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No. 53976-4-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

AMANDA CALDERA, as personal representative of
the estate of Dawn Caldera,

Appellant,

vs.

SUSAN PARSONS, a married person, et. al.,

Respondent.

APPELLANT'S BRIEF

Dan'L W. Bridges, WSBA 24179
McGaughey Bridges Dunlap, PLLC
3131 Western Avenue, Suite 410
Seattle, WA 98121
(425) 462 4000

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1. Parties

Appellant was the plaintiff below; the estate of Dawn Caldera.

Respondent is Susan Parsons; the defendant below.

2. Assignments of Error

1. The trial court's November 10, 2018 order (CP 169-171) was error.
2. The trial court's December 20, 2018 order (CP 260) was error.
3. The trial court's April 26, 2019 order (CP 298) was error.

3. Issues Presented

1. Whether the trial court's exclusion, while refusing to conduct a Burnet analysis, of appellant's expert disclosed 3 months before a December 2018 trial in response to respondent's surprise disclosure of two new experts on the last day of discovery was error;
2. Whether the trial court's continued exclusion of appellant's expert after the December 2018 trial date was continued to July 2019 and the trial court still refused to conduct any Burnet analysis given that change of circumstance was error.
3. Whether this case should be remanded to a different judicial officer.

4. Facts

A. OVERVIEW

The trial court refused to consider Burnet v. Spokane Ambulance, 131 Wn.2d 484 (1997) when it excluded appellant's expert. Instead, it

mechanically applied its case schedule to the exclusion of all else while giving no weight to respondent's conduct that created the situation.

Appellant disclosed a new expert witness 3 months before trial in response to respondent's disclosing two new experts on the day of the discovery deadline. Respondent had those new experts' report for a full month and withheld it, emailing it to appellant on the day of the discovery deadline. Worse, respondent certified discovery responses that she had retained no expert when clearly she had, to facilitate her springing this discovery day deadline surprise on appellant with no warning.

Regardless, it was error to exclude appellant's expert. There was no willful violation of a court order nor was there prejudice by the disclosure 3 months before trial; respondent had two experts on the issue and appellant proactively offered to arrange a deposition and pay for any increase in costs.

The December 2018 trial was continued due to a health issue. Trial was reset to August 2019. After the reset, appellant raised the issue again arguing it was error to have not considered Burnet originally but now with many months to trial, it would be error to continue to exclude an expert disclosed in 2018 for a trial scheduled for August 2019. The trial court still refused to consider Burnet and ordered the expert was still excluded based on the case schedule from 2018.

This case was tried to a verdict on August 12, 2019 with the jury making a liability determination and award of damage. CP 321-322. The error presented here only effects the damage portion of the trial given the trial court erroneously excluded appellant's damages expert. Thus, although appellant seeks a reversal of trial court orders, she only asks for a remand on damage. The liability verdict is not appealed.

B. 2018 ORDERS EXCLUDING EXPERT

This case was set for jury trial on December 10, 2018. CP 10.

i. Timing of Discovery Disclosures

After the case schedule discovery deadline but three months before trial, October 10, 2018, appellant disclosed a new expert medical witness, CP 33-38, in *response* to two new medical experts respondent disclosed on the day of the discovery deadline which was September 17. CP 10.

Those defense experts' report was dated **August 25**. CP 181.

Respondent held their report and used email to time the disclosure to the precise last day of discovery set forth in the case schedule. CP 207.

That respondent withheld disclosure to prevent appellant from responding within the discovery deadline is self-apparent. But, removing any doubt this was gamesmanship to create the situation, the respondent also falsely certified her discovery answers to conceal their existence.

Again, the new defense experts' report was dated **August 25**.

Only four days earlier on **August 21**, respondent's counsel certified under CR 26 that *no expert witness had even been retained*; from appellant's discovery requests to respondent along with her answer; CP 219-220:

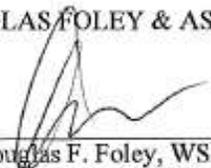
9 | **INTERROGATORY NO. 4:** Identify by name, contact information, area of
10 | expertise, and provide a full and complete description of their opinions, each and every
11 | individual you anticipate eliciting expert testimony from in defense of this matter.

12 | **ANSWER:** A CR 26(b) expert witness has not yet been retained. However, pursuant
13 | to CR (26(e)(i), we will seasonably supplement our responses with the identity of each

DATED this 21st day of August, 2017.

