arrived at the property and was surprised to see David in a hospital bed. (CP 25).

Nonetheless, David appeared to be of sound mind. (CP 50). Appellants withheld from Mr. Wynne that David was receiving hospice care, that they had observed signs indicating David might be confused, or that David was receiving medications that could affect his mental state. (CP 26). During the meeting with Mr. Wynne, David signed a quit claim deed and an excise tax affidavit gifting the Ridgefield Property to Bradford and Danice. (CP 25-26).

On October 2, 2005, David died at 80 years old. (CP 18). Jason Balint, David's other son and Bradford's brother, was appointed Personal Representative of David's estate. (CP 18). On June 2, 2006, Jason commenced a Quiet Title action against Bradford and Danice after questions surfaced surrounding their deceased father's competence during the weeks leading up to his death. (CP 41-46). On March 5, 2010, after a three-day bench trial, Jason prevailed in a nearly four-year-long Quiet Title proceeding against Bradford and Danice (who were pro se at trial). (CP 17-31). The court found that Appellants occupied a fiduciary relationship with David and that they breached that duty when they secured the quit claim deed and tax affidavit. (CP 28). The court further determined that David lacked capacity to execute the legal documents, with the inference that Bradford and Danice exerted undue influence. (CP 28-29).

B. Appellants' Lawsuit Against Respondent.

On July 22, 2011, nearly six years after the events at issue, and more than a year after the Quiet Title proceeding, Appellants filed suit against Respondent, alleging that Mr. Wynne “failed to conduct any appropriate investigation interview to determine if David M. Balint was competent to sign the Quit Claim Deed and Excise Tax Affidavit.” (CP 1). Appellants alleged that this failure constituted malpractice by (i) “failing and refusing to properly advise [Appellants] of a potential allegation for their undue influence” over the allegedly incapacitated David; and, (ii) failing to inform [Appellants] that he had a conflict of interest. (CP 4-5). Respondent denied the allegations. (CP 8).

On December 22, 2014, Plaintiff Bradford’s deposition was taken and Danice’s deposition was started, but suspended before completion. (CP 52). In relevant part, Bradford gutted the alleged basis for Plaintiffs’ suit by testifying that David was not incapacitated at the time he conveyed the Ridgefield Property:

Q. Did you think your father had capacity—
mental capacity at the point in time to convey
the—the property to you?

A. Yes.

Q. Do you think he was of sound mind?

A. Absolutely.

(CP 38). In support, Bradford pointed out that his father was able to converse; capable of solving crossword puzzles; refrained from medication during the day so that he could interact well with others; and, on the particular day in question, he was reminiscing with long-time attorney, Mr. Wynne, telling stories about the past. (CP 36). Bradford's testimony, quite remarkably, **is the opposite of what Appellants alleged in their lawsuit**—that Mr. Wynne should have recognized that Plaintiffs were exerting undue influence over a man who no longer had control over his mental faculties.

C. Respondent's Motion for Summary Judgment.

Following their depositions, Appellants effectively abandoned their suit. More than two years later, on March, 29, 2017, Respondent moved for summary judgment, in part, because now nearly six years after filing their suit, Appellants had not disclosed any expert to establish essential elements of their suit, including the applicable standard of care for the professional negligence they alleged. (CP 49-60). Appellants' responses have been internally inconsistent and irreconcilable. On one hand, Appellants have argued that despite implicating trust, estate, and real estate law, including possible issues of duties to former and current clients, and possibly intended beneficiaries, that expert testimony was not required because their claims were common knowledge of laypersons. On

the other hand, they have pled that Respondent was an expert in such complex matters: “[a]s an attorney, [Respondent] has that **expertise** to determine whether a client has the capacity to enter into an agreement . . . [Respondent] certainly has the **expertise** to know what make [sic] a deed transfer vulnerable to attack in estate cases.” (CP 75-76) (emphasis added). Further undercutting any argument that their allegations were based on “common knowledge,” Appellants also cited to Washington’s Rules of Professional Conduct and American Bar Association articles. Respondent replied in support of summary judgment and the court heard oral argument before taking the matter under advisement (CP 138; Report of Proceedings 1-12).

