

COURT OF APPEALS NO. 68256-3-I
IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DELORES R. VAN HOOFF, an individual

Appellant

v.

CHRIS L. MATSON, an individual,

Respondent.

FILED
COURT OF APPEALS
DIVISION I
JAN 11 2011
BY: [Signature]

RESPONDENT'S OPENING BRIEF

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I. INTRODUCTION

CHRISTOPHER MATSON, Respondent, respectfully submits this brief in response to the Briefs of the Appellant Delores Van Hoof. The Appellant's Notice of Appeal is timely only as to the Appellant Van Hoof and only as to Appellant Brief One. Two separate counsels filed two separate briefs on behalf of Appellant Van Hoof in this matter. One attempts to surreptitiously include as an appellant, Appellant's counsel, Barry Kombol, despite his absence on the Notice of Appeal. The issues remaining before this court were not raised at the trial level and not brought before the court for rightful determination and, therefore, are waived.

At the time of submitting this brief, the ruling on the admissibility of Appellant Brief Two was still pending. Appellant Brief Two is untimely and contrary to Appellate rules allowing for a single brief to be filed by an appellant under RAP 10.1. Respondent does not waive their objection in responding to the second brief.

Respondent requests that this Court affirm the trial court's decision on all counts regarding Appellant, strike all proceedings interposed by Barry Kombol and Rainier Legal Center Inc., and provide Respondent attorney's fees pursuant to CR 11 and RAP 18.9.

II. ASSIGNMENT OF ERROR

Respondent asserts the following with regard to the Appellant's Assignments of Error:

- 1(a) The Appellant failed to provide any legal argument or basis regarding the invalidity of the award of attorney's fees under the CR 11 statute for a CR 2A

agreement at the Trial Court. Appellant has therefore waived any argument on appeal.

- (1)(B) The Trial Court did not abuse its discretion in entering an award in favor of Respondent and against Appellant in the amount of \$2,525.00 on August 19, 2011.
- (1)(C) Appellant misstates the law in *State v. SH*, 102 Wn.App 468, P.3d 1058 (2000), in Appellate Brief One.
- (1)(D) Barry Kombol and Rainer Legal Center, Inc., P.S. are not Appellants and Regarding the August 19, 2011 And September 23, 2011 Orders, Judgments, Findings of Fact & Conclusions Of Law, they failed to timely appeal.
- (1)(E) The Trial Court did not abuse its discretion in awarding CR 11 sanctions against Barry Kombol and Rainier Legal Center, Inc., P.S.
- (2)(A) Appellant failed to timely preserve any objections regarding the Findings of Fact and Conclusions of Law for appeal.
- (2)(B) The Trial Court determined that Appellant's counsel's failure to appear for the December 16, 2011, Presentation of Judgments and Findings of Fact and Conclusions of Law was willful and all objections were waived.
- (3) Appellant waived any right to assert error for appearance of bias and prejudice.
- (4) Appellant's assertion of error regarding the duplication of Judgments is frivolous. Appellant could have remedied this clerical error under CR 60(A) at the Superior Court.

- (5)(A) Appellant's Second Brief is time barred and an appellant only has the opportunity to file one brief.
- (5)(B) Appellant Van Hoof is responsible for the actions of her attorney
- (6) The Trial Court did not err in imposing sanctions against a client because no difficulty prevented them from performing the requirements
- (7) Appellant's Request For CR 11 Is devoid of merit and is frivolous
- (8) This appeal is frivolous and the court should sanction Appellant and appellant's counsel pursuant to the Rules Of Appellate Procedure 18.9(A)

III. STATEMENT OF THE CASE

A. Relevant Facts.

1) Background & Mediation Results.

This Appeal concerns the enforcement of a CR 2A agreement by Respondent Matson against Appellant Van Hoof (CP 148). The case initially involved a boundary dispute between four neighboring properties in Enumclaw, Washington. There, Respondent Matson was the sole Plaintiff and the Defendant's were Van Hoof, Okita, and Schonbachler (CP 148 lns 12-20). Defendant Okita and Defendant Schonbachler appeared *pro se*. Respondent Matson and Appellant Van Hoof were represented by counsel.

Mediation took place on April 26, 2011, and included Appellant Van Hoof, Defendant Schonbachler, and Respondent Matson. (CP 1). Defendant Okita declined to participate. This mediation resulted in a CR 2A agreement between Respondent Matson and Appellant Van Hoof that required, "Defendant's attorney [Appellant's counsel] shall

make an initial draft of pleadings and Orders consistent with this Settlement." (CP 1 lns 21-22 and CP 2 lns 1-2).

Over two months passed and Respondent's counsel received no documents for review or communication from Appellant's counsel. (CP 2 lns 3-4). Consequently, on July 1, 2011, Respondent's counsel contacted Appellant's counsel regarding his drafts of the documents. (CP 2 lns 3-7) Appellant's counsel affirmed his duty to undertake this task, stating he would work on those documents soon. (CP 2 lns 7-8).