DOUGLAS FOLEY & ASSOCIATES, PLLC

By



Douglas F. Foley, WSBA #13119
E-mail: doug.foley@dougfoleylaw.com
Kevin M. Sampson, WSBA #24162
E-mail: kevin.sampson@dougfoleylaw.com
Attorneys for Defendants

It is an impossibility that it was true and accurate on **August 21**, 2017 that respondent had “not yet retained” an expert as respondent certified, and only *3 days later* managed to retain not merely one but two experts (two signed the IME report, CP 205) wherein they read and analyzed thousands of pages of medical records going back over 14 years, and drafted a 25 page, single spaced report that was printed in final form on **August 25**, 2018.

Regardless of respondent's tactics, appellant found it necessary to retain a forensic expert to respond. The issues raised by the new defense

experts ranged far and wide and treating doctors cannot be relied on to spend the time necessary to drill down and respond on such issues. Sometimes they do. But here, this case involved a complex head injury. A more direct consideration was required.

Appellant disclosed a responsive expert on October 17 and at the same time offered to present him for deposition.¹ CP 73 and 76.

ii. Respondent's Motion And 2018 Order To Exclude

Respondent refused appellant's offer of a deposition. That offer was made at least four times. CP 84, 94, 97, 100.

Instead, on November 19, 2018 respondent moved to exclude the witness asserting he was disclosed after the case schedule discovery deadline and should be stricken for that reason alone. CP 45, et. seq. Respondent did not cite the Burnet rule, work its analysis, or even acknowledge its existence.

Respondent's motion omitted she withheld disclosing her two new experts until the last day of the discovery deadline. She also articulated no prejudice by appellant's disclosure in response. That would have been an interesting task indeed given she disclosed two experts on precisely those

¹ After that disclosure on October 17, appellant had to swap out the disclosed expert due to an issue. However, there was categorically *no change* in the opinions or substance and respondent had done nothing to take discovery or request a deposition of the expert named on October 17. While appellant appreciates that constitutes an expert name change, nothing material changed.

issues and there were three months between appellant's disclosure in October and trial in December.

Appellant responded to the motion with a detailed Burnet analysis and identified that she offered respondent to set the deposition and to pay for any increased cost by the timing. CP 54-69.

With no Burnet analysis whatsoever, on November 30, 2018 the trial court granted respondent's motion to exclude. (CP 169-170). The order only identified the pleadings that were filed and concluded:

ORDERED:

Motion to exclude report is granted
the court reserves on costs at this
time

Given the short time to trial, (the order was November 30 and trial was scheduled for December 10), plaintiff filed a motion for reconsideration as a part of her in trial limine briefing. CP 173-179. Again appellant outlined the timing of respondent holding her experts' report a month until the day of the discovery deadline, that respondent had certified in discovery only four days earlier that she had "retained no expert" (CP 175) when clearly she had, appellant's rebuttal disclosure in response, and her attempts over two months to work with respondent to secure any further discovery requested by respondent. Id. Appellant also worked the Burnet analysis.

Respondent's response (filed December 10) again only argued the case schedule ostensibly being violated; that plaintiff's attempt to video preserve her doctor's trial testimony violated the rules (ignoring plaintiff had been working to try to set a deposition for over two months with respondent), and a variety of non-sequiturs and ad hominem arguments. CP 570-579. Respondent cited no authority and made no response to Burnet.

Appellant's motion, noted for the first day of trial, was being argued by the parties when counsel for appellant was struck by a medical condition and the trial was continued. CP 558-559 and 256.

A week later after having recovered enough to resume some amount of work and the issue still open, appellant filed a short reply in support of the motion. CP 254-259. The reply again worked through Burnet, bolstered by Jones v. City of Seattle, 179 Wn.2d 322 (2013). 9

The trial court later (December 20) entered a paper order. It conducted no Burnet analysis to cure its earlier failure to do so. CP 260.

Instead:

(1) The trial court ruled plaintiff "did not cite any provision of CR 59 in support of his² motion." (sic).

² The plaintiff was Dawn Caldera. The motion was her's. It is notable how the trial court was personalizing the issue.

