90788-9

Court of Appeals No. 70917-8

SUPREME COURT
OF THE STATE OF WASHINGTON

JACOB BECKWITH,

Plaintiff/Respondent,

v.

SEIL REVELS,

Defendant/Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Seil Revels asks this Court to accept review of the unpublished Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

The decision of the Court of Appeals, Division One, was filed August 4, 2014. A copy of the decision is in the Appendix at pages A-1 through A-7.

C. ISSUES PRESENTED FOR REVIEW

A person with no funds was ordered to pay attorney fees as a condition for vacating default judgments. These terms were imposed only because his lawyers were negligent in failing to enter a timely notice of appearance and in botching the first of two Motions to Vacate. And when his lawyers refused to pay the terms, the default judgments were re-instated and he was thrown out of court. Two issues are presented for review.

1. Was it an abuse of discretion to impose on Petitioner, rather than his lawyers, the attorney fees incurred as a result of his lawyers' negligent failure to, among other things, enter a timely Notice of Appearance?

2. Did the trial court's imposition of these terms result in a denial of access to the courts?

D. STATEMENT OF THE CASE

1. The facts of the case.

Petitioner, Seil Revels, and the LLC he used to own, SQPUTT, LLC, were defendants in a suit brought by Respondent, Jacob Beckwith. CP 1.

Mr. Revels invented a putting trainer and the claims in the suit arose from his efforts to manufacture and sell the invention. CP 1, 2. SQPUTT, LLC was a Washington Limited Liability Company Mr. Revels formed to manufacture and market the invention. CP 2, 3.

In August 2011, Mr. Revels offered to bring Mr. Beckwith in to the venture as an investor and possible manufacturer of the product. CP 1, 2. They had a falling out, and Mr. Beckwith commenced suit against Mr. Revels and SQPUTT, LLC by filing a Complaint in King County Superior Court on May 28, 2013. CP 1.

The Complaint was served on Mr. Revels on May 30. CP 7. Mr. Beckwith served SQPUTT, LLC's registered agent at Davis Wright Tremaine on June 3, 2013. CP 8. On June 13 Mr. Revels spoke with an attorney and, at the conclusion of their meeting on June 18 Seattle attorney Ryan Hogaboam, and the firm of inVigor Law Group PLLC agreed to defend the case. (Declaration of Seil Revels Filed in Support of Motion on

the Merits).[1] One of his attorneys said they would file the Answer on June 20, 2013. *Id.*

They did not file the Answer as promised or otherwise notify Mr. Beckwith's attorney that they represented the defendants, and a default judgment was entered against Mr. Revels personally on June 21, 2013. CP 15, 16. A default judgment was entered against SQPUTT on June 25, 2013. CP 25.

Mr. Revels' attorneys did not serve a Notice of Appearance until July 15, 2013. CP 41. They filed an Answer on behalf of both defendants on June 24, 2013. CP 18. They did not serve the Answer until July 12, 2013. CP 47.

The defense attorneys filed a Motion to Vacate the Judgments. CP 30-36. But it was denied for defective procedure. CP 66 - 68. The second attempted Motion to Vacate was filed on August 5, 2013 and noted for hearing without oral argument. CP 69. After making four findings of fact, on August 15, 2013 the trial court, Judge Jim Rogers, vacated both Judgments ***conditionally*** and stayed the judgments for 14 days. CP 140, 141.

The four findings of fact, which are not in dispute, were:

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[1] They drafted a Declaration for Mr. Revels to say he retained them on June 20, but that is not correct. CP 39. They undertook to defend the case on June 18.

1. Substantial evidence exists to support, at least prima facie, a defense to the claim asserted by the opposing party;

2. The moving party's failure to timely appear in the action and answer the opponent's claim was occasioned by mistake, inadvertence, surprise or excusable neglect;

3. The moving party acted with due diligence after notice of entry of the default judgment; and

4. No substantial hardship shall result to the opposing party. CP 140, 141.

The condition was that Mr. Revels, personally, had to pay plaintiff's attorney fees and costs allegedly incurred in obtaining the default judgments and responding twice to the two Motions to Vacate the Judgments. CP 140-144. The Order Awarding Attorney's Fees and Setting Deadline for Payment/Satisfaction of Conditional Order gave Mr. Revels 14 days to pay, and it said if the defendants did not pay, then the Default Judgments "shall remain in full force and effect and defendants shall be entitled to no further relief from entry of said judgments." CP 164, 165.