2) No Drafts & Assistance by Respondent's Counsel.

Another three weeks passed with no communication from Appellant's counsel. Subsequently, on July 19, 2011, Respondent's counsel sought to facilitate the production of the settlement agreement because the trial date of August 01, 2011, approached in eleven days (CP 2 lns 10-11). Despite the agreement's provision that Appellant's counsel was tasked with drafting the pleadings, on July 19, 2011, with the goal of reaching an amicable resolution without court involvement, Respondent's counsel drafted the Stipulated Judgment at the Respondent's cost and then delivered the drafts to Appellant's counsel via email and regular mail. (CP 2 lns 9-13). Respondent's counsel included an explanatory letter stating,

In Order to help facilitate resolution in this case, I am enclosing a draft of the Stipulated Judgment between Matson and VanHoof for your review. I have highlighted sections that I am not certain of regarding your client and would appreciate your cooperation in this matter.

(CP 12).

As of July 19, 2011, no settlement was reached between Defendant Okita and Respondent Matson, disallowing the possibility of filing of a Notice of Settlement with the Superior Court. *See* KCLR 41(e)(1). Subsequently, with a trial pending in a little

more than a week, Defendants Okita and Respondent Matson ultimately agreed to settle. (CP 158 lns 21-24 and 159 lns 1-2).

3) Further Delay of the Van Hoof Stipulated Judgment.

On July 25, 2011, Respondent's counsel entered with the King County Superior Court a Notice of Settlement between Respondent Matson and Defendants Okita. This, combined with a the Schonbachler Notice of Settlement filed on July 05, 2011, and the pending Stipulated Judgment for Appellant Van Hoof, gave the court the discretion to dismiss the case in forty-five (45) days. This period would elapse on or about September 08, 2011, if the Van Hoof Stipulated Judgment failed to get filed with the court. All parties had now signed a CR 2A or Settlement Agreement, and, pursuant to King County Court Rules, "all claims" had to be resolved. (CP 2) *citing* KCLR 41 (e)(1). Only the entry of the Van Hoof Stipulated Judgment remained.

Yet, the Stipulated Judgment for Appellant Van Hoof continued to languish, causing concern for Respondent's counsel. Consequently, on July 29, 2011, with no communication from Appellant's counsel nearly fifteen weeks after mediation, (CR 2), Respondent's counsel attempted contact with Appellant's counsel one last time in a good faith effort to reach amicable resolution. The letter stated in part:

While I realize that you have had some difficulties and setbacks in the past year, I feel stymied with moving this case forward. I have provided you with every courtesy. We mediated this case on April 26, 2011...

In order to help move the settlement forward, I provided you with an initial draft of the Stipulated Judgment....As you know, the Notice of Settlement was entered with the court on July 25, 2011. Within 45 days of July 25, 2011, we need to have all of the settlement documents entered with the court. Unfortunately, at this point I have little hope that this case will be resolved without my having to file a motion to enforce the settlement agreement.

If you would please provide me with the pleadings for settlement I would appreciate it, or at least contact me about revising the ones that I provided. If not, you leave me no choice but to file a Motion to Enforce the Settlement Agreement, with attorney's fees. I will be filing the motion by August 12, 2011.

(CP 26).

Ten days after sending the letter, with no communication from Appellant's counsel, Respondent proceeded by filing the Motion to Enforce the Settlement Agreement. (CP 3 lns 9-11).

B. Procedural History.

1) Order & Motion to Enforce to Settlement Agreement.

On August 10, 2011, Respondent's counsel sent to Appellant's counsel via US Mail the Motion to Enforce the Settlement, the Note for Motion, and the Order Enforcing the Settlement Agreement. (CP 405-406). The hearing was set for August 19, 2011, without oral argument. (CP 1 lns 3-4). Appellant acknowledges that the Respondent's Motion and Order "...was mailed out pursuant to the Court Rules." (CP 41 lns 16-19). The Proposed Order was included with the Motion. (CP 405 lns 24-25). It should not have been a surprise to Appellant's counsel that he was required to provide an "initial draft of pleadings and Orders" consistent with language in the Settlement Agreement.

The proposed Order sent to Appellant's counsel stated:

...it is hereby ORDERED, ADJUDGED AND DECREED that the Settlement Agreement is enforceable and the Defendant Van Hoof and its attorney shall comply with the terms of the agreement by providing Plaintiff Matson's attorney with "an initial draft of pleadings and orders consistent with this settlement" as according to section 7 of the Settlement Agreement by or before August 24th of 2011.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Van Hoof and Defendant's attorney Mr. Barry Kombol of Rainier Legal Center Inc. P.S., jointly shall pay reasonable attorney's fees

in the amount of \$525.00 to Plaintiff Matson for having to bring the Motion to Enforce the CR 2A Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Van Hoof shall pay \$500.00 in attorneys fees for every day past August 19th that Defendant Van Hoof fails to comply with their duties under the settlement agreement.

