

FILED

MAR 30 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 293793

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

DONALD J. ROKKAN, individually; and DONALD J.
ROKKAN, personal representative for the Estate of Marsaelle
F. McHale, deceased,
Appellant,

v.

GESA CREDIT UNION, a Washington non-profit corporation;
and PAULA MILLER and JOHN DOE MILLER,
Respondents.

BRIEF OF RESPONDENTS

Lucinda J. Luke WSBA #26783
Pamela E. Peterson WSBA #27885
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TABLE OF CONTENTS

I. IDENTIFICATION OF PARTIES..... 1

II. SUMMARY OF RESPONSE..... 1

III. RESPONSE TO ASSIGNMENTS OF ERROR 3

IV. RESPONSE TO ISSUES RAISED..... 4

V. RELIEF REQUESTED..... 5

VI. RESPONSE TO STATEMENT OF THE
CASE..... 5

VII. ARGUMENT..... 8

 A. Rokkan’s Legal Argument on Review Far
 Exceeds the Scope of His Appeal..... 8

 B. Response to Rokkan’s Assignment of
 Error No. 7:..... 11
 The Trial Court Did Not Err in Holding That
 the Filing of the Jury Verdict on July 9, 2010
 was the Order of the Court for Purposes...of
 Appeal.
 The Jury’s Verdict is the Court’s Order or
 Decision in a Jury Proceeding Where Money
 Damages or Fees are Not Awarded.

 C. Response to Rokkan’s Issue No. 11: 13
 Rokkan Timely Filed Appeal of the Order
 Denying His Motion for Leave But Failed to
 Timely File His Underlying Motion as Required
 By CR59’s Strict Timelines

Rokkan Failed to Timely Request Leave of
the Court to File a Motion for New Trial
Subsequent to His Two Requests for
Reconsideration..... 15

VIII. CONCLUSION..... 18

INDEX TO APPENDICES

APPENDICES – pages 1- 8

TABLE OF AUTHORITIES

CASES

Alpine Industries, Inc. v. Goh
101 Wn.2d 252, 253, 676 P.2d 488 (1984)..... 16

Right-Price Recreation, LLC v. Connells Prairie Community Council
105 Wash.App. 813, P.3d 1157 (2001) 9

STATUTES

RCW 4.44.460..... 12

COURT RULES

Rules of Appellate Procedure (RAP) 2.4.....8, 9, 10

Court Rule (CR) 59.....7, 12, 14, 15

OTHER AUTHORITIES

WA Practice, Vol. 15, §38.6 (2003).....17

I. IDENTIFICATION OF PARTIES

Plaintiff at trial in this matter, Donald J. Rokkan, individually, and as personal representative of the Estate of Marsaelle F. McHale, deceased, will hereinafter be referred to as “Rokkan.” Defendants at trial, Gesa Credit Union and Paula Miller, will be collectively referred to hereinafter as “Gesa.”

II. SUMMARY OF RESPONSE

Rokkan’s appeal should extend only to the Notice of Appeal he filed September 15, 2010. That Notice of Appeal appeals the Superior Court’s September 8, 2010 Order denying Rokkan’s Motion for Leave to File Motion for New Trial. Contrary to Rokkan’s argument on review, September 8, 2010 is not the date the final order (jury verdict) was filed. That date was July 9, 2010 – the date that the court’s clerk read the verdict’s questions and answers into the record, the jury was polled, and the court stated on the record that the verdict was accepted.

In his brief, Rokkan assigns errors, presents issues, and argues well beyond the Order he is appealing essentially rearguing the case he presented at trial.

Rokkan's continued efforts – over the course of two requests for reconsideration, a motion for new trial, and a motion for leave of court – require responses and simply frustrate the judicial tenet of finality. To allow Rokkan to appeal beyond the September 8, 2010 Order is prejudicial to Gesa, who seeks finality to this matter.

In this Brief, Gesa responds only to the issues relating to the Superior Court's September 8, 2010 Order that is properly before this Court on appeal. If this Court wishes for Gesa to brief matters that extend beyond that Order, Gesa respectfully reserves the right to submit supplemental briefing and will await the direction of the Court.