His lawyers told the trial court that Mr. Revels had no funds. CP 157. Mr. Revels was unemployed, lives with his parents, and had no funds with which to pay the award. (See Mr. Revels' Declaration in Support of Motion on the Merits.)

He asked his former attorneys to pay some or all the award because it appeared to him that the Default Judgments were entered due to their mistakes. *Id.* After agreeing to take the case, they failed to telephone, email, FAX or otherwise notify plaintiff's attorneys of the fact that they were appearing as counsel. They should have done so on June 18, 19, and/or 20. If they had taken this simple step, then the Defendants would have been entitled to notice of Plaintiff's Motion for Entry of Default on June 21. The defense lawyers told Mr. Revels they would not pay.

On September 16, 2013, the default judgments were re-instated. CP 166-168.

2. Procedural history.

Mr. Revels retained new counsel and a timely Notice of Appeal was filed on September 18, 2013. CP 176.

Mr. Revels and SQPUTT brought a Motion on the Merits, which was denied on November 5, 2013.

At a sheriff's sale on September 18, 2013, Mr. Beckwith bought Mr. Revels' interest in SQPUTT; thereafter SQPUTT retained new counsel and SQPUTT's appeal was voluntarily withdrawn and dismissed.

The Court of Appeals denied all relief and affirmed the trial court by unpublished opinion on August 4, 2014. The opinion failed to address two of the issues pertaining to the assignments of error.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Summary of argument.

Review should be accepted under RAP 13.4(b)(1) and (4) because the decision of the Court of Appeals conflicts with the heart of this Court's decision in *Morin v. Burris*, 160 Wn.2d 745, 161 P.3d 956 (2007), because the trial court's exercise of discretion was inequitable, unjust and unfair and, therefore, an abuse of discretion, and because the trial court's conditional sanction resulted in a denial of access to the courts. Poor peoples' access to justice and the conduct of lawyers *vis a vis* their clients when defending a claim are issues of substantial public interest.

2. The decision conflicts with the principles stated in *Morin v. Burris, Id.*

The late Justice Chambers stated the principles governing default judgments most recently in *Morin v. Burris, Id.*, Justice Bridges concurring. He wrote for the unanimous Court:

> Again, we do not favor default judgments. We prefer to give parties their day in court and have controversies determined on their merits. A proceeding to vacate or set aside a default judgment is equitable in its character, and the relief sought or afforded is to be administered in accordance with equitable principles and terms. Thus, for more than a century, it has been the policy of this court to set aside default judgments liberally. *Hull v. Vining*, 17 Wn. 352, 360, 49 P. 537 (1897) (" 'where there is a showing, not manifestly insufficient, the court should be liberal in the exercise of its discretion in furtherance of justice.' ") (quoting Robert Y. Hayne, New Trial and Appeal § 347). (Other internal citations omitted.).

While not directly addressing the issue of the sanctions that may be imposed, the Court stated clearly that default judgments are not favored and equitable principles must inform the court's decisions, 1) whether to vacate a default judgment, and 2) what terms, if any, should be imposed. "The relief sought or afforded is to be administered in accordance with equitable principles and terms." *Id.* The court should be liberal, not punishing, in the exercise of its discretion in furtherance of justice. Justice is served when parties have their day in court and controversies are determined on their merits. Justice is not served when parties are punished and thrown out of court for their lawyer's mistakes.

The appellate court's primary concern should be "that a trial court's decision on a motion to vacate a default judgment is just and equitable." *Showalter v. Wild Oats*, 124 Wn.App. 506, 101 P.3d 867 (Div. 2 2004). Those principles were not applied here.

It is undisputed that the default judgment against Mr. Revels should have been vacated because, as the trial court concluded, four grounds existed:

> 1. Substantial evidence exists to support, at least prima facie, a defense to the claim asserted by the opposing party;
>
> 2. The moving party's failure to timely appear in the action and answer the opponents claim was occasioned by mistake, inadvertence, surprise or excusable neglect;

3. The moving party acted with due diligence after notice of entry of the default judgment; and

4. No substantial hardship shall result to the opposing party. CP 140, 141.

It was undisputed on appeal that the default judgments should have been vacated. The only issue was who should pay Mr. Beckwith's attorney fees. It was illiberal and inequitable to saddle Mr. Revels with those costs under the circumstances of this case.