On May 3, 2017, the trial court issued a “Memorandum of Opinion and Order Deciding Defendant’s Motion for Summary Judgment.” (CP 147). The court’s decision correctly noted that when “a defendant challenges the sufficiency of the plaintiff’s evidence, the plaintiff must present sufficient evidence to set forth a genuine issue of material fact.” (CP 150). The trial court concluded that Appellants “failed to produce competent evidence that established Wynne’s breach of the duty of care owed to them or to David Balint.” (CP 151). In the written order, the trial court specifically noted that the negligence alleged was **not** “so obviously improper” so as to excuse it from the general rule that expert testimony

was required. (CP 151). Accordingly, summary judgment was granted. (CP 152). The trial court requested presentation of a judgment of dismissal for Friday, May 19, 2017 at 9:00 am. (CP 152).

D. Appellants' Tardy Motions for Reconsideration Were Denied.

Fourteen days after the trial court's order granting summary judgment was filed and just two days before the presentation of a judgment of dismissal, Appellants filed a "Motion for Reconsideration and Motion for Admission of Additional Evidence." (CP 164). With this submission, Appellants provided a declaration from a purported expert witness with experience in trust and estate dispute actions, guardianships, estate planning, and some real estate and probate matters, who opined regarding the applicable standard of care required of Respondent. (CP 153). Not having had time to fully appreciate the untimely filed materials, the court requested supplemental briefing on whether the court had discretion to grant reconsideration after the ten day limitation of the local civil rule, and whether additional evidence had to be considered. (RP 17-18).

At this first hearing for presentation for judgment, Appellants forecasted to the trial court the same argument they make in their appeal, that somehow the May 3, 2017 Order was not an Order. The trial court rejected this position stating, "I put in a written document which was an

Order saying I was granting Summary Judgment and setting on the Judgment for today. So I haven't entered the written Judgment, but I entered a written Order." (RP 15).

Per the court's request, both parties provided supplemental memorandums. (CP 193; 202). On June 23, 2017 the trial court reconvened and, with the benefit of supplemental briefing, was ready to rule. After hearing argument from both sides, the trial court determined that whether or not the motion for reconsideration was untimely was immaterial, as the court was declining to consider additional evidence provided by Appellants, which was introduced for the first time nearly six years after suit was filed and could have been obtained prior to the summary judgment dismissal. (RP 22-26) The trial court entered Judgment of Dismissal. (CP 210).

Appellants moved for reconsideration a second time (within ten days, this time), and the court again denied their motion. (CP 212; 220). They do not appeal the denial of their second motion for reconsideration.

IV. ARGUMENT

A. Summary Judgment Dismissal Was Proper Because Appellants Failed to Produce Evidence Supporting Essential Elements of Their Suit.

An appellate court reviews a summary judgment order de novo, engaging in the same inquiry as the trial court. *See, e.g., Anderson v.*

Weslo, Inc., 79 Wn. App. 829, 906 P.2d 336 (1995); *Thompson v. Peninsula Sch. Dist. No. 401*, 77 Wn. App. 500, 892 P.2d 760 (1995) (In reviewing a summary judgment, the appellate court engages in the same inquiry as the trial court). Summary judgment is proper under CR 56(c) if the pleadings, depositions and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. CR 56(c); *Kesinger v. Logan*, 113 Wn.2d 320, 325, 779 P.2d 263 (1989).

A defendant may move for summary judgment on the ground that the plaintiff lacks competent evidence to support essential elements of the plaintiff's claim. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989), (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). After a party moving for summary judgment submits adequate affidavits, the nonmoving party must set forth specific facts rebutting the moving party's contentions and demonstrating that a genuine issue of material fact exists. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986). If the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then the trial court should grant the motion. *Young*, 112 Wn.2d at 225. This Court may affirm a trial court's ruling on

summary judgment on any ground supported by the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

In order to succeed on a claim for legal malpractice, a plaintiff must establish (1) an attorney-client relationship giving rise to a duty of care on the part of the attorney to the client, (2) breach of the duty, (3) damage to the client, and (4) proximate causation between the attorney's breach of duty and the damage suffered by the client. *Hizey v. Carpenter*, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992). Because the Balints did not produce competent evidence on each element of their claims, the trial court did not err in dismissing their claims on summary judgment.

