Court of Appeals No. 300935-III
Superior Court No. 03206739-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES W. and JUDY D. AASEBY, husband and wife

Petitioners

v.

WILLIAM VUE, et al.

Defendants,

J. SCOTT MILLER of Law Offices of J. Scott Miller, PLLC

Respondent

PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONERS

Petitioners James W. and Judy Aaseby, husband and wife (hereafter '**Aasebys**'), petition this Court to accept review of the Court of Appeals' decision terminating review designated in this Petition.

II. CITATION TO COURT OF APPEALS' DECISION

Petitioners seek review of the Court of Appeals' unpublished decision filed August 29, 2013, in the Washington State Court of Appeals, Cause No. 30093-5-III. A copy is attached in the Appendix.

III. ISSUES PRESENTED FOR REVIEW

The issues presented for review are as follows:

Issue No. 1

Should Attorney Miller have had contact with his clients, the Vues, and conducted an inquiry when answering Aasebys' Verified Complaint and when responding to discovery requests, as required by CR 11 and 26(g)?

Issue No. 2

When clients were advised by their attorney, Miller, that 'Attorney Will Answer' Aasebys' discovery, was Miller liable under CR 26(g) for discovery responses that were represented as true, under oath, when his office was aware the responses were, in fact, false?

Issue No. 3

If Miller had performed a reasonable inquiry into his client's, William Vue's, Farmers policy, could litigation have been avoided altogether or concluded at the time of, or soon after, inquiry?

Issue No. 4

When Miller paid, in full, a Judgment entered against him in the trial court and did not preserve his appeal when he satisfied the Judgment entered against him, was his appeal then moot?

Issue No. 5

When Miller's motion sought sanctions against Aasebys' counsel under CR 11 by misrepresenting to the trial court the law that governs a supersedeas bond, RAP 8.1(b) and (c), did Miller's motion violate CR 11(a)?

Issue No. 6

Did Miller's untimely, unsupported and frivolous Motion To Dismiss Aasebys' Cross Appeal, after Miller's requests for suspension of the deadlines for his appeal, violate RAP 18.9(a)?

IV. STATEMENT OF THE CASE

Aasebys seek review of the conduct of attorney J. Scott Miller (hereafter '**Miller**'), defense counsel retained by the defendant Vues: Willam, Vilay, and Agnes. For clarity, the defendant Vues will be referenced by their first names, William, Vilay and Agnes.[1] The issues herein are of substantial public interest and should be determined in the Supreme Court and/or the decision of the Court of Appeals is in conflict with prior decisions of the Supreme Court, *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp*, 122 Wn.2d 299, 340-44 (1993); and *Bryant v. Joseph Tree, Inc.,* 119 Wn.2d 210, 219-20 (1992).

[1] William Vue is the adult son of Cheu and Pai Vue, husband and wife. Vilay and Agnes Vue are siblings of William, and the adult children of Cheu and Pai Vue.

In October of 2000, Aasebys were in a car accident, with clear liability on the part of the defendant-driver, Willam Vue, an adult, driving his parents' car. Two different insurance policies existed, one for the parents' car and one for the driver, William. In 2003, Aasebys retained attorney Michael Delay (hereafter '**Delay**') to file a personal injury action, CP at 1-7. Aasebys' Verified Complaint was filed against the driver, William, and against Vilay and Agnes, husband and wife, all as co-defendants, alleging Vilay and Agnes are William's natural parents, and the registered owners of the car driven by William Vue, CP at 3-4. At the time and as partner of the law firm of Miller, Devlin, McLean & Weaver, P.S., Miller was retained by the defendants to defend all of the Vues against the Aasebys' claims. Miller's representation of the Vues was not limited in scope. See Miller's signed Notice of Appearance filed on behalf of all defendant Vues,[2] CP at 960. Also, Miller's signed Answer was filed on the Vues behalf, CP at 7 and 10.

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[2] The Court of Appeals opinion, p. 1, stated Allstate, Vilay Vue's insurer, had retained Miller. This was error as a Notice of Appearance and an Answer, signed and filed by Miller, represented to the Aasebys that the Vues had retained Miller, CP at 960 and at 7. Miller did not disclose that he was retained as counsel by Vilay's insurer, Allstate, or by William's insurer, Farmers, CP at 960 and at 7-10. It was error by the Court of Appeals (p. 1) when it stated '*Attorney J. Scott Miller was retained by Allstate Insurance Company to represent Mr. Vue*' as Miller's Notice of Appearance and Answer did not reveal that he was retained by Vilay Vue's insurer, Allstate.

Aasebys' Verified Complaint identified Vilay and Agnes Vue as William's parents, CP at 3, ¶1.3. This allegation was admitted as true by Miller's Answer, CP at 8, ¶1.3, when, in fact, Vilay and Agnes were not William's parents or husband and wife. William attempted to change Miller's false statement, CP at 1406, ¶8. Not only did Miller not correct the false statement, after his paralegal was so informed, he never met with his clients, the Vues, CP at 1407, ¶11. If he had met and inquired of his clients, Miller would discover that William's parents were, in fact, Cheu and Pai Vue, CP at 25. William's true father, Cheu, was the registered owner of the car driven by William, *un*like Miller's representations in his Answer, CP at 8, ¶3.1 and ¶3.3.

The inaccuracies[3] contained in Miller's signed Answer were numerous and significant, as noted by the trial court's decision, CP at 33-34. One of Miller's clients, William, informed Miller's paralegal about several inaccuracies pertaining to the Vues' family, CP at 1406, ¶8. Justin Whittekind, the paralegal who met with William Vue, noted these changes on the draft interrogatories, CP at 1423, ¶7. Miller did not incorporate the

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[3] Trial court Judge Austin's decision, CP at 35:

> *The Answer and discovery materials admit key facts which Defendants and their counsel, after "reasonable inquiry" could have and should have known were false.*

requested changes by William. Patrick McMahon, substituted counsel for the Vues, testified, CP at 698 (ln. 12-21):

> *Mr. Vue* ***corrected the draft interrogatories****, corrected the caption, as Mr. Whittekind has declared under penalty of perjury in his declaration, by saying no, that is my brother and this is my sister, I'm speaking of Vilay and Agnes that was penned in on the rough draft answers. The Answer to the complaint was submitted later, not by William, but the correction had not been made and – the inadvertent mistake that they were husband and wife* ***never got changed****, even though my client had informed the attorneys that that was incorrect.*

William Vue never had the opportunity to review the interrogatory answers before they were submitted to the Aasebys, CP at 1407, ¶11:

> *I* [William] *was never given an opportunity to review the final answers to Plaintiffs' interrogatories. Additionally, I was never given an opportunity to review the Answer to Plaintiffs' Complaint. Furthermore,* ***I never met with Mr. Miller or any other attorney to go over the answers to Interrogatories, Answer, or any other aspect of the case.***

