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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 369722

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

Nicholaus Miley
Appellant
V.

Anna Pylypets
Appellee

APPELLANT'S BRIEF

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II. Introduction

The appellant brings this appeal based on the American civil right to a fair trial. This brief is meant to accompany oral argument and is incomplete without oral argument, following the filing of this brief. Furthermore, every effort has been made to accurately cite page number of the record while not receiving a copy of the actual file (designated Clerk's papers) submitted to the appeals court by the trial court. In this case, the appellant was denied that basic right of a fair trial. This brief will show that the appellant sought to have a fair trial by both reaching out to the Appellee during all phases of the case as well as the Trial Court during the all phases of the case in an attempt to exercise his right to a fair trial with respect to the fair discovery of evidence and accesses to witnesses. It will point to the record that shows how and when the Appellee unlawfully hid evidence and the ability to discover a witness from the Appellant issued false and misleading statements to the court in her effort to conceal and

hide evidence and the identity of a witness and how the Trial Court responded to the matter of discovery and a fair trial.

III. Assignments of Error

The Trial Court Errored when it, first, during the pre-trial hearing on Feb. 16, 2018, directed the Appellant to work with the opposing party to obtain the information that Appellant was seeking during discovery phase that was withheld by appellee. The Trial Court stated, “If you don’t get it and/or you think you need it, we can address it on the day of trial in a Motion in Limine...”

On the day of trial, March 12, 2018, Appellant made an oral motion to compel and to continue the trial. In reference to the pretrial hearing, The Trial Court declared, “I said we can discuss it, I didn’t say you could take care of it on the day of trial. The Trial Court also said, “You have to follow the rules. If you didn’t file a motion to demand discovery that you demanded and you haven’t done that, you can’t do it orally. You can’t do it on the day of trial...”

The Trial Court then accepted a stipulation from the Appellee that changed the separation date to a date that allowed the Appellee to claim that the discovery requested was irrelevant, and thereby in inadvertently assisting the Appellee hide

evidence and quash the ability to a fair trial. The trial court later denied the Appellants motion to compel with the basis of not adhering to the rules and thereby also erroring. This was an error by the court, as the trial court made specific directions to the parties on during the pre-trial hearing and later did not honor those previous directions, during trial.

The trial court then again erred when it was given a chance to correct the record through a motion to vacate by denying the motion brought forth by the Appellant (see generally, CP, pages 14-238).

IV. Statement of Case

Appellant filed a petition for the marriage between the parties to be declared invalid, (*See generally* CP page 1-13). Appellant sought to discover evidence from Appellee, and Appellee refused to procure the evidence that the Appellant sought, (*See generally*, CP pages 14-238) to discover evidence first without court interference by directly reaching out to the Appellee and Appellee subsequently withheld the discovery Appellant sought and

effectively ran out the clock, thereby making Appellant seek to have court intervention close to the trial date and on the trial date, (*See generally*, CP pages 14-238). The Trial Court first gave Appellant instructions during the Pre-trial (Feb. 16, 2018) on how to deal with this matter of discovery and then during the trial, the Trial Court changed its position on dealing with this matter of discovery, (*See generally*, RP.) Appellant was forced to dismiss his case without prejudice due to "...not being duly supplied with due process needed to prevail on my claims," (See, RP , page 25)

V. Argument

RCW 4.72.010(3) (3) provides for mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order and Washington State Superior Court Rules, CR 60(b)(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order, as a cause to motion the court in which a judgment has been rendered to hear a petition for the vacation of such a judgment in whole or in part. In this case, an irregularity and a surprise in the proceedings has occurred. Specifically, the Appellee, declared as a matter of fact, that the two parties separated on January 15, 2016 (*See generally*, CP pages 14-238), and claimed that the two parties, "...lived together in

