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65259-1 HK

No. 65259-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

HAROLD CROVISIER, Respondent,

v.

JAMES HENCHES, Appellant.

BRIEF OF RESPONDENT

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Washington Cases

Beckman ex rel. Beckman v. State, Dept. of Social and Health Services, 102 Wn. App. 687, 11 P.3d 313 (2000), 6

Cotton v. City of Elma, 100 Wn. App. 685, 690, 998 P.2d 339 (2000). 2

Court Rules

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COUNTER STATEMENT OF THE CASE

Counsel for Mr. Henches appeared shortly before trial by emailing a copy of his notice of appearance. CP 27. From that time until well after the judgment was entered, all pleadings were served by email. CP 28. The case was tried in a bench trial on December 2, 2009. On December 3, 2009, counsel for Mr. Crovisier submitted Findings of Fact and Conclusions of Law by email. CP 28. On the same date, counsel for Mr. Crovisier sent an email to counsel for Mr. Henches stating “I recently sent you a copy of my proposed findings by email. Can we agree to serve documents electronically?” Counsel for Mr. Henches replied “Yes” on the same day, also by email. CP 28 and 33. Findings of Fact and Conclusions of Law were entered on December 4, 2009 and emailed by the court to counsel for both parties the same day. CP 28. Counsel for Mr. Crovisier filed a Notice of Presentation of Judgment and served it on counsel for Mr. Henches by email on December 7, 2009. CP 28, 36. Counsel for Mr. Henches filed two separate motions for reconsideration on December 8, 2009

and December 10, 2009, subfiles 48 and 50*. Mr. Henches served both of these pleadings on Counsel for Mr. Crovisier by email. CP 28. All pleading were served by email until Mr. Henches' Motion to Vacate Judgment which was filed on March 11, 2010. CP 14.

ARGUMENT

1. Standard of review.

Review of a trial court's denial of a motion to vacate is based on an abuse of discretion standard. *Cotton v. City of Elma*, 100 Wn. App. 685, 690, 998 P.2d 339 (2000). "A trial court abuses its discretion if it exercises it on untenable grounds or for manifestly unreasonable reasons." *Id.*

2. The parties agreed to electronic service of pleadings.

Henches ignores the exchange of emails in which he expressly agreed to accept service by email. The exchange was clear: "I recently sent you a copy of my proposed findings by email. Can we

* Documents not included in the Clerk's Papers are cited with their subfile numbers from the trial court and will be requested in a supplemental designation of clerk's papers.

agree to serve documents electronically?” “Yes.” Declaration of Kirk R. Wines in Response to Motion to Vacate Judgment. CP 27 at 28. (Copy of emails at CP 33)

The parties are free to agree to alternate means of service if the agreement is in writing. CR 5(b)(7). The cases cited by Mr. Henches relating to service by fax are not relevant. The court pointed out in both parties that the served party had not agreed in writing to service by fax. Mr. Henches did agree in writing to the exact means of service that was used.

Although it is not necessary to the disposition of this case because there is a written agreement for electronic service, GR 30(B)(4) could be read to eliminate the need for a writing. GR 30(B)(4) states: “Parties may electronically serve documents on other parties of record only by agreement.”

Mr. Henches has never responded to the argument that the parties consented to service by email. This argument was asserted by Mr. Crovisier below in his Response to Motion to Vacate, CP 25 at 26. Mr. Henches then abandoned the argument in his reply brief, stating: “The problem here was not with the method used to serve the

documents, but with what was served. A bare word processing file is not a document. It is not and cannot be signed as required by CR 11.” Reply Brief in Support of Defendant’s Motion to Vacate Judgment, CP 37. Mr. Henches went on to argue that only images, and not word files could be filed because only images could be signed. CP 37. This is simply not accurate. Word files or documents can be signed electronically as discussed in the next section.

3. The Notice of Presentation of Judgment was signed in accordance with the court rules for electronically filed documents.

Mr. Henches argues that the Notice of Presentation of Judgment

was not effective because it was not signed. This pleading was signed as follows:

s/Kirk R. Wines
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Kirk R. Wines, PS
210 Crockett Street
Seattle, WA 98109
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E-mail kirkw@cellslayer.com
Attorney for Plaintiff (CP 22)

This is the exact method of signature set forth in GR 30 for electronic documents.