(CP 156). The Honorable Judge Monica Benton signed the Order on August 19, 2011.

(CP 156 lns 27-29).

2) False Representations & Dubious Tactical Maneuvers.

a. Allegations of Bullying & Untimely Reply.

Instead of complying with the order, Appellant's counsel filed an untimely reply on August 19, 2011, the day of the hearing. This untimely reply denied Respondent's counsel the opportunity to respond pursuant to court rules.

Despite Respondent's counsel's repeated efforts facilitating the resolution of the case, in his Reply, Appellant's counsel alleged Respondent's counsel employed "bullying/bludgeoning tactics" and asked the Court to consider whether it would be appropriate to schedule a hearing to review the conduct of (Respondent's counsel) Ms. Johnson in this case." (CP 42 lns 11-17). Appellant's counsel based his allegation on his perceived inequity that Respondent's counsel paid Defendant Schonbachler no attention and focused her attention only upon Appellant Van Hoof. In fact, trying to bring the case to conclusion, Defendant Schonblacher received communications from Respondent's counsel on the same dates and in a similar spirit as those provided to Appellant's counsel. (CP 169, 173).

b. Hearing Request to Review the Conduct of Respondent's Counsel.

In addition to alleging "bullying" tactics by Respondent's counsel, Appellant's counsel also requested a hearing and included an order requesting review of "pertinent court rules, statutes and Rules of Professional Conduct" for such to set a hearing date for September 08, 2011. (CP 174). Upon investigation by Respondent's counsel, she discovered the Court misunderstood the purpose of the hearing and although it does not appear on the record, the Court ultimately struck the hearing.

c. Untimely Request for Motion of Reconsideration.

Appellant's counsel failed to meet the August 29, 2011, deadline to file a Motion for Reconsideration. Instead, on September 8, 2011, Appellant's counsel filed a Motion for Reconsideration/Motion for Relief from Order based on the following legal authority:

The relief being requested in this Motion is based upon the provisions of CR 59(a)(5); 59(c) based upon the Court's own initiative in the Order it entered on August 24, 2011; CR 59(e)(2) based upon the Note for Presentation of Judgment filed herein this day; CR 60(b)(1); CR 60(b)(9).

(CR 178, 179 Ins 1-4). No legal analysis or case law was provided. Nonetheless, a hearing was set for September 23, 2011. (CP 178).

d. Misleading Purpose of the Hearing.

At the Motion for Reconsideration/Motion for Relief hearing on September 23, 2011, Appellant's counsel reframed his purpose. He presented the following statement regarding the Motion for Reconsideration: "Yes, your Honor. Basically I'm--that would be the essence, not reconsideration, but relief from. Yes?" (VR p. 4, Ins 14-16 September 23, 2011).

Contrary to the stated purpose of the hearing, rather than present a motion in any form, Appellant's counsel indicated that he sought only relief from the sanctions granted

at the hearing on August 19, 2011, via review of Appellant's counsel's conduct. He stated to the Court, "But there is another motion in front of the Court, I think, for sanctions. So if – I mean, I'm here to answer questions that the Court may have." (VR p. 6, lns 7-8).

In Brief One, Appellant's counsel now argues that at the September 23, 2011, hearing, he truly sought a review of the conduct of Respondent's counsel, not a Motion for Reconsideration or Motion for Relief. "Mr. Kombol believed the Court wanted the parties' attorneys to discuss the matters described in the Court's Order of August 24th which ordered both to appear." (ABO p. 36). Those were the same issues from the Order regarding the "pertinent court rules, statutes and Rules of Professional Conduct" referenced above. (CP 174).

e. False Representations to the Court.

i) Language in the Order.

Continuing on his course of duplicity, Appellant's counsel asserted Respondent's counsel failed in her duties despite clear evidence to the contrary. He stated to the Court that Respondent's counsel failed to include the Respondent's obligations under the CR 2A Agreement in the proposed Stipulated Judgment stating, "...they didn't even impose on the plaintiff, her client, the two burdens that he had." (VR p. 12, lns 1-2 September 23, 2011). ...I mean, you didn't have to draft pleadings, I suppose, consistent with the settlement agreement, and could have, you know, entered those, had there been no reply." (VR p. 12, lns 9-12 September 23, 2011).

