

**FILED**  
**SEPTEMBER 24, 2020**  
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

In the Matter of the Marriage of:	)	No. 36972-2-III
	)	
NICHOLAUS MILEY,	)	
	)	
Appellant,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
ANNA PYLYPETS,	)	
	)	
Respondent.	)	

PENNELL, C.J. — Nicholaus Miley has filed a pro se appeal of a trial court order denying his motion to vacate a divorce decree and final judgment. We affirm the trial court’s order and award Anna Pylypets reasonable attorney fees under RAP 18.9(a).

## FACTS

Anna Pylypets and Nicholaus Miley married in 2014. In 2017, Mr. Miley petitioned to invalidate the marriage, alleging immigration fraud. Ms. Pylypets counterclaimed for divorce. The morning of trial, Mr. Miley withdrew his petition after the trial court denied his motion for continuance. Trial then proceeded on the counterclaim, and the only evidence came from Ms. Pylypets's uncross-examined testimony. The trial court issued a divorce decree consistent with Ms. Pylypets's counterclaim. It also sanctioned Mr. Miley under CR 11 and RCW 4.84.185 for failing to make a reasonable inquiry into the factual or legal basis of his petition, and granted Ms. Pylypets reasonable attorney fees. Mr. Miley did not appeal from the divorce decree or final judgment.

Approximately one year after the final judgment, Mr. Miley filed a motion to vacate under RCW 4.72.010 and CR 60. Mr. Miley's motion centered on the substance of the trial court's decree. He did not submit any new evidence in support of his motion. Mr. Miley instead argued that the trial court made improper discovery rulings, Ms. Pylypets failed to satisfy her discovery obligations, and Ms. Pylypets provided false testimony at trial. The court denied Mr. Miley's motion to vacate.

Mr. Miley appeals.

### ANALYSIS

A motion for relief from judgment is reviewed for abuse of discretion. *See Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). Review “is limited to the trial court’s decision, not the underlying order the party seeks to vacate.” *In re Marriage of Persinger*, 188 Wn. App. 606, 609, 355 P.3d 291 (2015).

No abuse of discretion occurred here. Mr. Miley’s arguments are that the trial court’s judgment was erroneous as a matter of law. Such complaints should have been asserted in a direct appeal, not in a motion for relief from judgment. *See In re Marriage of Tang*, 57 Wn. App. 648, 654-56, 789 P.2d 118 (1990). The time for appealing from entry of the divorce decree and final judgment has long since expired. *See* RAP 5.2. It is improper to resurrect an untimely appeal under the guise of a motion for relief from judgment.

### ATTORNEY FEES


Ms. Pylypets requests attorney fees and costs under RAP 18.1(a), RCW 26.09.140, and RAP 18.9(a). We award Ms. Pylypets fees and expenses under RAP 18.9(a), which allows sanctions for a frivolous appeal. Mr. Miley’s appeal does not raise any debatable legal issues. It is frivolous and an award of fees and expenses is appropriate as a sanction. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987).

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CONCLUSION

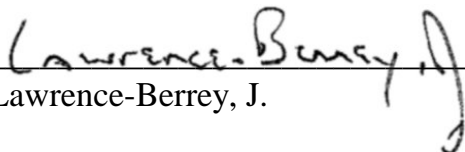
The order denying relief from judgment is affirmed. Ms. Pylypets is awarded reasonable attorney fees and expenses under RAP 18.9(a), subject to compliance with RAP 18.1(d).

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.

  
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Pennell, C.J.

WE CONCUR:

  
\_\_\_\_\_  
Siddoway, J.

  
\_\_\_\_\_  
Lawrence-Berrey, J.