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**III. RESPONSE TO ASSIGNMENTS OF ERROR
IDENTIFIED BY ROKKAN**

Gesa does not accept Rokkan's assignments of error numbers 1 through 6 as they exceed the scope of the Order subject to this appeal. Gesa respectfully requests that this Court strike those portions of Rokkan's brief addressing Assignments of Error number 1 through 6.

Rokkan's Assignment of Error number 7 (“[t]he trial court erred in holding that filing of the jury verdict on July 9, 2010, was ‘the order of the court for purposes of. . . appeal’”) was argued to the trial court on September 7, 2010. Gesa will respond to this assignment of error as it relates to the timeliness of Rokkan's motion for leave. Rokkan does not assign any other error to the court's September 8, 2010 Order Denying Motion for Leave to File a Motion for New Trial.

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**IV. RESPONSE TO ISSUES RAISED BY
ROKKAN**

Gesa does not accept Rokkan's Issues Pertaining to Assignments of Error Nos. 1 through 10 because they exceed the scope of review. Gesa respectfully requests that this Court strike those portions of Rokkan's brief addressing issues pertaining to Issues Pertaining to Assignments of Error numbers 1 through 10.

Rokkan's Issue number 11 (“[w]hether the Notice of Appeal herein was timely filed? (Assignment of Error No. 7.)”) does appear to be an issue before this Court on review. Gesa points out; however, Rokkan does not identify any other issue concerning the court's September 8, 2010 Order Denying Motion for Leave to File Motion for New Trial.

V. RELIEF REQUESTED BY GESA

Gesa requests that any hearing on the merits be precluded, that portions of Rokkan's brief be stricken (relating to Errors 1 –

6 and Issues 1 – 10), that the court's September 8, 2010 Order be affirmed, and Rokkan's appeal be denied. Gesa also requests this Court order the payment of Gesa's reasonable attorney's fees and costs in this appeal.

VI. STATEMENT OF THE CASE

The Statement of the Case submitted by Rokkan does not fairly or accurately state the facts and procedures relevant to this review. Rokkan's Statement far exceeds the facts and procedures relevant to this review and is inappropriately argumentative.

Gesa submits the following Statement of the Case:

Rokkan filed his Complaint in this matter on April 1, 2008. CP 002. The trial commenced on June 28, 2010. RP 1.¹ On July 7, 2010, after Rokkan rested his case, the court entertained Gesa's Motion for Judgment as a Matter of Law. RP 390-434. On this same date, Rokkan requested

¹ Report of Proceedings (RP) references are to the verbatim report of proceedings consisting of pages 1-543, filed on December 17, 2010, by court reporter John McLaughlin.

reconsideration of the court's order concerning Rokkan's Consumer Protection Act claim. RP 435. Upon hearing from both parties, the court denied the request. RP 438.

Gesa then presented its case. RP 438-484. On July 8, 2010, at the conclusion of Gesa's case, Rokkan again requested reconsideration as to the court's order dismissing his Consumer Protection Act claim. RP 494. After hearing from both parties, the court denied Rokkan's second request for reconsideration. The trial court subsequently presented the jury's verdict on July 9, 2010, the clerk was directed to read the verdict into the record, and the verdict was filed with the court. CP 156.

On July 16, 2010, Rokkan filed his Motion for New Trial and scheduled a hearing on the matter for August 13, 2010. CP 159 and 160. Rokkan did not note the hearing as a Special Set before the trial court. The court struck the August 13th hearing date.

Gesa filed its Response to Rokkan's Motion on August 18, 2010. CP 163. In its response, Gesa requested dismissal of the Motion for New Trial based upon Rokkan's failure to comply with Civil Rule ("CR") 59(b) and CR 59(j)'s requirement that leave of court be obtained prior to filing multiple requests/motions. CP 163. On August 24, 2010, Rokkan sought to cure his CR 59 deficiencies by filing a Motion for Leave to File a Motion for New Trial. CP 164. On September 3, 2010, Gesa filed its response to Rokkan's Motion for Leave. CP 168.