3. The trial court's exercise of discretion by imposing the sanctions on Mr. Revels personally was inequitable, unjust and unfair and, therefore, an abuse of discretion.

The Court of Appeals said, "the award made Beckwith whole and rebalanced the equities between the parties." Slip op. at 6. In fact it gave Mr. Revels' attorneys an opportunity to blame their client, which they promptly did. He called the lawyers within two weeks of service and retained them within the time to appear and answer. If they had simply looked at the King County Superior Court records, which are available on line 24 hours a day, they would have seen the Affidavit of Service. CP 63. It showed Mr. Revels was served on May 30, 2013. Instead, his lawyers asked him to sign a declaration that Mr. Beckwith asserts is "a fabrication, and is demonstrably false." CP 105. He reasonably relied on their

expertise. It is illiberal and unfair to blame one who is not a trained lawyer for his lawyers' procedural and tactical mistakes.

The standard of review is abuse of discretion, and that means the trial court's imposition of an award of attorney fees on the client rather than the lawyer who caused the problem should be affirmed only if the trial court did not abuse its discretion in doing so. Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 819 P.2d 370 (1991), citing, *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). The decision to punish the client for the lawyers' mistakes was arbitrary and capricious.

Judge Wiggins' analysis in *State v. Rundquist*, 79 Wn.App. 786, 905 P.2d 922 (1995) of when an abuse of discretion exists should be applied to this case. He wrote:

> .....we find abuse "when the trial court's decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons." (citation omitted) Three steps are included in this analysis:
>
> first, the court has acted on untenable grounds if its factual findings are unsupported by the record;

> second, the court has acted for untenable reasons if it has used an incorrect standard, or the facts do not meet the requirements of the correct standard;
>
> third, the court has acted unreasonably if its decision is outside the range of acceptable choices given the facts and the legal standard.

a. No evidence supported the decision to impose the terms on Mr. Revels instead of the attorneys who were at fault.

One looks in vain for any factual finding to support the trial court's decision to impose terms on Mr. Revels personally. The evidence and argument of Mr. Beckwith's attorneys supported only the conclusion that Mr. Revels should not be saddled with his lawyer's mistakes. They wrote:

> Moreover, the declarations of service were on file within days of service of process, and easily could have been reviewed by counsel to confirm the date service of process occurred. No excuse exists for not having looked at the declarations of service. The motion for default judgment was filed and granted prior to any answer having been served, and no excuse exists for not having timely answered and for not notifying plaintiff's counsel that counsel for the defendants had been engaged. CP105.

While the trial court made no finding on the issue of who should pay, its conclusion that the client should pay is clearly not supported by the record.

A conclusory action taken without regard to the surrounding facts and circumstances is arbitrary and capricious. *Michael Hayes v. City of Seattle*, 131 Wn.2d 706, 934 P.2d 1179 (1997). The trial court's decision

to impose the penalty on the client was conclusory and made with no apparent regard of the surrounding facts and circumstances. Indeed, Mr. Revels' attorneys made a plea of poverty. CP 157. Those facts and circumstances should have been taken into account.

Arbitrary and capricious is defined as a " 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.' " *Id., citing Kendall v. Douglas, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist. 6*, 118 Wn.2d 1, 14, 820 P.2d 497 (1991) (quoting *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 858-59, 576 P.2d 888 (1978).

Absent findings to justify its conclusion, the Court should hold that the trial court's conclusion was arbitrary and capricious.

b. The trial court and court of appeals used the wrong standard.

To suggest that Mr. Revels, who had no ability or opportunity to control his lawyers' performance, should be liable under an *agency* theory does not reflect today's real world. *Slip Op. at 6.* While there does not appear to be any Washington decision so holding, an old U.S. Supreme Court decision said that the law of agency governs the issue, but that harsh approach is appropriately denounced in light of contemporary realities. *Compare, Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962). (There is

certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty.) and 1988 DUKE L.J. 733 (1988), Notes: The Agency Theory of the Attorney Client Relationship: An Improper Justification for Holding Clients Responsible for Their Attorneys' Procedural Errors (Courts should completely abandon the rigid agency theory and, to the greatest extent possible within the context of the primary litigation, pinpoint the person responsible for the abuse or delay.) When the delay only caused a monetary loss, the proper sanction would be to impose costs on the attorney. *Id.*

When the lawyers were engaged with time to appear and answer, and promised to do so, and then botched their first attempt to undo the mess they created, the proper standard for imposition of terms is that the lawyer should pay, not the client.

c. One correct standard is to impose such terms as are just and that did not happen here.