CR 59 is not the applicable Rule. It is CR 60. And while the trial court was correct no specific provision of CR 60 was cited, it is settled that “deviation from the technical requirements (are) inconsequential” in motions to vacate. See Carpenter v. Elway, 97 Wn.App. 977, 985 (1999) finding that a party’s citation to even the wrong rule was of no consequence when the adverse party “prepared and argued (in response) anyway,” and the “substantive argument” was identical. Id. at 986. There was no question as to the argument raised, the relief requested, or the basis for it.³ Respondent filed a detailed brief in response, albeit unresponsive and did not address Burnet.

(2) The trial court ruled “the motion was not properly served on the defense by mail.”

Again, appellant’s motion was filed as a component of her other motions in limine for the first day of trial. Neither the Court or respondent objected to how those other motions were noticed. They were ruled on by the Court. Appellant provided all her motions to respondent by email and followed that with hard copy as both parties had done throughout the case.

³ The motion was framed as: “Plaintiff moves this court for an Order allowing plaintiff to submit to the jury, the preserved testimony of Dennis Chong, M.D...It matters not to plaintiff the specific procedural manner in which this motion is framed. Whether it is a motion in limine, motion for reconsideration, or motion to vacate the previous order, all are appropriate vehicles for this court to correct, what plaintiff respectfully submits, is reversible error.” CP 173.

In response, respondent filed a lengthy (albeit unresponsive) brief specific to this issue. Further, the trial court based its exclusion on the assumption of a timely disclosure by respondent of her two new experts *yet respondent's disclosure was done by email also.*

It is *not* appellant's intention to argue the trial court should have found respondent's discovery disclosure untimely merely because it was by email. But, it is suggested to be material the trial court knew and accepted as sufficient respondent's expert disclosure *by email*, but identified appellant's giving an email notice of her motion followed by hard copy (exactly as respondent did) as insufficient. The trial court is properly vested with vast discretion on such issues but it must exercise it consistently. This is arguably not material on the merits of the exclusion but does bear on appellant's request to be remanded to a different judicial officer.

(3) The trial court concluded: "for all the reasons previously found in the court's order of November 30, 2018, the Motion for Reconsideration is hereby denied." However, *no reasons* were "found" in the November 30, 2018 order. CP 169-171.

It is suggested the court's December 20, 2018 order demonstrates a certain reaching for any reason to deny the motion to reconsider/vacate while not doing the one thing it needed to do: a Burnet analysis.

A new trial date was set for August 5, 2019. CP 261.

C. 2019 MOTIONS AND TRIAL

In 2019 after the continuance, the undersigned wrote respondent's attorney and submitted the 2018 order to exclude was moot given the continuance, asked respondent's attorney if he agreed, and requested a response. CP 265. Respondent's counsel simply ignored the letter. Id.

Appellant filed a motion in April 2019, asking the trial court to rule appellant's expert witness could testify at the August 2019 trial:

COMES NOW plaintiff and moves for an order allowing Dennis Chong, M.D., to testify on behalf of plaintiff at trial scheduled for August 5, 2019.

Whether the court (considers) this to be a motion to amend the case schedule or some other form of relief, plaintiff demurs. This motion is based on the authority cited below.

CP 264-268.

The gist of the motion asked the Court to find appellant's expert disclosed in 2018 could testify at the August 2019 trial. The motion argued in light of the continuance, striking the witness for a December 2018 trial date was moot and a Burnet analysis would not tolerate continued exclusion with an August 2019 trial date. CP 264-268.

Respondent provided her response late, the day before the motion, depriving appellant any ability to provide a written reply. CP 334 (VRP 4).⁴

⁴ While perhaps not material on the core issue here, this is notable on appellant's request to be remanded to a different judicial officer. In addition to the inconsistency regarding email versus US Mail notice, here the trial court tolerated

Lateness aside, respondent again ignored Burnet and its progeny. App. 271-279). She recycled her arguments from her November 2018 motion to exclude. She articulated no prejudice to responding to an expert with 5 months remaining to trial other than complaining defense counsel may have to drive to Seattle for a deposition if one was taken. Id.

At oral argument appellant pointed out respondent filed her motion late thus depriving appellant an ability to file a reply. CP 334 (VRP 4) Appellant orally replied that: respondent's arguments based on the prior case schedule and trial date were moot; it was error originally to have granted the motion to exclude given the lack of Burnet analysis but even if not error, it was error to continue to exclude appellant's expert witness with five months remaining to trial based on allegations of lateness in 2018. CP 334-335, inter alia. Appellant also worked through the Burnet analysis despite the fact neither the trial court or respondent would and repeatedly pointed out to the trial court the need for it to do so, id., and more specifically CP 341-342

The trial court did not engage in any Burnet analysis. It focused solely on appellant's 2018 disclosure after the original Local Rule case schedule deadline. CP 331-344.

without comment respondent's late notice to appellant of the response and the fact respondent's counsel was being dilatory by using email when it suited him (the email disclosure on the last day of discovery of the two new experts in order to time the deadline perfectly) but only using US Mail to send the motion response, in order to prevent appellant filing a reply.

