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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**

In re the Marriage of:

Nicholaus Miley, *Petitioner/Appellant*

and

Anna Pylypets, *Respondent*

RESPONDENT'S BRIEF

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I. INTRODUCTION

Before the Court is Appellant's, Mr. Miley's, appeal from an order denying his motion to vacate the trial court's final divorce order and findings and conclusions about a marriage. The Court should AFFIRM the trial court's denial of the motion to vacate because the trial court did not abuse its discretion in denying Mr. Miley's motion. The Court should further award Ms. Pylypets reasonable attorneys' fees, as well as sanctions or compensatory damages for having to respond to Mr. Miley's frivolous appeal.

II. STATEMENT OF FACTS

Appellant, Mr. Miley, and Respondent, Ms. Pylypets, were married on July 12, 2014. CP at 3, 368. They married in 2014 after they met online in 2013. CP at 336. When they met one another online, Mr. Miley lived in Washington, and Ms. Pylypets lived in Ukraine. *Id.* He traveled to Ukraine to meet Ms. Pylypets during August 2013. *Id.*

Upon returning from Ukraine, Mr. Miley began the process of obtaining a federal K-1 fiancée visa. CP at 336. After the fiancée visa was obtained, Ms. Pylypets traveled to the United States in early July 2014, and the parties were married in Coeur d'Alene, Idaho shortly thereafter. CP at 335, 336.

The marriage did not last long. The parties separated, and the marital community ended, on September 23, 2015. CP at 368. (While Ms. Pylypets originally disputed this date, she eventually stipulated September 23, 2015 was the date of separation. RP at 17. September 23, 2015 was the date of separation the trial court found as a matter of fact in its findings and conclusions about a marriage. CP at 368.)

Then, on February 21, 2017, Mr. Miley filed a petition to invalidate (annul) his marriage to Ms. Pylypets. CP at 3. He requested his marriage be annulled on the basis of “pressure, force or fraud” and because the “marriage is void or voidable” under the laws of the State of Idaho. CP at 4.

Ms. Pylypets responded to Mr. Miley’s request for an annulment on May 9, 2018. CP at 263-68. She disagreed with his request for annulment, CP at 263, 265, and she counterclaimed for a dissolution of their marriage, CP at 266. Ms. Pylypets also disputed Mr. Miley’s allegation that the separation date occurred on September 23, 2015, and alleged “to the best of [her] recollection” that the date of separation occurred on January 15, 2016. CP at 264.

The trial court issued its domestic case scheduling order on June 29, 2017. CP at 279. The court's order set November 10, 2017 as the date by which all discovery was to be completed. *Id.*

Then, on October 16, 2017, Mr. Miley moved the court to amend the scheduling order. CP at 281-92 (motion to amend scheduling order), 293-305 (November 7, 2017 amended motion to amend scheduling order). Specifically, he requested the court to reschedule trial and allow for more time to conduct and complete discovery. CP at 282, 294.

During this same time period, Mr. Miley also propounded discovery requests. CP at 39-59. He sent his interrogatories and requests for production to Ms. Pylypets on November 2, 2017. CP at 59.

Shortly thereafter, Ms. Pylypets responded to Mr. Miley's request for an amended scheduling order. CP at 306-07. Through counsel, she asked the court to deny his request, because "no additional time [was] necessary to resolve whether the parties' marriage should be dissolved or annulled," as that was the only issue left for the court to determine. CP at 307. Ms. Pylypets further informed the court that pretrial disclosures had been made and exchanged, and that the parties had served written discovery

requests, but acknowledged the deadlines for responses would not occur until shortly before the trial scheduled for December 18, 2017. CP at 306, 279 (scheduling order).

Ultimately, the court denied Mr. Miley's request for a continuance of the trial date. CP at 315-16. The court further ordered the parties to engage in mediation prior to the December 7, 2017 pretrial conference. CP at 316.

Prior to the pretrial conference, the parties filed a joint domestic trial management report. CP at 317-29. There, the parties listed their disagreement as to the length of trial. CP at 317. Mr. Miley estimated trial would take between three and five days, while Ms. Pylypets estimated trial would take approximately two days to complete. *Id.* The parties also listed the issues that remained in dispute. CP at 317-18. The primary issue in dispute was whether the marriage was invalid or dissolvable. CP at 318.