Appellant's counsel, who implied he reviewed the documents by stating he redrafted them, made these statements to the court knowing that the proposed Stipulated Judgment included the following statement:

ORDERED, ADJUDGED, AND DECREED **that the terms of that certain CR2A Settlement Agreement entered into by and between the parties on or about April 26, 2011 shall be the final disposition of this case and that this case shall otherwise be dismissed as between Plaintiff Matson and Defendant VanHoof with prejudice and without an award of costs or fee, except said Settlement Agreement (CR2A) shall remain in force and binding against both parties.**

(CP 8).¹ (emphasis added)

ii) Drafting the Initial Pleadings.

In addition, Appellant's counsel asserted that he "worked [on the initial pleadings] all day...on the day" he received the draft of the signed Order. Making this statement clearly implies he reviewed the document, which made him familiar with its contents. (VR p. 14, lns 2-5 September 23, 2011).

In defense, Respondent's counsel stated that she "...provided a copy of my draft with a copy of his hard work" to the Court:

THE COURT: "So--and your point is really?

MS. JOHNSON: The point is that he didn't make any changes.
(VR p. 15, lns 13-22).

The comparison between the draft provided by Respondent's counsel to Appellant's counsel and the initial pleadings supplied by Appellant's counsel showed four insignificant changes.

3) Judge Benton's Comments.

During the September 23, 2011, hearing, the Honorable Judge Monica Benton made the following statement: "**It's not the first case where I've had to issue a sanction where parties have just let things sit too long, and better it be a monetary penalty**

¹Even now, Petitioners Brief One continues to assert that Respondent's counsel failed to provide a copy of the CR2A agreement with their Motion to Enforce the Settlement Agreement. (ABO p. 6. lns. 10-12) Yet, Respondent's counsel provided the CR 2A with the Declaration of Cindy A. Johnson in order to swear that the copy was a true and correct copy. (CP 7-11).

than one from the bar association, is what I would think." (VR p. 16, lns 11-14 September 23, 2011). (emphasis added).

The Order signed on September 23, 2011, specifically stated, "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's attorney Mr. Barry Kombol and Rainier Legal Center, Inc. P.S. shall jointly and severally pay attorney's fees in the amount of \$1,225.00 to ACEBEDO & JOHNSON, LLC. " This Order is not against Appellant, Delores Van Hoof. (CP 156).

4) Presentation of Judgments and Findings of Fact & Conclusions of Law.

Respondent's counsel mailed Notes for Motion to Appellant's counsel on November 21, 2011, and emailed the same to Appellant's counsel on November 20, 2011. (CP 262, 263). Both hearings were set for December 16, 2011. The Notes for Motions were sent timely, although Respondent's counsel admitted filing the Declaration of Mailing for the Notices at a later date. The Declaration of Mailing did not prejudice Appellants.

In preparation for hearing on the Findings of Fact and Conclusions of Law, Respondent's counsel's staff transcribed the recording of the hearing in-office, causing a delay in determining the date to set for the hearing. On December 05, 2011, Respondent's counsel mailed the transcription to Appellant's counsel, who filed no objections with the Court regarding the transcription of the hearing or the Findings of Fact and Conclusions of Law.

5) Declarations Filed by Appellant's Office.

a. Urgent Appearance at Federal Court.

Two days prior to the hearing set for December 16, 2011, Appellant's counsel lodged an objection to the hearing date. On December 14, 2011, Appellant's counsel's paralegal faxed Respondent's counsel an "objection to hearing date" stating that "no copy was received by this office." The message further states, "Mr. Kombol is not available for any hearing on December 16, 2011, because he is schedule to appear at a Federal District Court hearing that day." (CP 95 lns 26-27 and 97 lns 9-11). The message stressed the urgency of Appellant's counsel's presence at the hearing: "Mr. Kombol committed himself to appear at an important hearing at the U.S. District Court in Tacoma this Friday." (CP 108).

Respondent's counsel inquired with the U.S. District Court and learned that the only hearing involving Appellant's counsel on Tuesday, December 16, 2011, required no oral argument. The case, *The Prudential Insurance Company of America v. Shannon Atkinson*, C11-05299 RBL, held a hearing for Motion for Summary Judgment, which was presented **without oral argument**. (CP 103 lns 13-17). However, once again in Brief One, Appellant's counsel brazenly asserts to this court that Appellant's counsel was "scheduled to be at" a hearing "at the U.S District Court in Tacoma" on December 16, 2011. (ABO 38 lns 16-18).

b. Four Scheduled Hearings at Superior Court.

In the late afternoon, the day before the hearing set for December 16, 2011, Appellant's counsel lodged another untimely objection to the hearing date. On December 15, 2011, at 4:30 PM, Appellant's counsel's office faxed to Respondent's counsel's

office a Declaration stating that Mr. Kombol faced conflicts in Pierce County Superior Court the day of the December 16, 2011, hearing set for King County Superior Court (VR p. 6, lns 18-20 December 16, 2011).

