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Court of Appeals
Division III
State of Washington
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No. 359204
No. 362272 Consolidated

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

SARA RHODES, an individual

Appellant,

v.

BARNETT & ASSOCIATES, INC., a Washington corporation, and
RYAN BARNETT AKA RYAN MOSSBRUGGER, a married
individual,

Respondent.

**APPEALED FROM SPOKANE COUNTY SUPERIOR COURT
CAUSE NO. 14-2-04684-1**

THE HONORABLE ANNETTE S. PLESE

APPELLANT SARA RHODES' OPENING BRIEF

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“Injustice anywhere is a threat to justice everywhere.” – Martin Luther King, Jr.

II. INTRODUCTION

Sara Rhodes was subjected to the worst kind of quid pro quo sexual harassment imaginable by Defendant Barnett. Ms. Rhodes is a single mother who relied on her position as a bookkeeper/administrative assistant to survive. After Defendant Barnett purchased the client list for accounting firm Ms. Rhodes worked for, Ms. Rhodes became employed by Defendant Barnett. Barnett immediately began making sexual advances and within a week assaulted Ms. Rhodes with non-consensual sex. From that point forward, Defendant Barnett subjected Ms. Rhodes to an atmosphere of untenable quid pro quo harassment, hostile work environment harassment and retaliation. This included calling her a “*whore*”, “*slutter butter*” and telling her that sex was “*part of your job.*” See CP 28-44 (verified Complaint) and CP 799-813 (Amended Complaint).

When this action was filed, Defendant engaged in delay tactics which included improperly removing the action to Federal Court (the Federal Court awarded attorney fees based upon the fact there was not a basis for the removal) and appealing the Order of Remand from Federal Court. After these delays, Defendant Barnett served a set of discovery on Ms. Rhodes which continued the demeaning attacks. The discovery

included asking Ms. Rhodes to identify prior sexual partners and accused her of being a prostitute. Unfortunately for Ms. Rhodes, this discovery was served at the time her Counsel had left his firm, which resulted in delay and confusion. When Ms. Rhodes attempted to answer the discovery, her Counsel properly objected based on the lack of relevance, ER 404, and ER 412. A motion to compel and a request for a protective order followed.

Instead of being provided a fair opportunity to have her case fairly litigated, Ms. Rhodes was subjected to demeaning discovery intended solely to harass and intimidate. Unfortunately for Ms. Rhodes, a Discovery Master was appointed that viewed this case as being similar to a “*car wreck case*” and ordered she answer questions about her sexual history, personal relationships unrelated to the employer and Defendant at issue and generally attacking her character. This discovery is a prime example of the types of improper personal attacks that discourage victims from coming forward when they are subjected to sexual harassment and abuse. There is no justice when our Court’s do not implement the rules which are intended to prevent this type of stereotypical and improper attack on victims of sexual assault.

On December 10, 2017, the Discovery Master entered an order compelling the production of the harassing and irrelevant discovery. During that time-period, Ms. Rhodes experienced a family crisis of

domestic violence. Ms. Rhodes had to take her child and find shelter outside the home. Counsel for Ms. Rhodes requested an extension of time for Ms. Rhodes to comply with the Order. Despite the fact Trial was not until November 5, 2018, more than 11 months away, and the fact Defendants did not identify any prejudice in allowing Ms. Rhodes time to respond, the Discovery Master denied the extension and wrongfully dismissed Ms. Rhode's case as a sanction. The Court adopted the rulings by the Discovery Master.

As explained below, the Court erred when it adopted the decision to deny a protective order to compel discovery seeking information about sexual history and harassing discovery laced with innuendo. The Court compounded this err by awarding attorney fees against Ms. Rhodes, denying an extension of time to comply during a family crisis and dismissing Ms. Rhodes' case. These actions should be reversed and the matter remanded to provide Ms. Rhodes with her day in Court.

