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ORIGINAL

No. 64101-8-I

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COURT OF APPEALS, DIVISION I  
FOR THE STATE OF WASHINGTON

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JAMES ROW,

Respondent,

v.

TYE AND JENNIFER BARRINGER, and  
ALL OTHER TENANTS,

Appellants.

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BRIEF OF RESPONDENT

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Philip A. Talmadge, WSBA #6973	Evan Loefeller, WSBA #24105
Sidney C. Tribe, WSBA #33160	Law Office of Evan Loefeller, PLLC
Talmadge/Fitzpatrick	2033 6 <sup>th</sup> Avenue, Suite 1040
18010 Southcenter Parkway	Seattle, WA 98121-2527
Tukwila, WA 98188-4630	(206) 443-8678
(206) 574-6661	

Attorneys for Respondent

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A. INTRODUCTION

In this frivolous appeal of an order denying a frivolous motion, Tye and Jennifer Barringer make a third attempt to challenge a \$49 process server fee and \$714 in statutory attorney fees and costs awarded as part of a default judgment. This third attempt was made 18 months after entry of the judgment.

Counsel for the Barringers admitted at oral argument in the trial court that their motion was based on mistake, not fraud. It was therefore time-barred by the one-year limitation for bringing such motions under CR 60(b)(1). Even assuming for the sake of argument that the Barringers had any evidence that the judgment was obtained by fraud or misrepresentation, their counsel also admitted at oral argument that they knew all of the pertinent facts in March 2008, and that there was “no reason” to delay bringing of the motion until July 2009.

This appeal is without merit and is solely designed to run up James Row’s legal expenses. The trial court’s well-supported orders should be affirmed, and Row should be awarded attorney fees for having to defend this frivolous appeal. RAP 18.9(a).

B. RESTATEMENT OF ISSUES PERTAINING TO ASSIGNMENT OF ERROR

The Barringers fail to state the issues pertaining to assignments of error as required by RAP 10.3(a)(4). However, Row believes the central issues in the appeal are:

1. Does a trial court act within its discretion in denying a CR 60(b) motion to vacate a judgment entered 18 months prior, when the movant admits that there was no reason, explanation, or excuse for the delay?

2. When a movant admits that a CR 60(b)(4) motion purportedly based on fraud is actually based on mistake, does a trial court act within its discretion in concluding that the motion is time-barred under the one-year limitation of CR 60(b)(1)?

3. Does a trial court act within its discretion in finding that a motion is frivolous when it has no basis in law or fact, is time-barred, is identical to a motion that was denied a year earlier, and is designed to drive up attorney fees for the opposing party?

4. Is the Barringers' appeal frivolous and/or taken for purposes of delay within the meaning of RAP 18.9?

C. RESTATEMENT OF THE CASE

*It is critically important that this Court take note of the numerous errors in dates in Row's fact recitation. These date errors are particularly*

central to this appeal, because the trial court's order rests in part on the conclusion that the Barringers' 2009 motion was time-barred.

First, the Barringers state that they were served with the summons and complaint in this matter "On January 4, 2009." Br. of Appellants at 2. It was in fact January 4, 2008. CP 184. Next, they state that that the response deadline was "January 12, 2009." Br. of Appellants at 2. It was January 11, 2008. CP 190. They then claim that "the motion for entry of default" and the "Judgment and Order of Default" were ordered on January 14, 2010. Br. of Appellants at 3. The order of default was entered on January 14, 2008. CP 181. They claim that a motion to set aside the judgment was brought on March 11, 2009. Br. of Appellants at 3. It was brought on March 11, 2008. CP 167. The rest of the dates appear to be accurate.

The Barringers are former tenants of Row. They failed to pay rent. CP 194. In January 2008, Row obtained a judgment, order of default and order for writ of restitution for back rent, attorney fees, and costs in King County Superior Court. CP 181-83.

Two months later in March, they moved to set aside the default judgment under CR 60(b)(4), citing defects in service and irregularities in entry of the order. CP 158-67. They also argued that the judgment should not have contained a \$49 process server fee, alleging that the process

server Row used was unregistered. CP 130-31. They impugned the Commissioner (the Honorable Jacalyn D. Brudvik) who entered the default order, saying that “her actions were more akin to a ‘rubber stamp’ than a careful examination of the records and files.” CP 133. After several botched attempts by the Barringers to note and re-note the CR 60(b)(4) motion (CP 118) it was heard in May of 2008. The motion was denied. CP 115.

After the 2008 CR 60(b)(4) motion was denied, Row nevertheless attempted to settle the \$49 dispute to prevent further needless litigation. CP 71. He offered to enter an amended judgment that removed the \$49 process server fee. *Id.* However, when the Barringers sent their proposed judgment, they also removed nearly \$2,000 in attorney fees that had been awarded to Row for having to defend the Barringers’ 2008 CR 60(b) motion. CP 74-76. When Row objected to that additional deduction, settlement talks ceased.

In December 2008, the Barringers filed suit in federal district court against Row’s *attorney*, again alleging that the \$49 process server fee was improper. CP 84. In July 2009, their suit was dismissed for failure to state a claim. CP 83-100.

After the federal suit failed, the Barringers returned to state court in July 2009 for yet another CR 60(b)(4) motion under the same cause

number as the May 2008 CR 60(b)(4) motion. They generally alleged fraud regarding the process server fees, and complained that the trial court had insufficient evidence to support the \$400 in attorney's fees awarded in the January 2008 default judgment. CP 105-12. The motion came before the Honorable Susan Gaer, Commissioner. CP 11.

At oral argument on the 2009 CR 60(b)(4) motion, the Barringers' counsel repeatedly admitted that the motion actually alleged mistakes and errors, and not fraud. CP 52; VRP 9, 12. When asked for an explanation for the long delay in bringing the motion, the Barringers' counsel alternately stated that there was no explanation, and then cited the filing of the federal court case as justification. VRP 6-7, 11-12. Because more than one year had passed since entry of the judgment and there was no justification for the delay, the trial court concluded that the motion was time-barred and dismissed it. CP 52-53.

In a subsequent motion by Row for additional attorney's fees, the trial court concluded that the 2009 CR 60(b)(4) motion was frivolous. CP 2-3. The court in its oral ruling noted that she could see "no basis" for the repeated re-litigation of the same \$49 issue, "except incurring attorney's fees." VRP 31. Despite these findings, in another attempt to end the litigation, the trial court reduced Row's attorney fee award by \$50 to eliminate the \$49 contested process server fee as an issue. *Id.*

The Barringers were still not satisfied, and now have appealed both the dismissal of their 2009 CR 60 motion and the finding that the motion was frivolous. CP 1, 8.

D. SUMMARY OF ARGUMENT

This appeal has no merit. For more than a year, Tye and Jennifer Barringer have made repeated attempts to modify a default judgment to remove a \$49 service fee. In May 2008, they brought a CR 60 motion alleging fraud and other errors. The motion was denied. In December 2008 they filed a federal court action, making the same claims. The action was dismissed for failure to state a claim. In July 2009, more than sixteen months after entry of the default judgment, they brought yet another CR 60 motion, again alleging that the \$49 fee was obtained fraudulently. Their motion was dismissed as untimely and frivolous. The trial court concluded that the only apparent basis for bringing the latest motion was to drive up Row's legal expenses .

As the Barringers' opening brief demonstrates, this appeal is frivolous. Like the many motions and suits before it, its purpose is not to present a colorable legal argument, but to drive up Row's legal expenses. The trial court's orders should be affirmed, and Row should be awarded attorney fees on appeal. RAP 18.9(a).

E. ARGUMENT

(1) Standard of Review

The Barringers challenge the trial court's denial of their CR 60(b) motion to vacate the January 2008 judgment, the trial court's ruling that their motion was frivolous, and the award of \$1,500 in attorney fees to the Rows for having to defend the frivolous motion.

All of these rulings are reviewed for abuse of discretion. A trial court's decision to vacate a judgment is reviewed for an abuse of discretion. *Ellison v. Process Systems Inc. Const. Co.*, 112 Wn. App. 636, 50 P.3d 658 (2002), *review denied*, 148 Wn.2d 1021 (2002). Regarding a finding that an action is frivolous, our Supreme Court unequivocally has stated:

...an award of attorney fees that is authorized by statute is left to the trial court's discretion and will not be disturbed "in the absence of a *clear* showing of abuse of discretion."  
... This standard of review is appropriate for decisions under RCW 4.84.185.

*Fluke Capital & Mgmt. Servs. Co. v. Richmond*, 106 Wn.2d 614, 625, 724 P.2d 356 (1986) (citations omitted).

A court abuses its discretion in deciding a motion for relief from judgment only when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. *Vance v. Offices of Thurston County Comm'rs*, 117 Wn. App. 660, 71 P.3d 680, *review denied*, 151 Wn.2d 1013 (2003). This Court will not overturn a trial court's decision

on a motion to vacate a judgment for mistake, inadvertence, excusable neglect or fraud unless it plainly appears that the trial court abused its discretion. *Scanlon v. Witrak* 110 Wn. App. 682, 42 P.3d 447 (2002), *review denied*, 147 Wn.2d 1024 (2002).