On September 7, 2010 a hearing was conducted and argument of counsel was heard on Rokkan's Motion for Leave of Court to File Motion for New Trial. CP 169; RP Pelletier, 1-11.² The court held that Rokkan failed to timely seek leave of court to file a motion for new trial, as required by Civil Rule 59(j) and 59(b). and denied Rokkan's motion for leave to file

² RP Pelletier refers to the verbatim report of proceedings consisting of pages 1-12, filed on December 13, 2010, by court reporter Cheryl A. Pelletier.

another motion for new trial. RP Pelletier 10. An Order consistent with the court's September 7, 2010 decision was entered on September 8, 2010. CP 170.

On September 15, 2010, Rokkan filed his Notice of Appeal of the Order Denying his Motion for Leave to File a Motion for New Trial. CP 172.

VII. ARGUMENT

A. Rokkan's Legal Argument on Review Far Exceeds the Scope of His Appeal

Rules of Appellate Procedure (RAP) 2.4(a) provides:

"Generally. The appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal ... or and other decisions in the case as provided in sections (b), (c), (d), and (e)." RAP 2.4(a).

Sections (b) through (e) are not applicable to the circumstances of this appeal.

RAP 2.4(b) provides for the review of a trial court order or ruling not designated in the notice if (1) the order or ruling

prejudicially affects the decision designated in the notice, and
(2) the order is entered, or the ruling is made, before the
appellate court accepts review. RAP 2.4(b)(emphasis added).
A previous order prejudicially affects the order designated in the
notice of appeal, and thus is reviewable, if the order appealed
cannot be decided without considering the merits of the previous
order; this requires some connection between the two other than
that the appealed order would not have occurred if the earlier
order had been decided differently, and the issues in the two
orders must be so entwined that to resolve the order appealed,
the court must consider the order not appealed. *Right-Price
Recreation, LLC v. Connells Prairie Community Council*, 105
Wash.App. 813, P.3d 1157 (2001), review granted 145 Wash.2d
1001, 35 P.3d 381, remanded 146 Wash.2d 370, 46 P.3d 789.

In this case, the trial court's decisions and the verdict
reached have no connection to the denial of Rokkan's Motion
for Leave other than Rokkan would not have needed to request

leave of the court to file a motion for new trial if he had not twice requested reconsideration at trial, requested a new trial at the end of the trial, and simply ultimately lost at trial. Motion for Leave was a separate post-trial motion without bearing on the verdict or trial rulings. Therefore, his Notice of Appeal should stand on its own and not be expanded to include matters decided at trial as well as the trial verdict.

RAP 2.4(c) provides that the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely post-trial motion based on a judgment as a matter of law, amendment of findings, reconsideration, new trial, and amendment of judgments. In the case at hand, the Notice of Appeal identifies and attaches the Order Denying Rokkan's untimely motion for leave to file a motion for new trial. Again, Rokkan's motion for leave was separate and succinct from the trial court rulings, orders, and verdict. It was simply a motion to request that he be granted

another opportunity to request a new trial. It was not timely made and, therefore, was properly denied.

The scope of Rokkan's appeal must be maintained within the Notice he filed. In this instance, the rules do not support the extension of Rokkan's appeal beyond the scope of the Notice he filed.

B. Response to Rokkan's Assignment of Error No.

7:

The Trial Court Did Not Err in Holding That the Filing of the Jury Verdict on July 9, 2010 was the Order of the Court for Purposes . . . of Appeal.

The Jury's Verdict is the Court's Order or Decision in a Jury Proceeding Where Money Damages or Fees are Not Awarded.

At the hearing on September 7, 2010, Rokkan argued that the court below failed to enter a "judgment" so the time for filing a motion for new trial was tolled. RP Pelletier 4-7.

Rokkan consistently references the term "judgment," but did not

recognize that Civil Rule 59 references the terms “judgment, order *or* other decision.” CR 59(b). *Id.*

In a jury trial where there is no award of damages or fees, the jury’s verdict is considered the “order” of the court.³ RCW 4.44.460. The statute provides that once the court determines that a jury’s verdict meets the requirements of the civil rules and of Chapter 4.44 RCW, the clerk files the verdict. At that point, the verdict is “complete” and the jury is discharged from the case. The verdict “shall be in writing, and under the direction of the court shall be substantially entered in the record as of the day's proceedings on which it was given.”