To prove a prima facie legal malpractice case, plaintiffs must establish that the defendant's decisions were incorrect at the time they were made. *Hizey*, 119 Wn.2d at 261 (citing *Hansen v. Wightman*, 14 Wn. App. 78, 90, 538 P.2d 1238 (1975)). This requires showing that the attorney being sued failed to exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer in the state. *Estep v. Hamilton*, 148 Wn. App. 246, 201 P.3d 331 (2008); *Bush v. O'Connor*, 58 Wn. App. 138, 791 P.2d 915 (1990); *Cook, Flanagan and Berst v. Clausing*, 73 Wn.2d 393, 438 P.2d 865 (1968).

“Expert testimony is often required to determine whether an attorney’s duty of care was breached in a legal professional negligence action, because the ‘[l]aw is admittedly a highly technical field beyond the knowledge of the ordinary person.’” *Geer v. Tonnan*, 137 Wn. App. 838, 851, 155 P.3d 163 (2007) (quoting *Lynch v. Republic Publ’g Co.*, 40 Wn.2d 379, 389, 243 P.2d 636 (1952)). A limited exception to the general rule that expert testimony is required provides that a plaintiff’s claim may proceed, even without expert testimony, when the alleged attorney’s negligence is within the “common knowledge of lay persons.” *Walker v. Bangs*, 92 Wn.2d 854, 601 P.2d 1279 (1979).

Appellants contend their legal malpractice lawsuit (which implicates issues of real estate law, estate law, duties to past and current clients, and possibly intended beneficiaries) falls under the narrow exception, and that expert testimony was not required. This contention is meritless and contrary to well-settled law.

In *Geer*, plaintiff Geer alleged malpractice on the simple issue of whether the defendant attorney, Tonnan, breached his duty of care when he failed to be aware of a contractual requirement to file a suit within a one-year limitation. When Geer failed to produce an expert, the trial court dismissed his lawsuit. The Court of Appeals affirmed, stating “Geer failed

to proffer any such expert testimony. Thus, there was no evidence that attorney Tonnan breached any applicable duty to Geer.” *Id.* at 851.

The need for expert testimony in *Geer* was consistent with decades of prior case law. For example, in *Hansen v. Wightman*, it was held that a “trial court instructed the jury properly that the degree of care, skill and learning which constitutes the recognized standard of practice of a profession must be proved by testimony of a member of that profession.” 14 Wn. App. 78, 93, 538 P.2d 1238 (1975). In *Hansen*, the plaintiffs contracted with an attorney and paid the filing and service fees to file a personal injury action. The attorney, however, failed to file suit. Even on as simple of an issue as whether the lawyer should have followed through on filing an action, the Court of Appeals held that expert testimony was required to establish the standard of care. *Hansen*, 14 Wn. App. at 93; *see also Walker*, 92 Wn.2d at 858 (where the court held that “expert testimony was both proper and necessary,” for the plaintiffs to succeed on their medical malpractice claim).

Here, the allegations and issues in Appellants’ lawsuit are far more complex than whether an attorney should have filed a lawsuit and did not, as in *Hansen*, where the court still required an expert. The issues are also more complex than whether or not an attorney should have been aware of a provision in a contract, like *Geer*, where the court still required an

expert. Instead this case presents a complex interplay of real estate and estate planning laws, compounded by possible issues of current and former clients or intended beneficiaries. This is precisely the degree of intricacy needing “special skill or knowledge” which *Walker* and *Geer* found **necessitated** expert testimony.

Appellants’ argument that “the concept of undue influence and whether or not that concept should have been relayed . . . is something that is within the common knowledge of laypersons,” Appellants’ Brief p. 15, is inherently flawed. Appellants themselves did not have knowledge of what duties they allege were owed, or what a reasonably prudent attorney would have done under the circumstances as they existed in 2005— certainly if they did have this “common knowledge” that a different course of action was required, they would not have participated in the transfer of the property as it occurred and which, six years after the fact, they would allege was negligent. Similarly, Appellants’ citations to the Rules of Professional Conduct reinforce that any alleged duty and breach by Respondent is beyond the “common knowledge of laypersons”— especially where the RPCs do **not** set the standard for civil liability, and may **not** be used as evidence of malpractice. *Hizey*, 119 Wn.2d at 258-61 (again, Respondent denies any negligence). Accordingly, the trial court correctly determined that no layperson knows the degree of care, skill,

diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer in the state, in the year 2005, practicing in the same or similar circumstances as Mr. Wynne.

