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No. 68163-0

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

ANNE BLOCK,

Appellant,

vs.

THE CITY OF GOLD BAR,

Respondent.

2012 DEC 14 11:23 AM
STATE COURT DIVISION I
COURT OF APPEALS

BRIEF OF RESPONDENT

Michael R. Kenyon
WSBA No. 15802
Ann Marie Soto
WSBA No. 42911
Kenyon Disend, PLLC
11 Front Street South
Issaquah, Washington 98027-3820
(425) 392-7090
Attorneys for Respondent City of Gold Bar

ORIGINAL

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I. INTRODUCTION

This case involves just one of many baseless lawsuits filed by attorney and appellant Anne K. Block (“Block”) against Gold Bar (“Gold Bar” or “City”), a small city in Snohomish County with very limited financial resources. Gold Bar’s financial condition has materially worsened due to Block’s near-constant antics.

Over the past three years, and against Gold Bar alone, Block and her close allies¹ have filed five Public Records Act (“PRA”) lawsuits and an Open Public Meetings Act lawsuit. Additionally, between November, 2011 and June, 2012, Block and her allies filed five recall petitions against Mayor Joe Beavers and various councilmembers. Despite the flood of filings, no court has ever granted any substantive relief to Block in any of these cases.

¹ Block, Susan Forbes (“Forbes”), and Joan Amenn (“Amenn”) are partners or “joint owners” of an online blog called the Gold Bar Reporter. Block is also a licensed Washington attorney, and represents Forbes in a separate PRA lawsuit that was dismissed and affirmed by this Court in its published decision dated November 13, 2012 (*Forbes v. Gold Bar*, 288 P.3d 384 (Wn. App. Div. I, 2012)). Krista Dashtestani and Chuck Lie are additional allies of Block. Krista Dashtestani is a former Gold Bar Reporter partner and now appears to be a paralegal working for Block. Chuck Lie (“Lie”) was a Gold Bar councilmember until he resigned from that position on January 3, 2012. Since his resignation, Lie has joined Block, Noel Frederick (Block’s housemate), Forbes, and Amenn in filing multiple recall petitions against Mayor Beavers, and Councilmembers Chris Wright and Florence Martin. Block and Noel Frederick filed an OPMA lawsuit against the City that was dismissed on summary judgment, and on which Block is now seeking direct review by the Supreme Court of Washington. *Block et al. v. City of Gold Bar et al.*, Case No. 87861-7.

This case involves one particular PRA suit filed by Block, in which she refused to attend her properly noted deposition. Block did not even seek, let alone obtain, a protective order regarding her deposition. Rather, she instead informed the City that she had unilaterally decided to “cancel all in person appearances” because she had allegedly received “death threats.” When the City properly moved for and obtained an order compelling Block’s attendance and granting the City its costs and fees for Block’s failure to attend the deposition, Block refused to comply with the clear deadline for payment set forth in the court’s order. The City understandably returned to court. The trial court concluded that lesser sanctions would have no effect on Block and that her conduct was willful and prejudicial to the City. The trial court accordingly dismissed the lawsuit.

Block’s brief to this Court is confusing. The City is unclear whether she is challenging the trial court’s imposition of sanctions, the trial court’s subsequent dismissal of her lawsuit, or both. In any event, however, Block wholly fails to apply the correct standard of review. Under the applicable standards of review, both of the trial court orders are proper.

II. RE-STATEMENT OF THE ISSUES

A. Whether Judge Krese properly entered an order dismissing Block's lawsuit when the record below demonstrates that Block willfully refused to comply with a court order, which prejudiced the City and which could not be corrected with lesser sanctions?

B. Whether Commissioner Gibbs properly entered an order imposing sanctions against Block for her refusal to attend her properly noted deposition, when the record below demonstrates that Commissioner Gibbs acted well within the bounds of his reasonable discretion?

III. RE-STATEMENT OF THE CASE

On November 11, 2011, Block served the City with a Summons and Complaint alleging violations of RCW Chapter 42.56, known as the Public Records Act. CP 316 – 317. Continuing what had by then become a well-established pattern, Block on November 14, 2011 filed a Notice of Unavailability claiming that she would be “unavailable and out-of-state on a family emergency” from December 14, 2011 to January 7, 2012.² CP 314.