In the instant case, the court instructed the clerk of the court to read the verdict’s questions and answers into the record, and after polling the jury, the court stated on the record that the

³ “Judgments” are awards for money damages. See, generally Chapter 4.56 RCW. RCW 4.64.030 identifies different types of judgments as those for money, real property and ownership. RCW 4.56.210 and RCW 6.17.020 provide that a judgment has a life of 10 years in most instances.

verdict was accepted. The clerk then filed the verdict— as the decision or order of the court – as clerk’s paper number 156.

The timeline for post-trial motions and appeals became operational on July 9, 2010 upon entry of the verdict. Rokkan failed to timely request leave of court to file a motion for new trial within 10 days of July 9, 2010, and failed to schedule a hearing within 30 days of July 9, 2010.

C. Response to Rokkan’s Issue No. 11:

Rokkan Timely Filed Appeal of the Order Denying His Motion for Leave But Failed to Timely File His Underlying Motion as Required by CR 59’s Strict Timelines

Rokkan filed his Notice of Appeal of the Order Denying Motion for Leave to File Motion for New Trial on September 15, 2010 and within the time required to file such a Notice. CP 174. However, as to Rokkan’s underlying Motion for Leave to File Motion for New Trial, Rokkan failed to comply with Civil Rule 59. Therefore, the court’s decision below was correct and

its Order Denying Motion for Leave to File Motion for New Trial should be affirmed.

CR 59 provides a means for a party to request reconsideration or a new trial. The Rule provides various causes for which such relief may be granted and provides specific rules with which the party seeking relief must comply, including timelines and means for filing a second request for relief on a particular issue. CR 59(b), (j).

CR 59 includes three requirements for filing a second motion for new trial or request for consideration. The motion/request must be filed within 10 days of entry of the trial court's "order, judgment or decision." The party must also note a hearing to be held within 30 days of entry of the order, judgment or decision. If the party has already requested reconsideration prior to entry of the order, judgment or decision, as occurred twice in this case, the party must *first* obtain leave of the court to file a second

request for reconsideration or, as in this case, a motion for new trial.

As noted in the procedural history of this case, Rokkan failed to timely request leave of court to file his motion for a new trial after the “order, judgment or decision” was filed on July 9, 2010. Rokkan also failed to timely set a hearing on his motion for a new trial, as he ultimately set the hearing well beyond the 30-day requirement. The Civil Rules determine how a case moves forward, and Rokkan’s failure to comply with the Rules should result in the Court’s decision to deny his motion for leave to be affirmed.

Rokkan Failed to Timely Request Leave of the Trial Court to File a Motion for a New Trial Subsequent to His Two Requests for Reconsideration.

CR 59(j) limits how multiple motions may be brought regarding a

particular issue. It provides that:

If a motion for reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard *before*

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[.]

CR 59(j)(emphasis added). See also *Alpine Industries, Inc. v. Gohl*, 101 Wn.2d 252, 253, 676 P.2d 488 (1984)(explaining a CR 59(j) application for leave was “necessary” to file a second new trial motion.)

On July 7, 2010 the trial court granted Defendants’ motion to dismiss Rokkan’s Consumer Protection Act claim. RP 412. On that same date, after Rokkan rested, Rokkan requested reconsideration of the court’s decision regarding the CPA. RP 435. The court denied this motion. RP 438.

After Gesa’s case was completed on July 9, 2010, Rokkan once again moved the court for reconsideration of the decision dismissing his CPA claim. Rokkan presented a prepared argument and cited case law, cited to testimony, and thoroughly briefed the matter, albeit verbally rather than in writing. The

court heard from both parties, considered the matter, then once again denied Rokkan's request for reconsideration.

Rokkan apparently continues to argue that his motions for reconsideration of the court's decision to dismiss his CPA claims were not really motions for reconsideration because they were verbal and the court's decisions were verbal. In everyday practice, a CR 59 request for reconsideration is regularly invoked as a device for seeking reconsideration of any type of order or decision. WA Practice, Vol. 15, §38.6 (2003).