Washington as husband and wife for almost 18 months,” in her response to the initial petition. And again, in the Appellee s, AWSERS TO PETITIONER’S FIRST DISCOVERY REQUEST TO RESPONDENT, the Appellee claims that she lived with the Appellant until January 2016 (*See*, CP pages 59-61). However, on the day of the trial, the Appellee surprised the Appellant with a change in her depiction of the facts related to date of separation, and declared with the court, on the day of the trial, and not with the Appellant, that she would stipulate to a separation date of September 23rd, 2015 (*See* RP page 17) and went onto to downplay the importance of the case in general and confusing the understanding of the facts with the use of a stipulation. This was made in a successful attempt to further hide evidence related to the requests for production of documents and thereby, reduced the Appellant’s due process including, but not limited to, to have all the facts prior to trial pursuant to the Rules. As the record of the trial shows, the Appellee disputed the separation date up to and until the Appellant raised it as an issue with the court on the day of the trial, relative to gaining evidence he sought from the Appellee. Additionally, after the trail, the Appellee claimed in a separate court record, that the parties were separated prior to the date of September 23rd, 2015, and in fact claims that the two parties were separated in late 2014 (*See generally*, CP 14-238).

RCW 4.72.010(4) provides a mechanism to vacate a judgment where fraud practiced by the successful party in obtaining the judgment or order exists. Furthermore, Washington State Superior Court Rules, CR 60(b)(4) provides the court may relieve a party or the party's legal representative from a final judgment,

order, or proceeding for the following reason: Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. In this case, the Appellee sought to hide evidence that was necessary to the Appellant's case, and in an effort to gain an advantage over the Appellant and in the Appellee's efforts to have the court grant a judgment on the grounds that the Appellant "...failed to conduct a reasonable inquiry into the factual or legal basis of the action." (see generally, RP). The record from the trial (*See generally*, RP 1-13) shows that the Appellant sought to have certain documents and information supplied to him by the Appellee. The record from the trial shows that the Appellant could not prove his case by stating to the court, "I need this information to prove my case. Without this information, I will fail hands down." (see RP, page 20-21). The record from the trial (see RP, page 25) also shows that the Appellant dismissed his claim without prejudice due to "... myself not having been dually supplied with due process needed to prevail on my claims."

In the Appellee's, ANSWERS TO PETITIONER'S FIRST DISCOVERY REQUEST TO RESPONDENT, the Appellee supplied to the Appellant a lease agreement between the Appellee and a John Doe (redacted information), and Amador Lakes Apartments (see CP, pages 74-130, {Exhibit B}). However, the document supplied to the Appellant was redacted of the necessary information that was needed and requested by the Appellant without cause or reason. The Appellant sought to have that information released through a CR 26(i) (see generally, CP pages 131-136{Exhibit C}), by specifically noting

that the Appellee redacted information and failed to supply an objection to releasing the information that was redacted. The Appellee then supplemented her answers in her SUPPLEMENTAL ANSWERS TO PETITIONER'S FIRST DISCOVERY REQUESTS TO RESPONDENT (see CP, pages 145-151 {Exhibit H}) by then objecting to supplying the redacted information based on a new allegation of harassment by the Appellant (see CP, pages 145-151 {Exhibit H}), without supplying any evidence to support the claim of harassment. These new allegations of harassment were only made after the Appellant sought to have the Appellee's deficiencies fixed through a CR 26 (i) conference. Appellant noted this deficiency in his SECOND NOTICE TO RESPONDENT in RE:

DEFICIENT RESPONSES TO PETITIONERS'S FISRT DISCOVERY REQUEST (see CP, pages 160-164 {Exhibit J}). Furthermore, the Appellee claims to have produced all documents responsive to this request (see CP, pages 145-151 {Exhibit H}). As Exhibit L clearly shows that another address at a separate apartment complex in Elk Grove, California was used as a place of residence by the Appellee (See CP pages 197-198, {Exhibit L}), prior to her moving to the residence located in Dublin, California. Effectively, the Appellee hid the fact of another residence and sought to undermine the Appellant s due process by withholding evidence and failing to produce documents as legally requested by the Appellant, in the Appellee's efforts to undermine the Appellant's claim and obtaining a judgment as a result.