Under CR 60(b), the court may grant a motion for relief from judgment "upon such terms as are just." It was unfair, inequitable and unjust to subject Mr. Revels' right to defend the claims on his personal payment of Mr. Beckwith's attorney fees for which he, Mr. Revels, was entirely blameless.

d. The trial court's decision was outside the range of acceptable choices given the facts and the legal standard.

The facts are that Mr. Revels entrusted his lawyers to defend the case and protect his rights, and when they failed to do so, they put their own interests above those of their clients. Instead of advising the court that they had the case in time to avoid entry of a default judgment, they drafted and filed a completely useless declaration for Mr. Revels that Mr. Beckwith asserts is "a fabrication, and is demonstrably false". CP 105.

The range of acceptable choices in a case like this one should not include throwing the defendant out of court unless he can personally pay for his lawyers' errors.

The trial court abused its discretion here. The Court should accept review because the Court of Appeals' decision was not consistent with *Morin v. Burris, supra.*

4. The trial court's action deprived Mr. Revels of access to justice.

Access to justice is clearly a matter of substantial public interest as is the Court's authority to regulate the practice of law. Both issues are presented in this case. In view of the Court's efforts to advance the goal of access to justice, it is troubling that the Court of Appeals failed completely to address the access to justice issue, which was raised in the

trial court (CP 156, 157) and presented in the briefs in the Court of Appeals.

The first principle of the Access to Justice Statement of Principles and Goals, which were adopted May 8, 2003, is that "access to justice is a fundamental right in a just society."[2] Two Access to Justice goals are implicated in this case. First, "institutions involved in the justice system must make access to justice an essential priority." Second, "access to justice shall not be limited or denied for any reason of condition or status, including finances." *Id.*

The people have a right of access to courts; indeed, it is "the bedrock foundation upon which rest all the people's rights and obligations." *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991). Citing a principle apt here in view of the defendants' inability to pay the attorney fee award, the *Puget Sound Blood Ctr* Court said:

> The administration of justice demands that the doors of the judicial system be open to the indigent as well as to those who can afford to pay the costs of pursuing judicial relief", and "[c]onsistent with our affirmative duty to keep the doors of justice open to all with what appears to be a meritorious claim for judicial relief, we hold that the plaintiff is entitled to the relief requested [waiver of fees and costs].

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[2] http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/Access-to-Justice-Board-Key-Documents

The trial court's draconian penalty, throwing Mr. Revels out of court unless within two weeks he paid the terms that were imposed because, basically, his attorneys failed to make a telephone call, denied him of access to justice. All poor people and those who work to prevent the denial of access to justice should be concerned at this outcome. The trial court appeared to be unmoved by these principles and goals.

Under the facts of this case, the terms should have been imposed on the attorneys who created the mess, not the literally poor client who trusted in their expertise. Mr. Revels should be granted his day in court.

Lastly, the opinion below says, "as for any dispute between Revels and his attorney, that issue is not before us." Slip Op. at 7. But, with respect, the conduct of the attorneys whose lack of diligence resulted in the entry of the default judgments and who botched the first attempted motion to vacate was before the court. The primary issue presented in this appeal was "who should pay?" That is a dispute between Mr. Revels and his attorneys and it was front and center in this appeal.

These issues, access to justice and the acts and omissions of the defense attorneys, are intertwined matters of substantial public interest. The Court should accept review to address them and declare, again, the principle that one's access to the courts and justice should not be contingent on one's personal wealth.

F. Conclusion

The Court of Appeals decision is not consistent with this Court's jurisprudence governing the setting aside of Default Judgments. And the denial of access to justice and conduct of the lawyers are matters of substantial public interest.

Mr. Revels asks the Court to grant this Petition for Review, reverse the Court of Appeals and trial court, and grant him his day in court.

DATED this 2nd day of September, 2014.

SCHEDLER BOND, PLLC

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Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JACOB A. BECKWITH, Respondent, v. SEIL REVELS, an individual, Appellant, SQPUTT, LLC, a Washington limited liability company, Defendant.	No. 70917-8-I DIVISION ONE UNPUBLISHED OPINION FILED: August 4, 2014

APPELWICK, J. — The issue presented on appeal is whether the trial court abused its discretion when it conditioned vacating a default judgment on the defendant's payment of the plaintiff's attorney fees. We affirm.