III. ASSIGNMENTS OF ERROR

1. The Trial Court erred by denying Ms. Rhodes request for a protective order.
2. The Court erred by granting a motion compelling Ms. Rhodes to respond to the discovery propounded.
3. The Court erred by denying Ms. Rhodes motion for an extension to provide the ordered responses due to a family crisis.
4. The Court erred by dismissing Ms. Rhodes' suit as a sanction.

5. The Court erred by dismissing the case and awarding sanctions without the entry of Findings of Facts.
6. To the extent the Court views any of the written decisions as being findings of fact, Ms. Rhodes assigns err to those as they do not accurately represent the facts in this case.
7. The Court erred by entering CR 11 sanctions against Plaintiff's Counsel based on Defendants claiming "*abandonment*".
8. The Court erred by entering sanctions against Counsel for prevailing on Plaintiff's Motion to Amend Judgment.

IV. ISSUES PRESENTED

1. In a sexual harassment case is it improper for a Defendant to seek sexual information about the Plaintiff?
2. In a sexual harassment case is it improper for a Defendant to seek discovery which will not lead to the discovery of admissible evidence, seeks evidence that purely relates to character and is intended to harass or embarrass the other party?
3. Is it improper for a case to be dismissed as a Sanction where there are lesser Sanctions available and an extension of time would not prejudice any party?

V. STATEMENT OF THE CASE

Procedural History

On December 16, 2014, Defendants removed this matter to federal court. Their position was that the Washington Corporate Defendant was not properly named so it did not exist and there was diversity. The Federal Court saw through Defendants gamesmanship and granted Plaintiffs Motion to Remand. The Notice of Remand was filed in Federal

Court February 11, 2015 and in Superior Court on February 13, 2015. Defendants appealed to the 9th Circuit.

The Appellate Decision Affirming the Federal Courts ruling with regard to remand and the award of attorney fees and costs against Defendants was filed on June 26, 2017. As a result, nearly all of the delay in this case was caused by Defendants own actions.

Discovery

While the Federal appeal was pending, Defendants served discovery on Dunn, Black & Roberts. Counsel for Plaintiff had left the firm that same week. The discovery at issue included, among others, the following requests which had no legitimate purpose except to harass, embarrass and annoy:

- *“List by date each and every one of your marriages, and dates of separation and divorce...”* CP 709 - Rog. No. 7.
- *“List the names of each and any child of yours, each’s respective date of birth, and the name(s) of the father(s) of each child.”* CP 709 – Rog. No. 8.
- *“Identify all prior or current employers identified in Int. 10 above, if any, with which you engaged in any sexual contact and/or engaged in any sexual relationship, the duration of any such relationship, and whether you claim such sexual contact was forced or voluntary.”* CP 711 – Rog. No.13.
- *“Other than Defendant Ryan Barnett, have you ever accused any other individual of rape, assault, or sexual misconduct?...”* CP 712 – Rog. 15.
- *“Identify any and all forms of state or federal government aid that you have received, including Public Assistance, food*

stamps, state medical, educational grants, or otherwise...”
CP 713 – Rog. 17.

- *“Have you ever received unemployment compensation; ...”* CP 713 – Rog. 18.
- *“Have you ever received labor and industries (L&I) compensation?..”* CP 713 – Rog. 19.
- *“Were you involved in any way in, alleged to be involved in, contacted by police regarding, or contacted by any investigator regarding, any ‘sting’ operation in Spokane County or elsewhere, related to alleged sexual trafficking, sex industry involvement, and/or prostitution activity?...”* CP 718 – Rog. 31.
- *“Have you been involved in any way in Spokane County or elsewhere in any sexual trafficking, and or sexual or prostitution activity?...”* CP 718 – Rog. 32.
- *“Identify when you first met your attorney Kevin Roberts, where and how you met him, on what legal matters you had used him previously, and whether you socialized with him, or had business or personal dealings with him prior to filing your action.”* CP 719 – Rog. 37.
- *“Identify all attorneys you have used for any purpose...”* CP 719 – Rog. 38.