5. Authority And Argument

A. AUTHORITY

Before any witness is excluded over an issue of timing

the trial court must explicitly consider (1) whether a lesser sanction would probably suffice, (2) whether the violation at issue was willful or deliberate, and (3) whether the violation substantially prejudiced the opponent's ability to prepare for trial.

Jones, 179 Wn.2d at 338. (numbers added for reference).

The trial court must actually and in fact work a Burnet analysis; to not do so is error:

Under Jones, a trial court may not exclude late-disclosed witnesses as a sanction without first explicitly consider[ing] whether a lesser sanction would probably suffice, whether the violation at issue was willful or deliberate, and whether the violation substantially prejudiced the opponent's ability to prepare for trial.

HBH v. State, 197 Wn. App. 77, 95 (2016).

A case schedule violation does not alone satisfy exclusion of a witness for several reasons.

First, a case schedule violation standing alone does not color the “willful or deliberate” element of Burnet:

It has (been) more recently noted, however, that Burnet's willfulness prong would serve no purpose if willfulness follows necessarily from the violation of a discovery order.

Jones, 179 Wn.2d at 345.

Second, a Local Rule case schedule is subservient to the Supreme Court's interpretation of the Civil Rules and a case schedule requirement erecting hurdles higher than the Civil Rules is contrary to them:

The local rules may not be applied in a manner inconsistent with the civil rules, and they are therefore subordinate to this court's holding in Burnet.

Id. at 344.

In candor, Jones held exclusion may be “harmless error” if “the excluded testimony was largely irrelevant or cumulative.” In re Dependency of M.P., 185 Wn.App. 108, 118 (2014). However, when the court fails to consider that *and finds it is so*, it cannot be said exclusion “was harmless.” Id. Exclusion without a finding the testimony was “irrelevant or cumulative” “must be reversed.” Id.⁵

This Court in Mancini v. City of Tacoma, 188 Wn. App. 1006 (2015)⁶ well summarized the process. Although lengthy, it identifies the totality of the legal issue better than anything appellant could provide:

As our Supreme Court has made clear: The law favors resolution of cases on their merits. Because of this, the court has cabined a trial court's discretion to exclude witness testimony as a means of sanctioning discovery violations. Consequently, prior to excluding witness testimony, the trial court must explicitly consider whether a lesser sanction would probably suffice, whether the violation at issue was

⁵ Reversing “guardianship” orders based on the exclusion of witnesses when the trial court failed to conduct a proper Burnet analysis. Id.

⁶ Cited in accord with GR 14.1

willful or deliberate, and whether the violation substantially prejudiced the opponent's ability to prepare for trial.

Discovery sanctions should be proportional to the nature of the discovery violation and the surrounding circumstances of the case. Generally, the court may impose only the least severe sanction that will be adequate to serve its purpose in issuing a sanction. We have also said that it is an abuse of discretion to exclude testimony as a sanction for noncompliance with a discovery order absent any showing of intentional nondisclosure, willful violation of a court order, or other unconscionable conduct. As made clear, only “unconscionable conduct” can give rise to the exclusion of testimony as a discovery sanction.

Moreover, the trial court must make a proper record of its consideration. While the court may enter an order imposing a discovery sanction without oral argument or a colloquy on the record, the order (or a contemporaneous record) must contain findings on the Burnet factors of willfulness, prejudice, and consideration of a lesser sanction. To allow for meaningful review, the findings themselves must explain the court's reasoning for reaching its conclusions. In addition, the order must be supportable at the time it was entered.

Id. at 14. (substantial and many citations omitted) (underline added).

This court is asked to give particular consideration of its own words underlined above as they are reflective of the Supreme Court's expectation: “the order must be supportable at the time it was entered.”

B. ARGUMENT

i. The Trial Court's 2018 Orders Were Error

The trial court erred when it excluded appellant's expert witness the first time around in November 2018 (before the trial continuance) and denied

appellant's motion brought for the first day of trial (December 10, 2018) for reconsideration or to vacate that order.