This Court reviews findings of fact and conclusions of law by determining whether substantial evidence supports the challenged findings and whether the findings support the conclusions of law. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). Unchallenged findings of fact are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

- (2) The 2009 CR 60 Motion Was Time-Barred and Subject to Res Judicata
  - (a) The Barringers Admitted Their 2009 Motion Was Based on Mistake, Not Fraud, and That There Was No Explanation or Excuse for the Delay

The Barringers argue that the trial court incorrectly concluded that their CR 60(b) motion was based on mistake, not fraud or clerical error. Br. of Appellants at 12-27. They argue that the trial court erred in concluding that their action was time-barred under CR 60(b)(1) and CR 60(b)(4). *Id.* at 11.

CR 60(b)(1) provides for motions to correct judgments on grounds of “[m]istakes, inadvertence, surprise, excusable neglect or irregularity in

obtaining a judgment or order.” Such motions must be brought within one year. CR 60(b); *Plouffe v. Rook*, 135 Wn. App. 628, 634 n.3, 147 P.3d 596 (2006).

Although the Barringers’ motion papers alleged a CR 60(b)(4) motion, presumably to avoid the one-year restriction of CR 60(b)(1), their counsel, Scott Peterson, repeatedly conceded at oral argument that the motion was really brought to correct a “mistake:”

MR. PETERSON: *I’m asking this Court to correct a mistake that was previously made in awarding process server fees that are not allowed under the appropriate Statute. Additionally I’m – I’m stating that the Court should not have awarded attorney fees without proper documentation.*

VRP 9.

MR. PETERSON: *And I’m asking this Court that you take an affirmative stand to myself, to all of the attorneys, to the defendants that this Court is going to correct mistakes when they [sic] – when they find it. It was a mistake to enter the process server fees. And I’m asking this Court to correct a mistake that has been made.*

VRP 12.

The trial court gave the Barringers ample opportunity to explain how their motion was based on fraud or misrepresentation rather than mistake. They admitted that it was the latter. CR 60(b)(1), not CR 60(b)(4), applied, and the motion was time-barred.

Even if the one-year restriction does not apply, motions for fraud can still be considered time-barred. All CR 60 motions must be brought within a reasonable time. CR 60(b). Lack of a reasonable explanation for delay weighs heavily against a finding that a CR 60(b)(4) motion was brought within a reasonable time. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 312, 989 P.2d 1144 (1999), *review denied*, 140 Wn.2d 1026 (2000).

The Barringers admitted that they knew all of the relevant facts in March 2008, yet had no reasonable explanation for the long delay in bringing their second CR 60 motion until July 2009:

THE COURT: Counsel, what I want you to explain to me is why you are bringing this motion well more than a year after the matter – the order was entered, and more than a year after your prior motion to vacate. The default was denied.

MR. PETERSON: Well, I wish we have [sic] brought it earlier. The – there is – *there is no reason*.

RP 6. When again pressed to explain why the motion was not timely, Peterson admitted the precise mistake he was challenging, and alleged that the mistake was made by the trial court:

THE COURT: ...Why should this Court not find that your motion is not timely and dismiss it?

MR. PETERSON: Well, I'm asking the Court not do that because prior departments have – have exercised a pattern of not reviewing materials, not checking to see if process servers were properly registered.

RP 8. Peterson made no attempt to argue that the motion was brought within a reasonable time, or to offer a reasonable explanation for the delay. He equivocally claimed that the federal court claim against Row's counsel was somehow justification for delay of the second CR 60 motion, but had no evidence to back up his claims. RP 6-8.

The trial court found, based on these statements, that "Defense counsel had no explanation for the delay from May of 2008 to July of 2009 in bringing this matter forward." CP 10. The Barringers do not challenge this finding on appeal. Br. of Appellants at vii – ix. It is therefore a verity. *Cowiche Canyon*, 118 Wn.2d at 808.

The trial court did not abuse its discretion in taking the Barringers' counsel at his word. After the Barringers' repeated admission that their CR 60 motion was based on mistake, not fraud, and the unchallenged finding of fact that they had no excuse for the 16-month delay in challenging the judgment, the trial court correctly concluded that the motion was time barred. CP 14, 51-53; VRP 13.

(b) The July 2009 CR 60 Motion Largely Repeated the Unappealed May 2008 CR 60 Motion and Raised No New Facts, and Therefore the Issue Was Res Judicata

Res judicata encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated

in a final judgment, a matter may not be re-litigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding. *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 328-29, 941 P.2d 1108 (1997). Res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at that time. *Kelly-Hansen*, 87 Wn. App. at 329.

When a party has the opportunity to litigate a claim to the trial court and either does not present an issue that could have been presented, or argues the issue and loses, failure to appeal makes the claim res judicata, and a CR 60 motion cannot revive it. *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 898, 1 P.3d 587 (2000).

Here, the Barringers' July 2009 CR 60 motion raised no fact or issue that could not have been raised in their May 2008 CR 60 motion. In fact, some of the issues *were* raised and adjudicated in May 2008. They admit that they knew all of the relevant facts as early as March 2008, yet they did not appeal denial of that 2008 motion.

Not only is the Barringers' second CR 60 motion time-barred, but it is res judicata. The trial court did not abuse its discretion in denying the motion.

(3) Even If the Entire Motion Were Not Time-Barred and Res Judicata, the Substantive Arguments Regarding the 2008 Judgment Have No Merit

The Barringers raise four substantive challenges in their Brief of Appellants. First, they claim that the trial court should have set aside the process server fee in the 2008 judgment because it was fraudulently obtained. CP 108; Br. of Appellants at 20-29. Second, they claim that the 2008 award of \$400 in attorney's fees and \$314 in costs was improper "clerical error" because the trial court did not actually award those amounts. CP 110-12; Br. of Appellants at 10-20. Third, they claim that the trial court erred in concluding that their 2009 CR 60 motion was frivolous. Br. of Appellants at 42-49. Fourth, they claim that the trial court's \$1,500 fee award under CR 11 was not supported by the record, and that the court should have segregated fees for "unsuccessful claims." Br. of Appellants at 29-41.

Even disregarding the fact that their entire motion was time-barred and res judicata, the Barringers' individual arguments on appeal also have no merit.

(4) There Is No Evidence of Fraud or Misrepresentation Regarding the Process Server Fee

Having admitted to the trial court that their motion was brought to correct a mistake, (RP 9, 12) the Barringers again claim on appeal that the trial court should have nonetheless vacated portions of the January 2008 judgment for fraud or misrepresentation. Br. of Appellants at 28.

On review of an order denying a motion to vacate a judgment, only the propriety of the denial, not the impropriety of the underlying judgment, is before the reviewing court. *Barr v. MacGugan*, 119 Wn. App. 43, 78 P.3d 660 (2003). Therefore, the Barringers are precluded from challenging the January 2008 judgment in this appeal.

However, even assuming that the Barringers can properly challenge the 2008 judgment, they have no evidence to support their claim that the judgment should be vacated based on fraud or misrepresentation.

CR 60(b)(4) authorizes a trial court to vacate a judgment based on fraud, misrepresentation, or other misconduct of an adverse party. There are two ways to prove fraud or misrepresentation: (1) prove the nine elements of fraud; or (2) show that the nonmoving party breached the affirmative duty to disclose a material fact. *Baddley v. Seek*, 138 Wn. App. 333, 338-39, 156 P.3d 959 (2007) (citing *Baertschi v. Jordan*, 68 Wn.2d 478, 482, 413 P.2d 657 (1966)).

To establish a claim for fraud, in general a plaintiff must prove the following elements: (1) representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of the truth; (5) the speaker's intent that the recipient will rely upon the fact; (6) ignorance on the part of the recipient; (7) reliance on the part of the recipient; (8) the recipient's right to rely; and (9) recipient's resulting damage as a result of his reliance. *Williams v. Joslin*, 65 Wn.2d 696, 697, 399 P.2d 308 (1965). Each of these elements must be proved by clear, cogent, and convincing evidence. *Id.* at 697. The burden is on the plaintiff to prove the existence of all of the elements of fraud. *Puget Sound Nat'l Bank v. McMahon*, 53 Wn.2d 51, 54, 330 P.2d 559 (1958). The absence of any element is fatal to a claim. *Id.* at 54.

The Barringers offer no evidence or argument that Row's counsel knew the process server to be unregistered, which would be essential to proving fraud or misrepresentation. *Baddley*, 138 Wn. App. at 338-39. They merely make the circular statement that Row "falsely claimed" that the server was registered, with no citation to the record. Br. of Appellants at 23.

The Barringers also suggest that the judgment summary contained cost awards that were somehow not pled by Row nor ordered by the trial court. Neither assertion is true. Row's complaint requested "the amount

of rent and other charges owing at the time of judgment.” CP 193. The trial court’s order included the judgment summary, which properly listed all of the costs owing at the time of judgment. CP 181-83.

The Barringers have not alleged sufficient facts to prove fraud or misrepresentation. The trial court did not abuse its discretion in denying their motion to vacate.