Block served discovery on the City electronically on November 11 and November 17, and stated that she would be seeking to depose the Mayor

² It is unclear to the City how Block would know that an “emergency” would occur one full month *after* the date of her Notice of Unavailability.

and a councilmember in early to mid-December. CP 233, 239. In an effort to streamline the discovery process, the City e-mailed Block on November 18, indicating that the City would “agree to accept service electronically of these discovery documents, as well as all pleading in this case, if you agree to do the same.”

Within minutes Block responded, “I will accept service electronically.” CP 238.

The City prepared a Notice of Deposition scheduling Block’s deposition for December 1, 2011 at 10:00 a.m., well in advance of the December 14, 2011 commencement of her period of claimed unavailability. On November 19 (a Saturday), at 1:08 p.m., the City’s process server attempted previously arranged service on Block at her residence in Gold Bar. CP 32 – 33. The following Monday, November 21, the City served Block with the deposition notice by e-mail, pursuant to Block’s written agreement of November 18 to accept e-mail service. CP 238 – 240.

The next day, November 22, the City learned that Block had requested that the Snohomish County Prosecutor move a previously scheduled sufficiency hearing on Block’s recall petition against Gold Bar Mayor Joe Beavers from December 2 to December 1, 2011 at 9:30 a.m. – a half hour prior to the time that the City had noted Block’s deposition to

begin.³ Upon learning of the conflict between the scheduled deposition and the sufficiency hearing on Block's recall petition, and in order to accommodate both proceedings, the City immediately served Block on November 22, 2011 with an Amended Notice of Deposition, voluntarily changing the time of the December 1 deposition from 10:00 a.m. to 1:30 p.m. CP 267 – 273; 288 – 289.

On November 21, 2012, the same day that the City served Block with its first Notice of Deposition, Block filed a second Notice of Unavailability, dated November 19, 2011, stating she would be out of the area from November 21, 2011 to November 24, 2011.⁴

Also, on November 21, Block e-mailed Ms. King, the City Attorney, stating, "As you know my life has been threatened; I will remain unavailable until January 2012, only working from my laptop and by a secured telephone

³ Block requested the County move the sufficiency hearing from December 2 to December 1 to accommodate claimed "prior legal engagements." CP 260 – 261.

⁴ Although Block claims to have served the City with the new Notice of Unavailability on November 19, the City did not receive it until November 22, 2011. Also, the envelope in which the Notice was mailed was postmarked November 21, the same date the Notice was filed. CP 42 – 44. Further, e-mails obtained from the Snohomish County Prosecutor's Office reveal that, in separate litigation against Snohomish County, Block had noted the deposition of a county employee for November 22, 2011 – a date on which she claimed to the City that she would be unavailable because she was "out of the area" until November 24. *Id.*; CP 47 – 48. It should also be noted that on November 19, the same day Block claims to have filed and served her November 21 - 24 "unavailability," she e-mailed the County to demand that a deposition that she scheduled for November 22, 2012 be conducted by telephone, not because she was out of the area, but because of an alleged "death threat" by the deponent. CP 50. It would appear that Block's attempt to submit a Notice of Unavailability for November 21 - 24 (again, filed and mailed on November 21) was yet another attempt to prevent the City from defending itself against her claims, based on her apparent mistaken belief that a Notice of Unavailability acted to stay the litigation that she herself filed.

line.” CP 38. The City responded, noting that Block had been properly served, and that she was not entitled to file litigation and then go into nearly immediate hiding for several months. CP 39. Block responded that “[u]nless its [sic] by telephone, its [sic] not going to happen. I sent you notice” *Id.* Block then contended that “there is a 30 day wait period on any deposition from date of filing of a suit. Please let me know what dates during the second or third week of January work for you.” CP 68 – 69.

On November 22, the City responded that Civil Rule 30(a) imposes a “30 day wait period” only when a *plaintiff* seeks to take a deposition within 30 days of service, and not “if a defendant has served a notice of taking deposition or otherwise sought discovery,” as the City did in this case. CP 67 – 68, 250 – 256. In response, Block again only insisted that “[m]y life has been threatened and I will not be making no [sic] in person appearances.” CP 67.