On September 19, 2017, Plaintiff provided responses and objections to the improper discovery requests. CP 706-722. Defendants proceeded with a Motion to Compel. However, Defendants’ Counsel did not confer in person or by telephone prior to filing the Motion to Compel. After receiving the responses, Defendant’s Counsel did not attempt to confer.

On **October 18, 2017**, Trial was set for **November 5, 2018**. The Trial was not set sooner because Defendant's Counsel was insistent that she could not do it any of the other months offered. The discovery cut-off was not until August 31, 2018. CP 791. Again, the delay was caused by Defendants, not Plaintiff.

The Court did not rule on the Motion to Compel. Instead, it appointed a Discovery Master. CP 793.

The Discovery Master heard the Motion to Compel and a Motion for Protective Order. During the hearing, the Discovery Master ignored the type of case at issue and instead compared asking Ms. Rhodes for private information about her sex life and character attacks, including insinuating Ms. Rhodes is a prostitute, to "*very similar questions, many, many questions in personal injury cases from the defense merely because allegations are made.*" CP 1093. The Discovery Master ignored ER 412 and 404 and decided "*Ms. Schultz is entitled to find out information about her past.*" *Id.* On December 10, 2017, the Discovery Master recommended granting the Motion to Compel and denying the Protective. CP 814 – 817.

On December 18, 2017 the Court adopted the Discovery Master's recommendations which ordered "*Despite Plaintiff's compelling arguments, ...Plaintiff provide complete and full responses to Defendant's*

First Set of Interrogatories and Requests for Production, and execute a medical release form by December 21, 2017.” CP 816-817.

On December 20, 2017, Plaintiff’s Counsel filed a motion requesting an extension of time to provide the discovery responses based on the fact that Ms. Rhodes had been subjected to domestic violence and was seeking shelter since she was not residing with her abuser and was unavailable to her Counsel.¹ Ms. Rhodes suffered an unfortunate crisis in her life. When Counsel learned of the issue, he tried to discuss the matter with Defendants’ Counsel. She did not respond to the request to talk. Ms. Rhodes and her children had been residing with a man and Ms. Rhodes was the victim of domestic abuse by him and was in the process of recovering from it, trying to find a home for her children, and working through the issues associated with the crisis.

On January 12, 2018, despite the personal crisis, the Discovery Master issued a recommendation that Ms. Rhode’s case be dismissed if she did not provide discovery by January 16, 2018. CP 845-850. This despite the fact that Trial was still nearly 11 months away, the Discovery cut-off was nearly 9 months away and there was no finding of prejudice to the Defendant if additional time was provided.

¹ The record is incomplete as it appears pleadings filed with the Discovery Master have not all been included in the Clerks Papers. Plaintiff will file a motion to supplement the record with the Declaration which the Discovery Master was provided with regard to this issue.

Sanctions

On February 9, 2018, the Court entered an Order adopting the Discovery Master's recommendation and dismissing the case. CP 1012-1015. The Court did not enter any Findings of Fact or Conclusions of Law explaining the basis for the sanction or that there was any prejudice to Defendant in providing additional time to Ms. Rhodes or to allow Ms. Rhodes to show cause for the delay. *Id.*

Without any Findings of Fact explaining the basis, the Court also included a CR 11 Sanction against Plaintiff's Counsel asserting it was because there had not been "*disclosure to the court by Plaintiff's counsel of his client's abandonment of her claims...*" This was not an accurate statement and is not supported by the record. CP 1253-1256.

The Court also incorrectly awarded sanctions against Plaintiff's Counsel for the Motion to Amend Judgment on which Plaintiff prevailed and which was necessary because Defendants' Counsel would not agree to correct the mistake in the Judgment. CP 1259.