(5) The Judgment Summary Is Part of the Trial Court’s Order Signed by the Commissioner, It Was Not Concocted by a Clerk

The Barringers’ argument regarding “clerical errors” in the judgment summary is perplexing. Br. of Appellants at 9-11. They claim that the summary’s inclusion of \$400 in attorney’s fees and \$314 in court costs is “clerical error” because the trial court allegedly did not order them. *Id.* They state that inclusion of those amounts in the judgment summary was “clerical error” because the trial court did not order them. Br. of Appellants at 10-11.

The Barringers are wrong about the judgment summary. The summary was part and parcel of the trial court’s signed order. CP 181-83. It was not some separate afterthought presented for a clerk’s signature without court review. A cursory glance at the order reveals that it consists of three pages: the judgment summary, the default findings, and the

signature page. *Id.* The footnotes clearly show that they are part of the same three-page document, all signed by the Commissioner. *Id.*

Therefore, the trial court did in fact award \$400.00 in attorney's fees and \$314 in court costs that the Barringers now contest more than 13 months later. The attempt to reach back to January 2008 to challenge that order is frivolous, as the trial court found when it reviewed their 2009 CR 60 motion. CP 14-15.

Also, the attorney fee and court costs issue was never raised in the 2008 CR 60 motion. The Barringers stated no reason for their failure to raise it then. In fact they admitted to the trial court that they knew all of the relevant facts regarding the judgment in March of 2008, yet did not raise the issue until July of 2009. VRP 7, 8. Their attempt to challenge in 2009 the attorney fees and court costs from the January 2008 judgment is meritless and frivolous. The trial court did not abuse its discretion in refusing to vacate it.

(6) The Trial Court Did Not Abuse Its Discretion in Concluding that the Barringers' Motion Was Frivolous

In their third argument on appeal, the Barringers challenge the trial court's finding that their motion was frivolous. Br. of Appellants at 42-49. They contend that their motion was not time-barred because it was

brought under CR 60(b)(4), and challenge the findings that they failed to present any evidence of fraud. *Id.*

CR 11 permits reasonable attorney fees and costs incurred by an opponent filing pleadings that are not grounded in fact or warranted by law. *Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 574, 27 P.3d 1208 (2001). This Court applies an objective standard to determine whether sanctions are merited. The question is whether a reasonable attorney in a like circumstance could believe his or her actions to be factually and legally justified. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). The purpose of the rule is to deter baseless filings and curb abuses of the judicial system. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994). And a filing is baseless if it is not well-grounded in fact, or not warranted by existing law or a good faith argument for altering existing law. *Blair v. GIM Corp.*, 88 Wn. App. 475, 482-83, 945 P.2d 1149 (1997). A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts. *Daubner v. Mills*, 61 Wn. App. 678, 684, 811 P.2d 981 (1991); *Bill of Rights Legal Found. v. Evergreen State College*, 44 Wn. App. 690, 696-97, 723 P.2d 483 (1986).

CR 11 also prohibits filings for an “improper purpose,” a provision designed to reduce “delaying tactics, procedural harassment, and mounting

legal costs.” *Suarez v. Newquist*, 70 Wn. App. 827, 855 P.2d 1200 (1993) quoting *Bryant*, 119 Wn.2d at 219.

In *Reid v. Dalton*, 124 Wn. App. 113, 100 P.3d 349, *review denied*, 155 Wn.2d 1005 (2005), Stephen Eugster, a candidate for political office who lost a primary election sued the eventual winner Phil Harris and various state and county officials with a pleading entitled “Complaint to Invalidate Election and to Declare Primary Election and Primary Election Law Unconstitutional.” 124 Wn. App. at 116. The thrust of the complaint was that his opponent had convinced supporters to vote for the weaker opponent in the primary, and thus ensure his victory. *Id.* He made various arguments in his pleadings that were inaccurate, baseless, and strained credulity, then admitted as much at oral argument to the trial court. *Id.* at 117-18. His complaint was dismissed, and sanctions, including attorney fees, were awarded to his opponent for having to defend the frivolous action. *Id.*

On appeal Division Three of this Court concluded that the trial court acted well within its discretion in finding the action to be frivolous. *Id.* at 123. In particular, the *Reid* court observed Eugster’s concessions at oral argument that his complaint was not well grounded in law. *Id.*

In their brief, the Barringers point to no evidence in the record to demonstrate that the trial court’s conclusion was erroneous. Instead they

catalog what they claim to be frivolous or improper behavior by *Row's* counsel: "This section will go over the frivolous legal positions of Row that were ultimately partially adopted by the Court." Br. of Appellants at 43.

The Barringers cannot point out any authority or evidence to undermine the trial court's factual findings relating to the purpose behind their frivolous motion. This Court need not consider arguments that are not supported by citations to authority or the record. *Cowiche Canyon*, 118 Wn.2d at 809.

The trial court correctly concluded that the Barringers' 2009 CR 60 motion was frivolous. In June 2008, after Row prevailed on May 2008 CR 60(b)(4) motion, counsel for Row offered to reduce the judgment amount by \$49, the amount of the process server fees. CP 71.<sup>1</sup> Barringers' counsel counterproposed an amended judgment that reduced the judgment by about \$2,000. CP 72-77. When Row responded that this was not acceptable, the Barringers refused the \$49 offer and instead filed suit against Row's attorney in federal district court. CP 84. That federal suit raised the same issues and arguments that had failed in state court. CP 84. In a detailed ruling, the federal district court dismissed the Barringers' suit under Fed. R. Civ. P. 12(b)(6). CP 83-97.

After the federal suit was dismissed, the Barringers came back to state court with the present CR 60(b)(4) motion. Knowing that they had long missed the year deadline under CR 60(b)(1), they styled their motion as a CR 60(b)(4) fraud motion. However, the Barringers' fraud allegations regarding the process server fee were raised on reply in their 2008 motion to set aside Row's default judgment. CP 129-30. That issue was resolved by the May 8, 2008 order in which the court stated that "no basis under CR 60(b) has been established." CP 115. No appeal was taken from that order. They filed a federal suit on the same issue, it was dismissed. No appeal was taken from that order. The Barringers cannot now, more than a year later, re-litigate that issue in the form of a second CR 60 motion.

The trial court concluded that the Barringers' repetitive, time-barred, meritless 2009 CR 60 motion was filed simply to drive up legal costs and was frivolous. CP 3; RP 31. As in *Reid*, counsel for the Barringers repeatedly admitted the deficiencies in their motion at oral argument. RP 6-12. Given that the motion at issue in this appeal was (1) repetitive of previous issues raised, rejected, and unappealed in both state

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<sup>1</sup> He wanted to avoid further expensive litigation over a relatively small sum. CP 71.

and federal courts; (2) time-barred; (3) improperly framed as a fraud motion rather than mistake; and (4) without explanation for the delay, the trial court had ample basis to conclude that the motion was frivolous. CP 12-13. The court did not abuse its discretion.

(7) An Award of \$1,500 In Attorney Fees Was Appropriate for Defending the Frivolous Motion

Finally, the Barringers argue that in awarding Row \$1,500 in attorney's fees for having to defend the frivolous motion, the trial court did not adhere to the principles of *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998). Br. of Appellants at 31-41. They claim that the trial court should have segregated time spent at oral argument discussing whether each party had adhered to the court rules regarding service and filing motions. *Id.*

In addition to CR 11, discussed *supra*, Washington law provides for an award of sanctions for bringing a frivolous action. RCW 4.84.185. In *Mahler*, our Supreme Court made clear that attorney's fee awards should be supported by an adequate record, so that appellate courts may review whether the trial court abused its discretion in awarding fees. 135 Wn.2d at 434. The court must have evidence of the number of hours worked, the type of work performed, the reasonable hourly rate, and other

factors. Also, fees must reflect the reasonable number of hours expended in obtaining the successful result. *Id.*

The Barringers do not argue that the trial court did not have an adequate record upon which to rest its ruling. In fact, it did have such a record, and properly calculated fees using the lodestar method. RP 31; CP 37-41. Row's counsel set forth the documentation for the reasonable hours spent at his usual hourly rate of \$250 an hour. *Id.* at 39.

Because Row's attorney fees are well documented, the Barringers instead contend that the trial court abused its discretion by failing to segregate time spent at the hearing arguing about whether Row's counsel had notice of the CR 60 hearing, and whether the Barringers' counsel received a copy of Row's reply in support of the motion for attorney's fees. Br. of Appellants at 31-41.

Again, it is unclear why the Barringers believe that Row's counsel should not be compensated for the time spent arguing these procedural issues in connection with the motion. The Barringers conceded that they did not serve Row's counsel with a copy of the motion, despite his having been the attorney of record for more than a year. Regarding the reply on attorney's fees, the Barringers raised the objection Row had not timely filed a reply (although the record demonstrates he had) and Row was obligated to respond to that allegation. RP 2-3. They also conceded that

they could address the arguments in the reply brief regardless of when it was served. RP 5.

