

FILED  
Court of Appeals  
Division III  
State of Washington  
8/5/2020 4:33 PM  
COURT OF APPEALS  
Division III  
OF THE STATE OF WASHINGTON

---

Appeal from the Superior Court of Spokane  
Honorable Tony Hazel

Pedro Mendoza  
Petitioner/Respondent

And

Amanda Mendoza  
Respondent/Petitioner

No 368190  
Spokane Superior Court #17-3-01992-3

---

BRIEF OF RESPONDENT PEDRO MENDOZA

---

Michael J. Beyer  
Attorney at Law  
WSBA # 9109  
5010 W. Prosperity Lane  
Spokane, Washington 99208

(509)499-1877  
mjbeyer@sisna.com

**TABLE OF CONTENTS**

**A. CONTROLLING ISSUES PRESENTED ON APPEAL ..... 1**

**B. STATEMENT OF THE CASE ..... 1**

**C. STANDARD OF REVIEW ..... 2**

**D. ARGUMENT IN RESPONSE ..... 2**

**E. REQUEST FOR AWARD OF ATTORNEY FEES. .... 6**

**F. CONCLUSION ..... 8**

## TABLE OF AUTHORITIES

### Table of Cases

<u>Biggs v. Vail</u> , 124 Wn.2d 193, 876 P.2d 448 (1994) . . . . .	7
<u>State v. Chapman</u> , 140 Wn.2d 436, 998 P.2d 282, <u>cert. denied</u> , 531 U.S. 984 (2000). . . . .	7
<u>Eggert v. Vincent</u> , 44 Wn.App. 851, 723 P.2d 527 (1986), <u>review denied</u> , 107 Wn.2d 1034 (1987). . . . .	4,6
<u>In re Marr. of Greenlee</u> , 65 Wn.App. 703, 829 P.2d 1120, <u>review denied</u> , 120 Wn.2d 1002 (1992) . . . . .	7
<u>State v. Halstiem</u> , 122 Wn.2d 109, 857 P.2d 270 (1993). . . . .	6
<u>In re Hansen</u> , 81 Wn.App. 494, 914 P.2d 799 (1996) . . . . .	2,5,6
<u>State v. Hill</u> , 123 Wn.2d 641, 870 P.2d 313 (1994) . . . . .	4,6
<u>Holland v. City of Tacoma</u> , 90 Wn.App. 533, 954 P.2d 290 (1998) . . . . .	3
<u>State v. Homan</u> , 181 Wn.2d 102, 330 P.3d 182 (2014) . . . . .	4
<u>Litho Color, Inc. v. Pacific Employee Ins. Co.</u> , 98 Wn. App. 286, 991 P.2d 638 (1995) . . . . .	3
<u>Mallicott v. Nelson</u> , 48 Wn.2d 272, 293 P.2d 404 (1953). . . . .	4
<u>In re Parker</u> , 135 Wn.App. 465, 145 P.3d 383 (2006). . . . .	2,5,6
<u>In re Marr. of Pennamen</u> , 135 Wn.App. 790, 146 P.3d 466 (2006) . . . . .	7
<u>In re Marr. of Penry</u> , 119 Wn.App. 799, 82 P.3d 1231 (2004) . . . . .	7

<u>Richard v. Handly</u> , 53 Wn.2d121, 330 P.2d 1079 (1958) .....	4
<u>State v. Robinson</u> , 79 Wn.App. 386, 902 P.2d 652 (1995) .....	2,5,6
<u>State v. Ross</u> , 141 Wn.2d 302, 4 P.3d 130 (2000) .....	3
<u>In re Santore</u> , 28 Wn.App. 319, 623 P.2d 702 (1981) .....	4
<u>Silverdale Hotel Assocs. v. Lomas &amp; Nettleton Co.</u> , 36 Wn.App. 762, 677 P.2d 773 (1984) .....	5,6
<u>Washington State Physicians Exchange &amp; Ass’n</u> <u>v. Fisons Corp.</u> , 122 Wn.2d 299, 858 P.2d 1054 (1993) .....	2
<u>In re Marr. of Zigler and Sidell</u> , 154 Wn.App. 803, 808-09, 226 P.3d 202 (2010) .....	2,5,6

**Statutes**

RCW 4.84.185 .....	7
--------------------	---

**Court Rules**

CR 11 .....	6
RAP 10.3(a)(4) .....	5
RAP 10.3(g) .....	3

RAP 10.4c. ....	2,5,6
RAP 12.2 ....	6,9
RAP 18.9(a) ....	2,7
RPC 3.3(a)(1) ....	5

### **Treatises**

Vol. 1 <u>Washington Court Rules Annot.</u> , comment to RPC 3.3 (West 2nd Ed. 2007) .....	6
---	---

## **A. CONTROLLING ISSUES PRESENTED ON APPEAL**

The issues which control and ultimately dispose of this appeal, filed by the appellant, AMANDA EILEEN MENDOZA, along with her attorney, Garry R. Stenzel, can be summarized as follows:

1. Whether the failure to assign error to the superior court's finding of fact no. 2, associated with the court's secondary basis for imposing monetary sanctions against counsel in terms of his violation of an attorney's "duty of candor" [RP 299-300, 324-26; CP 204, 282] to the court [RPC 3.3(1)(a)], disregards the requirements under RAP 10.3(g) and RAP 10.4c making finding of fact no. 2, a verity on this appeal and the established facts on the case? [Section D, below].