VI. ARGUMENT

A. Rhodes Objections Were Appropriate and She Was Entitled to be Protected from Demeaning and Harassing Discovery Which Was Not Intended to Lead to the Discovery of Relevant or Admissible Evidence.

- 1. The Discovery Sought Was Not Relevant and Would Not Lead to the Disclosure of Admissible Evidence Pursuant to ER 412, ER 404 or RCW 7.90.080(1).**

The Defendants sought evidence with regard to sexual behavior beyond any sexual activity that is at issue in this case and to try to prove sexual predisposition. This type of evidence and invasion of privacy is inadmissible. ER 412. Even if there were any remote probative value, it was substantially outweighed by the danger of harm to Ms. Rhodes and unfair prejudice. *Id.* Washington's ER 412 rule preventing this type of evidence is based on the Federal Rule of Evidence 412. The purpose of the federal rule is "*to safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details and the infusion of sexual innuendo into the fact-finding process.*" FRE 412 Advisory Committee's Notes (revised rule 1994). FRE 412 extends to sexual harassment lawsuits. *Id.* The scope of the rule covers all forms of sexual behavior, including activities of the mind such as fantasies and statements involving sexual behavior or desires. *Id.* See also, Sheffield v. Hilltop Sand & Gravel Co., 895 F. Supp. 105, 108 (E.D. Va 1995)(*ruling that "[e]vidence relating to the plaintiff's [allegedly vulgar] speech is certainly evidence offered to prove an alleged victim's 'sexual predisposition'*"); and Socks-Brunot v. Hirschvogel, Inc., 184 F.R.D. 113, 118 (S.D. Ohio 1999)(Rule 412 applicable to a Title VII plaintiff's statements to co-workers about a sexual relationship with former supervisor).

Such evidence was also inadmissible under ER 404 since it is an attempt to introduce evidence of character. Moreover, in a sexual harassment lawsuit as in any civil case, evidence offered to prove a victim's sexual behavior or sexual predisposition is admissible (if it is otherwise admissible) only if “*its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party.*” Fed. R. Evid. 412(b)(2). With respect to subsection (b)(2), the Advisory Committee Notes clarify that the balancing test to be employed in assessing whether to admit proposed evidence is “*more stringent*” than that governing Rule 403:

*“First, it Reverses that usual procedure ... by shifting the burden to the proponent to demonstrate admissibility rather than making the opponent justify exclusion of the evidence. Second, ... it raises the threshold for admission by requiring that the probative value of the evidence **substantially** outweigh the specified dangers. Finally, the Rule 412 test puts ‘harm to the victim’ on the scale in addition to prejudice to the parties.”*

Advisory Committee Notes; *B.K.B.*, 276 F.3d 1091; see also Rodriguez–Hernandez, 132 F.3d at 856.

This type of discovery has been denied in numerous other similar cases. See e.g. Hughes v. Twenty-First Century Fox, Inc., et al., 327 F.R.D. 55, 58 (S.D.N.Y. 2018)(“*this Court bars discovery pertaining to the proffered defenses, this Court bars discovery pertaining to Hughes’ sexual history with other men.*”); Macklin v. Mendenhall, 257 F.R.D.

596, 602 (E.D. Cal. 2009)(“*[I]n the context of civil suits for sexual harassment, and absent extraordinary circumstances, inquiry into such areas [i.e. complainant’s past sexual behavior] should not be permitted, either in discovery or trial.*”); Ogden v. All-State Career Sch., 299 F.R.D. 446, 449 (W.D. Pa. 2014)(Rule 412 restricts discovery seeking to elicit information regarding sexual conduct outside the workplace at issue.); Rossbach v. Rundle, 128 F. Supp. 1348, 1354 (S.D. Fl. 2000)(the discovery had “*run afoul of the liberal relevancy standard*” by inquiring into “*every conceivable office rumor...*”); Williams v. Brd. Of Cty. Comm. Et al., 192 F.R.D. 698, 703-704 (D. Kansas 2000)(Similar discovery of sexual history was denied. The Court explained, “*...there is an inordinate risk of harm to Plaintiff if the Defendants are permitted to inquire into intimate sexual details of Plaintiff’s life. Examples of such harm include the unjustified invasion of privacy into Plaintiff’s life, the potential for public and private embarrassment to Plaintiff as a result, and the likelihood of significant prejudice based on improper sexual stereotyping.*”); and Howard v. Historic Tours of America, 177 F.R.D. 48, 51 (Dist. of Col. 1997)(similar discovery was denied and the Court explained the purpose of FRE 412 – “*The logic behind the note is self-evident: one of the purposes of Fed. R. Evid. 412 was to reduce the inhibition women felt about pressing complaints concerning sex*

