

FILED
Court of Appeals
Division III
State of Washington
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COA No. 359204; 362272

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

SARA RHODES, an individual,

Appellant/Cross Respondent,

v.

STADTMUELLER AND ASSOCIATES, P.S., d/b/a BARNETT,
STADTMUELLER & ASSOCIATES, P.S., a Washington Professional
Services Corporation; **RYAN BARNETT aka RYAN MOOSBRUGGER**
and **SHARON S. BARNETT aka SHARON S. KIM**, as individuals and a
marital community,

Respondents/Cross Appellants.

CROSS APPELLANTS' REPLY BRIEF (AMENDED)

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
I. REPLY	1
II. ARGUMENT	1
III. CONCLUSION.....	7
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

Cases

Hahn v. Boeing Co.,
95 Wn.2d 28, 621 P.2d 1263 (1980) 1

Hammack v. Hammack,
114 Wn. App. 805, 60 P.3d 663 (2003) 2

In re Marriage of Thurston,
92 Wn. App. 494, 963 P.2d 947 (1998) 2

In re Marriage of Wixom & Wixom,
182 Wn. App. 881, 332 P.3d 1063 (2014) 1

Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC,
161 Wn. App. 249, 254 P.3d 827 (2011) 1

Pappas v. Holloway,
114 Wn.2d 198, 787 P.2d 30 (1990) 6

I. REPLY.

Cross Appellants Ryan Barnett and his wife, Sharon Kim-Barnett, reply to Cross Respondent Sara Rhodes's response to the Barnetts' counter appeal as follows:

II. ARGUMENT.

Cross Respondent Sara Rhodes's Attorney, Kevin Roberts, who was the actual moving party for CR 60 relief, does not deny that he filed a CR 60 motion on his own behalf, using his client's name, for the sole purpose of exculpating *himself* from a financial sanction which he occasioned upon his client. But he ignores the issue arising from such an act, and fails to address RFP 1.2(a), 1.4(b), 1.7, 1.8(b) or 1.9(c)(1), or the precedent regarding such an act, including *In re Marriage of Wixom & Wixom*, 182 Wn. App. 881, 332 P.3d 1063 (2014); *Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC*, 161 Wn. App. 249, 262, 254 P.3d 827 (2011); and *Hahn v. Boeing Co.*, 95 Wn.2d 28, 34, 621 P.2d 1263 (1980). The cross appeal should be granted.

Cross Respondent Rhodes/ Attorney Roberts also fail to justify the June 13, 2018 memorandum opinion and the September 7, 2018 order granting the Attorney financial relief under CR 60. Attorney Roberts cites to nothing in this record that shows his client knew that Attorney Roberts was

moving to exculpate himself from judgments entered, and that she waived that conflict; he cites to nothing in the record that might evidence the necessary extraordinary circumstances which may have caused him, before a noticed presentment of orders, not to read or object to proposed orders containing the CR 11 language; he cites to nothing in the record that might explain why he failed to even read the orders then entered by the court at presentment, which included those sanctions, until they were brought to his attention by another attorney in a different case. *See CP 1257-1260, Court's Memorandum Ruling of June 13, 2018.*

Cross Respondent's Attorney Roberts argues that the original orders proposed to the court contained irregularities, and that the trial court simply corrected obvious irregularities on his motion to vacate. But first, CR 60 does not allow for correction of a judicial error. *Hammack v. Hammack*, 114 Wn. App. 805, 810, 60 P.3d 663 (2003), citing *In re Marriage of Thurston*, 92 Wn. App. 494, 499, 963 P.2d 947 (1998), *review denied*, 137 Wn.2d 1023, 980 P.2d 1282 (1999).

Second, there was no error in the *original* orders entered. It was the vacate process that has brought substantial confusion and inconsistency to these judgments. What results from the vacate process is grossly confusing.

To recap, on February 9, 2018, the court entered Judgments I and II. *CP 1012*. Judgment I was the imposition of \$4,062 of fees against Attorney Roberts and Plaintiff Rhodes jointly. Judgment II was to be the discovery master fees “to be determined,” but to be imposed against both Attorney Roberts and Plaintiff Rhodes jointly. On February 15, 2018, the court reentered the same order. *CP 1022*.

On February 28th, the court entered Judgments III and IV. *CP 1044*. Judgments III and IV assessed an additional \$7,477.50 of fees and the now-billed \$3,812 of discovery master costs jointly against Attorney Roberts and Plaintiff Rhodes. All four judgments now imposed joint liability, and CR 11 sanctions against Attorney Roberts.

On May 4, 2018, Attorney Roberts moved to amend the order of *February 15, 2018*, which only included Judgments I and II. *CP 1140-41*. The court’s June 13th memorandum opinion grants relief as to “**the**” judgment, but does not specify which judgment(s) it is referring to. *CP 1258-59*. The September 7, 2018 order then presented by Attorney Roberts and signed by the court amends Judgments III and IV, entered on February 28, 2018, *not* Judgments I and II entered on February 9th and 15th, as had been requested. *CP 1136*. The September 7th order removes Attorney Roberts from liability for original Judgments III and IV. But this

results in legal inconsistency. First, while the original Judgment III imposed \$7,477.50 of fee liability upon Attorney Roberts, so did Judgment I impose \$4,062 of fee liability upon him. The Court's amended Judgment III removes Roberts as a joint debtor as to the original Judgment III's \$7,477.50 of fees, but it does not remove him as a joint debtor on Judgment I's \$4,062 of fees. This is inconsistent.