As noted above, at trial in this case, Rokkan took two opportunities to present requests for reconsideration to the court regarding its dismissal of his CPA claim. Rokkan then sought a third opportunity for the trial court to rule on this matter when he raised the issue again in his July 16, 2010 Motion. However, Rokkan was required to comply with the Civil Rules to first seek leave of the court to file a motion for new trial, obtain a ruling on that matter, and if he prevailed, he must file the motion

for new trial and set a hearing within 30 days of the July 9, 2010 verdict. Rokkan failed to timely follow these steps as required by the Civil Rules. The time for a proper motion for leave of the court and motion for a new trial has come and gone.

As noted in *Alpine*, leave of the court is “necessary” after a party has previously requested a request for reconsideration. Here, two such motions were presented to and ruled upon by the court. Rokkan simply failed to comply with the Rules. The ruling of the court below should be affirmed.

VIII. CONCLUSION

In this appeal, Rokkan again seeks redress to which he is not entitled. Rokkan’s Notice of Appeal clearly extends only to the Superior Court’s September 8, 2010 Order that denied his Motion for Leave to File Motion for New Trial. Rather than assigning error to the court’s denial of his Motion for Leave, Rokkan assigns errors to the trial court’s actions at trial. In his brief, Rokkan inappropriately re-argues the case he presented at

INDEX TO APPENDICES

Documents	Appendix page
Washington Practice Civil Procedure Chapter 38 – Motion for New Trial or Reconsideration . . .	1-2
 Statutes	
RCW 4.44.460	3
 Court Rules	
RAP 2.4	4-5
CR 59	6-8

Washington Practice Series TM
Current through the 2010 Pocket PartsCivil Procedure
Karl B. Tegland[a0]I. Posttrial Motions
Chapter
38. Motion for New Trial or Reconsideration**§ 38:6. Reconsideration of rulings on earlier motions**

Interlocutory orders. Prior to 2005, CR 59 did not authorize motions for reconsideration of interlocutory orders. In everyday practice, however, the rule was commonly invoked as a device for seeking reconsideration of any type of order or decision. In 2005, CR 59 was amended to expressly authorize a motion to reconsider any judgment, order, or decision, thus conforming the rule to actual practice.[1]

Most counties regulate the use of motions for reconsideration by local rule. Many counties provide that the motion will be considered on briefs and affidavits only, without oral argument, unless argument or a telephone conference is called for by the court. Local rules may or may not authorize the submission of a response and/or reply. As always, familiarity with the applicable rules is essential. Local rules are readily available from a number of sources[2] and should be consulted as necessary.

A more detailed discussion of motions to reconsider interlocutory orders can be found in an earlier chapter.[3]

Dispositive orders. If a dispositive motion is granted and a judgment entered—whether it is a summary judgment, a judgment as a matter of law, or a judgment of dismissal—the judgment is treated like any other judgment in a case decided without a jury. The party obtaining the judgment is entitled to the same measure of finality that would be associated with any other judgment.

A motion for reconsideration can be an attractive alternative to an appeal. The motion procedure is simpler, faster, less expensive, and handled locally. Errors of law can be asserted on a motion for reconsideration, just as they can on appeal.[4] In addition, other arguments can be made on a motion for reconsideration that cannot be made on appeal—newly discovered evidence, accident or surprise, procedural irregularities, and the like.

Again, a more detailed discussion of motions to reconsider dispositive orders can be found in an earlier chapter.[5]

Reconsideration of reconsideration. The courts have held that a ruling on a motion for reconsideration is, itself, subject to reconsideration, thus opening the door to multiple motions.[6]

Motion decided by court commissioner. When a motion has been decided by a court commissioner, special rules may apply. In some counties, by local rule, a party may move for reconsideration by the commissioner

15 WAPRAC § 38:6
 15 Wash. Prac., Civil Procedure § 38:6

Page 2

himself or herself. In other counties, the only available remedy is a motion to the court, for review of the commissioner's ruling.[7] Local rules should be consulted as necessary.

[FN0] Of The Washington Bar.

[FN1]

Amended

For a detailed discussion of the 2005 amendments to CR 59, including the actual text of drafters' comments, see Tegland, 4 Washington Practice: Rules Practice, CR 59 (5th ed.).