harassment because of the shame and embarrassment of opening the door to an inquiry into the victim's sexual history.”).

Further, in relation to sexual assault protection orders, RCW 7.90.080 prohibits the admission of any evidence of the petitioner's prior sexual conduct unless it is evidence of prior sexual conduct *with the respondent*, or if the admission of the evidence is constitutionally required. RCW 7.90.080(1). If the evidence is of sexual conduct with the respondent Washington law requires an offer of proof with specific information as to how and when the prior sexual conduct occurred. Id. Additionally, RCW 9A.44.020(2) prohibits the use of prior sexual conduct, or sexual propensity, to be admitted on the issue of credibility. Id.

In sexual harassment cases, such evidence is not admissible to establish whether inappropriate conduct by a Defendant was “*welcome*”. Such arguments for admissibility have been rejected by numerous courts and is nothing more than an attempt to perpetuate sexual stereotyping. Indeed, it has long been recognized that a plaintiff’s “*private and consensual sexual activities do not constitute a waiver of his or her legal protections against unwelcome and unsolicited sexual harassment.*” Winsor v. Hinckley Dodge, Inc., 79 F.3d 996, 1001 (10th Cir. 1996). See also Katz v. Dole, 709 F.2d 251, 254 n. 3 (4th Cir. 1983); B.K.B. v. Maui Police Dep’t, 276 F. 3d 1091, 1105 (9th Cir. 2002)(“*Courts have held ...that*

the probative value of evidence of a victim's sexual sophistication or private sexual behavior with regard to the welcomeness of harassing behavior in the workplace does not substantially outweigh the prejudice to her."); Rodriguez-Hernandez v. Miranda-Velez, 132 F.3d 848, 856 (1st Cir. 1998)(upholding trial court's ruling that evidence concerning sexual-harassment plaintiff's moral character and promiscuity was inadmissible under Rule 412); and EEOC v. Wal-mart Stores, UNPUBLISHED DECISION 198 F.3d 257 (1999) (Court held that evidence of plaintiff's sexual relationships with coworkers and plaintiff's employer's generalized suspicions about her relationships were irrelevant to her claims of harassment at work).

The evidence sought by Defendants was not probative with regard to the issues at bar and will not lead to admissible evidence. They were being asked for an improper purpose. Accordingly, the Court should have ruled that Plaintiff Rhode's objections were proper and entered a protective order with regard to Interrogatories No. 4, 7, 8, 13, 14, 15, 30, 31, 32 and RFPs No. 5 and 6.

A protective order should also have been entered with regard to inadmissible evidence which was being sought for improper purposes. (Rogs No. 6,9,10, 11, 16, 17, 18, 19, 21, 22, 33, 34,35,36,37, 38, 39, 40, 41 and Rfps No. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 14, 17, and 18.) CP 706-721. The discovery also included interrogatories and requests which are not

intended to lead to the discovery of admissible evidence, for which the probative value was outweighed by their prejudicial effect, and which seeks to invade the attorney client and work product privileges. Furthermore, a review of these requests confirms they were intended to embarrass or harass Plaintiff Rhodes. For example, there are numerous requests relating to crimes, public assistance, labor and industries claims, drugs, and social relationships with prior employers. There is also an odd line of questioning about Plaintiff's counsel, payment of costs etc.