2. Whether said unchallenged finding of fact no. 2 further supposes the trial court's corresponding conclusion of law and imposition of monetary sanctions against counsel and, therefore, warrants summary affirmance of the same on this appeal? [Id.].

3. Finally, whether in light of these circumstances, the respondent, PEDRO HERNAN MENDOZA, should be awarded by this court his reasonable attorney fees in these appellate proceeding under RAP 18.9(a) and related case law. [Section E, below].

## **B. STATEMENT OF THE CASE**

The principle focus of this case is the superior court's imposition of monetary sanctions on November 20, 2018, concerning both (1) the frivolity of Attorney Gary R. Stenzel's legal theories including the claim the marriage was "defunct" prior to the September 1, 2017 filing of the petition for dissolution by his client [CP 1-12],

as well as (2) the ‘violation of candor’ to the court with respect to Mr. Stenzel having ‘affirmatively misrepresented’ case law associated with this legal theory of a ‘defunct marriage’ in order to falsely claim the parties’ marriage had ended long before the September 1, 2017 filing of the petition for dissolution in Spokane County superior court. [RP 297-302, 323-27; CP 1-12, 203-04, 281-82].

### **C. STANDARD OF REVIEW**

A trial court’s decision regarding sanctions, including whether (a) such is warranted in a given case, (b) the type of sanction as well as © the amount associated therewith, is reviewed for manifest abuse of discretion. Washington State Physicians Exchange & Ass’n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993). The trial court abuses its discretion, only when it can be said the court acted on untenable grounds or for untenable reasons, or has erroneously interpreted, misapplied or otherwise chosen to ignore the governing law. State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995); see also, In re Marr. of Zigler and Sidell, 154 Wn.App. 803, 808-09, 226 P.3d 202 (2010); In re Parker, 135 Wn.App. 465, 145 P.3d 383 (2006); In re Hansen, 81 Wn.App. 494, 498, 914 P.2d 799 (1996). Only in such case is reversal justified. Otherwise, the trial court should be given deference on review. Id.

### **D. ARGUMENT IN RESPONSE**

1. Grounds for summary affirmance and dismissal of this appeal. Rule 10.3(g) of the rules of appellate procedure [RAP] requires, in pertinent part, that an

appellant must provide “. . . [a] separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number.” The rule then goes on to state that “[t]he appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue associated thereto.” Failure to follow this rule is not considered a mere “technical violation,” but will normally preclude review altogether in terms of the unchallenged finding. See, State v. Ross, 141 Wn.2d 302, 310-11, 4 P.3d 130 (2000).

RAP 10.4© further mandates that “(i)f a party presents an issue which requires the study of a . . . finding of fact . . . , the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief.” Such requirement must also be strictly followed by an appellant. Accord, Holland v. City of Tacoma, 90 Wn.App. 533, 954 P.2d 290 (1998). The obvious purpose behind RAP 10.4© is to enable the court and opposing counsel to efficiently and expeditiously review and determine the relevant issues and legal authority associated therewith. Litho Color, Inc. v. Pacific Employee Ins. Co., 98 Wn.App. 286, 991 P.2d 638 (1995).

Here, a simple review of the opening brief of the appellant, AMANDA EILEEN MENDOZA, and her attorney, Garry R. Stenzel, establishes there was no

error assigned to finding of fact no. 2 of the superior court's "Order on Attorney Sanctions pursuant to 11/20/18 Ruling" with respect to court's separate determination of a violation of the duty of candor towards the court as contemplated in Rule 3,3(a)(1) of the Rules of Professional Conduct [RPC]. [CP 204, 282].

With respect to existing assignments of error concerning "frivolity," Ms. MENDOZA and counsel neglected to identify any of the issues associated with appellant's assignments of error. RAP 10.3(a)(4). In addition, the appellant and her attorney have neglected to abide by the briefing requirements set forth in RAP 10.4© in terms of any effective challenge to finding of fact no. 1. [CP 203, 281].

More to the point, and as to their failure of to abide by RAP 10.3(g), finding of fact no. 2 [CP 204, 282] is now considered a verity on this appeal and constitutes the established fact in this case. State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014); In re Santore, 28 Wn.App. 319, 623 P.2d 702 (1981); State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); see also, Richard v. Handly, 53 Wn.2d 121, 330 P.2d 1079 (1958); Mallicott v. Nelson, 48 Wn.2d 272, 274, 293 P.2d 404 (1953). Thus, the only issue remaining is whether finding no. 2 [CP 204, 282] supports the corresponding conclusions of law and judgment of the imposition of monetary sanctions by the trial court. See, Eggert v. Vincent, 44 Wn.App. 851,

854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984).