FACTS

On May 28, 2013, Jacob Beckwith filed a complaint against Seil Revels and SQPutt LLC in King County Superior Court. Beckwith alleged breach of contract by SQPutt for failing to repay short term loans and breach of fiduciary duty by Revels for gross negligence and intentionally misusing company funds. He also demanded an accounting from Revels. Beckwith requested a judgment of $112,811.06 against SQPutt and Revels. On May 30, Beckwith served the summons and complaint on Revels. Beckwith served the registered agent of SQPutt on June 3.

Revels met with an attorney on June 18 to discuss representation. He brought the summons and complaint to the meeting. Revels and SQPutt retained the attorney on June 20. However, by June 21, Revels failed to answer or otherwise appear in the action. As a result, Beckwith moved for an order of default and default judgment against Revels on June 21. That same day, the trial court granted Beckwith's motion and entered default against Revels.

On June 24, Revels and SQPutt filed an answer with the superior court. However, Revels did not serve the answer on Beckwith until July 12. Beckwith moved for an order of default and default judgment against SQPutt on June 25. The trial court entered default against SQPutt the same day.

On July 12, Revels and SQPutt moved to vacate default under CR 60(b)(1).[1] However, the motion was procedurally defective, because Revels noted it for a hearing, instead of obtaining a show cause order scheduling a hearing, as required by CR 60(e). Beckwith's counsel contacted Revels's counsel and requested that the defective motion be stricken and processed correctly. Revels's counsel failed to do so. As such, on July 31, the trial court denied Revels's motion to vacate without prejudice. The court pointed out that Beckwith's "counsel notified Defendants' counsel of this defect in an effort to avoid the costs of responding formally, but Defendants' counsel failed to strike the Motion."

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[1] A party moving to vacate under CR 60(b)(1) must show that (1) there is substantial evidence supporting a prima facie defense; (2) the failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) the defendant acted with due diligence after notice of the default judgment; and (4) the plaintiff will not suffer a substantial hardship if the default judgment is vacated. Little v. King, 160 Wn.2d 696, 703-04, 161 P.3d 345 (2007).

On August 5, Revels again moved to vacate default under CR 60(b)(1), this time using the correct procedure. On August 19, the trial court entered a conditional order vacating the default order and judgment against Revels and SQPutt. The court found all four of the CR 60(b)(1) requirements to be met. However, the court ruled that the two default judgments would only "be vacated once defendants have paid plaintiff the costs of filing defaults and responding to this motion." The court stayed the judgment and ordered Beckwith to file a cost bill within seven days. Beckwith submitted the cost bill four days later, requesting $3,937.50 in attorney fees. Revels opposed the request.

On September 3, the trial court awarded Beckwith $3,468.75 in attorney fees. The court reduced Beckwith's award, because the default judgment against SQPutt was entered after the answer was filed, but before it was served on Beckwith. The court specified that Revels had until 5:00 p.m. on September 13 to pay the fees. Otherwise, "the orders and judgments by default entered in this cause on June 21 and June 25, 2013, shall remain in full force and effect and defendants shall be entitled to no further relief from entry of said judgments."

Revels failed to pay Beckwith's attorney fees by September 13. On September 16, Beckwith certified to the court that Revels had not satisfied the conditions for vacating default. Revels and SQPutt appealed. SQPutt was thereafter voluntarily dismissed as a party to the appeal.[2] Revels remains.

[2] Because SQPutt is no longer a party to this appeal, we do not consider its argument that it did not receive notice of default.

DISCUSSION

Revels argues that the trial court lacked statutory authority to condition vacating the default judgment on his payment of Beckwith's attorney fees. Specifically, he asserts that RCW 4.72.010, .050, and .060 do not give courts any such power. In the alternative, Revels argues that the trial court abused its discretion under the court rules. He asserts that it is unjust to condition vacating default judgment on the defendant's payment of attorney fees where the default judgment is entered less than 30 days after service and the defendant's failure to timely appear was due to his attorney's negligence.