Block failed to appear for her deposition on December 1, 2011. In response, the City filed a motion pursuant to the Civil Rules to compel Block’s attendance, and for sanctions for her willful and deliberate failure to appear. CP 286 – 298. The City’s Motion for Costs, Expenses and Fees, and Motion to Compel was supported by the e-mails from Block referenced above, as well as by the Declaration of Councilmember Chris Wright. *Id.*; CP 207 – 285. In his declaration, Councilmember Wright testified that he

had twice encountered Block dining out in public, during the same time period in which Block had claimed that “my life has been threatened and I will not be making no [sic] in person appearances.” CP 67, 284 – 285.

As Block had agreed in her November 18 e-mail (“I will accept service electronically”, CP 238), the City served its motion on Block by e-mail on December 12, 2012. CP 204 – 206, 238, 298. Block did not file a response to the City’s motion.

On December 20, Commissioner Gibbs granted the City’s motion. The Order required Block to appear for deposition on January 9, 2012, and awarded the City its costs and fees expended in preparing for the December 1 deposition, as well as those expended in preparing the motion. The Order further required the City to present an attorneys’ fees affidavit to the Ex Parte Department on December 30, 2012 (within 10 days of the date of the Order). CP 75 – 76.

With respect to the City’s request that the matter also be dismissed if Block appeared but failed to timely pay her fees, Commissioner Gibbs reserved consideration of the request until the amount of the costs and fees had been approved. *Id.* The court ordered that the amount of costs and fees could be presented “ex parte within ten days.” *Id.* Block was served by e-mail and regular mail with a copy of Commissioner Gibbs’ Order on

December 20, 2011, the same day it was issued.⁵ CP 60 – 61. Block acknowledged receipt of the Order, by e-mail on December 22, 2011. CP 78.

The City provided Block with a copy of its requested fees and proposed order by e-mail on December 29, 2011. CP 185 – 197. Although Block does not dispute that she received the documents and notice of the ex parte presentation, Block did not appear or respond. The City presented its fee affidavit to the Ex Parte Department on December 30. Commissioner Pro Tem Corrigan entered an Order Awarding City of Gold Bar's Costs, Expenses and Fees in the amount of \$7,049.10 against Block. CP 198 – 200.

Commissioner Pro Tem Corrigan's Order also required Block to pay the sanctions at or before the date and time of her deposition scheduled for January 9, 2012. CP 199. The Order further authorized the City to set a show cause hearing if Block failed to pay, and also specified that, in the absence of good cause, the case would be dismissed. *Id.*

Block appeared for her deposition on January 9. When asked whether she had brought payment, she replied, "I did not, I will not. I will be appealing to the Washington State Court of Appeals." CP 86 at 7:13-17.

⁵ Block was timely served on December 12, 2012 with the City's Motion for Costs, Expenses and Fees and Motion to Compel, which was set to be heard on December 20, 2011. CP 204 – 206, 298.

When asked why she did not bring payment as required by the court's Order, she replied, "Because it was an unlawful filing." *Id.* at 7:19. Block disagreed that Commissioner Gibbs' use of the word "shall" in the Order was mandatory rather than discretionary, and claimed that she retained the right to appeal Commissioner Gibbs' Order. CP 88 at 15:8-17. Block further asserted that Superior Court orders are invalid until after expiration of an appeal period. *Id.* at 16:17-19.

On January 9, 2012, Block filed yet another Notice of Unavailability, dated January 5, 2012, stating that she would be "out of the country and thus unavailable from January 19 to January 25, 2012." CP 181. Despite this claimed "unavailability," on January 19, 2012, Block filed an untimely "Motion to Modify" the Commissioner's ruling.⁶ CP 161 – 180. The motion sought to revise the Order signed by Commissioner Gibbs on December 20. Block did not file her motion until January 19, a full thirty days following the date of Commissioner Gibbs' Order and twenty days after Commissioner Pro Tem Corrigan's Order.⁷ On the same day, Block also

⁶ Block's motion is correctly known as a "motion for revision" pursuant to RCW 2.24.050. The timing of Block's motion is a good example of the pattern she regularly follows, first filing Notices of Unavailability and then shortly thereafter filing her own motions, lawsuits, and/or public record requests during the time that she purports to be "unavailable." CP 161 – 172.