This Declaration stated, "In the absence of any Notice of Hearing from Plaintiff's Counsel, and in reliance on Ms. Johnson's first Notice of Unavailability dated November 14, 2011, **I scheduled four (4) Superior Court matters in Pierce County on December 16, 2011, all of which have been confirmed.**" (CP 140 lns 15-18 and 141 lns 1-9). (emphasis added). However, Appellant's fail to acknowledge than an Amended Notice of Unavailability was filed on November 18, 2011, four days after the Respondent's counsel's initial Notice of Unavailability. The Amended Notice of Unavailability stated Respondent's counsel would be unavailable starting December 17, 2011.

c. Substitute Counsel and Response to Four Hearings.

On December 16, 2011, without notice to Respondent's counsel, Loretta M. Fiori-Thomas appeared on behalf of Appellant's counsel and sought a continuance of the Motions. (VR p.3, lns 18-21 December 16, 2011).

In opposition to the impromptu Motion to Continue, Respondent's counsel provided the following information about the four scheduled hearings requiring Appellant's counsel to appear in Pierce County Superior Court:

MS. JOHNSON: The first case, Cause No 06-4-01183-2, was a show cause hearing for an estate that was filed in 2006, requiring a notice of completion. That completion was filed yesterday, so -- my understanding from the Court is, he didn't need to show up for that.

(VR p. 7, lns 9-13 December 16, 2011).

MS. JOHNSON: The second case, Guardianship of Trevor Kane, which is Cause No. 07-4-00824-4, was a guardianship, which is a simple accounting, which is at 9:00 this morning, before Judge Serko. My appearances before Judge Serko have been such that guardianships always go first, and a simple accounting could have brought him here on time.

(VR p.7, lns 24-25 and p. 8, lns 1-4 December 16, 2011).

The third one, Shannon Atkinson vs. Jerry Edward Atkinson, Cause No. 09-3-04059-1, this was-- this was the most disturbing to me. Mr. Kombol **actually filed this motion on December 12th, with an order to show cause-- or an order to shorten time to have it scheduled today, which I thought was very unfair.**

And the--the forth one, Cause No. 11-2-08534-7, Baja Properties vs. SDC Homes, was an order of default entered on September 30th, 2011. All that Mr. Komol had to do in that case was file a declaration supporting his order of default. And if he did not do so by today, then a review hearing was done-- was required for today. He didn't do so, so a review hearing was required for today.

(VR p. 7, lns 24-25 and 8 1-18, December 16, 2011). (emphasis added).

6) Judge Benton's Remarks and Reaction.

At the December 16, 2011, hearing, the Honorable Judge Monica Benton considered Respondent's counsel's information on the four Pierce County hearings of Appellant's counsel. She then stated, "Typically, though, the remedy would not be to go forward, but rather to sanction and require attorneys' fees to be paid." (VR p. 8, lns 24-25, December 16, 2011). Respondent's counsel argued that, in fact, their attempts to move the case forward continually met refusal from Appellant's counsel replying, "Well, we've been trying to do that for quite some time now." (VR p. 9, lns 2-3 December 16, 2011).

Judge Benton's reply was quite clear, "**It's --Ms. Fiori, you've inherited a snake in a basket, and it's fighting its way out of the basket, on its way to the state bar. So I want you to communicate that to Mr. Kombol.**" (VR p. 8, lns 4-7, December 16, 2011). (emphasis added) "...**You know, in other words, I'm not satisfied that his**

failure to appear is anything but willful, so I'm going forward as though he's --he's forfeited any objection.” (VR p. 11, lns 13-16, December 16, 2011). (emphasis added).

7) Clerical Error & Alternative Security .

Subsequent to Judge Benton’s ruling, the Findings of Fact and Conclusions of Law were entered and the Judgments against the Appellant, Appellant’s counsel, and Rainier Legal Center Inc. P.S., were signed by the Judge. A clerical error occurred and a second set of Judgments were also signed by Judge Benton. (CP 315 lns 18-19). The second set of Judgments was never recorded. (CP 315 ln 22) No motion was filed by Appellant or Appellant’s counsel regarding resolving a clerical error under CR 60(a).

On March 09, 2012, Appellant’s counsel attempted to seek an alternative means of security in this case, which duplicated the security Respondents already held: a lien. (CP 315 lns 26-29 and 316 lns 1-4). Respondent's asked for an additional bond due to the frivolous nature of this appeal. (CR 313 lns 10-13). Judge Benton granted the additional collateral. However, due to Appellant's filing of two briefs, attempting to add Mr. Kombol and Rainier Legal Center, Inc., and adding additional errors to their brief that were not listed on the Notice of Appeal, the collateral will not cover Respondent’s attorney’s fees and costs. (CR 358-359).