Revels's statutory argument fails. Chapter 4.72 RCW does not apply, because it has been superseded by CR 60(b). State v. Scott, 20 Wn. App. 382, 386, 580 P.2d 1099 (1978), aff'd, 92 Wn.2d 209, 595 P.2d 549 (1979). CR 60(b) "now provides the exclusive basis for modifying or vacating final judgments in both criminal and civil cases." Stanley v. Cole, 157 Wn. App. 873, 881 n.12, 239 P.3d 611 (2010). Vacating a default judgment under CR 60(b) lies within the discretion of the trial court. Scott, 20 Wn. App. at 388. The trial court did not lack statutory authority to condition vacating default on the payment of fees.

CR 60(b) allows the trial court to award terms that it considers just to either a moving party or opposing party in a motion to vacate default judgment: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment." See also Housing Auth. of Grant County v. Newbigging, 105 Wn. App. 178, 192, 19 P.3d 1081 (2001). "The decision to impose terms as a condition on an order setting aside a judgment lies within the discretion of the court." Knapp v. S.L. Savidge, Inc., 32 Wn. App. 754, 756, 649 P.2d 175 (1982). The rule is equitable in nature.

Newbigging, 105 Wn. App. at 192. The trial court has liberal discretion to preserve substantial rights and do justice between the parties in awarding terms. Id. A trial court abuses its discretion when it is exercised on untenable grounds or for untenable reasons. Morin v. Burris, 160 Wn.2d 745, 753, 161 P.3d 956 (2007).

In Newbigging, the trial court imposed terms and awarded the defendant half her attorney fees for successfully vacating a default judgment. 105 Wn. App. at 192-93. There, the plaintiff obtained default under highly questionable circumstances, but the defendant bore some responsibility for her predicament. Id. Given these equities, the trial court did not abuse its discretion in splitting the difference. Id. at 193.

In Knapp, the plaintiff and his attorney failed to appear when the case was called, instead showing up 35 minutes late. 32 Wn. App. at 757. In the intervening time, the trial court granted the defendants' motion to dismiss. Id. The trial court vacated dismissal on the condition that the plaintiff pay $1,000 to each of the two defendants as terms. Id. at 756. The appellate court held that imposing these terms was an abuse of discretion. Id. at 758. First, the terms were unrelated to the reasons for dismissal. See id. at 757. Second, both defense attorneys spoke to plaintiff's counsel the day before and knew he was prepared for trial and intended to be in court. Id. And, third, the order of dismissal was presented to the judge before the defendants attempted to telephone plaintiff's counsel. Id. "At best, counsel acted in a manner inconsistent with basic professional courtesy." Id. Therefore, it was inequitable to impose terms as the trial court did. See id. at 757-58.

Here, Beckwith served Revels on May 30. Revels did not seek representation until June 18 or retain an attorney until June 20. Revels's attorney then failed to file a notice

of appearance or an answer, or even call Beckwith's attorney, by June 21. As a result, more than 20 days elapsed since service, and Beckwith expended costs moving for default against Revels. CR 12(a)(1); CR 55(a)(1). Revels acknowledges that Beckwith was within his rights in moving for default. Revels then filed an answer on June 24, but failed to serve the answer on Beckwith until July 12. Without notice of this answer, Beckwith again expended costs moving for default against SQPutt.

Then, on July 12, Revels filed a defective motion to vacate the default. Beckwith's counsel notified Revels's counsel, giving him the opportunity to correct the defect and avoid additional time and expense responding to the motion. Revels's counsel failed to correct the error. As a result, Beckwith was again forced to expend costs in pointing out to the court that the motion was defective. When Revels finally filed a proper motion to vacate, Beckwith again had to respond.

These facts demonstrate that both Revels and his attorney made errors that resulted in extra work and expenses for Beckwith. But for these errors, Beckwith would not have needed to twice move for default or twice respond to Revels's motion to vacate. The trial court's award of fees directly related to these expenses. The award made Beckwith whole and rebalanced the equities between the parties.

Revels further asserts that it was an abuse of discretion for the trial court to impose terms on him rather than on his attorney, who Revels claims made the mistakes. Revels fails to cite any authority for the notion that he is not responsible for the actions of his attorney/agent in the course of litigation. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments without citation to

authority need not be considered). And, as for any dispute between Revels and his attorney, that issue is not before us.

Under the circumstances, we cannot say that the trial court abused its discretion in conditioning vacating the default judgment on Revels's payment of Beckwith's attorney fees.

We affirm.

Eppelwick, J

WE CONCUR:

Trickey, J

Spearman, C.J.