Due to the requirements of local rules and Mr. Miley's estimation that trial would take three to five days to complete, the trial court entered an agreed order continuing the date of trial from December 18, 2017 to March 12, 2018. CP at 330. The court issued an amended scheduling order. CP at 332. The amended scheduling order moved the date of trial, but *did not* extend the

original deadline for completion of discovery. *Id.* Nevertheless, the parties did continue to engage in discovery. See *generally* CP at 63-136 (Ms. Pylypets' December 7, 2017 answers to interrogatories and requests for production), 138-41 (Mr. Miley's December 14, 2017 notice of deficient answers and responses), 143-49 (correspondence re: Civ. R. 26(i) discovery conference), 151-55 (Ms. Pylypets' January 19, 2018 supplemental answers to discovery), 164-66 (Mr. Miley's February 1, 2018 second notice of discovery deficiencies), 157-62 (Ms. Pylypets' February 7, 2018 second supplemental answers).

On February 16, 2018, the trial court held the pretrial conference. RP at 3-10. At the pretrial conference, Mr. Miley informed the court he was not ready to proceed to trial on March 12, 2018. RP at 3. Specifically, he claimed he was still waiting on discovery from Ms. Pylypets, but that he did not have "enough time ... to file a formal motion for order to compel yet." RP at 3. The court asked Mr. Miley what documents he was missing. RP at 4. He informed the court he was seeking an unredacted lease for an apartment, as well as another lease for a different apartment that Ms. Pylypets had not provided. RP at 4. He confirmed the one

redaction on the lease agreement he was provided through discovery was another individual's name. *Id.*

In response to Mr. Miley's claim that he was not ready to proceed due to deficient discovery answers, Ms. Pylypets' counsel informed the court it was the first time she was hearing of such deficiencies. RP at 6. Ms. Pylypets informed the court she declined to produce an unredacted lease agreement due to Mr. Miley's harassment of herself and individuals at her apartment complex. *Id.* She further informed the court that the parties had conducted a Civil Rule 26(i) conference on January 10, 2018, and Mr. Miley failed to raise either of his purported deficiencies during that conference. *Id.*

The court advised both parties to meet and confer over the alleged deficiencies in answers to discovery requests, but declined to continue the trial date scheduled for March 12, 2018. RP at 9. Specifically, the court instructed Mr. Miley as to his alleged issues with discovery deficiencies, "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* ..." RP at 9 (emphasis added).

The court held a bench trial on March 12, 2018. RP at 11-38. At the outset, Mr. Miley repeated his claim made at the pretrial

conference that he was not ready to proceed due to alleged deficiencies in response to his discovery demands. RP at 11. Again, the court inquired as to what discovery Mr. Miley believed he was missing, and, again, Mr. Miley responded he was still awaiting “all the signed lease agreements” *Id.* He also made an oral motion to continue the trial date, as well as an oral motion to compel discovery. *Id.*

In response to his oral motions made on the day of trial, the court asked for an offer of proof as to how the lease agreements would prove fraud. RP at 12. Mr. Miley proffered the lease agreements would tend to show Ms. Pylypets’ ill intent in *reconciling* the marriage. RP at 12-17. Ms. Pylypets countered that the lease agreements were not relevant to the issue of whether Mr. Miley was tricked into the marriage. RP at 19. The trial court rejected Mr. Miley’s offer of proof. RP at 23 (“The issue today is whether or not you can prove at the time that you got married in July of ’14 there was fraud. What happened after that doesn’t really matter.”) The Court also accepted Ms. Pylypets’ stipulation as to the separation date of September 23, 2015. RP at 23, 25.

Then, Mr. Miley dismissed his case for annulment of the marriage. RP at 25. The court proceeded on Ms. Pylypets’

counterclaim for dissolution of the marriage. RP at 26. The court asked Mr. Miley if he had anything to present on Ms. Pylypets' claim for dissolution or on her claim for attorneys' fees. RP at 26, 27. Mr. Miley responded "No," and did not present any evidence or argument on Ms. Pylypets' claim for dissolution, but did argue attorneys' fees were unnecessary because he dismissed his claim for annulment on the day of trial. RP at 27. Ms. Pylypets then proceeded with her case. RP at 27.