Miller had no contact with any of the Vues (Vilay, Agnes or William). Vilay stated, CP at 1393, ¶5, as did Agnes, that while represented by Miller, CP at 1400, ¶ 6:

> *I have never met, spoken with, or had any other contact with attorneys Scott Miller or Crystal Spielman.*

The Vues' responses to the Aasebys' discovery were drafted with a complete lack of inquiry by Miller. The Court of Appeals erred when it stated, at p. 5: '*The final answers to the Aasebys generally mirrored the*

answers drafted in the meeting with Mr. Vue.' In actuality, the answers did not mirror the drafted answers, and contained numerous errors, not limited to the inaccuracies of the parties pointed out by William Vue. Of note, the Vues were advised by Miller's form letter that '*Attorney Will Answer'* all but a few of the Aasebys' interrogatories and requests for production, CP at 231 - 237. Answers to Aasebys' interrogatories and requests for production were drafted with no inquiry by Miller and signed-off on as true by a newly licensed associate attorney, Crystal Spielman, at the direction of Miller, CP at 1458, ¶7. Attorney Spielman, before Judge Robert Austin on June 23, 2006, CP at 697 (ln. 1-8), stated:

> *At that point, I had been in practice roughly a month when I signed those* [the interrogatory responses] *and I was given them at the direction of lead counsel* [Miller]. *I had submitted – and gave everything back to lead counsel after I reviewed it because I had no familiarity with the case.... if I would have refused to sign them* at *the direction of the managing partner* [Miller] ***I'd probably be issued my walking papers***.

It was disclosed to the Aasebys during a UIM claim with Grange Insurance Co., the Aasebys' insurer, that Miller did not produce a copy of William's Farmers insurance policy sought during discovery, CP at 1483. The policy for William was discoverable but not revealed by Miller due to a lack of inquiry with his clients, the Vues. Three separate letters were

sent to Miller for Miller to produce William's policy to avoid sanctions for not producing a copy of William Vue's policy during discovery.[4]

After Miller did not produce a copy of William's policy issued by Farmers, Aasebys brought a motion and show cause hearing that took place on July 1, 2005, before Judge Austin, CP at 19. Miller attended and did not produce the Farmers policy for William Vue. Miller filed a Notice of Withdrawal, CP at 14. Aasebys objected to withdrawal on the basis that Miller was aware of the violations of CR 11(a) and 26(g), stemming from his complete lack of an inquiry during representation of all of the Vues. No timesheets were ever produced by Miller reflecting any time spent with the clients. Miller's paralegal (Lisa Keller and later known as Lisa Mittleider), CP at 191-96, was unable to produce any timesheets reflecting any time spent by Miller (or Spielman) with the Vues. When faced with sanctions for not producing William's policy, Miller sought to withdraw as counsel. Aasebys objected to withdrawal, CP at 16:

> *Counsel* [Miller] *of record for Defendants* [Vues] *are aware of this pending motion and seek to withdraw before the motion is decided, such withdrawal would further prejudice Plaintiffs* [Aasebys].

---

[4] The letters to Miller were dated June 10, 17 and 22, 2005, CP at 984, at 985 and at 988, respectively. One stated as follows, CP at 984:

> *...Would you please open a claim with...Farmers and provide a copy of that documentation previously requested from Mr. Vue...*

No order was entered by the trial court allowing Miller's withdrawal after Aasebys' objection, as required by CR 71(c)(4).

V. ARGUMENT

Issue No. 1 Aasebys contend Attorney Miller's complete lack of contact with his clients, including no inquiry into the accuracy of the pleadings and discovery responses submitted by Miller on behalf of his clients, violated CR 11(a) and CR 26(g).

The Court of Appeals concluded, in error, at p. 17, that Miller conducted a reasonable inquiry before submitting discovery responses and an Answer to the Aasbys' Verified Complaint. The record established Attorney Miller had no contact with the Vues, his clients. Agnes, Vilay and William Vue all stated at no time during the litigation did any of the Vues have contact with their attorney, Miller, CP at 1393, ¶5; at 1400, ¶6; and at 1407, ¶11. Not only did all the Vues live in Spokane, they all lived in the same residence, CP at 25, ¶4. It would have been a simple task for Miller to contact his clients and verify that the information provided to the Aasebys was accurate, as required. He chose not to. This lack of contact by Miller extended the litigation, needlessly, over 10 years.

It was intentionally and falsely represented to the Aasebys by Miller, under oath, that a reasonable inquiry and due diligence were made by Miller prior to responding to the Aasebys' discovery requests (see

Answer to Interrogatory #1, below). Some of the discovery requests requested the Vues produce any insurance policies or any documents affecting coverage, such as a denial of coverage. One of the Aasebys' discovery requests was, CP at 1069-70:

> *2. REQUEST FOR PRODUCTION: Please produce any other documents affecting insurance coverage (such as any documents **denying coverage**, extending coverage, or reserving rights), from or on behalf of any person carrying on an insurance business, to any defendant or covered person, or such person's representative.*
>
> *ANSWER:*
>
> ***None.***

This answer was false. The truth was, Farmer's had denied coverage of Aasebys' claim, see declaration of Farmers Field Claims Manager, David Koelher, CP at 1093-4. The purported denial of coverage by Farmers was not produced for the Aasebys, despite being specifically asked for in discovery.

As with the rest of the discovery responses, Miller performed no inquiry whatsoever into whether there were any insurance policies other than Vilay's Allstate policy insuring the driver, William Vue, at the time of the accident. Not addressed by the Court of Appeals opinion was that Miller acknowledged on June 23, 2006, before Judge Austin, that he had

performed no inquiry whatsoever into the Farmers policy for William Vue, CP at 687 (ln. 22-25). [5]

It is inconceivable how an inquiry was performed by an attorney, Miller, who had no contact with his clients. Miller performed no inquiry whatsoever into William's policy, and if he had, the purported denial or any other document affecting coverage under Farmers' policy would be revealed. It cannot be considered reasonable by any objective measure, contrary to the opinion of the Court of Appeals.

The Court of Appeals erred, at p. 19, when it concluded CR 11 sanctions for Miller's submission of inaccurate pleadings are not appropriate, stating that '*the family relationship* [of the Vues] *was not critical to litigation'*. Judges Austin, CP at 34-5, and Tomkins disagreed, CP at 838 (ln. 3-10):

> *The identity of the Defendants and the relationships are the* ***foundation*** ***but separate from the coverage issue.*** *It is very difficult at this point to not apply the information we have in hindsight to determine the seriousness of the issue when it was arising back in* ***2004, 2005 and 2006.***

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[5] Miller, CP at 687:

> *It is my understanding that Farmers issued a claim number and I believe that Mr. Delay is correct in that. I don't know what Farmers did after that point.* ***I have never been in contact with them.*** *I have recently, but I had not been in contact with them, wasn't aware that policy existed.*

CR 11 requires attorneys to "stop, think and investigate more carefully before serving and filing papers." *Bryant v. Joseph Tree, Inc., supra,* at 219.