In this regard, counsel's deliberate misrepresentation of the relevant case law amounts to nothing short of a glaring violation of RPC 3.3(1)(a). See, Vol. 1 Washington Court Rules Annot., comment to RPC 3.3 at 198 (West 2nd Ed. 2007). Consequently, finding of fact no. 2 [CP 204, 282]; see also RP 299-30, 324-260] supports the decision to impose such sanctions. CR 11.

As a result, there is no basis whatsoever for any claim of abuse of discretion by the superior court in this case. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995); see also, In re Marr. of Zigler and Sidell, 154 Wn.App. 803, 808-09, 226 P.3d 202 (2010); In re Parker, 135 Wn.App. 465, 145 P.3d 383 (2006); In re Hansen, 81 Wn.App. 494, 498, 914 P.2d 799 (1996). Consequently, the decision of court can be affirmed on this basis alone without taking into account the issue of "frivolity." RAP 12.2.

2. Postscript to grounds for summary dismissal of appeal. As an aside, it should be observed that, even if the appellant and her attorney had chosen to abide by RAP 10.3(g) and RAP 10.4©, it remains clear the record fully supports, by way of "substantial evidence," the trial court's award of monetary sanctions under either of its two (2) theories or findings of fact. [CP 203-04, 282-83]. Such

evidence is said to exist where there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the findings. See, Hill, at 644; see also, State v. Halstiem, 122 Wn.2d 109, 129, 857 P.2d 270 (1993). Such is clearly the case in terms of the instant appeal.

Ultimately, either of the superior court's findings nos. 1 and 2 [CP 202-04, 281-83] would clearly support the court's corresponding conclusions of law and resulting order. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984). Thus, in light of these additional considerations, there was once again no manifest abuse of discretion on the part of the superior court. State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995); see also, In re Marr. of Zigler and Sidell, 154 Wn.App. 803, 808-09, 226 P.3d 202 (2010); In re Parker, 135 Wn.App. 465, 145 P.3d 383 (2006); In re Hansen, 81 Wn.App. 494, 498, 914 P.2d 799 (1996). The trial court should therefore be affirmed. RAP 12.2.

#### **E. REQUEST FOR AWARD OF ATTORNEY FEES**

The respondent, PEDRO HERNAN MENDOZA, requests that he be awarded his costs and expenses, including a reasonable attorney fee, as

contemplated under the provisions of RAP 18.9(a) and RCW 4.84.185 in his having been forced to defend against this frivolous appeal. State v. Chapman, 140 Wn.2d 436, 454, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000). An appeal will be deemed “frivolous” when such proceeding is devoid of merit and there is no reasonable possibility of reversal by the reviewing court. In re Marr. of Penry, 119 Wn.App. 799, 82 P.3d 1231 (2004). In turn, an award of such fees may be granted in the situation, as here, where the opposing party and her attorney are clearly being intransigent, unjustifiable tenacious and engaging in purely obstructionist tactics, in terms of pursuing an appeal. See, In re Marr. of Greenlee, 65 Wn.App. 703, 704, 829 P.2d 1120, review denied, 120 Wn.2d 1002 (1992).

With the foregoing case law in mind, the present appeal is clearly “frivolous.” At a very minimum, the requested fees are justified if Ms. MENDOZA and her attorney STENZEL chose to continue with these proceedings rather voluntarily dismissing the same of their own volition. Id.; In re Marr. of Pennamen, 135 Wn.App. 790, 146 P.3d 466 (2006). Without question, the points made in this responsive brief puts the appellant and her counsel squarely on notice of the same. See, Biggs v. Vail, 124 Wn.2d 193, 198-99, 876 P.2d 448 (1994 F.

**F. CONCLUSION**

Based upon the foregoing points and authorities, the respondent, PEDRO HERNAN MENDOZA, respectfully requests that the decision of the superior court be affirmed and, in turn, this appeal be dismissed with prejudice. RAP 12.2. Furthermore, the respondent should be awarded his costs and legal expenses incurred in this appeal including a reasonable attorney fee.

DATED this 5<sup>th</sup> day of August 2020.

Respectfully submitted:

S/MICHAEL J. BEYER

Michael J. Beyer, WSBA #9101

Attorney for Respondent,

PEDRO HERNAN MENDOZA

**MICHAEL J. BEER ATTORNEY AT LAW**

**August 05, 2020 - 4:33 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36819-0  
**Appellate Court Case Title:** In re Marriage of: Pedro Hernan Mendoza and Amanda Eileen Mendoza  
**Superior Court Case Number:** 17-3-01992-3

**The following documents have been uploaded:**

- 368190\_Briefs\_20200805162835D3850371\_7712.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Mendoza Response Brief.pdf*

**A copy of the uploaded files will be sent to:**

- lscaranoparalegal@gmail.com
- pavaagen@gmail.com
- stenz2193@comcast.net

**Comments:**

Thank you for all our help mjb

---

Sender Name: Michael Beyer - Email: mjbeyer@sisna.com

Address:

5010 W PROSPERITY LN  
SPOKANE, WA, 99208-8417  
Phone: 509-499-1877

**Note: The Filing Id is 20200805162835D3850371**