Arguing about whether motion was properly served and defending against Peterson's accusations of late-filed pleadings was necessary to the successful result. The trial court did not abuse its discretion in refusing to segregate time spent successfully arguing the procedural aspects of the motion.

(8) Row Should Be Awarded Attorney Fees Under RAP 18.1 and/or 18.9

The Court may award terms and compensatory damages for a frivolous appeal or for a party's failure to comply with the rules of appellate procedure. RAP 18.9(a); RAP 18.1; *see also, In re Marriage of Healy*, 35 Wn. App. 402, 406, 667 P.2d 114, *review denied*, 100 Wn.2d 1023 (1983) (noting an appeal may be so devoid of merit to warrant the imposition of sanctions and an award of attorney's fees). This Court may also award attorney fees if a statute so provides. RAP 18.1; RCW 4.84.185 provide that in any civil action, the court may award attorney fees as a sanction for filing a frivolous action.

The issues presented by the Barringers on appeal are so devoid of merit as to be frivolous and advanced without reasonable cause. An appeal is frivolous when it presents no debatable issues and is so devoid of

merit that there is no possibility of reversal. *Streater v. White*, 26 Wn. App. 430, 613 P.2d 187 (1980). This Court considers the following factors when evaluating whether an appeal is frivolous: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Griffin v. Draper*, 32 Wn. App. 611, 649 P.2d 123 (1982).

*Griffin* is illustrative. In that boundary dispute, one party sought a motion for reconsideration of a judgment that was entered nine months earlier, citing insufficient evidence. 32 Wn. App. at 612. Given that the time allowed for a reconsideration motion was five days, this Court concluded that the appeal was frivolous because it was “evident from the record that the purpose of the appeal was to re-litigate the lawsuit tried in March, 1979.” *Id.* at 616.

Here, the appeal is frivolous because (1) the Barringers conceded that the motion was to correct mistakes and therefore barred by CR 60(b)(1); (2) this is simply an attempt to re-litigate the January 2008

default judgment and the May 2008 CR 60(b)(4) motion; (3) it is clear from the record that the purpose of the appeal is to run up Row's litigation fees and costs; and (4) the trial court concluded that the motion appealed from was itself frivolous. The Barringers have filed multiple motions, a federal suit, and now this appeal, largely over a \$49 matter that Row offered to settle over a year ago. The trial court acknowledged this in its oral ruling:

However I will note that considering the amount of attorney time spent in this \$49, it would appear to me that I can't imagine why anyone...would spend the amount of time spent on this for a \$49 bill that was offered to be corrected. I can see no basis for that, except incurring attorney's fees. And the Court find[s] that very concerning.

RP 31.

Despite finding their arguments meritless and time-barred, in an attempt to end the Barringers' litigious ways, the trial court *deducted \$50* from the CR 11 sanctions to compensate them for the \$49 mistake. VRP 31. The trial court's optimism that such a concession would end this litigation was well-intentioned but obviously misplaced.

"A lawsuit is frivolous when it cannot be supported by an[y] rational argument on the law or facts." *Forster v. Pierce County*, 99 Wn. App. 168, 183, 991 P.2d 687, *review denied*, 141 Wn.2d 1010 (2000). "An appellate court may award attorney fees under RAP 18.9(a) if the

appeal, considering the record as a whole, presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal.” *Watson v. Maier*, 64 Wn. App. 889, 901, 27 P.2d 311 (1992). In the instance of a frivolous appeal, an award of attorney fees is appropriate. *See Mahoney v. Shinpoch*, 107 Wn.2d 679, 692, 732 P.2d 510 (1987).

The Barringers bring this appeal despite ample, clear case law foreclosing their arguments. They waste this Court’s time and the parties’ time with meritless arguments. Even resolving all doubt in favor of the Barringers, their appeal of the trial court’s orders raises no debatable issues upon which reasonable minds could differ.

This Court has the authority to sanction the Barringers or their counsel<sup>2</sup> by awarding Row his reasonable attorney fees. He respectfully requests this appropriate sanction.

#### F. CONCLUSION

This appeal – from denial of a frivolous, meritless, and time-barred motion – is itself frivolous. It is a waste of this Court’s valuable time and judicial resources. The appeal is devoid of merit, and reasonable minds

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<sup>2</sup> It is unclear from the record how much of this litigation has been prompted by the Barringers, and how much has been the fault of their counsel. However, it seems unlikely that the Barringers are truly interested expending tens of thousands of dollars on appeal over a matter of \$49, and their counsel may be the source of the endless litigation. This court may take judicial notice, however, the Barringers' *counsel*, Scott Peterson (not the Barringers) did in fact commence a second suit against Row’s counsel in Snohomish County Superior Court. The case was dismissed and the Barringers' counsel was

cannot differ on the outcome. The Barringers have presented no reasonable arguments, nor demonstrated any facts, to suggest that the trial court's rulings were an abuse of discretion.

Row respectfully requests that this Court affirm the trial court's orders, and award attorney fees to Row under RAP 18.9.

DATED this 21<sup>st</sup> day of May, 2010.



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Philip A. Talmadge, WSBA #6973  
Sidney C. Tribe, WSBA #33160  
Talmadge/Fitzpatrick  
18010 Southcenter Parkway  
Tukwila, Washington 98188-4630  
(206) 574-6661

Evan Loeffler, WSBA #24105  
Law Office of Evan Loeffler PLLC  
2033 6<sup>th</sup> Avenue, Suite 1040  
Seattle, WA 98121-2527  
(206) 443-8678  
Attorneys for Respondent James Row

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sanctioned nearly \$8,875.75 under CR 11 for bringing a frivolous suit. Snohomish County Cause No. 09-2-10734-1.

# APPENDIX

## CR 11

**(a)** Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the 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: (1) it is well grounded in fact ; (2) it is 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) it is 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. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

**(b)** In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is 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) it is 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. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

**RCW 4.84.185. Prevailing party to receive expenses for opposing frivolous action or defense**

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order. The provisions of this section apply unless otherwise specifically provided by statute.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

JAMES ROW, )  
Plaintiff, ) NO. 08-2-01799-9  
v. ) NO. 64101-8-I  
TYE BARRINGER, JENNIFER BARRINGER, )  
and all other tenants, )  
Defendants. )

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VERBATIM REPORT OF PROCEEDINGS

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BE IT REMEMBERED that on the 21<sup>st</sup> day of July, and the 19<sup>th</sup> day of August, Snohomish County Cause No. 08-2-01799-9 came on for hearing before the Honorable Susan C. Gaer, Court Commissioner of the Superior Court sitting at the Snohomish County Courthouse, in the City of Everett, County of Snohomish; and the parties being represented by their respective attorneys as follows:

EVAN L. LOEFFLER, Attorney at Law, Law Office of Evan L. Loeffler, PLLC, 1203 - 6<sup>th</sup> Avenue, Suite 1040, Seattle, Washington 98101-2527, appearing on behalf of the Plaintiff;

SCOTT R. PETERSON, Attorney at Law, 648 S. 152<sup>nd</sup> Street, Suite 7, Seattle, Washington 98148, appearing on behalf of the Defendants.

1 THE COURT: Next matter, James Row v. Barringer.  
2 Is that matter ready to proceed?  
3 MALE VOICE: Yes, your Honor.  
4 THE COURT: Okay. Mr. Peterson, this is your  
5 motion.  
6 MR. PETERSON: Good morning, your Honor. Scott  
7 Peterson, cause number 08-2-01799-9. I represent both Tye  
8 Barringer and Jennifer Barringer. Has the Court had an  
9 opportunity to read the -- the motion and memorandum in  
10 support of --  
11 THE COURT: Yes, I have. And I've also read the  
12 response.  
13 MR. PETERSON: Okay.  
14 THE COURT: And the declaration of Mr. Loeffler.  
15 MR. PETERSON: I actually did not receive that.  
16 THE COURT: Okay.  
17 MR. PETERSON: Maybe we could -- I could -- if  
18 Mr. Loeffler has a copy I could review that and we could call  
19 back.  
20 THE COURT: All right. Well we'll put this  
21 matter --  
22 Court hears other matters.  
23 THE COURT: Let's go back to Row v. Barringer.  
24 MR. LOEFFLER: Your Honor, before we get started,  
25 there was a statement made that Mr. Peterson had not received

1 any of the documents. I have the routing slip that shows that  
2 at 10:20 yesterday they were delivered to his office.

3 THE COURT: Okay.

4 MR. LOEFFLER: That statement was inaccurate.

5 THE COURT: Mr. Peterson, any response to that?

6 MR. PETERSON: Well, that statement is not  
7 inaccurate. I -- I have not received them. I contacted the  
8 office and they -- they did not confirm whether or not they  
9 had received it. But I let them know what was stated, trying  
10 to find out why I had not received them.

11 However I had checked with the office on Friday at shortly  
12 after noon to see if any documents had arrived in this matter.  
13 And procedurally I -- I believe under the Local Rules that you  
14 have to note a motion six days out. And then any response is  
15 due two court days ahead of time, which would have been -- at  
16 noon -- which would have been noon on -- on Friday. And then  
17 my response would have been noon yesterday.