III. ARGUMENT

(1)(A) THE APPELLANT FAILED TO PROVIDE ANY LEGAL ARGUMENT OR BASIS REGARDING THE INVALIDITY OF THE AWARD OF ATTORNEY'S FEES UNDER THE CR 11 STATUTE FOR A CR 2A AGREEMENT AT THE TRIAL COURT. APPELLANT HAS THEREFORE WAIVED ANY ARGUMENT ON APPEAL.

Respondent requested sanctions under CR 11 due to the fact that a CR 2A agreement was a binding court document, pleading or memorandum. This makes sense

because CR 2A agreements can be construed as "a contract between them embodying the terms of the judgment." *Washington Asphalt v. Kaeser*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957). A CR 2A "...operates to end all controversy between the parties within the scope of the judgment..." *Id.*

Civil Rule 11 provides in pertinent part:

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) 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 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.

(emphasis added). Yet instead of addressing the issue, Appellant insisted, and continues to insist in Appellant's Brief One, that no fees applied under the CR 2A agreement. (ABO p.27) (VR p. 11, lns 22-24, September 23, 2011).

Even in Appellant's untimely Motion for Reconsideration/Motion for Relief he restated the fact that the CR 2A agreement did not allow for fees and did not respond to the CR 11 issue. (CP 192 lns 11-17). Appellant cannot present any new arguments not

raised at the Trial Court level and any new argument by Appellant is waived. "We generally will not review an issue, theory or argument not presented at the trial court level. The purpose of this rule is to afford the trial court an opportunity to correct errors, thereby avoiding unnecessary appeals and retrials." *Demelash v. Ross Stores, Inc.*, 105 Wn.App 508, 527, 20 P.3d 447 (2001). ("An appellate court may refuse to review any claim of error which was not raised in the trial court.") *State v. Morgensen*, 148 Wn.App 81, 91 197 P.3d 715 (2008).

(1)(B) THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ENTERING AN AWARD IN FAVOR OF RESPONDENT AND AGAINST APPELLANT IN THE AMOUNT OF \$2,525.00 ON AUGUST 19, 2011.

The Trial Court committed no error in granting Respondent an award against Appellant on August 19, 2011. "Decisions either denying or granting sanctions...are generally reviewed for abuse of discretion' [citation omitted] ...But the 'choice of sanctions remains subject to review under the courts inherent authority applying the arbitrary capricious, or contrary to law, standard of review.'" *State v. SH*, 102 Wn.App 468, 475, 8 P 3d 1058 (2000).

The Appeals Court review concerns, "...whether the court's conclusion was the product of an exercise of discretion that was **manifestly unreasonable or based on untenable grounds of reason.**" *Skimming v. Boxer*, 119 Wn.App 748, 754, 82 P.3d 707 (2004). (emphasis added).

Judge Benton's review included numerous factors. She reviewed the record of information regarding Appellant's attempts to work with Appellant's counsel as follows:

The mediation took place on April 26, 2011. Respondent's counsel waited two months and then tried to communicate with Appellant's: calling, sending letters; asking

for Appellant's counsel's cooperation. (CP 2 lns 3-7, CP 2 lns 9-13, and CP 12). Finally, Respondent's counsel even wrote the "initial draft" for Appellant's counsel in order to amicably resolve the issue. The letter from Respondent's counsel, sent with the proposed draft stated:

In Order to help facilitate resolution in this case, I am enclosing a draft of the Stipulated Judgment between Matson and Van Hoof for your review. I have highlighted sections that I am not certain of regarding your client and would appreciate your cooperation in this matter.

(CP 12).

Inexplicably, Appellant's counsel still failed to respond.

Almost four months after the April 2011 mediation, on July 29, 2011, Respondent's counsel tried to contact Appellant's counsel one last time. The letter stated in pertinent part:

If you would please provide me with the pleadings for settlement I would appreciate it, or at least contact me about revising the ones that I provided. If not, you leave me no choice but to file a Motion to Enforce the Settlement Agreement, with attorney's fees. I will be filing the motion by August 12, 2011.

(CP 26).

Respondent's counsel waited two additional weeks and then filed the Motion to Enforce, seeing no other way to achieve compliance outside of court (CP 3 lns 9-11). Appellant's counsel made no response until the date of Order was due to be signed by Judge Benton, August 19, 2011.

After reviewing the Reply Brief and Motion for Reconsideration/Motion for Relief, which provided no legal analysis, the only statements made by Appellant's counsel clearly implied he knew of all of his office's circumstances, staffing shortage, and his pending vacation at the time he signed the CR 2A agreement. Because of these

circumstances, Appellant's counsel knew he never intended to provide a timely response to Respondent's counsel when he signed the CR 2A Agreement in April 2011.