The Appellant also sought to have all documents labeled with the date the document was produced and the Author of the documents produced as part of the

discovery requests made to the Appellee. This request was ignored even after repeated requests for that information (CP pages 131-136, {Exhibit C} and (see CP, pages 160-164 {Exhibit J}). The Responded also failed to seek a protective order as related to the above mentioned (see *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570).

Additionally, the Responded sought to use a claim of harassment to withhold the requested information (see CP, pages 145-151 {Exhibit H}) and (see CP pages 199-210 {Exhibit M}). However, during another case before the Eastern Washington US District Court, Appellant sought to gain evidence from the Appellee related to her claims of harassment that clearly show that no evidence or witnesses exist that substantiate her claim of harassment (see CP 210-234, {Exhibit N}). Even more troublesome, the Appellee claimed that she viewed the conduct of the Appellant complying to an order from the Superior Court of California (see CP, pages 233-238, {exhibit O}) to serve the Appellee with summons, as harassment (see CP pages 210-234, {Exhibit N}). Furthermore, Appellee did not seek any protection order nor even objected to the initial discovery request when she initially responded to the request but rather chose to ignore those parts that she decided on her own to withhold (See generally, CP 14-238).

CR 60 (a) provides a mechanism for a motion to be brought if Clerical misstates in judgments, orders or other parts of the record and errors therein arising from oversight or omissions exist. In this case a Clerical mistake(s) have occurred. On February 16, 2018 the Court stated that a Motion in Limine can be

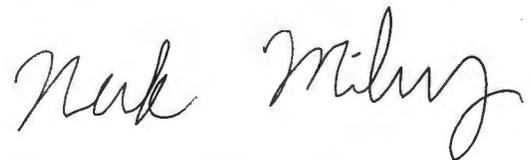
used on the day of the trial if, the Appellant didn't get the information that he sought regarding his discovery request (see CP, pages 199-210 {Exhibit M}). Pursuant to CR 7 (b)(1), on March 12, 2018, Appellant made an oral Motion in Limine (see CP pages, 165-196, {Exhibit K}), however, the Court mistakenly claimed that the Court Instructed the Appellant to "...file some kind of contempt motion, and you never did that," (see CP, pages 199-210, {Exhibit M}).

Additionally, the Court mistakenly applied CR 7 by stating, "You have to follow the rules. If you didn't file a motion to demand discovery that you demanded and you haven't done that, you can't do it orally," (see CP, pages 199-210 {Exhibit M}). The Court also mistakenly applied *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570 by placing the burden on the Appellant related to discovery he sought from the Appellee. Lastly, the court mistakenly applied the burden for sanctions under CR 11 as stated in the Appellee's pre-trial brief (see generally, RP).

Furthermore, the court on numerous times during pre-trial, and trial, that the case would take place on March 12, 2018 regardless of the outcome from a motion in Limine (see generally, RP), and hence shows that the court blinded its self to allowing the facts of the matter to be presented. And lastly, the trial court failed to address the facts in the motion for vacation of judgement and brings up arguments that were not made by any party and did not pertain to the motion, (see CP, pages 240-244).

VI. Conclusion

It is clear from the record that the Appellant sought to conduct this trial in a civil manner and lawfully sought to have lawful discovery. Appellee used deceit to justify the withholding of discovery. When appellant failed to get the discovery from Appellee, Appellant sought to involve the court to force the Appellee to supply the discovery sought by Appellant. It is clear that the court was mostly concerned in reaching a conclusion to the case by not only allowing the Appellee to ram this case through trial but assisted the Appellee by forcing the trial to take place, when it was clear that one party was not ready even though Appellant took all necessary steps related to discovery sought by Appellant. However, if the Appellant is not entitled to civil discovery, he is denied the right to present his case based on the merits and is thereby denied his right to a fair trial.

A handwritten signature in cursive script, appearing to read "Nak Miluz".

Signed Feb. 20, 2020

CERTIFICATE OF SERVICE

I, Nicholas Miley, certify that on the 20th day of February, 2020, I caused a true and correct copy of this Brief to be served on the following in the manner indicated below:

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