[FN2]

Local rules

See § 1:3.

[FN3]

Interlocutory orders, more detail

See § 22:25.

[FN4]

Errors of law

CR 59(a)(7), (8). See § 38:18.

[FN5]

Dispositive orders, more detail

See §§ 26:1 to 26:7.

[FN6]

Multiple motions

See § 38:29.

[FN7]

By court commissioner

See § 3:13.

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15 WAPRAC § 38:6

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App – 2

C

West's Revised Code of Washington Annotated Currentness

Title 4. Civil Procedure (Refs & Annos)

Chapter 4.44. Trial (Refs & Annos)

→ **4.44.460. Receiving verdict and discharging jury**

If the court determines that the verdict meets the requirements contained in this chapter and in court rules, the clerk shall file the verdict. The verdict is then complete and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the record as of the day's proceedings on which it was given.

CREDIT(S)

[2003 c 406 § 26, eff. July 27, 2003; Code 1881 § 239; 1877 p 49 § 243; 1869 p 59 § 243; RRS § 361.]

Current with 2011 Legislation effective through March 20, 2011.

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West's Revised Code of Washington Annotated Currentness

Part III Rules on Appeal

▣ Rules of Appellate Procedure (Rap)

▣ Title 2. What Trial Court Decisions May Be Reviewed--Scope of Review

→ **RULE 2.4. SCOPE OF REVIEW OF A TRIAL COURT DECISION**

(a) Generally. The appellate court will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal or, subject to RAP 2.3(e), in the notice for discretionary review, and other decisions in the case as provided in sections (b), (c), (d), and (e). The appellate court will, at the instance of the respondent, review those acts in the proceeding below which if repeated on remand would constitute error prejudicial to respondent. The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

(b) Order or Ruling Not Designated in Notice. The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. A timely notice of appeal of a trial court decision relating to attorney fees and costs does not bring up for review a decision previously entered in the action that is otherwise appealable under rule 2.2(a) unless a timely notice of appeal has been filed to seek review of the previous decision.

(c) Final Judgment Not Designated in Notice. Except as provided in rule 2.4(b), the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely posttrial motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) **CR 59** (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.5 (new trial).

(d) Order Deciding Alternative Post-trial Motions in Civil Case. An appeal from the judgment granted on a motion for judgment notwithstanding the verdict brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the judgment notwithstanding the verdict, the appellate court will review the ruling on the motion for a new trial.

(e) Order Deciding Alternative Post-trial Motions in Criminal Case. An appeal from an order granting a motion in arrest of judgment brings up for review the ruling of the trial court on a motion for new trial. If the appellate court reverses the order granting the motion in arrest of judgment, the appellate court will review the ruling on a motion for new trial.

(f) Decisions on Certain Motions Not Designated in Notice. An appeal from a final judgment brings up for review the ruling of the trial court on an order deciding a timely motion based on (1) CR 50(b) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) **CR 59** (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CrR 7.5 (new trial).

(g) Award of Attorney Fees. An appeal from a decision on the merits of a case brings up for review an award of attorney fees entered after the appellate court accepts review of the decision on the merits.

CREDIT(S)

[Amended effective September 1, 1994; September 1, 1998; December 24, 2002; September 1, 2010.]

Current with amendments received through 10/1/10

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C

West's Revised Code of Washington Annotated Currentness

Part IV Rules for Superior Court

[Ⓜ] Superior Court Civil Rules (Cr) [Ⓜ] 7. Judgment (Rules 54-63) → **RULE 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 his 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 he 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 an 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).

CREDIT(S)

[Amended effective July 1, 1980; September 1, 1984; September 1, 1989; September 1, 2005.]

Current with amendments received through 10/1/10

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END OF DOCUMENT

CERTIFICATE OF MAILING

I HEREBY CERTIFY under penalty of perjury under the laws of the State of Washington that on the 29 day of March, 2011, I caused to be delivered via First Class U.S. Mail, postage prepaid, a true and correct copy of Brief of Respondents to the following person:

Martin Gales
Attorney at Law
MARTIN GALES, PLLC
3337 East 16th
Spokane, WA 99223



JULIE R HIGUERA