18 MR. LOEFFLER: Well it is ironic that we're having  
19 this discussion because as the Court is aware from the docket  
20 and from my brief, I never received any notice of this hearing  
21 at all. It was not delivered to me as required by --

22 THE COURT: Was counsel served? I see no service  
23 document. Was counsel served with this?

24 MR. PETERSON: No. And if you notice, there's no  
25 citation to the rules when he says he wasn't served. The

1 bottom line is -- when I bring -- bring a motion under CR 60  
2 I'm required to serve it on the plaintiff in the manner  
3 consistent with service of a summons and complaint. Now I --  
4 I didn't --

5 MR. LOEFFLER: I didn't read CR 60 --

6 MR. PETERSON: Your Honor, I wasn't finished.

7 MR. LOEFFLER: -- out loud so that Mr. Peterson  
8 would be corrected on that.

9 THE COURT: I have CR 60 right here.

10 MR. LOEFFLER: And since any copy thereof served  
11 upon the attorneys of record of such parties in such action or  
12 proceeding prior to the hearing as the court may direct.  
13 There is no order that says counsel may decide not to serve  
14 counsel for the plaintiff of this motion. I have not received  
15 the motion. And -- and what I hear Mr. Peterson saying is I  
16 was under no obligation because my new and interesting reading  
17 of CR 60 that I don't have to. And I don't agree with that.

18 And so if -- and I will point out further, he did receive  
19 it; we have proof. He never gave notice to me at all of this  
20 hearing. And as I discussed in my brief, and as is clear in  
21 the record, this is not the first time that Mr. Peterson has  
22 elected not to serve counsel with pleadings in this matter.  
23 He brought several prior motions on us.

24 THE COURT: All right. I'm -- I'm going to go  
25 ahead and proceed. And I am accepting the plaintiff's

1 response. And counsel, I can't imagine why you wouldn't have  
2 served counsel because you very well knew that Mr. Loeffler  
3 was representing these plaintiffs. Isn't that correct?

4 MR. PETERSON: I will review the rule again on  
5 that. My belief was that I needed to serve the plaintiff  
6 only, which is why that's what was done. The plaintiff was  
7 much more difficult to serve than would have been  
8 Mr. Loeffler. And so perhaps I misread the rule. I will -- I  
9 will look at that in the future.

10 THE COURT: In any event, let's proceed, unless  
11 you're asking for a continuance in order to respond.

12 MR. PETERSON: No, I -- I can respond.

13 THE COURT: Okay.

14 MR. PETERSON: The plaintiff's bringing up certain  
15 interesting points. They -- they are asking this Court how  
16 many times can you bring a motion to set aside something that  
17 was entered by this Court. And the -- the prior motion was  
18 brought to set aside was based upon a declaration of my client  
19 and two witnesses indicating that the process server changed  
20 the return date on the summons, which would have only --

21 THE COURT: I read the whole file, counsel. I'm --  
22 I'm aware of what the prior motion was. But it was a motion  
23 to vacate the default judgment, which was denied.

24 MR. LOEFFLER: Correct.

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1 MR. PETERSON: Which was -- which was in total. I  
2 didn't -- I didn't go through the -- the minor elements. One  
3 of the minor elements of it, I was trying to get the entire  
4 judgment set aside. What we're trying to get set aside now,  
5 and the plaintiff appears to agree, at least as far as the  
6 process server fees, that those were inappropriately entered.

7 The -- the plaintiff represented to the Court that they  
8 were entitled to the process server fees. That was not a true  
9 statement. So we --

10 THE COURT: Counsel, what I want you to explain to  
11 me is why you are bringing this motion well more than a year  
12 after the matter -- the order was entered, and more than a  
13 year after your prior motion to vacate. The default was  
14 denied.

15 MR. PETERSON: Well, I wish we have brought it  
16 earlier. The -- there is -- there is no reason. The federal  
17 judge has indicated in this matter that -- that we need to --  
18 we need to resolve it before this Court as to whether or not  
19 that is proper --

20 MR. LOEFFLER: Objection, your Honor.

21 MR. PETERSON: -- which is part of the reason --

22 MR. LOEFFLER: That is not what the federal court  
23 said.

24 THE COURT: And you haven't provided anything from  
25 the federal court to this court, counsel. So --

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MR. PETERSON: I'm -- I'm going off the -- the memorandum -- memorandum that was provided by the -- the plaintiff to this Court.

THE COURT: Counsel, I'm asking why if there was an error in the judgment that you were aware of in March of '08, why you're filing a motion in July of '09?

MR. PETERSON: Because of the federal court matter. The federal --

MR. LOEFFLER: And --

THE COURT: What has that got to do with it?

MR. PETERSON: Well the federal court has said that it does not want to interfere with the function of the -- the trial -- trial court. That's a State matter to make those determinations. And --

THE COURT: What has the federal court -- because you didn't mention anything in your motion regarding federal court. What has the federal court motion got to do with a CR 60 motion as to whether or not it's timely filed?

MR. PETERSON: It -- well that wasn't exactly the Court's question. You were asking why I waited a year. And --

THE COURT: Well, actually --

MR. PETERSON: And -- and I said it was because the federal judge has said in this matter --

THE COURT: Okay.

1 MR. PETERSON: -- that -- that -- that the issue of  
2 whether or not the process server fee is proper is the subject  
3 of the trial court.

4 MR. LOEFFLER: That is not what the federal court  
5 said.

6 THE COURT: Well, let's just drop all that. Why  
7 should this Court not find that your motion is not timely  
8 filed and dismiss it?

9 MR. PETERSON: Well I'm asking the Court not do  
10 that because prior departments have -- have exercised a  
11 pattern of not reviewing materials, not checking to see if  
12 process servers were properly registered.

13 THE COURT: Well -- well, okay. Counsel, there --

14 MR. PETERSON: So we -- we need to --

15 THE COURT: Counsel, there is nothing before this  
16 Court regarding prior departments, or their policies, or  
17 anything else. You have filed a motion, and I'm asking a  
18 simple question in regard to why this Court should not find  
19 that your motion is not timely filed. You were -- there's no  
20 new facts since March of '08, is that correct?

21 MR. PETERSON: Correct.

22 THE COURT: There's no facts that you weren't aware  
23 of in March of '08, is that correct?

24 MR. PETERSON: Correct.

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THE COURT: And you're claiming that there was an error in the order in January of '08.

MR. PETERSON: I'm asking that this Court correct a mistake that was previously made in awarding process server fees that are not allowed under the appropriate Statute. Additionally I'm -- I'm stating that the Court should not have awarded attorney's fees without proper documentation, as I stated in my brief. The Court cannot always hear a motion for attorney's fees at a subsequent time. But the Court did not -- it -- did not properly review the file when it awarded the \$400 in attorney's fees.

MR. LOEFFLER: And your Honor, counsel seems to be admitting that this is simply a mistake, not fraud as he put in his brief to try to get around the one year statement. And he has yet to allege any fraudulent conduct.

The rule is pretty simple. What portion of it was read is that you have to deliver notice, which was admittedly not done. And it says motions shall be made within a reasonable time, and for reasons one, two or three, not more than one year after the judgment; (1) mistake. He just said it was error.

He's known about it since March. He brought it to my attention in June. I said draft me an order reducing the judgment by the \$40 or \$49 and I'll sign it. He drafted -- and this is all in the paperwork that I sent you. He drafted

1 a motion instead reducing it by \$3,000. And I said -- and I  
2 wrote him a letter that said do it right. So then what he did  
3 is he sued me. Not my firm, me, personally. And that case  
4 was thrown out of court.

5 And he has tried this matter now on three different  
6 occasions. He filed this motion to vacate the default back in  
7 February. He continued it on his own motion four times. On  
8 the fifth time it was denied; \$1,800 in additional fees were  
9 awarded at a separate hearing. And now here we are over a  
10 year later we're coming back and he's filing a different  
11 motion saying well, you didn't deal with this mistake yet.  
12 It's too late.

13 As for fees, I believe that I am entitled to additional  
14 fees for having to show up. My client is entitled to some  
15 fees for having to break off from his time to show up for  
16 this. It's untimely. And even a casual reading of Rule 60  
17 shows that one, you give notice; and two, you bring your  
18 motion within a year. He can't deny he didn't know about it;  
19 he wrote me letters about it. He sued me over it.

20 The motion should be denied, and we should talk about what  
21 fees are available. In fact I would like, since he is so  
22 insistent on having fees on another day, on order reserving on  
23 the issue of fees and terms, we come back and talk about those  
24 then.

25 THE COURT: Okay, counsel.

1 MR. PETERSON: I believe that the plaintiff's  
2 counsel is misrepresenting the record as far as the -- the  
3 federal suit. And again, what the federal court had done in  
4 this matter was they said hey, you keep referring to all those  
5 trial court matters. We want all the appropriate documents  
6 given to us so they're not being screened so we know exactly  
7 what's happened. I think that would be appropriate in this  
8 matter instead of just both of us saying what the trial --  
9 what the -- what the federal court has said in this matter.  
10 It would be more appropriate for this Court to actually see  
11 the --

12 THE COURT: But counsel, I'm having a very  
13 difficult time understanding what -- the federal court has not  
14 sent directions to this Court -- what the federal court order  
15 has to do with this, especially since you did not refer to the  
16 federal court case at all. You did not even tell the Court  
17 that there was a federal case.