⁷ RCW 2.24.050 requires that a motion for revision must be filed within 10 days from the date of the order, and failure to file within that time period deprives the Superior Court of jurisdiction.

filed a Notice of Discretionary Appeal of Commissioner Gibbs' Order. CP 159.

On January 27, 2012, and consistent with Commissioner Pro Tem Corrigan's Order, the City moved for an Order of Dismissal with prejudice. CP 151 – 157. Again, the City courteously scheduled the hearing on its motion for the same date that Block had set her motion to modify. CP 131, 177. On February 3, 2012, after hearing oral argument on both motions, the Honorable Linda C. Krese denied Block's Motion to Modify as untimely. Judge Krese then found Block to be in contempt of court for willfully violating the Commissioner's Order, that Block's action had prejudiced the City, and that lesser sanctions would not be adequate. Her Honor accordingly dismissed Block's lawsuit. CP 22.

Block filed a Notice of Direct Appeal to this Court on February 21, 2012 seeking review of Judge Krese's dismissal Order dated February 3, 2012. CP 1 – 4. Block's arguments in her opening brief to this Court, however, are unclear as to whether Block is appealing Judge Krese's dismissal Order (*Id.*; CP 5 – 9), or Commissioner Gibbs' Order imposing sanctions on Block for her failure to appear at her duly noted deposition (CP 75 – 76, 158 – 160), or something else entirely.⁸ Under any analysis, however, the trial court orders should be affirmed and this appeal rejected.

⁸ The two appeals were combined by this Court on April 25, 2012.

IV. ARGUMENT

A. Judge Krese's Order Dismissing Block's Lawsuit Should Be Affirmed, Because the Record Demonstrates That Block's Willful Refusal to Comply With a Discovery Order Prejudiced The City and That Lesser Sanctions Were Insufficient.

Judge Krese's Order dismissing Block's lawsuit (CP 5 – 8) should be affirmed. Judge Krese properly examined and applied the review criteria applicable to dismissal of a case for discovery abuse.

Under the applicable standard of review, the trial court examines whether: (1) a party willfully or deliberately refused to obey a discovery order, (2) whether the opponent was substantially prejudiced, and (3) whether the trial court explicitly considered whether lesser sanctions would suffice. Here, the record expressly and unequivocally demonstrates that Block willfully and deliberately refused to obey Commissioner Gibbs' discovery Order, and that the City was substantially prejudiced. The record also demonstrates that the trial court considered lesser sanctions. Block does not assign error to any of the findings establishing these facts.

1. Standard of Review.

When a trial court orders dismissal as a sanction for violation of a discovery order, the record must show (1) willful or deliberate refusal to obey the discovery order, (2) substantial prejudice to the opponent's ability to prepare for trial, and (3) that the trial court explicitly considered

whether lesser sanctions would suffice. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 686, 41 P.3d 1175 (2002). To aid meaningful review on appeal, the trial court should clearly state the reasons for its decision on the record. *Id.* at 685. In that regard, this Court has held:

Where, however, a court has found that a party has acted in willful and deliberate disregard of reasonable and necessary court orders and the efficient administration of justice and has prejudiced the other side by doing so, dismissal has been upheld as justified. Disregard of a court order without reasonable excuse or justification is deemed willful.

Woodhead v. Discount Waterbeds, Inc., 78 Wn. App. 125, 130, 896 P.2d 66 (Div. 1, 1995) (citations omitted). Whether contempt is warranted is a matter within the trial court's discretion. *Holiday v. City of Moses Lake*, 157 Wn. App. 347, 355, 236 P.3d 981, 985 (Div. 3, 2010), *citing* *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995) ("An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.").

2. The Record Demonstrates Block Willfully and Deliberately Failed to Comply With a Discovery Order, That the City Was Substantially Prejudiced, and That Lesser Sanctions Were Considered But Found to Be Inadequate.