Here, without any evidence of the duties owed by a reasonably prudent trust and estate attorney practicing in Washington in 2005 to current or former clients or to intended beneficiaries, or that any duty was breached, the trial court appropriately determined that Appellants failed to make a showing sufficient to establish the existence of elements essential to their case. Summary judgment dismissal was proper.

B. The Court Properly Denied Plaintiffs' Untimely Motion for Reconsideration.

Reconsideration is warranted in few circumstances including for:

(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.

CR 59(a)(4) (emphasis added). It is a moving party's burden to demonstrate that the provisions of CR 59 are satisfied. *State v. Swan*, 114 Wn.2d 613, 641, 790 P.2d 610 (1990). A court's denial of a motion for reconsideration will only be reversed if there was a manifest abuse of

discretion.¹ *McUne v. Fuqua*, 42 Wn.2d 65, 253 P.2d 632, *aff'd*, 42 Wn.2d 65, 257 P.2d 636 (1953).

The Balints attached new evidence to their motion to reconsider. This evidence, though, as Appellants' Brief admits, was available earlier in the proceedings had they exercised diligence. Appellants' Brief at p. 25 (a supporting declaration "could have been obtained prior to the hearing on the Motion for Summary Judgment"). Under these circumstances, it was not error for the court to exercise its discretion and not grant reconsideration or take additional evidence. Further, Appellants' motion to reconsider the trial court's order was untimely under court rule and the trial court did not have discretion to consider it. There was no error.

¹ Appellants' brief attempts to characterize the motion for admission of additional evidence and the motion for reconsideration as separate and distinct motions. In practice, however, Appellants filed a single motion for reconsideration and admission of additional evidence as a single pleading. This is consistent with Washington precedent, which has addressed reconsideration and the taking of additional evidence as a single issue. Motions for reconsideration and the taking of additional evidence are within the discretion of the trial court and decisions will not be overturned unless manifestly unreasonable. *Martini v. Post*, 178 Wn. App. 153, 162, 313 P.3d 473, 478 (2013); *Trohimovich v. Department of Labor & Indus.*, 73 Wn. App. 314, 318, 869 P.2d 95 (1994) (trial court did not abuse discretion by denying motion for reconsideration); *Ghaffari v. Dep't of Licensing*, 62 Wn. App. 870, 816 P.2d 66 (1991) (consideration of additional evidence at motion for reconsideration of bench trial within discretion of trial court); *Chen v. State*, 86 Wn. App. 183, 192, 937 P.2d 612, 617 (1997) ("The decision to consider new or additional evidence presented with a motion for reconsideration is squarely within the trial court's discretion."). The court should not adopt Appellants' strained characterization of the single motion.

1. The Court Did Not Abuse its Discretion in Refusing to Consider Additional Evidence That Would Have Been Available With the Exercise of Diligence.

The Balints' submitted an expert declaration attached to their Motion for Reconsideration. Appellants provide no argument for why this declaration would not have been available to them at the time of the summary judgment briefing—rather, their Brief admits the opposite. Rather, Appellants would have this court believe that they could seek refuge in being the exception to the general requirement for expert testimony, or assume they were the minority position, until they (predictably) lost their claims on summary judgment. That is not an exercise of reasonable diligence.

Directly on point is the case *Wuth v. Lab. Corp. of Am.* 189 Wn. App. 660, 359 P.3d 841 (2015). In *Wuth* the trial court's denial of reconsideration regarding a motion to strike was upheld where the moving party "exercising diligence, could have offered this evidence before the trial court's ruling." *Id.* at 693. Other courts have ruled similarly, holding that a trial court cannot consider evidence on reconsideration that could have been discovered before it ruled. *See Coggle v. Snow*, 56 Wn. App.499, 509, 784 P.2d 554 (1990); *Adams v. W. Host, Inc.*, 55 Wn. App. 601, 608, 779 P.2d 281 (1989); *Richter v. Trimmerger*, 50 Wn. App. 780, 785, 750 P.2d 1279 (1988). Even the authority cited by Appellants in the

underlying briefing, *Meridian Minerals Company v. King County*, held that “[u]nless discovered **after the opportunity passes**, the parties should generally **not** be given another chance to submit additional evidence.” 61 Wn. App. 195, 203, 810 P.2d 31 (1991) (emphasis added). Here, it is undisputed that the “new evidence” could have been produced before the ruling, and was not after any “opportunity” passed.