18 MR. PETERSON: It doesn't matter in this. And what  
19 they said is --

20 THE COURT: Okay. So if it doesn't matter, why are  
21 you talking about it?

22 MR. PETERSON: Because it was brought up in the  
23 plaintiff's memorandum. I have a right to respond to what  
24 they put in.

25 THE COURT: Okay.

1 MR. PETERSON: The federal court said under  
2 (unintelligible) that -- that the trial court needs to resolve  
3 those issues. That why we came back here --

4 MR. LOEFFLER: No, the federal court said those  
5 issues have been resolved.

6 THE COURT: Okay. I really don't want to hear  
7 about federal court anymore. I'd like to understand why I  
8 should grant your motion under CR 60.

9 MR. PETERSON: And I am asking this Court that you  
10 take an affirmative stand to myself, to all of the attorneys,  
11 to the defendants that this Court is going to correct mistakes  
12 when they -- when they find it. It was a mistake to enter the  
13 process server fees. And I'm asking the Court to correct a  
14 mistake that has been made. If the Court says no, we're not  
15 going to do that, great. But I am asking this Court -- it's a  
16 \$49 matter. I'm asking this Court to say this was  
17 inappropriately entered. The Court was deceived by -- when  
18 the plaintiff stated that we've incurred these fees, we're  
19 entitled to these fees. And -- and -- and the Court relied  
20 upon that in awarding those fees. I'm asking this Court to  
21 correct that error and make it right so my client does not  
22 have a judgment against him for the \$49 process server fees.

23 THE COURT: Okay, counsel. CR 60 is quite clear.  
24 Now you -- you just stated here that the Court was deceived.  
25 In your brief you claimed it was a fraud. But it is apparent

1 in your argument that it was a mistake that was made; that  
2 that \$49 should not have been included in the judgment and  
3 that that was a mistake.

4 I -- I would certainly be willing to find that it was a  
5 mistake to enter the \$49. You've hardly addressed the  
6 attorney's fees, and I'm certainly not making any kind of  
7 issue there.

8 I would be willing, however, Civil Rule 60 is quite clear  
9 that mistakes, inadvertence, neglect, newly discovered  
10 evidence -- mistakes, inadvertence, surprise, excusable  
11 neglect or irregularity in obtaining a judgment or order have  
12 to be brought within one year. The Court might even be  
13 willing to consider extending that period of time if there was  
14 a reason why it was not discovered. But in the file you refer  
15 specifically to this in motions -- or a brief that you wrote  
16 in May of '08. You were aware of this long ago. And it's  
17 also quite clear that counsel agreed to vacate that \$49, just  
18 to resolve a problem last June, and you didn't follow up on  
19 that.

20 I am not willing to reopen a default judgment that was  
21 entered almost a year -- or at least a year-and-a-half ago on  
22 the basis of a minor mistake was made when you ignored it for  
23 this significant period of time without any explanation that I  
24 can follow as to why you did not bring this matter forward.  
25 I'm denying your motion.

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MR. PETERSON: Thank you, your Honor.

MR. LOEFFLER: I have a proposed order that I'll hand over to Mr. Peterson. And we reserve on the issue of fees for a later day.

THE COURT: I'll reserve on the issue.

MR. LOEFFLER: Thank you, your Honor.

THE COURT: Okay, thank you.

Court hears other matters.

COURT CLERK: Your Honor, Mr. Loeffler has (unintelligible) drafted an order in this matter.

THE COURT: Okay, okay. Counsel, I don't like either one of your orders. I'm going to prepare an order and send it to you, all right?

MR. PETERSON: Thank you, your Honor.

MR. LOEFFLER: Does the Court have my address?

THE COURT: I believe. Is it on your answer?

MR. LOEFFLER: It's on all the papers, yes.

THE COURT: I'm sorry? It's on the paper.

MR. LOEFFLER: It's on all the pleadings.

THE COURT: Oh, and I'm looking at the wrong file.

So --

MR. LOEFFLER: I just want to make sure it's handy.

THE COURT: So that's the problem, okay. If it's on all the pleadings. And do you have a file?

MR. LOEFFLER: My address --

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THE COURT: Would you put this with it so we'll get that done. Thank you.

MR. LOEFFLER: Thank you.

THE COURT And I will -- I will get that in the mail by Monday, okay?

MR. PETERSON: Thank you very much.

THE COURT: Thank you.

Hearing adjourns on Tuesday,  
July 21, 2009 at 12:19 p.m.

ADJOURNS/COURT RECONVENED

Hearing reconvened with all parties present on Wednesday, August 19, 2009 at 10:42 a.m.

THE COURT: Okay. Row v. Barringer.

MR. PETERSON: Good morning, your Honor.

THE COURT: Good morning.

MR. LOEFFLER: Your Honor, good morning. Evan Loeffler appearing on behalf of the plaintiff. This is a motion for attorney fees and terms. If the Court has had an opportunity to review the file, or maybe the Court remembers this from a few weeks ago.

THE COURT: I do.

MR. LOEFFLER: Very briefly, plaintiff took a judgment, including attorney fees and costs in January of '08. The defendant filed a motion to vacate the judgment in March of '08.

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THE COURT: Sir, turn that off.

MALE VOICE: I thought I did, mam.

THE COURT: All right.

MR. LOEFFLER: And then continued hearings on it from March until May when it was finally denied, and additional attorney fees and costs were awarded. The defendant believed it had a mistake in the pleadings, contacted me about it. I agreed to fix it, and then refused to work with me to fix it. Instead of reducing the judgment by \$40 or \$49, attempted to reduce it by some two or \$3,000, which was unacceptable.

So the defendant sued me personally in federal court. And that case was dismissed. Then in July of this year the defendant filed a motion for -- to vacate the default judgment again. Did not mention the previous motions, did not mention the federal action.

At the hearing, counsel falsely indicated to the Court that he had not received any of the pleadings from me, even though that I provided proof that he had. Counsel has now provided a new declaration on Monday that indicated that oh, he actually had received the pleadings. He just felt that it was appropriate to tell the Court that he hadn't because of his belief that those were late.

None of the pleadings were delivered to my office at all. Counsel is attempting to say that CR 60 doesn't require

1 delivery of papers to opposing side, even though CR 5 says  
2 that all parties, including the plaintiff, and the plaintiff's  
3 counsel are supposed to be given notice of all pleadings and  
4 all hearings.

5 The statement here that -- requiring to give notice under  
6 CR 5 to counsel makes CR 60 meaningless, is meritless and  
7 meaningless. This is someone who is trying to shift the blame  
8 for something that he did not do.

9 But turning to the issue of fees, CR -- I mean RCW  
10 59.18.410 states that the prevailing party is entitled to  
11 attorney fees. This was discussed at the -- and -- and  
12 attorney fees were awarded in January of 2008. It was again  
13 discussed, and attorney fees were awarded in March -- May or  
14 June of 2008. It is not necessary to continue to litigate  
15 that issue.

16 I have provided to the Court a breakdown of the time that I  
17 spent on this matter. Counsel has not denied that the amount  
18 of time was reasonable and necessary. And we're asking for an  
19 award of attorney fees in that amount.

20 I have detailed in my brief the various things that counsel  
21 has done and deliberately not done during the pendency of this  
22 action, including not telling the Court important information,  
23 denying things that were known to not be true, including the  
24 delivery of documents to my office back last year, and the  
25 delivery of my documents to his office just a few weeks ago.

1 THE COURT: Counsel, attorney's fees were awarded a  
2 year ago so I'm -- I'm not going to make any findings based  
3 on -- on -- on what was prior to that award of attorney's  
4 fees.

5 MR. LOEFFLER: Right.

6 THE COURT: Okay.

7 MR. LOEFFLER: Okay. But I'm -- I was on to the --  
8 whether or not sanctions should be awarded.

9 THE COURT: Uh huh.

10 MR. LOEFFLER: This motion was meritless. It was  
11 deliberately filed late in an attempt to mislead the Court to  
12 believing that it wasn't late by -- there was fraud alleged,  
13 but there's not a single allegation of fraud. And even after  
14 the Court several times during the hearing last month asked  
15 Mr. Peterson what are you alleging was misleading here when he  
16 took a default judgment a year-and-a-half ago, and why if you  
17 knew about these things and counsel offered to reduce the  
18 judgment by the 50 or \$40, did you not take advantage of that  
19 and instead, wait a year to do so.

20 Counsel's response was well, that was because of the  
21 federal case, which he had not brought to your attention. And  
22 you will recall that the Court asked Mr. Peterson if that was  
23 the reason, why didn't you mention it in your pleadings. And  
24 the response was -- from Mr. Peterson, it was irrelevant. And  
25 the response -- and -- and then you followed up and asked if

1 the federal court case as you are now saying was irrelevant,  
2 then why didn't you file this a year ago.