Further, at the Motion for Reconsideration/Motion for Relief Appellant's counsel embarked on a course of providing misstatements about Respondent's counsel to the court. He stated to the Court that Respondent's counsel failed to include the Respondent's obligations under the CR 2A Agreement in the proposed Stipulated Judgment stating, "...they didn't even imposed on the plaintiff, her client, the two burdens that he had." (VR. p. 12 Ins 1-2 September 23, 2011). "... I mean, you didn't have to draft pleadings, I suppose, consistent with the settlement agreement, and could have, you know, entered those, had there been no reply." (VR p. 12, Ins 9-12 September 23, 2011). These statements stand in direct contradiction to the Stipulated Judgment drafted by Respondent that included the language "**...that the terms of said CR 2A Settlement Agreement entered by and between the parties on or about April 26, 2011 shall be the final disposition of this case and...shall remain in force and binding against both parties.**" (CP 8). (emphasis added)

Civil Rule 11 imposes a standard of "reasonableness under the circumstances." *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 829 P.2d 1099 (1992). After reviewing the pleadings and listening to counsel's arguments, Judge Benton found that Appellant and Appellant's counsel's actions were tantamount to bad faith. CR 11, is an "equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation." *Wilson v. Henkle*, 45 Wn.Ap 162, 173, 724 P.2d 1069, 1076 (1986). In *Wilson v. Henkle*, conduct which was "inappropriate and improper" was tantamount to a finding of "bad faith" and

was supported by the record. As a result, sanctions in the amount of attorney's fees and costs was proper. *Wilson v. Henkle*, 45 Wn.Ap 162, 173, 724 P.2d 1069, 1077 (1986).

The trial court's inherent authority to sanction litigation conduct is properly invoked upon a finding of bad faith, which includes conduct that delays or interrupts litigation, or affects the integrity of the court. *Rogerson Hiller Corp v. Port of Port Angeles*, 96 Wn.App. 918, 928, 982 P.2d 131 (1999), *review denied*, 140 Wn.2d 1010, 999 P.2d 1259 (2000). There is no question about the fact that Appellant's counsel's conduct unnecessarily delayed and interrupted the settlement process. Because there is also no question about the enforceability of the CR 2A settlement agreement, the trial court did not abuse its discretion in entering its August 19, 2011, order enforcing the settlement agreement.

Appellants cannot show abuse of discretion regarding the award of the CR 11 sanctions, nor can they show that the inherent power to do so was arbitrary and capricious, or contrary to law. The Trial Court's Award should be affirmed. As a result, if this Court upholds the trial court's finding, the monetary sanctions imposed by the trial court should be deemed proper without further examination.

(1)(C) APPELLANT MISSTATES THE LAW IN STATE v. SH, 102 Wn.App 468, P.3d 1058 (2000) IN APPELLATE BRIEF ONE.

In Appellant Brief One, asserts that in order award sanctions the court must make "express findings of bad faith." However, by stating this, Appellant's statement is that this is the only way for an award to be awarded. (ABO 34). Appellant then asserts that because no express findings of "bad faith" were found in the present case, it must be remanded. (ABO p. 35 ln 15). "Those undisputed facts "don't support a finding of bad faith." (ABO p. 35 ln 15).

Appellant omitted a fundamental portion of the holding in *State v. SH, Id. State v. SH*, provides a lengthy discussion regarding bad faith and actions tantamount to bad faith: “This court has held that a finding of ‘inappropriate and improper’ is tantamount to a finding of bad faith” *State v. S.H.* 102 Wn. App 468 ,475, 8 P.3d 1058 (2000). The case further cites a Ninth Circuit case which concluded that remand was not necessary where, “the record was ‘replete with evidence of tactical maneuvers undertaken in bad faith’” *Id.* (citing *Optyl Eyewear Fashion Int’l Corp. Style Cos., Ltd.*, 760 F.2d 1045, 1051 (9th Cir. 1985)).

In the present case, Conclusions of Law Number three explicitly stated “The Initial Order signed by the Court Granted fees for unreasonable and repeated delay which is tantamount to bad faith under CR 11.” Clearly, Appellant’s met the requirements for bad faith even under Appellant’s own cited case law. (CP 279, Ins 23-29).

(1)(D) BARRY KOMBOL AND RAINIER LEGAL CENTER, INC., P.S. ARE NOT APPELLANTS AND REGARDING THE AUGUST 19, 2011 AND SEPTEMBER 23, 2011 ORDERS, JUDGMENTS, FINDINGS OF FACTS & CONCLUSIONS OF LAW, THEY FAILED TO TIMELY APPEAL.

A party seeking review of the trial court decision reviewable as a matter of right must file a Notice of Appeal. RAP 5.1(a). Each Notice must be filed within the time provided in Rule 5.2. *See also* RAP 5.1(a). Pursuant to Rule 5.2(a), a Notice of Appeal must be filed within 30 days after the entry of the trial court’s decision that the filing party wants reviewed. RAP 5.2(a). On December 28, 2011, the trial court rendered its judgment in the underlying case (CP 279-282). Accordingly, a timely notice of appeal would have to be filed no later than January 27, 2012. No appeal was filed by Barry Kombol (Appellant’s counsel) or Rainier Legal Center, Inc., P.S., by January 27, 2012 or any time thereafter.