Also persuasive is the case *Davies v. Holy Family Hospital*, 144 Wn. App. 483, 183 P.3d 283 (2008). In *Davies*, the plaintiff sued for medical negligence after his wife died in surgery. When plaintiff failed to identify an expert to establish the standard of care, the Hospital moved for summary judgment. Summary judgment was granted by oral order on November 27, 2006 and presentment of an order was scheduled for December 22. On December 13, 2006 plaintiff filed for reconsideration under CR 59(a)(4), attaching a declaration of a healthcare provider. The trial court denied reconsideration. In upholding the trial court’s determination, the Washington State Court of Appeals, Division 3 noted that the untimely declaration did not qualify as “newly discovered evidence.” *Id.* at 499-501. The parallel of *Davies* to this case is uncanny where Appellants failed to timely provide expert support and now decry the result. Like *Davies*, though, it is not error for a trial court to decline consideration of evidence tardily produced after summary judgment has

been granted by written order, especially where Appellants had years to identify and produce this evidence.

The Balints' did not act diligently in pursuing their claim, and could have obtained the additional evidence (or other guidance from the court²) prior to the filing of the motion for reconsideration. The claim was filed nearly six years earlier, and there was ample time for the Balints to retain an expert to support their claim. Further, and contrary to the Balints' contention, the case law requiring an expert was clear. Where the Balints' "new evidence" was available if the Balints had used due diligence, the trial court did not abuse its discretion in denying reconsideration. This denial should be upheld.

2. Appellants' Motion for Reconsideration Was Not Timely.

As a separate and independent basis supporting the trial court's denial of the Balints' motion to reconsider, the Balints' filed their motion

² Appellants argue there was no possible way to know whether or not the trial court would determine an expert was required and thereafter dismiss their suit, placing them on the horns of a dilemma. This is not the standard under which reconsideration is permitted. Further, appellants' argument is nothing more than a post-hoc rationalization for a lack of reasonable prudence by Appellants. An expert could have been retained at any point following the events at issue in 2005, or the six years since filing suit in 2011, or after Respondent provided months of advance notice that they would be pursuing a Motion for Summary Judgment. Had Appellants truly wanted resolution on this issue, they could have affirmatively moved for partial summary judgment, judgment as a matter of law, or an advance motion in limine—any number of ways to get the court's guidance on whether their case was an exception to the general rule requiring expert support. Alternatively, after being served with the Motion for Summary Judgment, Appellants could have requested CR 56(f) relief, seeking the opportunity to identify an expert either before the hearing or as alternative relief. Appellants repeatedly chose not to take any action, and instead now blame the court's exercise of judgment for the obvious deficiencies of their own case.

late. Motions for reconsideration are governed by Clark County Local Civil Rule 59(b), which, in relevant part, reads as follows:

Time for motions; contents of motions. A motion for new trial or reconsideration shall be served and filed *not later than 10 days after the entry of the judgment or order in question.*

CCLCR 59(b) (emphasis added).

This local rule is substantially similar to Washington Civil Rule 59(b), which also requires that reconsideration be filed not later than ten days after the decision at issue. CR 59(b). Prior to 2005, CR 59(b) did not contain all of the nouns “judgment,” “order,” and “decision,” and instead former CR 59(b) demanded the filing of a motion for reconsideration within ten days of entry of a “judgment.” CR 59(b) was amended in 2005 adding the language “judgment, order, **or** other decision” to expand the range of actions which trigger the 10-day time period for review.