As to the discovery master fees, the original order of February 9, 2018 specifically imposed the discovery master's fees on Attorney Roberts jointly and severally per CR 11 because of his litigation conduct. *CP 1013, 1014 (and again on February 15, 2018, at CP 1023 and 1024)*. But the September 7 order removes Attorney Roberts' responsibility for the Discovery Master's fees *entirely*, and lists the sole judgment debtor for discovery master fees as Sara Rhodes. *CP 1135*. There is no question that the discovery master fees were to be imposed jointly as CR 11 sanctions against Attorney Roberts, and still are imposed, via the original and continuing Judgments I and II. *CP 1014*.

The September 7, 2018 order thus inconsistently separates the fee awards without explanation, requiring Roberts to pay for one but not the other, and it shifts *all* of the discovery master fees onto Plaintiff Rhodes, in violation of the express CR 11 language of the February 9th and 15th

orders which required Attorney Roberts to pay the discovery master fees jointly under CR 11. The September 7th order is now inconsistent with joint Judgments I and II, which remain actionable as ordered, imposing CR 11 sanctions upon Roberts, a fee judgment of \$4,062, and *all* discovery master fees. The September 7, 2018 amended judgment places liability for \$7,477.50 of fees, and all discovery master costs of \$8,812.50 upon Sara Rhodes individually, while Judgments I and II still remain active imposing \$4,062 of fees and all discovery master costs against Roberts and his client jointly. None of the CR 11 content of any of the three February 2018 orders has been vacated. *CP 1014, 1024, 1046.*

The September 7, 2018 Amended Order applies inconsistent reasoning, it imposes inconsistent holdings and judgments, and it removes Attorney Roberts from the very responsibility that Roberts was to shoulder for the discovery master fees. The original Judgments I-IV were consistent, and entered in a proper rational order. The June 13, 2018 memorandum opinion and September 7, 2018 orders create legal inconsistency, and should be reversed and vacated respectively.

Attorney Roberts asserts that he was improperly sanctioned under CR 11 because he was only protecting his client's interests. He was certainly *not* protecting his client's interests when he moved to vacate

judgments against *himself*, nor when he continued to pursue a case that his client had abandoned, and refused to account for her whereabouts. His CR 60 motion to vacate did not attempt to resurrect his *client's* claim—he filed that motion only to exculpate himself from financial liability. Second, a lawyer is certainly *not* protecting their client's interests by getting their client's case dismissed, and that is precisely what Attorney Roberts did. While an attorney cannot be required to disclose confidential communications, that attorney-client privilege applies to communications and advice between the attorney and client. *Pappas v. Holloway*, 114 Wn.2d 198, 203, 787 P.2d 30, 34 (1990). Such communications are readily distinguished from an attorney's refusing to disclose to the court his own client's status in the public litigation she filed—communications about, as an example, whether the client actually intends to pursue the case and will comply with court processes, or even *where* she is and *why* she has not responded. The latter scenario does not involve confidential communication. An attorney's refusing to tell the Discovery Master and the Court what their client's status is does *not* serve the client's interest when the attorney's behavior results in dismissal of his client's case. That is precisely what happened here. Moreover, this information is not confidential in any respect. Plaintiff made her litigation status and this litigation process public when she

filed her claims in the public venue. She made a lurid series of public claims against the Barnetts that destroyed their joint business and collective reputations. She then disappeared, leaving those allegations in a public record for all the world to see, without allowing the Barnetts to clear their names by discovery and trial. Knowing that a client was refusing to cooperate with court processes, or had disappeared, an attorney could have withdrawn as counsel. The attorney could also have asked for an order of confidentiality of his client's address, her litigation status, and the information on whether she intended to ever comply with anything (even though there would be likely no legitimate basis for such an order with a public litigant). But there is no proper basis under such conditions for an attorney to simply refuse to answer questions about his client's status, and to then stop responding to the discovery masters himself. *See CP 826.*

Sara Rhode's counsel's response shows that his motion to vacate in the trial court was without merit, and should have been stricken.

III. CONCLUSION.

Barnett's Counter-appeal should be granted.

DATED this 24th day of June, 2019.

MARY SCHULTZ

/s/Mary Schultz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on the 24th day of June, 2019, she electronically filed the foregoing document with the Court of Appeals, Division III, and thereby served a copy to the following individuals:

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DATED this 24th day of June, 2019.

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Comments:

This is an amended reply brief in support of Respondent's Counter-Appeal. Pages 2-3 were rewritten because the judgments that were referenced were incorrect, and the chronology was not in accord with the record. That section is now at page 2-5, and the tables are corrected.

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