None of these inquiries were likely to lead to any evidence that would be admissible with regard to the issues in this case. Their sole purpose was to try to harass, intimidate and embarrass Ms. Rhodes through innuendo and improper questions. Consequently, a protective order should be entered, and Plaintiff's Objections found valid.

2. The Motion to Compel Should Not Have Been Granted Given Defendants Failure To Confer Under LR 37(a).

Prior to the Motion to Compel, Defendant did not meet and confer as required by the Rules of Civil Procedure. See CR 26(i). LR 37(a) provides that absent a good faith meet and confer, "*no motion or objection with respect to CR 30, 31, 33, 34, or 35 will be heard unless it affirmatively appears that before the hearing counsel have conferred and attempted to resolve the issue(s).*" In Rudolph, the Court found that the conference required had to be in person or by telephone. Rudolph v. Empirical

Research Sys., Inc., 107 Wn. App. 861, 867 (2001). Without certification that an in person or telephone conference has occurred, the trial court lacks authority to consider a motion to compel. Id. A mere written request for compliance with discovery is not sufficient. Id. Consequently, Defendant's reliance on an email was not sufficient and the Motion to Compel should not have been heard.

B. Rhodes Claims Should be Remanded for a Trial on the Merits.

1. The Discovery Should Not Have Been Ordered.

Since the Discovery at issue should not have been ordered, Ms. Rhodes should not have her case dismissed for not providing answers.

2. Even if the Discovery Were Allowed, Dismissal was not a Proper Sanction.

Ms. Rhodes suffered a life crisis that left her and her children in a situation where they were forced to move from their home. As one of many consequences, communication with Ms. Rhodes was difficult as she dealt with the realities of domestic violence and trying to relocate a home for her and her children. Plaintiffs motion to extend sought additional time for Ms. Rhodes to provide the responses ordered. Without identifying any real prejudice, Defendants requested dismissal and opposed additional time based on the crisis Ms. Rhodes was facing. The Discovery Master and the Court ignored the lack of prejudice and

wrongfully dismissed the action. This position is contrary to Washington law and Justice.

When the trial court “*chooses one of the harsher remedies allowable under CR 37(b), ... it must be apparent from the record that the trial court explicitly considered whether a lesser sanction would probably have sufficed,*” and whether it found that the disobedient party's refusal to obey a discovery order was willful or deliberate and substantially prejudiced the opponent's ability to prepare for trial. Burnet v. Spokane Ambulance, 131 Wn. 2d 484, 494 (1997) quoting Snedigar v. Hodderson, 53 Wn. App. 476, 487 (1989). The Washington Supreme Court has 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.*” Id. at 494, 933 P.2d at 1041 (quoting Smith v. Sturm, Ruger & Co., 39 Wn. App., 740, 750, 695 P.2d 600, 59 A.L.R.4th 89, review denied, 103 Wn.2d 1041 (1985)). Some guiding principles are as follows: the court should impose the least severe sanction that will be adequate to serve the purpose of the particular sanction, but not be so minimal that it undermines the purpose of discovery; the purpose of sanctions generally are to deter, to punish, to compensate, to educate, and to ensure that the wrongdoer does not profit from the wrong. Id. at 495-96. In Burnet v. Spokane Ambulance, the Supreme Court went further, stating, “*even if the*

trial court had considered other options before imposing the sanction that it did, we would be forced to conclude that the sanction imposed in this case was too severe in light of the length of time to trial, the undisputedly severe injury...and the absence of a finding that [appellants] willfully disregarded an order of the trial court.” Burnet, 131 Wn.2d at 497–98, 933 P.2d at 1042.