A motion for reconsideration is timely only when the moving party both files *and* serves their motion within the statutory number of days. *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 849 P.2d 1225 (1993). Washington courts have repeatedly and unambiguously held that trial courts have “**no discretionary authority to extend the time period for filing a motion for reconsideration.**” *Id.* (emphasis added);

Moore v. Wentz, 11 Wn. App. 796, 799, 525 P.2d 290 (1974); *Metz v. Sarandos*, 91 Wn. App. 357, 957 P.2d 795 (1998); *In re Marriage of Harshman*, 18 Wn. App. 116, 567 P.2d 667 (1977); *Griffin v. Draper*, 32 Wn. App. 611, 613, 649 P.2d 123, 125 (1982). Court rules are to be interpreted as though enacted by legislature and giving effect to plain meaning. *State v. Brown*, 178 Wn. App. 70, 312 P.3d 1017 (2013), *rev. denied*, 180 Wn.2d 1004 (2014); *State v. Chhom*, 162 Wn.2d 451, 458, 173 P.3d 234 (2007). Plain meaning, in turn, is discerned by “reading the rule as a whole, harmonizing its provisions, and using related rules” to help identify the intent behind it. *Chhom*, 162 Wn.2d at 458.

It is undisputed that Appellants moved for reconsideration fourteen days after the Order they wish to have reconsidered. By the plain language of the rule, the court’s May 3, 2017 order triggered this time period as it was the order they wished to be reconsidered. In their Appeal, Appellants make the same argument which was squarely rejected by the trial court—that the court’s Order was not an “order” within the meaning of CCLCR 59(b). This argument is made in spite of the fact that the trial court titled the filing a “Memorandum of Opinion and **Order** Deciding Defendants’ Motion for Summary Judgment” (emphasis added). When Appellants argued to the trial court that this was not an order, they were squarely rebuked, with the trial court stating “I put in a written document

which was an **Order** saying I was granting Summary Judgment and setting on the Judgment for today. So I haven't entered the written Judgment, but I entered a written **Order**." (RP 15) (emphasis added).

Per the plain language of CCLCR 59 and precedential law, the trial court did not abuse its discretion in denying Appellants' Motion for Reconsideration. Appellants have provided no authority that the ten day limitation for reconsideration can be overlooked or ignored. The trial court generously allowed supplemental briefing on reconsideration and taking additional evidence; considered it; ruled and entered judgment of dismissal consistent with the May 3, 2017 order. The trial court did not err.

V. CONCLUSION

Appellants' underlying claims were complex, involving the intersection of real estate and estate law, and allegations of duties to current and former clients, and possibly intended beneficiaries. What was required for a reasonable and prudent estate attorney practicing in Washington in 2005 is not within the "common knowledge" of laypersons, and accordingly, expert testimony was required to establish what the standard of care at that time. Because Appellants did not submit an expert declaration, summary judgment was appropriately granted.

Further, CCLCR 59 precluded a motion for reconsideration brought more than ten days after court granted summary judgment. The trial court has no discretion in this regard. Even if the court could overlook that fatal error, it did not abuse its discretion in declining to consider additional evidence.

For the foregoing reasons this Court should affirm the dismissal of the Balints' claims against Mr. Wynne.

RESPECTFULLY SUBMITTED this 18th day of December, 2017.

FAIN ANDERSON VANDERHOEF
ROSENDAHL O'HALLORAN SPILLANE,
PLLC

By *Maria Callaghan* for
Ross C. Taylor, WSBA 48111
Attorney for Defendants

1301 A Street, Suite 900
Tacoma, WA 98402
Ph: 253-328-7800
Fx: 253-272-0386
Email: ross@favros.com

CERTIFICATE OF SERVICE

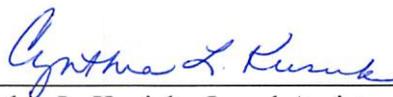
I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 18th day of December, 2017, I caused a true and correct copy of the foregoing document, "Brief of Respondents," to be delivered in the manner indicated below to the following counsel of record:

Counsel for Plaintiffs

Brian Wolfe
Brian Wolfe PC
900 Washington St., Suite 1010
Vancouver, WA 98660-3455
bwolfe@bhw-law.com

- Fax
- ABC Legal Services
- Express Mail
- Regular U.S. Mail
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DATED this 18th day of December, 2017, at Tacoma, Washington.



Cynthia L. Kusick, Legal Assistant

FAVROS LAW

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