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NO. 67410-2-I

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON DIVISION ONE

WARREN E. BELL,

APPELLANT,

V.

SNOHOMISH COUNTY,

RESPONDENT.

APPELLANTS REPLY BRIEF

Warren E. Bell
3027 South 220th St.
Des Moines, WA 98198

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 30 AM 11:37

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I. INTRODUCTION

Plaintiff is appealing the trial courts decision denying his motion to vacate the order Granting Snohomish County's Summary Judgment upon the grounds that the Court abused its descretion.

II. STATEMENT OF THE CASE

On November 9th, 2010, the trial court dismissed plaintiff's complaint pursuant to Snohomish County's Motion For Summary Judgment.

In the Summary Judgment, Snohomish County included a reference of "Mary Halberg" as Evidence relied upon.

Thereafter, plaintiff filed a Motion to Vacate, arguing that Snohomish County failed to comply with CR-56 (c) because Snohhomish County did not provide plaintiff with a copy of Mary Halberg's Declaration.

On June 16th, 2011, the trial Court denied plaintiff's Motion to Vacate. The trial Court found that Snohomish County did not rely upon a Declaration of Mary Halberg in sucessfully arguing its motion for summary judgment.

On March 29th, 2012, Plaintiff filed an opening brief appealing the trial Courts decision denying plaintiff's Motion to Vacate, arguing that the Court abused its discretion" by allowing defendant to file a fallacious and incomplete Motion of Summary Judgment not in accordance with CR-56 (c). Opening Brief at page 1, and the trial Court abused its discretion when it granted defendants Motion For Summary Judgment on an incomplete Record.

III. ARGUMENT

Following a pattern of mistake and error the Respondent's have included in thier "Brief of Respondent a citation of an Unpublished Case SEE: Brief of Respondent at page 4, Section III, Citing: Lockett V. Boeing Company, 98 Wn.App. 307, 309, 989 P.2d 1144 (1999), in violation of Title 10, and GR-14.1 (a) which requires a withdraw for correction or replacement, the brief stricken from the files with leave to file a new brief, or acceptance of the brief under RAP 10.7

The Appellant asks this Court to strike their Brief of Respondent from the files and impose

"SANCTIONS" upon the respondents for disregarding the Rules and Procedures of this Court. The Respondants are forming a pattern of disregard for the Court Rules, which prejudices the Plaintiff and delays the proceedings of this Court unduly. Therefore, Appellant asks this Court to impose Sanctions in the amount of $500.00 and/or Grant the Relief requested by the Appellant.

The Civil Rules for Summary Judgment under CR-56 (c) allows a trial Court to consider "Pleadings, depositions, Answers to interrogatories, and admissions on Record". In this Case the trial Court granted the defendant's Motion for Summary Judgment when the Motion was incomplete and Fallacious due to the inclusion of Mary Halberg as "Evidence Relied Upon", by including Mary Halberg in the Motion and not providing her Declaration. The defendant prejudiced the Plaintiff and denied him the opportunity to present a full and fair defense by Fraud and Misrepresentation.

Washington Courts have held that in order for a Party to Prevail on a motion to vacate under CR-60 (b)(4), "The Fraudulant conduct or Misrepresentation must cause the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense." SEE: Lindgren v. Lindgren, 58 Wn.App 588, 596, 794 P.2d 526 (1990) (Citing People State Bank v. Hickey, 55 Wn.App. 367, 372, 777 P.2d 1056 (1989).

In this case the trial court abused its discretion when it granted defendants Motion For Summary Judgment and furthermore denied Plaintiff's Motion to Vacate the Order granting defendants Motion For Summary Judgment. SEE: In Re Marriage of Littlefield, 940 P.2d 1362, 133 Wash.2d 39 (Wash. 08/07/1997); at ¶ [43]; A trial court abused its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Kovacs, 121 Wash.2d at 801, Wicklund, 84 Wash.App. at 770 N.1.

At ¶ [44]; A Court's decision is manifestly unreasonable if it is outside the range of

acceptable choices, given the facts and the applicable legal standard. It is based on untenable grounds if the factual findings are unsupported by the record, it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. State V. Rundquist, 79 Wash. App. 786, 793, 905 P.2d 922 (1995) (Citing Washington State Bar Ass'n, Washington Appellate Practice Deskbook, Section 18.5 (2d.ed 1993)), Review denied, 129 Wash.2d 1003, 913 P.2d 66 (1996).

The defendant's failed to correct their error of referencing and claiming Mary Halberg as "Evidence Relied Upon" in their Motion For Summary Judgment, and therefore failed to move the Court by way of "REFORMATION" to fix their Motion. Thus, this Court can not accept this new claim of a "Scrivener's Error" when it was never raised in the Trial Court. "Issues or Claims not presented to the Trial Court will not be considered on appeal." RAP 2.5, SEE ALSO: Elber V. Larson, 142 Wn.App. 243, 250, 173 P.3d 990 (2007).

IV. CONCLUSION

Therefore, Appellant respectfully requests that his appeal be granted and asks this Court to reverse the Trial Court's decision and Remand the Case back for a Bench Trial, and impose Sanctions in the amount of $500.00 against the Respondent for the failure to follow the Rules and Procedures of this Court and that Appellant be awarded all costs incurred in generating this action.

Warren E. Bell

Mr. Warren E. Bell
3027 South 220th St.
Des Moines, WA 98198

DECLARATION OF SERVICE BY MAIL

I, Mr. Warren B. Bell, declares and says:

That on the 28th day of MAY, 2012, I deposited the following documents in the U.S. Mail, by First Class Mail Pre-Paid Postage, Under Cause No. 67410-2-I.

APPELLANT'S REPLY BRIEF.

Addressed to the following:
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I declare under Penalty of Perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS _____ day of MAY, 2012, in the City of Des Moines, County of King, State of Washington.

Warren E Bell

Mr. Warren E. Bell
3027 So. 220th St.
Des Moines, WA 98198