Here, Judge Krese specifically found that Block's refusal to attend her deposition, as well as to pay the costs and expenses awarded to the City for such failure, was a willful and deliberate refusal to obey a court order. CP 6 – 7 (Finding Nos. 7, 8, and 11). Block does not assign error to these findings, and they are accordingly treated as true on appeal. *Metropolitan Park Dist. v. Griffith*, 106 Wn.2d 425, 433, 723 P.2d 1093 (1986).

Even if Block had challenged these findings, they are more than amply supported by substantial evidence. Block – a member of the Bar of this state – was ordered by the court to make payment to the City by a date certain. She testified that she had not and would not make the payment ordered by Commissioner Gibbs for a variety of reasons. CP 86 – 88 (transcript from deposition of Anne Block at 7:13-23, and at 13:18-25 – 16:1-19); RP 14:24-25 – 16:1, 17:17-25 – 18:1-5 (February 3, 2012 hearing before Judge Krese). Absent a court-ordered stay, which Block neither sought nor obtained, she was obligated to comply with the Order or face the consequences of contempt.

Block's willful refusal to comply with Commissioner Gibbs' discovery Order also prejudiced the City's ability to defend itself, as the trial court also found. CP 7 (Finding No. 10). Without knowing the facts that Block would assert to support her claims, the City *could not* defend itself. Block does not challenge Finding No. 10 or the trial court's related finding that lesser alternative sanctions "would not be sufficient because they would likewise not be complied with by Plaintiff and would not deter the conduct of Plaintiff." *Id.* (Finding No. 9). Unchallenged findings must be treated as verities on appeal. *Metropolitan Park Dist.*, 106 Wn.2d at 433.

The trial court's findings are further supported by substantial evidence. Block's conduct, especially her refusal to pay, resulted in additional costs to the City, costs that Block knows that the City is struggling to cover as a result of her relentless litigation and requests for public records. Block's failure to pay discovery sanctions substantially prejudiced the City's ability to pay for additional preparation as the case proceeded. CP 7, 136. Block's continued insistence at the hearing before Judge Krese that she was not required to pay the City's costs awarded in Commissioner Gibbs' Order underscores the reasonableness of the trial court's finding that lesser sanctions would not cover the City's increased

costs and that such alternative sanctions would likely simply be ignored.
RP 15:4–25 – 16:1–5; CP 6 – 7.

Block completely fails to assign error to the trial court's findings that her behavior was willful and deliberate, that the City was substantially prejudiced by her actions, and that her conduct could not be adequately addressed with lesser sanctions. As such, Block cannot demonstrate that the trial court's dismissal of the case was either manifestly unreasonable or based on untenable grounds. Accordingly, the dismissal must be affirmed.

Rather than address the legal standard applicable to dismissal for violation of a discovery order, Block argues instead that the trial court's entry of an order of dismissal is subject to *de novo* review on appeal, that the trial court was required to have assumed facts and inferences in the light most favorable to the non-moving party, and that dismissal may not be granted if reasonable minds could draw different conclusions from undisputed facts. Brief of Appellant, at 7.

Block is wrong. The three cases Block cites apply to appellate review of an order *on summary judgment* – not dismissal for violation of a

court rule or discovery order.⁹ The standard of review applicable to a dismissal for violation of a discovery order is the standard set forth in *Rivers*, 145 Wn.2d 674. As discussed above, Judge Krese fully considered the applicable legal standard and documented compliance with that standard in detailed findings of fact and conclusions of law. CP 5 – 9; RP 14:24-25 – 18:1-5. Block has failed to assign error to the operative facts supporting dismissal. Judge Krese’s Order must be affirmed.

B. Commissioner Gibbs’ Order Imposing Sanctions Should Also Be Affirmed, Because Block Cannot Demonstrate That Commissioner Gibbs Abused His Discretion.

Commissioner Gibbs’ Order imposing sanctions should also be affirmed. An order imposing sanctions for violation of discovery rules is reviewable only under an abuse of discretion standard. Block all but ignores the applicable legal standard, and does not allege any facts constituting an abuse of discretion. Commissioner Gibbs’ Order imposing sanctions (CP 75 – 76) is consistent with CR 37, was well within his discretion, and should be affirmed.