Ms. Pylypets testified that she entered into the marriage because she loved Mr. Miley, planned on having a family with him, and not because she was looking for an American husband. RP at 28. She testified it was Mr. Miley's idea to have her relocate to the United States. RP at 29. She testified she would not have hired an attorney if Mr. Miley had simply filed for a divorce, rather than an annulment. RP at 30. She testified she earned \$11 per hour. *Id.* She testified that defending against Mr. Miley's lawsuit had been a financial hardship. RP at 32. She also testified that when she had previously discussed a divorce with Mr. Miley, he responded "he will never grant me divorce no matter what, and he told me that I cannot get divorce by myself. I have to get his approval." RP at 31.

Mr. Miley declined to cross-examine Ms. Pylypets. RP at 32.

At that point, presentation of evidence was concluded, and closing argument was presented. RP at 32-35. The court found the marriage irretrievably broken, granted dissolution, and noted it previously granted Mr. Miley's motion to withdraw his claim for annulment. RP at 35. The court further granted Ms. Pylypets' request for attorneys' fees under Civil Rule 11. RP at 36.

After trial, the court entered findings and final orders on April 6, 2018. CP at 367-70 (findings), 371-74 (final divorce order). This was a short term marriage, the parties had no children, spousal maintenance was neither requested nor given, and there was limited personal property and debt to divide (an LLC, a car, an auto loan, and an engagement ring. CP at 368-69. As for the Civil Rule 11 sanctions, the court found Mr. Miley's petition to annul his marriage was not well grounded in fact or warranted by existing law, and that he failed to conduct a reasonable inquiry in the factual or legal basis of his petition. CP at 369. The court further found Mr. Miley dismissed his claim on the day of trial prior to presenting any evidence. CP at 370. The court's final divorce order awarded \$8,922 in fees and costs to Ms. Pylypets. CP at 371.

Three days prior to his trial, Mr. Miley filed a complaint for damages and a demand for a jury trial on March 9, 2018, in the

United States District Court for the Eastern District of Washington. CP at 341-58. His complaint was initially dismissed for lack of jurisdiction on April 6, 2018. CP at 465. After his March 12, 2018 trial in state court, Mr. Miley amended and refiled his complaint on June 1, 2018 in federal court. CP at 476-495. Among other things, he claimed a cause of action under RCW 26.09.040 (“Petition to have a marriage or domestic partnership declared invalid ...”). CP at 487. Mr. Miley’s amended complaint was ultimately disposed of on summary judgment for lack of federal subject-matter jurisdiction. *Miley v. Pylypets*, No. 2:18-CV-88-RMP, 2019 WL 4143294, at *3 (E.D. Wash. August 30, 2019).

During the pendency of the federal lawsuit, Mr. Miley moved to vacate the judgment of the trial court in this matter on March 11, 2019. CP at 14. His motion was made pursuant to RCW 4.72.010 and Civil Rule 60. CP at 14-15. Ms. Pylypets was not served with his motion to vacate until April 18, 2019. CP at 375, 377.

Ms. Pylypets responded to Mr. Miley’s motion to vacate on May 10, 2018. CP at 380. In response to his motion, she filed a declaration, CP at 375, a declaration of counsel, CP at 377, and a memorandum of authorities, CP at 380. Specifically, she asked the court to deny Mr. Miley’s motion because: (1) Mr. Miley failed to

follow procedural rules, (2) the final orders entered on April 6, 2018 were not obtained as the result of an irregularity, (3) the final orders were not the result of fraud or misrepresentation by Ms. Pylypets, and (4) there were no clerical mistakes in the final orders. CP at 381. The court agreed. CP at 244.

On July 3, 2019, the court entered an order denying Mr. Miley's motion to vacate judgment. CP at 240-44.

Mr. Miley appealed that order on July 31, 2019. He submitted his briefing on February 24, 2020. He appears before this Court *pro se*.