The confusion surrounding the true nature of the Vue's relation to one-another is not simply a harmless oversight, but rather a glaring example of the abject failure on the part of attorney Miller to provide accurate, complete information to the Aasebys through this entire litigation process. The errors of the Court of Appeals should be reviewed.

Issue No. 2 Aasebys' contend the discovery propounded to all of the Vues, under instruction by Miller of 'Attorney will Answer', was not verified with his clients or subjected to a proper, or any, inquiry by Miller and contained multiple false statements, despite being represented as true, in violation of CR 26(g).

CR 26(g) requires that all discovery responses be submitted only after the attorney submitting the responses has conducted a '*reasonable inquiry*'. *Physicians Ins. Exch v. Fisons Corp, supra,* at 342. The Court of Appeals erred in concluding, at p. 17, that the inquiry conducted by Miller prior to the submission of the discovery responses to the Aasebys was reasonable. On November 3, 2003, Aasebys served on Miller Interrogatories and Requests for Production Propounded to the defendants, the Vues, CP at 233. Miller's form letter, CP at 231, to the Vues that 'Attorney Will Answer' represented his only contact with the clients. This

came to light through David Force, new counsel for the Vues, CP at 223, ¶3. The Interrogatories and Requests for Production with the 'Attorney Will Answer' designation included any documents affecting coverage under William's policy, CP at 234-5.

Additionally, the Aasebys' discovery inquired as to *personal* information from each of the Vues. As Miller had no contact with his clients, and instructed them that he would answer these questions, there is no possible way Miller could provide accurate answers and responses.

In December, 2003, William Vue met with a paralegal at Miller's office, not with Miller himself. During the meeting, William pointed out errors in the Vue relationships, CP at 1423 ¶ 7, with the expectation that the errors would be corrected and incorporated into the responses. They were not. It was represented to the Aasebys, under oath, answer to interrogatory 1, that a reasonable inquiry was made prior to submitting discovery responses, when clearly it was not. The Interrogatory answers submitted to the Aasebys were certified as true, under penalty of perjury. They were false. William stated he wanted to meet with his attorney and was given no opportunity to review the final interrogatory answers, CP at 1407, ¶10 and ¶11.

Finally, when Vues' responses to Aasebys' discovery was signed, at Miller's direction by a newly licensed associate attorney, Crystal

Speilman, she had no knowledge of the case at hand. She, in fact, relied upon Miller, who had no contact with his clients. The Court of Appeals omitted and ignored the fact that Ms. Spielman signed the discovery responses under fear that she would lose her job if she did not, CP at 697 (ln. 1-8). There was no inquiry conducted by Miller, let alone a reasonable one. Aasebys contend that this is a clear violation of CR 26(g) and (e), when Miller did not supplement the false responses and sanctions imposed by the trial court for Miller's misconduct were appropriate.

Issue No. 3 Aasebys contend if Attorney Miller had inquired of his client, William Vue, about William's Farmers policy, the litigation would have been avoided, perhaps altogether, or at least at the time of, or soon after, inquiry.

Aasebys' discovery propounded to defendants, the Vues, in 2003, CP at 1069:

> *14. INTERROGATORY: Do any insurance or indemnification agreements or policies exist that may satisfy part or all of a judgment that may be entered in this action; or to indemnify or reimburse payments made to satisfy such award/judgment? If so, please state as to each insurance policy or indemnification agreement:*
> *(a) Name, address and telephone number of insurer or indemnitor;*
> *(b) Name, address and telephone number of each named insured or indemnitee;*
> *(c) Each type of coverage provided;*
> *(d) Applicable limits of the type of coverage provided;*
> *(e) Amount of deductible on each coverage;*
> *(f) Policy period coverage; and*
> *(g) Policy number.*

ANSWER:

(a) Allstate
(b) Vilay Vue
(c) Liability/property
(d) $25,000/$50,000/$10,000
(e) 9/21/00 – 3/21/01
(g) 064355033

William's Farmers policy was not identified or produced during discovery as required under CR 26(b)(2). In Federal Court, the Farmers policy is considered an '*initial disclosure*' to be produced at the beginning of litigation, requiring no discovery request by the Aasebys. FRCP 26(a)(1)(A)(iv). No document affecting or denying coverage under the Farmer's policy was disclosed. CR 26(b)(2)(ii). By Miller's own acknowledgement, he performed no investigation into whether William's Farmers policy even existed, let alone if it provided coverage of the Aasebys' claim, CP at 687: '..., wasn't aware that policy existed.'

The Court of Appeals erred, at p. 17, when it concluded that because William Vue did not inform Miller of the Farmers policy, Miller was justified in not disclosing it during discovery. Because William was directed by Miller's form letter, CP at 321, that '*Attorney Will Answer*' the Aasebys' discovery regarding William's insurance, no information about William's policy was provided to the Aasebys, CP at 1407, ¶7. William was not allowed any contact with Miller and was instructed 'Attorney Will

Answer' as it pertained to insurance. The onus is on Attorney Miller, per CR 26(g), to ensure that discovery responses bearing his or his associate's signature are submitted 'after a reasonable inquiry', especially when represented to the Aasebys in answer to Interrogatory 1, that it had.[6]

Once the Aasebys became aware of the existence of a second policy, Aasebys (Delay) sent three separate letters to Miller, CP at 984, 985 and 988, requesting a copy of William's Farmers policy. The policy was not provided by Miller. At a show cause hearing held on July 1, 2005, Miller once again had an opportunity to produce William's Farmers policy or any document affecting coverage. He, once again, did not.

The Court of Appeals erred, at p. 8, claiming Mr. Aaseby stated in his deposition, CP at 90, that William's Farmers policy did not apply. At no time in his deposition did Mr. Aaseby say that the Farmers policy did not apply. Not only would Mr. Aaseby have been in no position to make

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[6] Certified, and verified under oath, discovery responses provided to the Aasebys, CP at 1068:

> *1. INTERROGATORY: Prior to responding to these discovery requests, have you thoroughly researched and identified every document and made inquiry of every person, employee, or agent having knowledge of the information and subject matter sought by these requests?*
>
> *ANSWER:*
>
> ***YES***

that determination, but at this point in time, 2004, confusion still existed based on the false information provided during litigation by way of Miller's signed Answer as to the true nature of the Vues themselves, let alone whether a particular policy for William did or did not provide coverage of the Aasebys' claim.

Miller's misconduct led to 10 years of costly and vexatious litigation. Attorney James B. King stated, CP at 2025, ¶12:

> *From my review of the pleadings in this matter, the failure to disclose by the defendant William Vue and his counsel, resulted in eight years of litigation all of which could have been avoided if the conduct by the defendant William Vue had not occurred and* ***had his counsel made the kind of reasonable inquiry into the facts and/or timely supplemented inaccurate responses under the rules****.*

Mr. King's testimony was uncontroverted by Miller.

Issue No. 4 Aasebys contend when Attorney Miller paid, in full, the Judgment entered against him, and declined to preserve his appeal, Miller's appeal was rendered moot.