⁹ See, e.g., *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990), (“When reviewing an order of summary judgment, this court engages in the same inquiry as the trial court,” citing *Highline Sch. Dist. 401 v. Port of Seattle*, 87 Wn.2d 6, 15, 548 P.2d 1085 (1976)); *Rufus v. King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995) (when reviewing summary judgment under CR 56(c), the “reviewing court must take the position of the trial court and assume facts most favorable to the nonmoving party”); and *Schwindt v. Lloyd’s of London*, 81 Wn. App. 293, 297-98, 914 P.2d 119 (1996) (“Summary judgment is not proper if reasonable minds could draw different conclusions from undisputed facts or if all of the facts necessary to determine the issues are not present.”).

1. Standard of Review.

A trial court has broad discretion to impose discovery sanctions. A trial court's discretion in that regard should not be disturbed on appeal absent a clear abuse of discretion. *Rivers*, 145 Wn.2d at 684. "An abuse of discretion occurs when a decision is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Moreover, a trial court's inherent authority to sanction litigation conduct is properly invoked upon a finding of bad faith, and the court's inherent power to sanction is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases" *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000), *quoting Gonzales v. Surgidev Corp.*, 120 N.M. 151, 899 P.2d 594, 600 (1995). "Sanctions may be appropriate if an act affects 'the integrity of the court and, [if] left unchecked, would encourage future abuses.'" *Id.*

2. Commissioner Gibbs' Order Imposing Sanctions Should Be Affirmed, Because It Was Well Within His Discretion Due to Block's Deliberate Failure to Appear for Her Duly Noted Deposition.

This Court should affirm Commissioner Gibbs' Order imposing sanctions on Block. Block deliberately refused to attend her duly noted deposition, in a case she herself filed. A defendant in a Public Records

Act lawsuit is entitled to discovery in the same manner as a defendant in any other civil litigation. *City of Lakewood v. Koenig*, 160 Wn. App. 883, 250 P.3d 113 (Div. 2 2011); *see also Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 105, 117 P.3d 1117 (2005) (rules of civil procedure apply to PRA actions).

Block filed this PRA case based almost entirely on “information and belief” and vague allegations of non-compliance. CP 318 – 330, §§ 2.27 – 2.31, 3.2 – 3.5. Under these circumstances, the City’s need to obtain discovery promptly is even more critical.¹⁰

Here, the City noted Block’s deposition so that it could inquire about the specific records that Block claimed to be seeking, and to discover the basis for Block’s claims that the City had not, in fact, already provided her with those records. The City noted the deposition for a day when it was undisputed that Block *would* be available – she had asked that the County set for that same day the sufficiency hearing for the recall petition that she had filed against Gold Bar Mayor Joe Beavers. CP 51. The original sufficiency hearing was scheduled for December 2, but

¹⁰ One need only read the allegations and assertions set out (with almost no citation to the record) in Block’s “statement of the case” to understand the difficulty that the City faces in determining the actual basis for Block’s PRA suits against the City. Because a deposition allows the City to quickly and thoroughly determine the factual basis for Block’s complaints, or more accurately the lack thereof, allowing Block to file a suit and then serve written discovery on the City while she makes herself “unavailable” would clearly prejudice the City and, in fact, would be contrary to CR 37.

the County moved it to December 1 at Block's request. CP 51.

The City noted Block's deposition in *this* case for later that same day. Block never moved to continue the deposition nor sought a protective order; instead, she unilaterally attempted to control events by filing a "Notice of Unavailability," a document with no legal effect.¹¹ Given these facts, Commissioner Gibbs' Order imposing sanctions was warranted, and certainly well within his discretion and the court rules.

Civil Rule 37 specifically provides that if a party fails to appear for his or her deposition in the absence of a protective order, "the court *shall* require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." CR 37(d) (emphasis added). The record supports that Block was seen out in public having drinks and dinner during yet another time period that she declared herself "unavailable" and "making no in person appearances" because of an alleged fear for her life. CP 67, 284 – 285, 307 – 308.¹² On these facts,

¹¹ *In Re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 906, 232 P.3d 1095 (2010). Block's Notices of Unavailability were for November 21 - 24, 2011 and December 14, 2011 - January 7, 2012, *not* December 1, 2011, the date of her deposition.