3 So the question is why does my client, and why do I have to  
4 keep on coming back to court every time Mr. Peterson feels the  
5 need to file another motion in an attempt to either effect  
6 this case, or the case in federal court. Both cases are over,  
7 as far as Mr. Barringer is concerned. So why is he holding on  
8 to this? And is this not just an attempt for Mr. Peterson to  
9 file more motions, either in the Court of Appeals on -- on  
10 whatever the Court rules today, or back in federal court? And  
11 is that an appropriate use of the Court's time? And if it is  
12 not, and I suggest to you that it should not be, what terms  
13 are appropriate?

14 Now I have suggested in my motion \$250, representing an  
15 hour of my time, for each of the areas that I have outlined,  
16 and \$1,000 for wasting the Court's time. Frankly, I don't  
17 want the money. He can donate it to charity, he can give it  
18 to my office and I'll donate it to charity. But I want a  
19 clear statement from the Court that filing motions such as  
20 these is not the way that attorneys are supposed to act. They  
21 can be adversarial, but you don't have to be dishonest. Thank  
22 you.

23 THE COURT: Mr. Peterson.

24 MR. PETERSON: Good morning, Scott Peterson,  
25 counsel for the defendant. It's cause number 08-2-01799-9.

1 It's interesting that the plaintiff characterizes my actions  
2 in a certain manner. The -- the -- what really upsets  
3 attorneys is when an attorney is brought into federal court,  
4 or even Superior Court, being sued for -- for their actions.  
5 You know, it's tough, but it happens. You've got to -- you've  
6 got to live with it as an attorney.

7 As far as the -- the federal suit allegations, one of the  
8 pleadings that are before this Court, when the federal court  
9 was making certain rulings, it demanded that a copy of the  
10 entire relevant pleadings be provided to it. I would submit  
11 to this Court that -- that the representation of the federal  
12 court order is not accurate. In fact the -- the judge did  
13 clarify.

14 THE COURT: Well counsel, let -- let me just be  
15 very clear about this. I -- I do not think, and both of you  
16 have spent a great deal of time on the issue of whether or not  
17 a particular response or document from the other side was a  
18 day late or not. However, what this Court thinks is important  
19 and the basis of the ruling -- prior ruling in this case,  
20 which the Court was quite clear about -- and it wasn't based  
21 on responses or anything else -- is that well more than a year  
22 ago, your pleadings clearly indicated that you were quite  
23 aware of this §49. You mention it specifically. You were in  
24 court. A judgment was ordered. A motion -- I mean I'm

25

1           sorry -- an order was entered well more than a year ago. And  
2           you did nothing for more than a year.

3                       MR. PETERSON: But this --

4                       THE COURT: Counsel, I asked you repeatedly the  
5           last time why did you not -- since you clearly were aware of  
6           this, why did you wait so long, well more than a year, before  
7           you brought this matter back. And I never got a clear cut  
8           answer on that.

9                       MR. PETERSON: And I'm going to stand with the  
10          record on that. We -- we are appealing that decision.

11                      THE COURT: Okay.

12                      MR. PETERSON: But your Honor, the record -- I'm --  
13          I'm satisfied with -- with the way the record is presented.  
14          And I -- I would just like to have this motion heard today.

15                      THE COURT: Well counsel, the reason why this Court  
16          believes that it is important is that while your motion  
17          alleged fraud, in your argument you did not argue fraud. In  
18          fact you specifically repeatedly used the term mistake, as far  
19          as this \$49. It is clear that you were aware of this \$49  
20          error. That counsel did agree to sign a document to fix it.  
21          And nonetheless, you did not appeal the judgment from a year  
22          ago, you did absolutely nothing about it, 'til well more than  
23          a year.

24                      And the Court is concerned that without some reason why you  
25          would just simply ignore something for more than a year to

1 pass the time for correcting errors, and then file such a  
2 motion that it is frivolous, especially when counsel had  
3 agreed to enter an order to fix this.

4 MR. PETERSON: And that's --

5 THE COURT: But to incur all these attorney's fees,  
6 in the light of your clear error in not addressing this  
7 previously --

8 MR. PETERSON: That is where the cart is. While it  
9 was not by clear error, it was initiated by the plaintiff.  
10 And under the Rules of Professional Conduct that were brought  
11 up by the plaintiff, when they find out an error, if you  
12 indeed are going to characterize it as an error has been made,  
13 they have the duty to correct it.

14 THE COURT: Counsel, you've characterized it as a  
15 mistake repeatedly.

16 MR. PETERSON: I'm not going to re-litigate the  
17 past hearing.

18 THE COURT: Well --

19 MR. PETERSON: I'm satisfied with the record. I'm  
20 going to leave that for an appeal. I don't want to be arguing  
21 something that's not appropriate which -- which -- which it  
22 will be for the appellate court.

23 What I would like to point out to the Court is under RCW  
24 59.18.365, the term "shall" which is the -- the unlawful  
25 detainer -- Residential Unlawful Detainer Statute. The term

1 "shall" is used. And for years the Court interpreted "shall"  
2 to mean may. And -- and recently in Leda v. Whisnand, the  
3 Court of Appeals said no, "shall" means "shall". It seems  
4 simple. But --

5 THE COURT: Would you get to the point because I  
6 don't think in anybody's briefing were you arguing -- for  
7 today's motion were you're arguing the Landlord Tenant Law.

8 MR. PETERSON: Well, it's not my burden, as I said  
9 in my memo, to document why I'm entitled to attorney's fees.  
10 The plaintiff has mentioned RCW 59.10.410. It's the first  
11 time that has been raised. I've -- I've looked at the  
12 Statute. And I'm -- I'm not positive, but I believe case law  
13 says that RCW 59.18.410 only applies after a trial. That's --  
14 that's what the claim the basis for their motion is. There  
15 has not been a trial.

16 THE COURT: Their basis for their motion?

17 MR. PETERSON: The basis for their motion is  
18 attorney's fees.

19 THE COURT: For attorney's fees.

20 MR. PETERSON: Prior --

21 THE COURT: I thought it was quite clear, unless I  
22 am mistaken, that his motion -- let me find it -- that that  
23 was not the basis for his motion.

24 MR. PETERSON: The plaintiff is asking for  
25 attorney's fees with no statutory authority being cited until

1 today, when they're citing RCW 59.18.410. And what I'm  
2 submitting to the Court is that under that Statute -- this is  
3 the first I've ever heard of that being the claim why  
4 they're -- or that being the Statute they're basing attorney's  
5 fees under. It's not before the --

6 THE COURT: I believe their motion specifically  
7 referred to CR 55(c) and CR 60 is a frivolous motion being  
8 filed.

9 MR. PETERSON: Okay. Well, we -- I -- what I'm  
10 asking is that the Court not award any attorney's fees under  
11 RCW 59.18.290. It says the court may award attorney's fees.  
12 Now, under 59.18.365 as interpreted by the Court, "shall"  
13 means "shall". "May" should mean something less than "shall".  
14 I -- I never recall, ever, in -- in my legal practice the  
15 court not awarding attorney's fees to a landlord.

16 So if it's -- if it's a discretionary award by this Court,  
17 I'm submitting that -- that there is no case like the present  
18 one where the plaintiff misrepresented a right to process  
19 server fees to this Court.

20 MR. LOEFFLER: Well now we're re-litigating --

21 MR. PETERSON: The Court relied upon that.

22 MR. LOEFFLER: -- something from a year ago that's  
23 been denied now in federal court and in the State court twice.

24 THE COURT: Counsel, the question as far as this  
25 Court is concerned at this point is given that it was clear

1 that a mistake was -- \$49 mistake was made, that you were  
2 aware of this \$49 mistake in your briefing from a year ago,  
3 May 2008, that you were in court in 2008. Given that you  
4 haven't disputed that counsel agreed to sign an order removing  
5 that \$49 if the rest of the amounts were correct --

6 MR. PETERSON: I am disputing that.

7 THE COURT: Well --

8 MR. PETERSON: I'm disputing -- if you look at the  
9 materials there --

10 THE COURT: I did.

11 MR. PETERSON: -- what I submitted --

12 MR. LOEFFLER: If you look at the paperwork it's  
13 very clear.

14 MR. PETERSON: -- what I submitted I -- I said  
15 let's amend the January 14, 2008 judgment. They wanted to  
16 amend other things. All I wanted was that one judgment  
17 amended. I also pointed out that there was a refund of  
18 sheriff fees --

19 THE COURT: But counsel, given that you were in  
20 court arguing all the issues in regard to this case, you were  
21 aware of this, you somehow failed to address it at that time.  
22 Even being aware of this, and having knowledge of it, you  
23 waited for more than the year that is required to address  
24 mistakes under CR 60. Why shouldn't this Court find that the  
25

1 motion -- your motion to show cause was -- was not -- why  
2 shouldn't I find that it was a frivolous motion?