III. ISSUES ON APPEAL

Mr. Miley assigns error to the trial court's February 16, 2018 direction that the parties should collaborate to complete discovery, and if that was unsuccessful, that Mr. Miley could address any discrepancies in a motion in limine at the March 12, 2018 trial. Appellant's Brief ("AB") at 4.

Mr. Miley contends the trial court erred in denying his oral motion to compel discovery on the day of trial. AB at 4, 5.

Mr. Miley contends the trial court erred in accepting Ms. Pylypets' stipulation at trial to his claimed date of separation. AB at 4.

Mr. Miley contends the trial court erred in denying his motion to vacate judgment on July 3, 2019. AB at 5.

In an attempt to clarify for the Court those assignments of errors, Ms. Pylypets frames the issues before this Court on Mr. Miley's appeal from a denial of a motion to vacate judgment as follows:

1. Whether the trial court abused its discretion in denying Mr. Miley's motion to vacate judgment where the judgment was not obtained due to clerical mistake, irregularity, inadvertence, surprise, fraud, or misrepresentation.
2. Whether awards to Ms. Pylypets of reasonable attorneys' fees pursuant to RAP 18.1(a) and terms or compensatory damages pursuant to 18.9(a) against Mr. Miley would be appropriate for this frivolous appeal.

IV. ARGUMENT

A. The trial court did not abuse its discretion in denying Mr. Miley's motion to vacate judgment.

1. *The applicable standard of review is abuse of discretion; review is limited only to the propriety of the denial of Mr. Miley's motion to vacate judgment.*

A trial court's denial of a motion to vacate a judgment is reviewed for abuse of discretion. *Graves v. Dep't of Game*, 76

Wash. App. 705, 718, 887 P.2d 424, 431 (Div. III 1994) (trial court did not abuse its discretion in denying motion to vacate judgment from a second trial where the motion was based upon newly discovered evidence, because reasonable inquiry should have revealed the witness at or before the second trial); *Young v. Thomas*, 193 Wash. App. 427, 434, 378 P.3d 183, 186 (Div. II 2016). A trial court abuses its discretion when its decision is not supported by the facts in the record or when it is made after misapplying the law. *Mitchell v. Washington State Inst. of Pub. Policy*, 153 Wash. App. 803, 821-22, 225 P.3d 280, 288 (Div. II 2009); see, e.g., *Thomas*, 193 Wash. App. at 436, 378 P.3d at 187 (trial court abused its discretion in denying motion to vacate for irregularity where it failed to require withdrawing attorney to comply with Civil Rule 71 and failed to provide proper notice of the new trial date). A court may also abuse its discretion in denying a motion to vacate judgment where the court applies the correct law to the supported facts, but adopts a view no reasonable person would take and arrives at a conclusion outside the range of acceptable choices. *Mitchell*, 153 Wash. App. at 822, 225 P.3d at 288 (quoting *State v. Rohrich*, 149 Wash. 2d 647, 654, 71 P.3d 638, 642 (2003)).

Additionally, an appeal from a denial of a motion to vacate is limited only to review of the propriety of the denial. *Thomas*, 193 Wash. App. at 435, 378 P.3d at 187 (citing *Bjurstrom v. Campbell*, 27 Wash. App. 449, 450-51, 618 P. 2d 533, 534 (Div. III 1980) (“An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment.” (citing *Browder v. Dir., Dep’t. of Corr.*, 434 U.S. 257, 263 (1978))).

Here, Mr. Miley appealed the trial court’s July 3, 2019 order denying his motion to vacate judgment in his family law case. Consequently, the Court must review the denial of his motion for abuse of discretion, *Graves*, 76 Wash. App. at 718, 887 P.2d at 431, and appellate review is *limited only* to the question of whether the trial court abused its discretion in denying his motion to vacate, *Thomas*, 193 Wash. App. at 435, 378 P.3d at 187. The Court should not consider Mr. Miley’s arguments concerning actions taken at or before trial because he did not appeal the trial decision. *Id.*

2. *The court did not abuse its discretion in denying Mr. Miley’s motion to vacate for mistake, inadvertence, surprise, or irregularity.*

