

FILED
Court of Appeals
Division II
State of Washington
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NO. 53027-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Brad Allen Hudson, Petitioner,
v.
David Gates, Respondent

RESPONDENT'S BRIEF

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I. INTRODUCTION

Brad Hudson (“Hudson”) appeals the jury’s verdict against him in superior court. He has not assigned error to any action of the superior court, and instead challenges the jury’s verdict directly. However, he has chosen not to provide a complete record, which would be necessary for this court to review the verdict.

Because Hudson has not identified any error of the trial court, and because he has not provided a sufficient record to review the jury’s decision, this court should affirm the superior court.

II. ISSUES

1. Should this court affirm where the appellant has neither designated an appealable order nor assigned any error to the trial court?
2. Should this court affirm where the appellant has provided an insufficient record for review?

III. STATEMENT OF THE CASE

Petitioner Brad Hudson (“Hudson”) sued David Gates (“Gates”) in Mason County superior court. The jury returned a verdict for Gates. Hudson did not move to vacate or amend the

verdict, and the court subsequently entered judgment dismissing the case with prejudice.

Hudson now appeals the jury's decision. He does not assign any error to the trial court, and does not designate any order or judgment of the trial court in his notice of appeal. Instead, he designates the jury's verdict as the decision he appeals from, and attempts to re-argue the trial case in his brief. He has chosen not to provide a report of proceedings.

IV. ARGUMENT

A. This court should affirm the trial court because Hudson has not identified any error by the trial court.

Hudson's notice of appeal does not designate any decision of the superior court, as it should under RAP 5.3(a)(3). It specifically does not designate the court's final judgment, as would be required under RAP 2.4(c) if he wanted to appeal that judgment. In addition, under RAP 10.3(a)(4), a brief should contain a "separate precise statement of each error a party contends was made by the trial court." Hudson's brief does not state any error made by the trial court.

Instead of challenging any decision of the trial court, Hudson's notice of appeal designates the jury's verdict itself as the

decision appealed from. In his brief, he challenges the jury's verdict and attempts to re-argue the case.

However, the Rules of Appellate Procedure only allow for appeal from decisions of the trial court. RAP 2.2(a) contains a specific list of the superior court decisions that may be appealed, and that list does not include the jury's verdict. If Hudson believed that there were legal grounds to vacate or amend the jury's verdict, he could have moved the trial court to do so, and appealed the trial court's decision if the court denied his motion. He could also have appealed the trial court's final judgment if he believed it did not accurately reflect the jury's verdict. He cannot appeal the verdict directly without having challenged it before the trial court.

Because Hudson has not identified any decision of the trial court which he wants overturned, or any error which he believes the trial court committed, this court should affirm.

B. This court should affirm the trial court because Hudson has not provided a sufficient record to review the jury's decision.

Even if Hudson had challenged the jury verdict at trial in a manner which allowed him to appeal it here, Hudson has not provided a sufficient record for this court to review the verdict.

Under RAP 10.3(a)(6), an appellant must provide “references to relevant parts of the record” in addition to argument, and RAP 10.3(a)(5) states that “[r]eference to the record must be included for each factual statement” in the appellant’s brief. The appellant bears the burden of providing a sufficient record to review the issues raised on appeal. RAP 9.2; *In re: Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990).

In this appeal, Hudson challenges the jury’s verdict, which declined to award damages to him. “An appellate court will not disturb an award of damages made by a jury unless it is outside the range of substantial evidence in the record, or shocks the conscience of the court, or appears to have been arrived at as the result of passion or prejudice.” *Bingaman v. Grays Harbor Comm’ty Hosp*, 103 Wn. 2d 831, 835, 699 P.2d 1230 (Wash. 1985). Hudson does not argue that the verdict shocks the conscience or is a result of passion or prejudice; simply that the jury was wrong. In order to prevail on this claim, he would have to show that the verdict was not supported by substantial evidence. “A reviewing court may not disturb findings of fact supported by substantial evidence even if there is conflicting evidence.”

Merriman v. Cokeley, 168 Wash.2d 627, 631, 230 P.3d 162 (Wash., 2010).

In order to overturn the jury's verdict, this court would have to evaluate the complete record to determine whether the verdict was supported by substantial evidence. But Hudson has declined to provide the report of proceedings, which would contain the witnesses' testimony at the trial. Instead, he makes numerous factual statements unsupported by the record. Without the report of proceedings, this court cannot determine that there was no substantial evidence supporting the jury's verdict.

Because Hudson has not provided a sufficient record for this court to review the jury's verdict, the trial court should be affirmed.

V. ATTORNEY FEES

RAP 18.9 provides for the court to impose sanctions on a party who files a frivolous appeal. An appeal is frivolous "if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Streater v. White*, 26 Wash. App. 430, 435, 613 P.2d 187, 191 (1980). CR 11 also provides for sanctions for frivolous motions. Courts hold pro se litigants to the same standard

as attorneys. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

In this appeal, Hudson has failed to identify any error by the trial court and has failed to provide a sufficient record to review his claims, even had he brought them properly before this court. This appeal is so totally devoid of merit that there was no reasonable possibility of reversal. Therefore, this court should award attorney fees to Gates under RAP 18.9 and CR 11.

VI. CONCLUSION

Because Hudson has not assigned any error to the trial court, has not identified any appealable order, and has not provided a sufficient record for review, this court should affirm the trial court.

In addition, this Court award costs and reasonable attorney fees because Hudson's appeal is frivolous.

Respectfully submitted this 14th day of June, 2019,



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