3 MR. PETERSON: Well first off, the Court signed it  
4 at the time after reviewing it. So at that time the Court did  
5 not believe it was frivolous. However, I -- I just  
6 disagree --

7 THE COURT: Counsel, as far as scheduling a motion  
8 to show cause, the Court is not making a finding on the  
9 validity of the motion, just your right to bring the motion.  
10 And the Court certainly had not reviewed at the time of  
11 the -- an order to show cause is signed is certainly not  
12 reviewing all of your pleadings from a year ago to find within  
13 your pleadings that you were perfectly aware of all this. And  
14 certainly you cannot expect that that would be the case.

15 MR. PETERSON: Well -- well, as I said in my -- my  
16 brief, as you're going through this, there's a certain request  
17 made for attorney's fees. I think it's -- if the Court  
18 decides to award the whole amount, great. I think it's  
19 appropriate that it be reduced. And the Court point out  
20 specifically -- I would just say reduce it to zero. But, if  
21 the Court is going to reduce it, I -- I think it's only  
22 appropriate that specific areas that the Court reduces it.

23 For example the -- the frivolous CR 60 argument, that's --  
24 that's totally outrageous that they are still arguing that  
25 position here. When you look at the Statute, they

1 misrepresented -- misrepresent -- granted, it's actually a --  
2 a mild term for what they did. What they did was they cut out  
3 critical portions of the Statute to deceive the Court as to  
4 what it -- as to what the Statute says. I -- I don't think  
5 that CR 60 can be read any other way than the -- the way that  
6 I read it.

7 THE COURT: And you're still talking about the  
8 notice and the response?

9 MR. PETERSON: Well they're asking for attorney's  
10 fees now for preparing that. That was not a legal pleading  
11 that was well grounded in the law. And so if you award  
12 attorney's fees on these various theories that are not well  
13 grounded in the law, that's totally inappropriate. So I -- I  
14 believe the Court should reduce the -- to zero, I believe. I  
15 believe it should be discretionary on the Court's part.

16 But I believe that the Court should reduce and explain  
17 exactly why it's reducing the various amounts because of the  
18 frivolous claims brought up, and frivolous assertions brought  
19 up by the plaintiff. If nothing else than the fact they filed  
20 the -- their reply the day after the Court had the hearing.

21 MR. LOEFFLER: Your Honor, I don't know why  
22 Mr. Peterson is under the impression it was filed the day  
23 after the hearing. We've got the stamp that says that it was  
24 filed on the 17<sup>th</sup>, which was several days before the hearing.  
25 And we've got the --

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THE COURT: Well counsel, actually when I looked at the file, I thought he was right.

MR. LOEFFLER: Well, it was filed on the 17<sup>th</sup>. I can hand up a conformed copy. If it wasn't scanned for awhile, that is --

MR. PETERSON: I -- I don't think the Court should get into it.

MR. LOEFFLER: -- a problem on be -- on behalf of the federal court. But I can hand up --

THE COURT: Well --

MR. LOEFFLER: -- copy received at 3:42, July 17<sup>th</sup>, Snohomish County Superior Court.

THE COURT: Let me see.

MR. PETERSON: Your Honor --

THE COURT: I know that --

MR. PETERSON: -- I don't think that --

THE COURT: I know that prior to the hearing, this Court had a copy.

MR. PETERSON: It must be filed with the court. It doesn't say to provide --

MR. LOEFFLER: It was filed with the Court on the 17<sup>th</sup> --

MR. PETERSON: -- written papers. It says file with the court.

MR. LOEFFLER: -- at 3:42.

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MR. PETERSON: As far as --

THE COURT: Counsel -- counsel --

MR. PETERSON: As far as that document, the Court has --

THE COURT: Counsel, this is stamped Snohomish County Court received July 17, 2009.

MR. PETERSON: Well, we've had a problem because the Clerk of the Court --

MR. LOEFFLER: I don't think we do have a problem, your Honor.

MR. PETERSON: Your Honor, the Clerk of the Court is saying --

MR. LOEFFLER: I think Mr. Peterson is distracting the Court by talking about matters which have nothing to do with the rule.

THE COURT: Counsel, my determination, number one, at the last hearing was based upon your motion and a review of the court file as to what had happened a year ago. Quite honestly, the only thing significantly added to by the response was the fact that counsel had agreed to sign an order correcting the \$49.

MR. PETERSON: And it explained to you, that's not what it says.

THE COURT: And --

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MR. PETERSON: If you looked there they -- they were trying --

THE COURT: I did look. And counsel, I -- I disagree with your characterization of that. Okay. Mr. Loeffler, is there anything else?

MR. LOEFFLER: No, your Honor. I think I made my point that -- I have a proposed order awarding fees and terms. I went into some detail about that. The conduct --

THE COURT: Okay, okay.

MR. LOEFFLER: But I -- I know you're probably not going to want to sign exactly what I've --

THE COURT: No, no.

MR. LOEFFLER: -- prepared.

THE COURT: Okay.

MR. LOEFFLER: So will the Court -- would the Court like to prepare its own order?

THE COURT: Let me see your order.

MR. PETERSON: I don't believe that was served on me, was it? This -- this is apparently the first opportunity I've had to review it, so --

MR. LOEFFLER: That's right, Mr. Peterson, because I didn't know if the motion was going to be granted.

THE COURT: Well, I'm going to --

MR. LOEFFLER: That was the opposition to the --

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THE COURT: I am going to prepare my own order. What I am going to order is I am going to order the attorney's fees of \$1,550. However -- and also counsel, I will say that you carry on for a great deal of time regarding the amount, \$49, being the issue for the Court. This Court has never said that the fact that it was only \$49 was the issue. That's coming from you.

However I will note that considering the amount of attorney time spent on this \$49, it would appear to me that I can't imagine why anyone, especially in the face of an offered agreement -- anyone would spend the amount of time spent on this for a \$49 bill that was offered to be corrected. I can see no basis for that, except incurring attorney's fees. And the Court finds that very concerning.

So I will order the attorney's fees of \$1,550. But just because it is not worth the continuing -- the continuing difficulties in this case, because of that, I will reduce them by \$50. So I'll order \$1,500 in attorney's fees.

MR. PETERSON: What is the basis of -- which claim is the \$50 reduction based upon?

THE COURT: In -- well, I won't reduce it. Simply in the interest of addressing your concerns, I'll reduce it by \$50, even though the Court is quite clear that CR 60 -- this claim is time barred. Nonetheless, I will reduce it by \$50.

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I'm awarding no other costs and fees in this. But I am awarding \$1,500.

MR. LOEFFLER: Is the Court making a ruling on whether the motion was frivolous?

THE COURT: I am finding that the motion was frivolous.

MR. LOEFFLER: Okay. And you'll be preparing a motion?

THE COURT: Yes.

MR. LOEFFLER: An order, excuse me. Thank you.

THE COURT: I will prepare the order and submit it to both.

MR. PETERSON: And when can we expect that order?

THE COURT: I'm sorry?

MR. PETERSON: When can we expect that order?

THE COURT: I don't know, counsel.

MR. PETERSON: Can I just check in with the Court.

THE COURT: Counsel, I'm on vacation next week. I will try to get it done by Friday. But if not, you're going to have to wait two weeks, okay?

MR. PETERSON: Thank you, your Honor.

THE COURT: You're welcome.

MR. LOEFFLER: Thank you.

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CERTIFICATE OF COURT APPROVED TRANSCRIBER

STATE OF WASHINGTON )  
: ss.  
COUNTY OF MASON )

I, SHERI K. ESCALANTE, Notary Public and Court Approved  
Transcriber for the Superior Court of the State of Washington in  
and for the County of Snohomish, do hereby certify as follows:

THAT the foregoing VERBATIM REPORT OF PROCEEDINGS, numbered  
from Page One through and including Page Thirty-Two, is a true and  
correct transcript of the hearing heard on July 21, 2009 and August  
19, 2009 in **James Row v. Tye Barringer, Jennifer Barringer, and  
all other tenants**, Snohomish County Cause No. 08-2-01799-9 before  
the Honorable Susan C. Gaer, Court Commissioner of the Superior  
Court of Snohomish County, sitting at the Snohomish County  
Courthouse, Everett, Washington, on the date hereinbefore  
mentioned.

DATED at Allyn, Washington this 27<sup>th</sup> day of November, 2009.

*Sheri K. Escalante*  
SHERI K. ESCALANTE  
Notary Public and Court  
Approved Transcriber

DECLARATION OF SERVICE

On said day below I deposited with the US Postal Service a true and accurate copy of the following document: Brief of Respondent in Court of Appeals Cause No. 64101-8-I to the following:

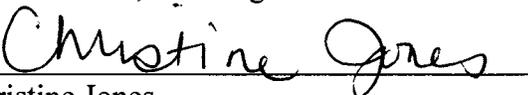
Gerald F. Robison  
Scott R. Peterson  
648 S. 152<sup>nd</sup>, Suite 7  
Burien, WA 9818-1195

Evan Loeffler  
Law Offices of Evan L. Loeffler  
2033 6<sup>th</sup> Avenue, Suite 1040  
Seattle, WA 98121-2527

Original filed with:  
Court of Appeals, Division I  
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 21, 2010, at Tukwila, Washington.

  
\_\_\_\_\_  
Christine Jones  
Talmadge/Fitzpatrick