GR 30(D)(2)(A) allows for attorneys to sign electronic documents either by using a digital signature or by signing in the form set forth above. Even non-attorney signatures to many documents can be made in a similar manner. GR 30(D)(2)(B). Only non-attorney signatures on documents signed under penalty of perjury require either a digital signature or a scanned copy of an actual signature. GR 30(D)(2)(C).

4. The Notice of Presentation of Judgment was not ambiguous.

Mr. Henches asserts that “The contents of the (December 7) email itself were vague regarding the intent of the document.” Brief of Appellant, p. 2. The email only identifies the documents that were attached. CP 21. The Notice of Presentation of Judgment states: “Comes now plaintiff and gives notice to defendant that he is presenting the Judgment filed with this notice for entry on Tuesday, December 15, 2009.” CP 22. The Notice leaves no doubt about plaintiff’s intent.

Any possible confusion would surely have been eliminated by the email to the trial court Judicial Assistant, Christine Henderson, a copy of

which was sent to counsel for Mr. Henches on December 7, 2009. This email stated: "I efiled a proposed judgment, a notice of presentation for 12/15/09, a declaration re attorney's fees and a declaration of service today. Working copies should be assembled and sent to Judge Spector. Please let me know if you do not receive them." CP 28 and 35.

5. Respondent had no duty to notify Appellant of entry of the judgment.

Mr. Crovisier submitted his proposed judgment to the trial court and Mr. Henches filed his motions for reconsideration. The trial court denied the motions for reconsideration and entered the judgment. Mr. Crovisier had no duty to advise Mr. Henches of the entry of the judgment. In *Beckman ex rel. Beckman v. State, Dept. of Social and Health Services*, 102 Wn. App. 687, 11 P.3d 313 (2000), the state sought permission to serve an appeal from a \$17.76 million verdict 10 days beyond the deadline because the plaintiff had not served conformed copies of the final judgment on it. The Court of Appeals held that the plaintiffs only needed to give notice of presentation of the judgment, not notice of its entry.

If Mr. Henches wished to appeal the decision, he was obligated to monitor the pending matters before the trial court. Neither party was present in court when the judgment was entered. Both parties had the same ability to

obtain a copy of the judgment from the court clerk after it had been entered. Mr. Crovisier had no reason to suspect that Mr. Henches had not bothered to check whether the judgment had been entered. All of the filings in the case are part of a public record that is available to the parties and their counsel online at the King County Clerk's website, <http://www.kingcounty.gov/courts/Clerk.aspx>.

6. Respondent should be awarded attorney's fees.

Respondent was awarded attorney's fees and costs below based upon the trial court's finding that Mr. Henches had violated the Consumer Protection Act and also based upon documents prepared by Mr. Henches that called for payment of attorney's fees. Findings of Fact and Conclusions of Law, subfile 45, Finding of Fact 18.

CONCLUSION

Mr. Henches has already filed two motions for reconsideration, bringing all of his claimed errors to the attention of the trial court. His only reason for filing the motion to set aside the judgment was because he missed the deadline for appeal. He did not establish any good cause for setting aside the judgment and the trial court did not abuse its discretion in denying the motion. The Order

Denying Motion to Vacate Judgment should be affirmed and respondent should be awarded attorney's fees on appeal.

Dated July 26, 2010

Respectively submitted,


Kirk R. Wines, WSBA No. 4183
Attorney for Respondent

No. 65259-I

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DECLARATION OF MAILING
BRIEF OF RESPONDENT

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Kirk R. Wines declares as follows:

1. On July 26, 2010, I deposited the following document in the United States

Mail, postage prepaid:

Brief of Respondent,

To the attorney for appellant at the address set forth below:

Matthew F. Davis
5224 Wilson Ave. S., Ste. 200
Seattle, WA 98118

Kirk R. Wines declares under the penalty for perjury under the Laws of the State of Washington that the foregoing is true and correct.

SIGNED July 26, 2010 at Seattle, Washington.



Kirk R. Wines, WSBA #4183

Attorney for Respondent