A motion to vacate judgment may be made for specific reasons pursuant to statute or the civil rules. See RCW 4.72.010;

Civ. R. 60; Civ. R. 60(e)(4) (“Except as modified by this rule, RCW 4.72.010—.090 shall remain in full force and effect.”). Statute provides, in relevant part, the court that has rendered the judgment may vacate it “for mistakes, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.” RCW 4.72.010(3). The civil rules provide much of the same. *See generally* Civ. R. 60. A judgment, order, or the record in the case may be corrected “at any time” by the court for clerical mistakes, including oversight or omission. Civ. R. 60(a). Additionally, the court “may relieve a party ... from final judgment” for “mistakes, inadvertence, surprise, excusable neglect or irregularity ...” if the party brings the appropriate motion within one year. Civ. R. 60(b)(1).

In the context of a motion to vacate judgment, “irregularities ... occur when there is a failure to adhere to some prescribed rule or mode of proceeding, such as when a procedural matter that is necessary for the orderly conduct of trial is omitted or done at an unseasonable time or in an improper manner.” *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wash. App. 647, 652, 774 P.2d 1267, 1270 (Div. III 1989). “Clerical error involves a mere mechanical mistake.” *Marchel v. Bunger*, 13 Wash. App. 81, 84, 533 P.2d 406, 408 (Div. III 1975) (clerical mistakes are corrected by

amending the mechanical error, if any). “Mistakes, inadvertence, surprise, [and] excusable neglect,” within the context of Civil Rule 60(b), generally pertain to a motion to vacate a *default* judgment for a parties’ failure to appear for a proceeding despite the parties’ due diligence. See, e.g., *Norton v. Brown*, 99 Wash. App. 118, 124, 992 P.2d 1019, 1022 (Div. III 1999) (a genuine misunderstanding between an insured and his insurer as to who is responsible for answering the summons and complaint will constitute a mistake for purposes of vacating a default judgment); *Rosander v. Nightrunners Transp., Ltd.*, 147 Wash. App. 392, 407, 196 P.3d 711, 718-19 (Div. II 2008) (misunderstanding in conversation where agent believed victim would not seek default judgment was not excusable neglect for employer’s failure to appear or defend that warranted vacation of judgment); *Ha v. Signal Elec., Inc.*, 182 Wash. App. 436, 451-52, 332 P.3d 991, 998 (Div. I 2014) (trial court did not abuse its discretion where company’s bankruptcy attorney’s genuine misunderstanding as to whether he should accept service of process for personal injury claim against company and company’s financial advisor’s subsequent mistake in forwarding the summons and complaint to the wrong insurance company

constituted “mistake”), *review denied* 182 Wash. 2d 1006, 342 P.3d 327.

Here, the trial court did not abuse its discretion in denying Mr. Miley’s motion to vacate judgment. The court did not abuse its discretion because there was no irregularity in the proceeding that would warrant vacation of the judgment. Judgment was reached after a trial on the merits of Ms. Pylypets’ claim for dissolution. Mr. Miley chose not to present any evidence as to Ms. Pylypets’ claim for dissolution. RP at 25-27. Similarly, Mr. Miley *chose* to dismiss his claim for annulment on the day of trial; his choice to dismiss the day of trial is not an irregularity which would warrant relief. Further, it was not an irregularity in the proceedings for the court to deny Mr. Miley’s oral motion to compel discovery made on the day of trial. A motion to compel discovery must be made pursuant to the rules. *See generally* Civ. R. 37(a). Contrary to Mr. Miley’s understanding, the court *did not* instruct him to bring a motion to compel discovery on the day of trial, rather it instructed that if he felt he was still missing evidence, he could address his concerns in the form of a motion in limine. RP at 9.