On April 3, 2012, Miller signed and filed: (1) Notice of Payment of Judgment (in Full), CP at 2347; and (2) Satisfaction of Amended Judgment (including Instructions to Clerk), CP at 2342-3. Miller tendered a cashier's check for the amount of the Judgment against him, plus all interest at the time. Miller's payment was made without any condition or reservation by Miller preserving his appeal, CP at 2342-3; 2347. If Miller was to preserve his appeal, his full satisfaction of Judgment should include

a reservation to preserve his appeal. Miller's payment in full of the Judgment rendered his appeal moot. *State v. Smithrock Quarry,* 49 Wn.2d 623, 625 (1956); and *Murphee v. Rawlings,* 3 Wn. App. 880, 882 (1970). In *Murphee,* the right to appeal was preserved, while in *State v. Smithrock,* the right to appeal was not.

Issue No. 5 Aasebys contend Miller's motion for CR 11 sanctions against Aasebys' counsel violated CR 11 when Miller misrepresented to the trial court the holdings of the cases cited by Miller.

The Court of Appeals, at p. 21:

> *The Aasebys contend that the trial court abused its discretion by not imposing sanctions on Mr. Miller after Mr. Miller* ***objected*** *to filing a supersedeas bond.*

Following the trial court's entry of a Judgment against Miller for sanctions, Aasebys filed a Motion for Supersedeas Bond under RAP 8.1(b) and (c)(1), CP at 2306-15. In response, Miller not only 'objected' but he filed a Notice of Hearing, a Declaration and a memorandum for CR 11 sanctions against the Aasebys, CP at 2316-27. Miller claimed that Aasebys' RAP 8.1 motion caused Miller attorney fees of $8,785 at $350 per hour under CR 11, CP at 2317-18. Miller's memorandum, CP at 2321 (ln. 12-15):

> *Washington law is replete with cases that show the Plaintiffs'* [Aasebys'] *position in this* [RAP 8.1] *motion is frivolous and based on blatant fabrication and disregard for the law. The following cases are only a few of the*

> *examples of how* ***staggeringly dishonest*** *the Plaintiffs' argument is.*

Miller claimed: '*The only purpose of Supersedeas is to protect the Defendant, not the Plaintiff*', CP at 2320. This was false. Just the opposite, a supersedeas bond is also used to protect a Judgment Creditor/Respondents (Aasebys):

> *It is our view that the bond meets the statutory requirements. It was intended to protect the respondents from payment of the costs of an unsuccessful appeal and is sufficient for that purpose.*
>
> *Sims' Estate v. Lindgren,* 39 Wn.2d 288, 296 (1951).

Miller's memorandum proceeded to cite and misrepresent to the trial court the holdings in six different cases, including the above *Sims' Estate* case, CP at 2321, *Estate of Spahi v. Hughes-Northwest, Inc.,* 107 Wn. App. 763, 769 (2001), etc.

Aasebys did not seek sanctions for Miller 'objecting' to a superseadeas bond, as asserted by the Court of Appeals. Aasebys sought sanctions against Miller for blatantly and intentionally misrepresenting to the trial court the six cases cited by Miller in his memorandum, filed in support of Aasebys purported Rule 11 violation, CP at 2321.

Issue No. 6 Aasebys contend Miller's untimely, unsupported and frivolous Motion to Dismiss Aasebys' Cross Appeal as found by Commissioner Wasson, entitled the Aasebys to terms under RAP 18.8(d) and 18.9(a).

The Court of Appeals completely omitted from its decision any mention of Miller's untimely and frivolous Motion to Dismiss Aasebys' Cross Appeal. Miller's Motion was filed on July 30, 2012, in an attempt to modify the Clerk's Scheduling Letter of February 14, 2012, CP at 2281. The Clerk's letter established deadlines that were relied upon by both Miller and the Aasebys. Miller sought to modify only a single deadline, the *expired* deadline for the Aasebys to file their Notice of Cross Appeal, CP at 2283, five months *after* the deadline of February 28, 2012 had expired. If Miller's belated request to modify a single deadline was granted, the deadline for the Aasebys' Notice of Cross Appeal would have expired *before* entry of a final decision in the trial court. Commissioner's Ruling on Terms, at p. 4:

> *...Miller himself was the person who requested a* ***stay*** *of the pending court of appeals' matters while the trial court considered several motions.* ***And, it was Miller that moved this Court to grant the superior court permission to formally enter the decisions on those motions.*** *To now bind Aaseby to 30 days after the November 22, 2011 signature date or to 14 days after the notice of appeal date would result in a* ***gross miscarriage of justice.*** *Aaseby reasonably relied on RAP 7.2(e), and calculated its time for cross appeal from the date the superior court entered the amended judgment, after this Court gave it permission to do so.*
>
> *Accordingly, IT IS ORDERED, Miller's motion to dismiss Aaseby's cross appeal as untimely filed is denied.* ***Aaseby's motion for terms and reasonable attorney fees under RAP 18.8(d) and 18.9(a) is referred to the panel of judges that***

ultimately decides this appeal. *This ruling also effectually* ***denies*** *Mr. Miller's motion to modify the clerk's letter of February 14, 2012.*

Aasebys are entitled to terms, including reasonable attorney's fees.

VI. CONCLUSION

Aasebys' Petition for Discretionary Review should be granted.

> The Court of Appeals' decision should be reversed and the following relief granted to the Petitioners:
>
> 1. The protracted litigation and expense for the Aasebys over a period of 10 years was unnecessary and resulted in the legal fees and costs awarded by the trial court for Miller's misconduct, in violation of CR 11(a) and 26(g).
> 2. Miller's appeal was moot after Miller paid the Judgment against him for violation of CR 11(a) and 26(g), in full, and did not preserve his appeal.
> 3. Commissioner Wasson's finding that Miller's motion would result in a 'gross miscarriage of justice' requiring terms to include reasonable attorney's fees under RAP 18.8(d) and 18.9(a)
> 4. Petitioners should be awarded their costs and disbursements herein.

Dated this 30th day of September, 2013.

Respectfully Submitted.

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VII. APPENDIX

A-2 – A-25: Court of Appeals' unpublished decision filed August 29, 2013, in the Washington State Court of Appeals, Cause No. 30093-5-III

FILED
AUGUST 29, 2013
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

JAMES W. and JUDY D. AASEBY, husband and wife, Respondents and Cross-Appellants, v. WILLIAM VUE, a single person; and VILAY and AGNES VUE, husband and wife, Defendants, J. SCOTT MILLER, Appellant.	)	No. 30093-5-III UNPUBLISHED OPINION

KULIK, J. — William Vue was involved in a car accident with James W. Aaseby and Judy Aaseby in 2000. The Aasebys initiated a personal injury action against Mr. Vue. Attorney J. Scott Miller was retained by Allstate Insurance Company to represent Mr. Vue. After the case was settled for Allstate's policy limits in 2004, the Aasebys identified a Farmers Insurance policy that was not provided during discovery and other factual discrepancies. The Aasebys moved for sanctions against Mr. Miller under CR 11(a) and

CR 26(g). Extensive and protracted litigation ensued. In 2011, the Spokane County Superior Court imposed sanctions on Mr. Miller in the amount of $22,300 for failing to exercise diligence in answering the complaint and the discovery request. Mr. Miller appeals the imposition of sanctions. The Aasebys cross appeal the amount of the sanctions and the denial of sanctions against Mr. Miller's firm.