In this case, the discovery cut-off was not until **August 31, 2018** and Trial was not until **November 5, 2018**. There would have been no prejudice in providing Ms. Rhodes additional time to provide responses and the sanction of awarding fees for the motion to compel that sanction sufficed. Additional time would have been appropriate given the fact there was no prejudice and based on the domestic violence and loss of her residence, there was no evidence the delay was willful.

C. The Sanctions of Paying the Discovery Master Fees and Defendant Fees Were Improper.

1. Plaintiff Rhodes Should Not Have Been Required to Pay the Discovery Master and Defendants Fees.

As explained above, the Discovery Master and Courts decisions were in error. As a result, the decisions awarding the payment of Discovery Master fees and Defendants attorney fees should be reversed.

2. Plaintiff's Counsel Should Not Be Sanctioned Under CR 11 for Protecting His Client's Interest.

The record confirms that Plaintiff's Counsel was protecting his Client's interest during a time of crisis. There was no abandonment and the Motion to Extend was valid and proper. To sanction lawyers for trying to advocate for their client based upon exigent circumstances would have a chilling effect on the representation provided to clients and the ability to advocate on their behalf. This sanction and the amounts which were paid as a result should be reversed.

3. Plaintiff's Counsel Should Not Have to Pay Defendant Attorney Fees on a Motion on Which Plaintiff Prevailed.

Plaintiff's Counsel pointed out the error in the Judgment to Defendants' Counsel and asked for it to be corrected without motion practice. Defendants' Counsel refused and forced motion practice. Plaintiff prevailed. The only reason the Motion and Defendants Fees were incurred was because Defendant refused to correct the mistake. The award of attorney fees to the non-prevailing party was inequitable and should be reversed.

D. Plaintiff's Request For Attorney Fees and Costs.

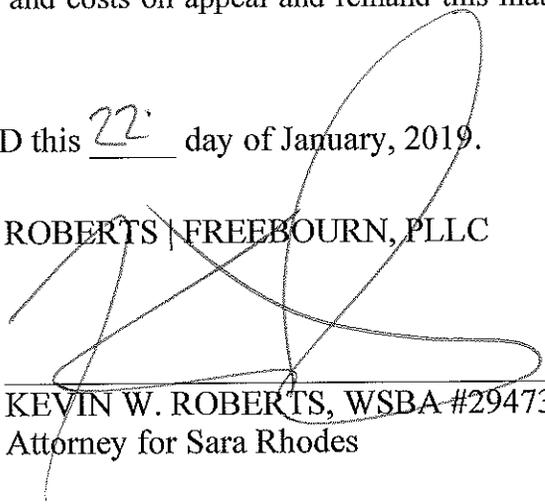
Pursuant to CR 37 and CR 11, Plaintiff requests an award of her attorney fees and costs on appeal. Plaintiff also requests that as part of the reversal and remand the Trial Court be directed to award attorney fees and costs as appropriate based on this Court's decision.

VII. CONCLUSION

Plaintiff respectfully requests that the Court reverse the Trial Court's rulings, enter a protective order, vacate the Judgments entered, award Plaintiff attorney fees and costs on appeal and remand this matter to be decided on the merits.

DATED this 22 day of January, 2019.

ROBERTS | FREEBOURN, PLLC



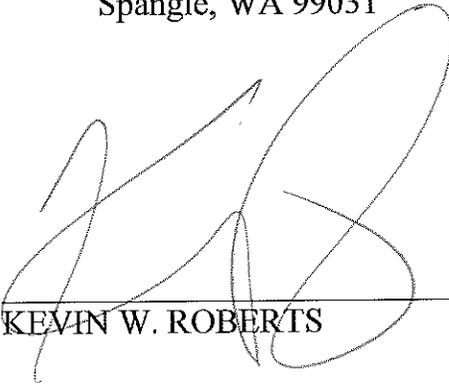
KEVIN W. ROBERTS, WSBA #29473
Attorney for Sara Rhodes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of January, 2019, I caused to be served a true and correct copy of the foregoing document to the following:

- HAND DELIVERY
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