Additionally, the trial court did not abuse its discretion in denying Mr. Miley’s motion to vacate judgment for surprise,

because his surprise in Ms. Pylypets' stipulation to his alleged date of separation does not qualify as a surprise that would justify vacating the court's orders. Instead, the considerable amount of case law regarding mistake, inadvertence, surprise, and excusable neglect deal with a parties' justified absence from court which would warrant vacating the court's *default* decisions. *Cf. Norton*, 99 Wash. App. at 124, 992 P.2d at 1022; *Rosander*, 147 Wash. App. at 407, 196 P.3d at 718-19; *Ha*, 182 Wash. App. at 451-52, 332 P.3d at 998. To reiterate the trial court's point on this matter, neither Ms. Pylypets' stipulation to the date of separation nor Ms. Pylypets' original claimed date of separation have anything to do with Mr. Miley's attempt to prove he was duped in marrying her at the outset of their relationship. RP at 23. Moreover, Mr. Miley cites no caselaw in support of his position that Ms. Pylypets' stipulation to his alleged date of separation constitutes a surprise that would warrant relief from the court's final orders in this matter. Finally, Ms. Pylypets' stipulation *did not* affect Mr. Miley's due process rights; he was twice provided an opportunity to be heard on his alleged discovery issues, however he chose not to present a proper motion to compel discovery, and he simply chose not to present his case at trial.

Consequently, the trial court did not abuse its discretion in denying Mr. Miley's motion to vacate judgment because the court's final orders were not the result of surprise, irregularity, or omission. Instead, the final orders were reached after a trial on the merits of Ms. Pylypets' claim for dissolution where Mr. Miley chose not to present any evidence or testimony besides offering argument against an award of Rule 11 sanctions.

3. *The court did not abuse its discretion in denying Mr. Miley's motion to vacate for fraud, misrepresentation, or misconduct.*

A motion to vacate may also be made on the basis of fraud, misrepresentation, or misconduct. *See generally* RCW 4.72.010; Civ. R. 60(b)(4). Specifically, statute provides the moving party must show "fraud practiced by the successful party in obtaining the judgment ..." in order for the movant to prevail. RCW 4.72.010. Similarly, the civil rule provides "the court may relieve a party ... from a final judgment" for "fraud ... misrepresentation, or other misconduct of an adverse party" Civ. R. 60(b)(4); *see, e.g., Himes v. MacIntyre-Himes*, 136 Wash. 2d 707, 729, 965 P.2d 1087, 1098 (1998) (dissolution decree was properly vacated where husband committed a fraud by falsely claiming he did not know the whereabouts of his wife at the time he obtained his dissolution by

default); *Lindgren v. Lindgren*, 58 Wash. App. 588, 596, 794 P.2d 526, 532 (1990) (“the fraudulent conduct or misrepresentation must *cause* the entry of judgment ...”) (emphasis in original).

Here, the court did not abuse its discretion in denying Mr. Miley’s motion to vacate judgment on the basis of fraud, misrepresentation, or misconduct, because the record does not support any finding of fraud, misrepresentation, or misconduct on Ms. Pylypets’ part in obtaining the judgment. Instead, the record shows Ms. Pylypets cooperated with Mr. Miley’s discovery demands even though the due date for discovery completion had passed. In response to Mr. Miley’s continued demands for irrelevant discovery, Ms. Pylypets asserted lawful objections where appropriate. Mr. Miley’s failure to seek the court’s assistance in compelling her answers to what he felt were relevant requests is not a fraud, misrepresentation, or misconduct by Ms. Pylypets. Further, as the court explained to Mr. Miley after providing him an opportunity to be heard on this issue, the discovery he sought was irrelevant to his claim that he was fraudulently induced into the marriage, because he was attempting to gain leases from California she entered into after she left him which had nothing to do with any trip she may have taken to New York. See RP at 13.

Consequently, the trial court did not abuse its discretion in denying Mr. Miley's motion to vacate on the basis of fraud, misrepresentation, or misconduct because Ms. Pylypets did not fraudulently obtain judgment. She simply asked for a divorce, and the court granted her request.

V. ATTORNEYS' FEES/SANCTIONS

The appellate rules authorize an award of reasonable attorneys' fees and costs when statute authorizes such a right. RAP 18.1(a). "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." RCW 26.09.140. The appellate rules further authorize "terms or compensatory damages" for a frivolous appeal. RAP 18.9(a). "An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal." *Mahoney v. Shinpoch*, 107 Wash. 2d 679, 691, 732 P.2d 510, 516 (1987).