¹² This Notice of Unavailability (CP 307 – 308) is, curiously, dated and "served" on "November 25, 2011" but was filed on November 23, 2011. The City, in fact, was never served with this Notice of Unavailability and discovered it only after reviewing the court docket and requesting a copy from the court on December 12, 2011. CP 215.

Commissioner Gibbs' award to the City of its fees in accordance with CR 37 was wholly reasonable, and well within his discretion.

Block has not asserted that her failure to appear was justified, only that she had filed a "Notice of Unavailability." Rather than address the proper legal standard, Block asserts that because her complaint was filed pursuant to the Public Records Act, the standard of review in this case is *de novo*, and Commissioner Gibbs was required to have construed the facts in Block's favor. Brief of Appellant, at 10 – 11.

Block is again incorrect. As noted above, the cases upon which Block relies pertain to trial court consideration of motions for summary judgment – not motions for sanctions for discovery abuses. *See supra* at 16, fn. 9. Here, the Court is not being asked to review an order on summary judgment, or even whether the City complied with the PRA, but rather whether the trial court erred in ordering sanctions. Because Block is arguing that the trial court erred when it assessed terms against her for failing to attend her properly noted deposition under CR 37(b), she must demonstrate a clear abuse of discretion in order to prevail here.

In her brief, Block briefly appears to acknowledge the "abuse of discretion" standard of review. The heading for Section B, at page 8, alleges that "Snohomish County Commissioner Gibbs Abused His Discretion When He Allowed Defendant to Hold Hearings When Plaintiff

Had Already Filed a Notice of Unavailability With the Court.”¹³ Block concedes that an abuse of discretion occurs only when a court’s decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Brief of Appellant, at 10. Block then reverts, however, to her argument that Commissioner Gibbs and this Court are required to “assume facts and inferences most favorable to Appellant Block, the nonmoving party.” *Id.*; *see also* Brief of Appellant, at 12 (“this Court must review the evidence in a light most favorable to Block and resolve all doubts in her favor.”).

Block misstates the applicable standard of review. Abuse of discretion is the legal standard governing review of Commissioner Gibbs’ Order. Block does not argue that the Order was “manifestly unreasonable,” or that it was based on an untenable ground or untenable reason. Block’s entire appeal is premised on the mistaken belief that her “Notice of Unavailability” actually precluded the City from taking her deposition or seeking sanctions for her nonappearance. That is not the law. A Notice of Unavailability has no legal effect. *In Re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 906, 232 P.3d 1095 (2010).

¹³ Block also ignores the fact that she was served with the motion prior to the beginning date of her stated unavailability. CP 204 – 206, 298. In addition, Block does not claim that she was unaware of the motion and hearing.

She accordingly appears to reason that any orders granting sanctions are likewise invalid. Brief of Appellant, at 7 - 10. Block fails to cite to *any* authority to support this argument, and this Court accordingly should not consider it. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a)(6).

3. Block Was Properly Served With the Notice of Deposition and Motion for Sanctions.

Block's final attempt to justify her behavior turns on a convoluted argument that a "pro se plaintiff" must be personally served by subpoena in accordance with CR 45 in order to be deposed. Again, Block fails to provide any legal authority for her assertion.

The provisions of CR 30(b)(1) apply to any party, *pro se* or otherwise. The City's obligation was to serve Block with a notice of deposition. The City did so. No requirement exists for the City to use a formal subpoena.¹⁴ The City correctly served Block with a notice of deposition on November 21, 2011, and again with an amended notice of deposition on November 22, 2011, setting Block's deposition for

¹⁴ Block offers the bizarre argument that the mere fact that the City attempted to serve her personally demonstrates that service could not also be effectuated electronically pursuant to Block's previous agreement to accept service by e-mail. Brief of Appellant, at 8 - 9. The record clearly demonstrates Block's unequivocal agreement to e-mail service. CP 238 - 240, 281. The fact that the City utilized a "belt and suspenders" approach, of e-mail service plus attempted personal service, does not nullify Block's written agreement to accept e-mail service. Indeed, Block served discovery requests to the City via e-mail on November 17, 2011. CP 237.