On October 10, 2018 appellant disclosed an expert witness three months before trial⁷ in response to respondent disclosing for the first time, two new experts with new opinions on the day of the discovery deadline having tactically withheld that defense expert report for one month and certifying in her discovery responses she had retained no experts when clearly she had.

Previously, with no defense expert disclosed and in reliance of respondent's discovery answers, appellant intended on calling treating doctors (disclosed) to simply explain their treatment and appellant's injuries.

However, responding to respondent's two new forensic experts given the nature of appellant's closed head injury was thought to have required more expert focus and preparation than treating providers are willing to do; or perhaps better said, can be relied on to do.

Under the Burnet factors, for the 2018 trial (1) there was no "willful or deliberate" violation of an order by appellant as defined by case law. As Jones explained, the base violation of the case schedule order did not color that element; yet, that was the sole argument respondent made. Additionally,

⁷ Substituting with a different expert one month later as described above, but even that was still two months before trial.

it was not “unconscionable conduct” for appellant to disclose an expert in response to respondent’s tactical delay in withholding her two experts’ report a month until the day of the discovery deadline and affirmatively concealing their existence by certifying discovery responses that she had retained no experts when clearly she had. CP 219-220.

(2) There was no “substantial prejudice (to respondent’s) ability to prepare for trial.” Respondent already had two expert witnesses on those issues. Three months remained before trial to take a discovery deposition when appellant first disclosed her responsive expert and she offered to both arrange it and pay for any increased cost in doing so. Albeit as pointed out to the court, despite the case being in litigation for over a year the defense had not bothered to take a single deposition in the entire case - not of any fact witness or the medical providers plaintiff already disclosed in discovery.

(3) Consideration of “whether a lesser sanction would probably suffice” is moot insofar as not even respondent could or did articulate a single cognizable argument or fact demonstrating prejudice by appellant’s disclosure that needed to be cured by a sanction. Sanctions in this context are only to cure “prejudice,” and then only in the least amount necessary to do so. Again, appellant immediately offered the expert for deposition and to pay for any increased cost. Also, respondent already had two experts on precisely those issues. There was no prejudice other than that respondent

confabulated by refusing for months to participate in a deposition and then to complain later she was doing trial prep. Had she responded timely and as Burnet instructs the parties should, the issue would have been wrapped up months before trial.

All that said, it is mooted by the trial court not even considering those issues. As cited above, it is error for a trial court to exclude without finding he Burnet factors. Not only did this trial court not consider them, when appellant repeatedly pointed them out and urged the trial court it was required to consider them the court essentially refused. Further, the trial court did not make a finding that the testimony was redundant or irrelevant and thus, as Mancini held, it *cannot* be said that the exclusion was harmless.

It is respectfully submitted the November 2018 exclusion given the undisputed facts in the record was error and there is no need to remand for further fact-finding. Given these facts, and not to take away from the discretion trial courts rightly have, it would have been an abuse of discretion to order exclusion even if the trial court worked the Burnet factors.

The trial court erred denying appellant's motion in limine to either reconsider or vacate the November 2018 for the same reasons. Appellant well briefed the legal and factual issues. Respondent again did not color any of the Burnet elements. The trial court did not enter any findings.

///

ii. The Trial Court's 2019 Order Was Error

The trial court's order denying appellant's April 2019 motion to allow the witness to testify at the August 2019 trial is error to an even greater degree than its 2018 order.

In April 2019 with five months before trial, none of the Burnet factors are present. Appellant need not even work through them – it is clear.

Even if Appellant did not disclose the expert for the first time until 2019, after the continuance, exclusion of him in April with an August trial date was error. That he was disclosed in 2018 makes it that much more clear.

As before, (1) there remained no “willful or deliberate” violation of a prior order nor was there “unconscionable conduct” by appellant disclosing an expert, in response to newly disclosed experts by respondent after respondent having tactically withheld that new experts' report a month until the very last day of the discovery deadline. And (2) there was no prejudice. Very shortly after the 2018 trial continuance, the undersigned wrote counsel for the respondent identifying this issue. The motion was ultimately decided in April 2019; approximately five months before the August 2019 trial date.

The order excluding that expert in April for an August 2019 trial date was not “supportable at the time it was entered” as required by Burnet and this court in Mancini, 188 Wn. App. at 14.

///

The reasons the court provided for denying appellant's April 2019 motion had nothing to do with Burnet and do not bear scrutiny of the record.