We reverse the sanctions imposed on Mr. Miller, affirm the trial court's dismissal of Mr. Miller's law firm, deny attorney fees on appeal, and remand solely for the trial court to deny the Aasebys' cross motion for sanctions.

FACTS

The underlying litigation that gave rise to the sanctions involved a motor vehicle accident. On October 20, 2000, 18-year-old Mr. Vue pulled out in front of a vehicle driven by Mr. Aaseby, causing a collision. Both cars were totaled. Mr. Aaseby and his wife, Judy Aaseby, were injured in the collision. Mr. Vue was at fault.

At the scene of the accident, Mr. Vue provided Mr. Aaseby information about a Farmers Insurance policy. Mr. Aaseby's notes taken at the scene include the names of Cheu and Pai Vue,[1] Mr. Vue's address, and a Farmers policy number. Later that day, Mr. Aaseby contacted Farmers and provided the policy number he received at the scene.

[1] For clarity, members of the Vue family will be referenced by their first names,

Farmers issued a claim number to Mr. Aaseby. Ultimately, Mr. Aaseby determined that Farmers did not provide coverage. Instead, he was informed that Allstate insured the car Mr. Vue was driving.

In 2003, the Aasebys retained attorney Michael J. Delay and initiated a personal injury claim against Mr. Vue. The complaint also named Vilay and Agnes Vue as defendants. The complaint alleged that Vilay and Agnes were the natural parents of Mr. Vue, and husband and wife. The complaint also alleged that Vilay and Agnes were the registered owners of Mr. Vue's car.

Allstate, who was Vilay's insurer, retained Mr. Miller and his law firm of Miller, Devlin, McLean, & Weaver, P.S. to represent Mr. Vue, Vilay, and Agnes. The file provided to Mr. Miller by Allstate indicated that the car driven by Mr. Vue was owned by and registered to his parents, Vilay and Agnes.

Soon after Mr. Miller was retained, he sent a letter to the defendants requesting that they contact him. Mr. Vue called Mr. Miller and confirmed that he had been driving the car with Vilay's permission. However, he did not inform Mr. Miller that some of the allegations in the complaint were inaccurate. Specifically, he did not advise Mr. Miller

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with the exception of William Vue.

that Vilay and Agnes were his siblings, that his parents were Cheu and Pai, and that Cheu was the registered owner of the car.

Mr. Miller filed an answer to the complaint, admitting that Vilay and Agnes were the married parents of Mr. Vue and that the two were the registered owners of the car driven by Mr. Vue. Neither Mr. Vue nor Allstate indicated that there was a Farmers Insurance policy issued to anyone in the Vue family.

The Aasebys served the defendants with a set of interrogatories and requests for production. In turn, Mr. Miller sent the discovery request to Mr. Vue, Agnes, and Vilay at their shared home. Mr. Miller requested that they answer all of the questions to the best of their ability. Mr. Miller informed Mr. Vue that the questions stamped "Attorney will Answer" would be filled out by his office, but that if Mr. Vue could answer any of these questions in whole or part, he should do so. Clerk's Papers (CP) at 231.

A paralegal in Mr. Miller's office met with Mr. Vue to draft responses. Of importance here are three requests and responses. First, interrogatory 14 asked Mr. Vue to identify any insurance or indemnification agreements or policies that may satisfy part or all of a judgment. The answer provided to the Aasebys identified only the Allstate policy. Second, the corresponding request for production asked Mr. Vue to produce any other documents affecting insurance coverage, such as documentation denying coverage,

for the defendant or covered person. The answer to this request was "none." CP at 1437. Last, interrogatory 35 asked Mr. Vue to identify the registered owner of the vehicle that he was driving at the time of the collision. The answer stated "Vilay Vue." CP at 1451.

During this meeting, Mr. Vue also corrected the caption of the case, indicating that Vilay was his brother and Agnes was his sister. He also noted on the caption that Vilay owned the car.

Mr. Vue was asked to review the answers. In a declaration submitted around two years later, Mr. Vue noted that the answers reflected that Allstate was the only insurance providing potential indemnification in the case and, at the time, he believed that this information regarding insurance was correct.[2] He also believed that Vilay was the registered owner of the car. Mr. Vue signed the verification page of the discovery request, stating that he read the responses and believed them to be true and correct.

A new associate in Mr. Miller's firm, Crystal Spielman, signed and certified the answers pursuant to CR 26. At the time of certification, Ms. Spielman had been in practice for about six weeks. The final answers provided to the Aasebys generally mirrored the answers drafted in the meeting with Mr. Vue. However, the caption of the

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[2] In a subsequent declaration, Mr. Vue claimed that he did not provide any information regarding insurance coverage at the meeting and that he did not have an opportunity to review the final answers to the interrogatories.

case was not corrected. Nor did Mr. Miller notify the Aasebys that Vilay and Agnes were Mr. Vue's siblings.

The only other discovery conducted for this action was Mr. Vue's deposition of Mr. Aaseby. The Aasebys did not depose any of the defendants.

In June 2004, the case was settled for Allstate's policy limits of $25,000. The Aasebys released the defendants from liability and dismissed their claim with prejudice.

The Aasebys subsequently pursued a claim for underinsured motorists insurance and personal injury protection coverage under their own policy held by Grange Insurance. The Aasebys received the policy limits of $100,000.

During Grange's investigation of the Aasebys' claim, Grange identified the Farmers liability policy for Mr. Vue and the claim number assigned to Mr. Aaseby. Grange notified the Aasebys that Mr. Vue may have had his own insurance policy in addition to the Allstate policy. Mr. Delay, the Aasebys' counsel, informed Grange that his investigation verified that no other policy existed, and that this information could be verified through Mr. Miller and Allstate.

Around this same time, Farmers contacted Mr. Vue. Mr. Vue e-mailed Mr. Miller about the coverage, telling Mr. Miller that he was unsure if he had two policies. Mr. Miller did not contact the Aasebys about the Farmers policy.

In June 2005, the Aasebys contacted Mr. Miller about the Farmers policy. The Aasebys requested that Mr. Miller open a claim with Farmers. Mr. Miller notified the Aasebys that he no longer represented Mr. Vue and that he forwarded the Aasebys' letter to Mr. Vue. Mr. Miller filed his notice of intent to withdraw as Mr. Vue's counsel.