Here, Ms. Pylypets is requesting an award of both statutorily authorized attorney's fees, and terms or compensatory damages. Statutorily authorized attorney's fees are appropriate pursuant to

RAP 18.1(a) because Mr. Miley has appealed an order denying his motion to vacate final judgment of the family law court, which granted Ms. Pylypets' claim for dissolution pursuant to Title 26, RCW. Ms. Pylypets' is therefore requesting the Court award her reasonable attorney's fees when it affirms the trial court's decision.

Additionally, Ms. Pylypets is requesting the Court enter an order sanctioning Mr. Miley or awarding Ms. Pylypets compensatory damages. Ms. Pylypets makes this request because this is Mr. Miley's fourth time hauling her into court on the facts of this case. He hauled her into court on his summons on his petition to invalidate their marriage back in 2017, then he hauled her into federal court on claims arising from the same occurrences and transactions, then he hauled her back into state court when he tried to vacate the decree of dissolution, and now he has hauled her back into court for his frivolous appeal. His appeal is frivolous because, much like his original motion to vacate judgment, it lacks merit and presents no debatable issues upon which reasonable minds could differ. *Cf. Shinpoch*, 107 Wash. 2d at 691, 732 P.2d at 516.

Therefore, sanctions or an award of compensatory damages to Ms. Pylypets, in addition to reasonable attorney's fees, is

necessary to make her whole for all the time, stress and costs she has endured defending against Mr. Miley's frivolous actions. His bad faith is evidenced by the facts that he moved to vacate his divorce decree on the basis of her *agreement* to his alleged separation date, and maintains this appeal on those same grounds.

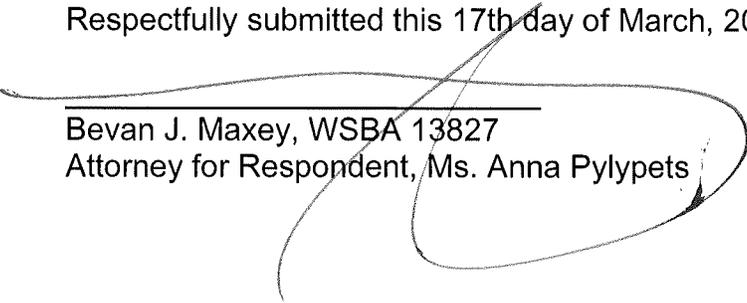
Sanctions or compensatory damages may also (hopefully) put an end to Mr. Miley's pursuit of further frivolous actions against her. This was, after all, a short-term marriage; there were no children, no spousal maintenance, and only limited property and debts to divide. While divorce through court process is infrequently a happy occurrence, it typically ends with some finality—especially when there are no children involved. An award of sanctions or compensatory damages may finally bring Ms. Pylypets the finality she has been waiting for since the final divorce order was signed and entered in April 2018.

VI. CONCLUSION

For the reasons set forth above, Ms. Pylypets respectfully requests the Court AFFIRM the trial court's denial of Mr. Miley's motion to vacate judgment. Ms. Pylypets respectfully requests the Court include an award of reasonable attorneys' fees in its decision,

as well as an award on sanctions or compensatory damages in an amount the Court deems appropriate.

Respectfully submitted this 17th day of March, 2020.



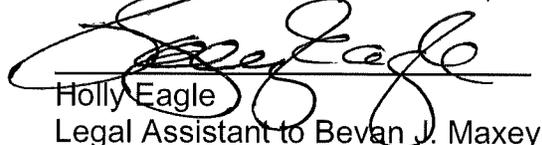
Bevan J. Maxey, WSBA 13827
Attorney for Respondent, Ms. Anna Pylypets

Proof of Service

I, Holly Eagle, declare under penalty of perjury under the laws of the State of Washington that on this 17th day of March, 2020, I caused a true and correct copy of this RESPONDENT'S BRIEF to be served by U.S. Mail to the following:

Nicholaus Miley, Petitioner/Appellant *pro se*
12515 N. Dakota St.
Spokane, WA 99218-1710

DATED this 17th day of March, 2020.



Holly Eagle
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