

No. 67410-2 I

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON,
DIVISION I

Warren E. Bell,

Appellant,

v.

Snohomish County,

Respondent

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BRIEF OF RESPONDENT

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I. QUESTION PRESENTED

Whether the trial court abused its discretion in denying plaintiff's motion to vacate by finding that Snohomish County did not rely upon Ms. Halberg's declaration in successfully arguing its motion for summary judgment where the County's motion for summary judgment does not rely upon any facts or argument attributable to Ms. Halberg.

II. STATEMENT OF THE CASE

On November 9, 2010, the trial court dismissed plaintiff's complaint pursuant to Snohomish County's motion for summary judgment. (CP 1-2). In its order, the trial court specifically referenced the declarations it had considered; to wit: the court considered the declarations of Barbara Gidos, Michel Swenson, Gail Bennett, and Detectives Trafford and Haley. (CP 1).

Thereafter, plaintiff filed a motion to vacate. Opening Brief, page 2. Plaintiff argued, as he argues here, that Snohomish County failed to comply with CR 56(c) because Snohomish County did not provide plaintiff with a copy of Mary Halberg's declaration. Opening Brief, page 4.

On June 16, 2011, the trial court denied plaintiff's motion to vacate. (CP 91-92). Based on argument of the parties, the pleadings on file, and being fully advised in the premises, the trial court found that "Snohomish County did not rely upon a declaration of Mary Halberg in successfully arguing its Motion for Summary Judgment." (CP 91).

Moreover, the trial court found that "Snohomish County did not commit fraud, misrepresentation, or other misconduct in arguing its Motion for Summary Judgment," and that "[t]he plaintiff was not prevented from fully and fairly presenting his defense to Snohomish County's Motion for Summary Judgment." (CP 91).

III. ARGUMENT

Under Washington law, "[a] trial court's decision to vacate a judgment or order under CR 60(b) is reviewed for abuse of discretion." Luckett v. Boeing Company, 98 Wn. App 307, 309, 989 P.2d 1144 (1999). Moreover, Washington courts have held that "[a] trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). The court in Littlefield held further:

a court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual

findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Id. at 47.

In this case, a simple review of the County's motion for summary judgment demonstrates that the trial court's decision to deny plaintiff's motion to vacate the order of dismissal was not an abuse of discretion because the decision was supported by the record.

Specifically, a simple review of Snohomish County's Motion for Summary Judgment confirms that the only reference to a declaration of Mary Halberg is made in Section IV, Evidence Relied Upon. (CP 71). Specifically, Section IV, Evidence Relied Upon, states "[t]his motion is based upon the Declarations of Barbara, Gidos, Mary Halberg, Michel Sewnson, Det. James Haley, Det. Matthew Trafford, and Gail Bennett." (CP 71). The inclusion of Mary Halberg in this list was a scrivener's error, as the motion for summary judgment was not based upon any facts or statements attributable to Ms. Halberg.

There is no other single reference to Ms. Halberg or her declaration throughout the motion. None of the facts stated in the six (6) pages of the Statement of Facts are attributable to Mary Halberg. (CP 66-71). None of the facts stated in the nine (9) pages of the Authority and Argument are attributable to Mary Halberg. (CP 71-79). Accordingly, Snohomish

County argued its successful motion without reliance upon any facts attributable to Ms. Halberg.

In addition to the simple fact that Snohomish County did not rely on any facts attributable to Ms. Halberg in the County's substantive argument, the trial court's order granting the County's motion for summary dismissal likewise makes no reference to a declaration from Mary Halberg. The order only references the declarations of Barbara Gidos, Michel Swenson, Gail Bennett, and Detectives Trafford and Haley. (CP 1).

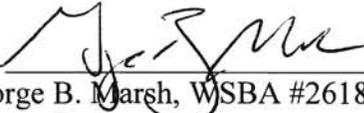
Therefore, the trial court did not abuse its discretion in denying plaintiff's motion to vacate the summary order of dismissal because its finding that "Snohomish County did not rely upon a declaration of Mary Halberg in successfully arguing its Motion for Summary Judgment (CP 91)," was supported by the record.

IV. CONCLUSION

Because the trial court did not abuse its discretion in denying plaintiff's motion to vacate, this court should affirm the trial court's order denying plaintiff's motion to vacate.

Respectfully submitted this 30 day of April, 2012.

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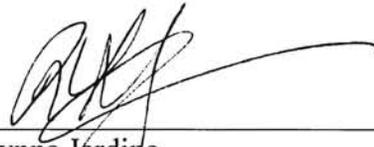
DECLARATION OF SERVICE

I, R. Lynne Jardine, hereby certify that on the 30th day of April, 2012, I served a true and correct copy of the foregoing Snohomish County's Reply Brief upon the person/persons listed herein by the following means:

Plaintiff <i>pro se</i>: Warren E. Bell 3027 South 220 th Street Des Moines, WA 98198 ./phone ./fax ./email	<input type="checkbox"/> Electronic Filing <input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 30th day of April, 2012.



R. Lynne Jardine
Legal Asst. to George B. Marsh,
Deputy Prosecuting Attorney