Patrick McMahon of Carlson, McMahon & Sealby, PLLC, filed a notice of substitution of attorney for Mr. Vue. Mr. McMahon sent a letter to the Aasebys that clarified that Vilay and Agnes were Mr. Vue's siblings. Mr. McMahon also stated that Vilay owned and insured the car. Sometime before September 2005, the Aasebys became aware that Cheu and Pai were Mr. Vue's parents and that the car was registered to Cheu.

The Aasebys moved to set aside the stipulation and order of dismissal with prejudice. The Aasebys also requested attorney fees and costs. The trial court granted the motion and vacated the order of dismissal. The court reserved the ruling on attorney fees.

In December 2005, the Aasebys filed another motion for attorney fees, citing rules CR 26(g) and CR 11(a). They contended that attorney fees were appropriate because Mr. Vue and Mr. Miller failed to disclose the Farmers policy or supplement the record with the policy during discovery, and that Mr. Vue's and Mr. Miller's willful actions constituted bad faith and a complete disregard for court rules. Mr. Miller was not served with this motion for sanctions or given notice of the upcoming hearing.

A hearing was held, with Judge Robert Austin presiding. Mr. Miller was not present. In February 2006, Judge Austin issued a letter addressing the Aasebys' motion for sanctions. The court found that Mr. Miller, Ms. Spielman, and Mr. Vue violated CR 11 and CR 26(g) by failing to make a reasonable inquiry and discover the obvious falsehoods in the answer and interrogatories. The court concluded that sanctions were appropriate against all three individuals.[3] The court requested that the parties prepare findings of fact and conclusions of law for its signature. Mr. Miller was not served with the court's letter opinion.

On June 23, 2006, a presentment hearing occurred. Mr. Miller was given notice and made his first appearance in the trial court on the issue of sanctions. He argued to the trial court that his answer to the complaint was reasonable, based on the information provided by Mr. Vue. He also informed the court that the Aasebys had knowledge of the policy from the beginning. He explained that he was not told of the Farmers policy when he answered the interrogatories, but had he been aware that there was another policy, he would have addressed the issue. He subsequently became aware of the policy only during Mr. Aaseby's deposition when Mr. Aaseby stated that the policy did not apply. As for the

[3] Sanctions against Ms. Spielman and Mr. Vue were eventually dismissed.

misidentification of parties, Mr. Miller contended that he had no information to the contrary until after the case was dismissed.

At the end of the hearing, the trial court declined to sign the findings submitted by the Aasebys and decided to review the issue further. Judge Austin stated, "Just factually there's enough in here, that I'd like to review this and write another memo. I'm not going to sign findings today. I know this is really a presentment. I'm not sure even findings are a way to go. There are things in [the Aasebys'] findings that I'm not sure I found." CP at 713.

In August 2006, the trial court determined that the resolution of all the issues of the case depended on whether the Farmers policy covered Mr. Vue. The court stated, "[I]f there is coverage, then all these other issues fall into place. If there isn't coverage, then I think the matter is pretty much at an end." CP at 169. The trial court stayed the case until the Farmers issue was resolved.

For the next few years, Farmers and the Aasebys litigated the coverage issue. In June 2007, the trial court concluded that the Farmers liability policy did not cover Mr. Vue at the time of the accident. The decision was upheld on appeal in 2009. *Farmers Ins. Co. v. Vue*, noted at 151 Wn. App. 1005, 2009 WL 1941991.

Meanwhile, while *Farmers Ins. Co. v. Vue* was pending, Judge Austin retired. Judge Linda Tompkins was assigned to preside over the Aasebys' action against Mr. Vue.

The Aasebys' request for sanctions resurfaced in March 2011. The Aasebys filed a motion for CR 11(a) and CR 26(g) sanctions based on Judge Austin's February 2006 letter opinion and based on the Aasebys' June 2006 proposed findings of fact and conclusions of law. Judge Tompkins affirmed. A reasonableness hearing was set to determine the amount of the sanctions.

Mr. Delay filed a billing statement for fees incurred to litigate the Aasebys' claim. Mr. Delay's billing statement included costs from 2003 to 2007, and 2011. Mr. Delay declared that the fees were incurred as a direct result of Mr. Vue's and Mr. Miller's misconduct and violation of the court rules. Mr. Delay also declared that no litigation would have been necessary to obtain the Allstate policy limit for Vilay if Mr. Vue and Mr. Miller had told the truth.

At the reasonableness hearing, the trial court ordered sanctions against Mr. Miller under CR 11 and CR 26 for failure to investigate. Judge Tompkins accepted and signed extensive findings of fact and conclusions of law presented by the Aasebys. While the findings memorialized Judge Austin's February 2006 letter decision, the findings did not include Judge Austin's June 2006 oral decision in which he refused to sign the Aasebys'

proposed findings and refused to impose sanctions. The findings also did not incorporate Judge's Austin's August 2006 determination that the appropriateness of sanctions depended on whether Farmers coverage existed.

The parties appeared for presentment of judgment. The Aasebys included Mr. Miller's current law firm of J. Scott Miller, PLLC in the judgment. Mr. Miller argued to remove his current law firm from the judgment because the firm was not in existence at the time the sanctionable conduct took place and the firm did not participate in the sanctionable conduct. The trial court agreed and removed the law firm of J. Scott Miller, PLLC from the judgment. The trial court entered the judgment against Mr. Miller in the amount of $46,285.27 to be awarded to Mr. Delay.

Mr. Miller filed a motion for reconsideration. Mr. Miller contended that the Aasebys misrepresented Judge Austin's ruling on sanctions. At the motion hearing, the trial court ordered a transcription of the June 2006 hearing to determine the scope of Judge Austin's prior ruling.

After reviewing the transcript, Judge Tompkins issued a letter in which she recognized Judge Austin's refusal to sign the findings and his intention to review the arguments and write another memo. Judge Tompkins stated in part that "[t]his transcript casts doubt on the finality of the two earlier written memo decisions of Judge Austin

which have been the foundation for the court's rulings to date. It also underscores the importance of the question of whether the sanctions issue is or is not necessarily linked to the dismissal vacation/liability issues." CP at 727. Judge Tompkins requested additional briefing.

Another hearing was held, and the trial court entered new findings of fact and conclusions of law. The court concluded that Mr. Miller's lack of diligence in the answer and discovery responses and withdrawal from the case warranted sanctions. However, the court also concluded that Mr. Delay was in a position to investigate further the initial information about Farmers insurance prior to the settlement, and could have cleared up any ambiguity through further detailed discovery. Additionally, the court concluded that Mr. Delay needlessly protracted a just determination of sanctions by failing to advise the court that Judge Austin declined to enter the Aasebys' findings and conclusions. Ultimately, the court ordered sanctions against Mr. Miller in the amount of $22,550 for attorney fees and costs up to the July 1, 2005 hearing.

Mr. Miller filed a second motion for reconsideration, this time contesting the amount of the sanctions. Mr. Miller contended that the award of sanctions was not supported by Mr. Delay's cost bill. In response, the trial court revised the findings and

conclusions. Based on Mr. Delay's declaration of costs dated May 20, 2011, the court reduced the reasonable attorney fees to $22,300.