There was no finding by the trial court that the excluded testimony was "irrelevant or cumulative." In re Dependency of M.P., 185 Wn.App. at 118. It cannot be said exclusion "was harmless." Id. Therefore, such exclusion "must be reversed." Id.

On the face of the record the testimony was neither irrelevant or cumulative. Respondent's IME doctors had a variety of opinions beyond the treating doctor witnesses disclosed by Appellant. Further, appellant not only intended on using her expert witness to tell the story of her medical treatment, he was to be used to rebut the IME doctors. CP 242-255

As things worked out, due to emergency of appellant's doctor for her closed head injury, he was unable to attend trial in 2019. The undersigned learned that only days before trial. That doctor was available for the 2018 trial. Plaintiff had to try this case in front of a jury with *no* medical testimony. Had the trial court not stricken appellant's forensic expert she would have had at least that person's testimony at trial.

Faced with the Hobbesian choice of having no medical evidence or testimony, or accepting respondent's ER 904 records containing all manner of irrelevant medical issues going back over 14 years, appellant was put to accept defendant's ER 904 records to her prejudice.

In conclusion, the trial court refused to work the Burnet analysis despite appellant's repeated urgings that it do so. Respondent cannot be heard to argue the trial court considered those issues but simply did not use certain magic words. The record demonstrates the court did not work that analysis regardless of the language used and despite repeated briefing and argument that it needed to. The trial court's refusal to account for that authority is somewhat confounding and is perhaps the strongest reason why this court should remand to a different judicial officer as described below.

6. Appellant Requests Remand To A Different Judge

On the one hand, appellant apologizes for digressing above into a variety of matters that are not necessarily material on the exclusion of appellant's expert. However, they are directly relevant and regrettably necessary to identify in support of appellant's request that on remand this matter be directed to a different judicial officer.

Remand to a different judge when the record shows "the judge would have difficulty overlooking (her) previously stated views or findings" is appropriate. In re Marriage of Dunn, 189, Wn.App. 1011 (2015), fn. 8. (unpublished, but cited per GR 14.1)

Appellant does not make this request lightly and in the undersigned's appellate practice this is only the second time the undersigned has done so. However, it is difficult to reconcile the trial

court's rulings and discussion at hearings as anything other than demonstrating a certain level of deference to the respondent over appellant. There are a variety of issues demonstrating that.

First is the simple fact of the trial court's repeated refusal to even consider the Supreme Court's authority in Burnet. Appellant, for lack of a better term, nudged the trial court on that repeatedly but the trial court was so locked into accepting respondent's arguments as to call into question at least the appearance of fairness against either this particular appellant or her attorney. It also calls into question this particular trial court's ability on remand to alter course objectively after having dug in no less than three times (on three motions) to rejecting any consideration of Burnet.

Second, the facts demonstrate a certain unevenness in terms of how the trial court exercised its discretion to call into question at least the appearance of fairness if not a lack of fairness in fact. Cited above, respondent complained notice of the motion to reconsider/vacate received by email, followed by US Mail was insufficient. The trial court found that a violation and used it to deny the motion to vacate despite the fact: (1) it was undisputed respondent received the briefing to fully brief a response and argue the merits, (2) that was the same manner of transmittal respondent used to make its disclosure of new expert witnesses timely on the day of the discovery deadline and that was acceptable to the court.

There are other issues that inhere in the foregoing that appellant does not believe necessary to call out here. Albeit, an additional example would be that while every act by appellant was given incredible scrutiny, the trial court gave no weight at all to the fact of respondent's discovery certification that she had not even "retained" an expert when clearly she had. As noted above, discretion is wide for a reason but it must be evenly applied. It is relied this court will draw its own conclusions.

7. Relief Requested

Appellant asks this Court to (1) reverse the orders identified above and remand this case for further proceedings on damage and (2) to remand to a different judicial officer.

DATED this 26th day of March, 2020.

McGAUGHEY BRIDGES DUNLAP, PLLC



By: _____
Dan'L W. Bridges, WSBA 24179
Attorney for appellant

Certificate of filing and service

I Dan Bridges certify under oath and the penalty of perjury of the laws of the State of Washington that on today's date I filed and e-served this brief on counsel for respondent by way of the court's electronic filing portal.

March 26, 2020.

/s/ Dan Bridges

MCGAUGHEY BRIDGES DUNLAP PLLC

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