December 1, 2012, in accordance with CR 30(b)(1). CP 250 – 256, 267 – 273. Block offers no contrary legal or factual proof. In order to permissibly avoid her properly noted deposition, Civil Rule 26(g) required Block to move for and obtain a protective order. She did not do so. The Court accordingly and appropriately imposed sanctions for failing to appear at her deposition. (CR 37(d).)

Block's argument that the December 30, 2012 hearing conducted in the Ex Parte Department of the Superior Court on Commissioner Pro Tem Corrigan's Order (CP 198 – 200) violated her right to due process, is similarly flawed. As discussed above, a notice of unavailability does not negate properly noted motions. Further, Block was provided notice of the December 30 hearing, and she does not assert otherwise. CP 189.¹⁵

Other than incorrectly claiming that a notice of unavailability somehow negates properly noted motions, Block provides no explanation as to how the City's notice of deposition and its motion seeking sanctions violated her "right to due process." Block had ample time to file a response to the City's motion, or to move for and obtain a continuance if

¹⁵ On page 7 of the Brief of Appellant, Block asserts that "Commissioner Gibbs held an Ex-Parte Hearing ignoring facts favorable to Block which include that Block filed a Notice of Unavailability with the Court prior to the City's Motion." As noted previously, Block, however, was timely served on December 12, 2012 with the City's Motion for Costs, Expenses and Fees and Motion to Compel, which was set to be heard on December 20, 2011. CP 204 – 206, 298. This hearing was not "ex-parte." Block simply chose not to respond or participate.

she truly was unable to attend the hearing. Block offers no explanation for her failures.¹⁶

Finally, Block admits that she received a copy of Commissioner Gibbs' Order dated December 20, 2011. CP 74 – 76. She knows of the statutory remedy of a motion for revision (CP 161 – 168), but again offers no explanation for her failure to timely seek such relief.¹⁷

V. CONCLUSION

This case is a clear example of Block's modus operandi – she files a lawsuit based solely on “information and belief”; she immediately makes herself “unavailable” for an indefinite period of time; she continues to take action, but protests when the opposition does likewise; she disregards court orders and rules; and she fails to cite to any legal authority to support her arguments. Here, the record clearly shows that the trial court did not abuse its discretion when Commissioner Gibbs properly sanctioned Block

¹⁶ Additionally, in all of Block's litigation she has sought, and in all but one occasion been allowed, to attend hearings by telephone. She certainly could have sought permission to do the same if she was in fact out of town on December 20, 2012. Indeed, a “Request for Accommodation” filed by Block in this case notes that she had “previously scheduled appointments on this day,” indicating that she understands that she can request participation in hearings by telephone, from a location different from her home, and is capable of doing so. CP 102.

¹⁷ RCW 2.24.050 requires that a motion for revision must be filed within 10 days from the date of the order, and failure to file within that time period deprives the Superior Court of jurisdiction. *Robertson v. Robertson*, 113 Wn. App. 711, 714-15, 54 P.3d 708 (Div. I 2002). The necessity to file a motion for revision within 10 days of the date of the order is so basic that failure to timely file a motion for revision “constitutes professionally unreasonable conduct sufficient to constitute ineffective assistance of counsel.” *State v. Wicker*, 105 Wn. App. 428, 433, 20 P.3d 1007 (Div. I, 2001) (emphasis added).

for failing to appear at her duly noted deposition. The record also reflects that Judge Krese properly considered the standard of review when she dismissed Block's complaint for failing to comply with Commissioner Gibbs' Order. Block fails to assign error to the operative facts supporting dismissal or to articulate how the court abused its discretion. Accordingly, the Orders of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 13 day of December, 2012.

KENYON DISEND, PLLC

By 

Michael R. Kenyon
WSBA No. 15802
Ann Marie Soto
WSBA No. 42911
Attorneys for Respondent