In March 2012, the Aasebys filed a motion requesting that the court compel Mr. Miller to post a supersedeas bond in the amount of $65,000 pending the appeal of the judgment. Mr. Miller opposed the motion. Mr. Miller contended that there is no legitimate basis in law for a trial court to demand a supersedeas bond to be filed. Mr. Miller requested CR 11 sanctions against the Aasebys for filing a frivolous and unsupportable motion. The Aasebys filed a cross motion for sanctions.

The next day, Mr. Miller paid the judgment and applicable interest. The court denied the Aasebys' motion to compel a supersedeas bond. The trial court reserved the issue on the attorney fees pending a decision on appeal.

Mr. Miller appeals the imposition and the amount of sanctions. The Aasebys cross appeal the trial court's decision to reduce the fees and to remove the law firm of J. Scott Miller, PLLC from the judgment. The Aasebys also cross appeal the court's denial of their request for attorney fees from their supersedeas motion.

ANALYSIS

Discovery Sanctions. A trial court's decision on discovery sanctions is reviewed for an abuse of discretion. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*,

122 Wn.2d 299, 338, 858 P.2d 1054 (1993). "A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds." *Id.* at 339.

CR 11 requires an attorney to certify that they have read each pleading, motion or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the forementioned document is: (1) well grounded in fact, (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

"CR 11 allows courts to impose sanctions upon a party and/or the attorney for signing pleadings, motions or memoranda in violation of the rule." *Blair v. GIM Corp.*, 88 Wn. App. 475, 481-82, 945 P.2d 1149 (1997). "CR 11 imposes a standard of 'reasonableness under the circumstances.'" *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). "The court should inquire whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified." *Id.* "The court is expected to avoid using the wisdom of hindsight and should test the

signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted." *Id.*

Factors to be considered in assessing the reasonableness may include: (a) the time available to the signer; (b) the extent of the attorney's reliance on others, including the client, for factual support; (c) whether the signing attorney accepted the case from a forwarding attorney; (d) the complexity of the factual and legal issues; and (e) the need for discovery to develop factual circumstances underlying the claim. *Miller v. Badgley*, 51 Wn. App. 285, 301-02, 753 P.2d 530 (1988).

"CR 26(g) parallels CR 11." *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 531, 20 P.3d 447 (2001). CR 26(g) provides that when responding to a discovery request, an attorney must certify by signature that, after making a "reasonable inquiry," the discovery responses are: (1) consistent with the rules, (2) not interposed for any improper purpose, and (3) not unreasonable or unduly burdensome or expensive. "Reasonable inquiry" is judged by an objective standard. *Fisons*, 122 Wn.2d at 343. "In determining whether an attorney has complied with the rule, the court should consider all of the surrounding circumstances, the importance of the evidence to its proponent, and the ability of the opposing party to formulate a response or to comply with the request." *Id.*

A response to a discovery request must be consistent with the letter, spirit, and purpose of the rules. *Id.* at 344.

Proof of intentional withholding of information is not required for sanctions to be imposed under CR 26. *Carlson v. Lake Chelan Cmty. Hosp.*, 116 Wn. App. 718, 739, 75 P.3d 533, *review granted*, 150 Wn.2d 1017 (2003). An inadvertent failure to disclose information without a reasonable excuse is enough to establish a violation of the rule. *Id.*

The purpose of CR 26 is to deter discovery abuses, which include delaying tactics, procedural harassment, and mounting legal costs. *Demelash*, 105 Wn. App. at 531.

Sanctions are usually reserved for egregious conduct; they should not be viewed as "simply another weapon in a litigator's arsenal." *Biggs v. Vail*, 124 Wn.2d 193, 198 n.2, 876 P.2d 448 (1994).

Mr. Miller contends that the trial court abused its discretion in issuing sanctions. He assigns error to the trial court's conclusion that he failed to exercise diligence in forming the answer and discovery responses and that he improperly withdrew before identifying the parties. Mr. Miller maintains that he conducted a reasonable inquiry and provided appropriate responses under the circumstances.[4]

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[4] As a preliminary matter, Mr. Miller contends that the sanctions are improper because he was not afforded due process rights. Before sanctions can be imposed, the court must provide minimal due process rights to the opposing party, which is satisfied

The primary sanctionable conduct that the trial court focused on was Mr. Miller's certification of three errors: (1) the interrogatory answer that did not identify the Farmers insurance policy, (2) the interrogatory answer that incorrectly listed Vilay as the registered owner, and (3) the answer that admitted the false familial relationship of the Vues.

We conclude that the trial court erred by sanctioning Mr. Miller for this conduct. First, in responding to the interrogatory and request for production regarding insurance coverage, Mr. Miller conducted a reasonable inquiry under the circumstances before certifying the discovery request. Mr. Miller sent the interrogatories to Mr. Vue, Agnes, and Vilay and asked them to review the questions. Mr. Vue, who was the only party to respond, was interviewed by Mr. Miller's office. Mr. Vue admitted that he did not tell Mr. Miller about another insurance policy even though he told Mr. Aaseby at the accident of the Farmers policy. Mr. Vue later justified withholding the information because he did not think he was covered. Additionally, neither Allstate nor the Aasebys informed Mr. Miller about another policy, although it appears both parties knew of the policy and were

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with notice and an opportunity to be heard. *Watson v. Maier*, 64 Wn. App. 889, 899-900, 827 P.2d 311 (1992). Although Mr. Miller was not told about the initial sanction motions and hearings, when the trial court realized the error, Mr. Miller was given notice of the sanctions and was allowed to address the court on the issue. Minimal due process rights were met.

in contact with Mr. Miller. In sum, after conducting a reasonable inquiry, Mr. Miller had no knowledge of the Farmers policy and answered the interrogatory appropriately.

As for the interrogatory regarding the registered owner of the car, Mr. Miller's investigation into the matter was also reasonable. Vilay and Agnes did not respond to the interrogatories served to their home address. However, Mr. Vue was interviewed by Mr. Miller's office and responded that Vilay was the registered owner of the car. Mr. Vue declared that he thought this was the correct answer at the time he was interviewed. As additional verification of ownership, Allstate also told Mr. Miller that Vilay was the registered owner of the car. Considering the uncontested information gathered from these two sources, and considering that Vilay's insurance would cover the accident, it was reasonable under the circumstances for Mr. Miller to indicate that Vilay was the registered owner of the car.

On the other hand, Mr. Miller violated CR 11 when he signed and verified the answer to the Aasebys' complaint regarding Vilay's and Agnes's familial relationship.[5] Mr. Miller filed the answer after Mr. Vue had met with Mr. Miller's office and corrected the caption on the interrogatory request. Thus, Mr. Miller had implied knowledge that

[5] This error is not sanctionable under CR 26(g) because it does not involve a discovery violation. Pleading violations are addressed under CR 11.

Agnes and Vilay were brother and sister to Mr. Vue. His answer admitting that Vilay and Agnes were married parents of Mr. Vue was inaccurate and a pleading violation.

But, sanctions under CR 11 are not warranted or reasonable for this insubstantial violation. The family relationship was not crucial to the outcome of the litigation. Vilay, as the legal owner of the car, as opposed to the registered owner, was still the responsible party, regardless if Vilay and Agnes are parents or siblings of Mr. Vue. Furthermore, the fact that Cheu and Pai were Mr. Vue's parents did not impede litigation. The Aasebys did not assign fault to Mr. Vue's parents. Thus, it made no difference that Vilay and Agnes were not Mr. Vue's parents.

Moreover, Mr. Miller's conduct was not egregious. He simply admitted to a fact that the Aasebys also assumed was true.[6] A trial court should be "reluctant to impose sanctions for factual errors or deficiencies in a complaint before there has been an opportunity for discovery." *Bryant*, 119 Wn.2d at 222. Sanctions should not be encouraged for these errors because "[t]he notice pleading rule contemplates that discovery will provide parties with the opportunity to learn more detailed information about the nature of a complaint." *Id.* The parties had just begun discovery when Mr.

[6] Based on Mr. Aaseby's notes taken at the scene of the accident, the Aasebys had knowledge that Cheu and Pai were family members of Mr. Vue. Mr. Aaseby noted these names with Mr. Vue's Farmers policy information. No explanation is given as to how

Miller answered the complaint. Thus, the trial court abused its discretion by sanctioning Mr. Miller for this minor error.

There is no indication that Mr. Miller's responses were provided for an improper purpose. His responses were consistent with the rules. He conducted a reasonable inquiry and properly certified the interrogatories and answer under CR 26(g) and CR 11. The trial court abused its discretion in sanctioning Mr. Miller.

The other sanctionable conduct found by the trial court was Mr. Miller's withdrawal from the case. However, Mr. Miller's withdrawal as counsel was justified and did not prolong litigation. The action between Mr. Vue and the Aasebys was settled and dismissed. When the Aasebys brought the discovery issues to Mr. Miller, Mr. Miller acted appropriately by informing the Aasebys that he no longer represented Mr. Vue on the matter and then by informing Mr. Vue that he needed to contact the Aasebys. Once Mr. Miller's notice of withdrawal was filed, Mr. Vue's new counsel immediately addressed the issues raised by the Aasebys. The trial court abused its discretion by sanctioning Mr. Miller for withdrawing from the case.

Also, Mr. Miller's withdrawal does not appear to have been done in bad faith. In a letter to Allstate on June 20, 2005, Mr. Miller expressed his understanding that Allstate

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they arrived at the conclusion that Agnes and Vilay were Mr. Vue's parents.

was reassigning Mr. Vue's matter to a new attorney, and indicated that he would maintain the file and provide it to the new attorney. Mr. Miller also understood that he could potentially be a witness in the case. Mr. Miller acted reasonably and was not required to interject himself back into the case.

The trial court abused its discretion in sanctioning Mr. Miller for violations of CR 11 and CR 26.

The outcome of the first issue is dispositive. As a result, we need not reach the amount of the sanctions and the dismissal of Mr. Miller's law firm.

Cross Motion for Sanctions and Supersedeas Bond. A supersedeas bond stays enforcement of a judgment while on appeal. RAP 8.1. "An appellant is under no obligation to supersede a judgment or a decree appealed from. It is a right and a privilege granted, in certain cases under certain conditions, to preserve the fruits of his appeal if he prevails, but it is not something he is obliged to do." *In re Estates of Sims*, 39 Wn.2d 288, 297, 235 P.2d 204 (1951).

The Aasebys contend that the trial court abused its discretion by not imposing sanctions on Mr. Miller after Mr. Miller objected to filing a supersedeas bond. The Aasebys contend that Mr. Miller misrepresented the law in his objection to their motion.

They also contend that Mr. Miller's objection was a frivolous filing because a few days after objecting, Mr. Miller paid the judgment in full.

The trial court deferred judgment on the issue of sanctions to this court, to be resolved on appeal. We determine that sanctions are not warranted. Mr. Miller provided valid case law that casts doubt on whether the Aasebys can compel Mr. Miller to file a supersedeas bond. Mr. Miller's objection was not frivolous, baseless, or filled with misrepresentations. The Aasebys are not entitled to sanctions on their cross motion.

We remand to the trial court to order that the Aasebys are not entitled to the sanctions requested in their cross motion.

Attorney Fees on Appeal. RAP 18.8(d) states that the remedy for a violation of the rules of appellate procedure is set forth in RAP 18.9. "The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9." RAP 18.8(d). RAP 18.9(a) allows an appellate court to sanction a party with terms or compensatory damages when the party (1) uses the appellate court rules for the purpose of delay, (2) files a frivolous appeal, or (3) fails to comply with the rules.

Yet again, the Aasebys request sanctions against Mr. Miller, this time for his actions on appeal. The Aasebys contend that Mr. Miller's entire appeal is frivolous. The

Aasebys also contend that Mr. Miller's motion to dismiss the Aasebys' cross appeal as untimely was a baseless and frivolous motion. The Aasebys request terms and reasonable attorney fees under RAP 18.8(d) and RAP 18.9(a).

We deny the Aasebys' request. Sanctions are usually reserved for egregious conduct; they should not be viewed as "simply another weapon in a litigator's arsenal." *Biggs*, 124 Wn.2d at 198 n.2. Mr. Miller's motion and appeal were not filed for the purpose of delay, were not frivolous, and complied with the rules. Mr. Miller asserted valid arguments on appeal. Sanctions are not warranted.

Mr. Miller also requests attorney fees on appeal. He contends that the Aasebys engaged in misrepresentations and frivolous claims at trial and on appeal. He relies on RCW 4.84.185 as authority for attorney fees for baseless claims. RCW 4.84.185 allows the prevailing party to recover attorney fees from the nonprevailing party for frivolous actions. While the Aasebys' incessant request for sanctions is troublesome, we deny Mr. Miller's request. The Aasebys' initial request for CR 11 and CR 26(g) sanctions was not frivolous and formed a reasonable basis for appeal.

We reverse the trial court's imposition of sanctions against Mr. Miller. We deny both parties' request for attorney fees on appeal. Finally, we remand to the trial court for denial of the Aasebys' April 2012 cross motion for sanctions.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

Kulik, J.

WE CONCUR:

Siddoway, A.C.J.

Siddoway, A.C.J.

Brown, J.

Brown, J.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2013, a true and correct copy of the foregoing, Petition for Discretionary Review, filed on September 30, 2013, was hand-delivered to J. Scott Miller at the following address:

J. Scott Miller
Law Office of J. Scott Miller, PLLC
201 W. North River Drive, Suite 500
Spokane, WA 99201

Dalton Luke
Paralegal
Michael J. Delay, P.S., Inc.