Appellant, Delores Van Hoof, is the sole Appellant. RAP 5.3 requires that the Notice of the Appeal includes "the party or parties seeking the review." The Notice of Appeal filed by the Appellant in this case included Ms. Van Hoof and stated: "Dolores R. Van Hoof, pursuant to Title 5 of the Rules of Appellate Procedure, hereby Appeals..." (CP 287, lns 26-27).

Yet when Appellant's counsel filed Brief One it was titled: "Brief of Appellants Barry Kombol and Dolores Van Hoof. This brief included errors of Barry Kombol and Rainier Legal Center, Inc., P.S. This is contrary to RAP 5.2 and 5.3. Later, Appellant's counsel admitted he is not an appellant in his Appellant's Reply to Respondent's Objection/Opposition to Van Hoof's Motion to File a Separate Opening Brief.

There Appellant stated: "Mr. Kombol's reference to himself as appellant along with Mrs. Van Hoof was done **simply for purposes of clarity**. Mrs. Van Hoof is the appellant." (Appellant's Reply to Respondent's Objection/Opposition to Van Hoof's Motion to File Separate Opening Brief p. 3). (emphasis added).

Appellant can appeal on her behalf but has no standing to appeal on the behalf of her counsel, Mr. Kombol. "A lawyer who is sanctioned by a court becomes a party to an action and thus may appeal as an aggrieved party." *Breda v. B.P.O Elks Lake City 1800*, 120 Wn.App 351, 353, 90 P.3d 1079, 1081 (2004). Appellant's counsel and/or Rainier Legal Center, Inc., P.S., filed no appeal. As a result, Appellant's counsel and Rainier Legal Center, Inc., P.S., waived and failed to timely preserve any appeal rights on their own behalf. Because Appellant's counsel and Rainier Legal Center, Inc., P.S., failed to timely appeal the Judgment or proceed under RAP 5.3 in filing a Notice of Appeal, the

judgments must stand as to Mr. Kombol and Rainier Legal Center, Inc., P.S. *State v. Gaut*, 111, Wn. App 875, 881, 46 P.3d 832 (2002).

Neither Barry Kombol nor Rainier Legal Center, Inc., P.S. filed a Notice of Appeal Accordingly, Barry Kombol and Rainier Legal Center, Inc., P.S., waived the right to seek review of the judgment.

In that regard the Order and Judgment pertaining to September 23, 2011, is solely against Barry Kombol and Rainier Legal Center, Inc., P.S. and is time barred. Nonetheless, in an abundance of caution, Respondent responds to the argument below.

(1)(E) THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING CR 11 SANCTIONS AGAINST BARRY KOMBOL AND RAINIER LEGAL CENTER, INC., P.S.

Should the Court decide to review the Order of August 19, 2011, the review should be for abuse of discretion. *State v. SH*, 102 Wn.App 468, 8 P.3d 1058 (2000). Appellant filed a Motion for Reconsideration/Motion for Relief in the underlying case on September 07, 2011, nineteen days following the entry of the Order on August 19, 2011. (CP 178) This violates Court Rules, which state: “A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision.” CR 59.

Appellant’s counsel provided no case law, no legal analysis, and only provided the following legal authority:

The relief being requested in this Motion is based upon the provisions of CR 59(a)(5); 59(c) based upon the Court's own initiative in the Order it entered on August 24, 2011; CR 59(e)(2) based upon the Note for Presentation of Judgment filed herein this day; CR 60(b)(1); CR 60(b)(9)².

²CR60(b)(1) and CR60(b)(9) state: On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order; ... (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending.

(CP 179 lns 1-4). At the September 23, 2011, hearing for the motion, Appellant's counsel attempted to remodel his untimely "Motion for Reconsideration" into a review hearing like he attempted at the hearing on August 24, 2011. He stated: "Yes, your Honor. Basically I'm--that would be the essence, not reconsideration, but relief from. Yes?" (VR p. 4, lns 14-16, September 23, 2011). "But there is another motion in front of the Court, I think, for sanctions. So if – I mean, I'm here to answer questions that the Court may have." (VR p. 6, lns 7-8, September 23, 201).

In Appellant's Brief One counsel states, "Mr. Kombol believed the Court wanted the parties' attorneys to discuss the matters described in the Court's order of **August 24th which ordered both to appear.**" (ABO p. 36 lns 10-12) (emphasis added). That order was the Order filed by Mr. Kombol seeking review of Ms. Johnson's conduct. (CP 42 lns 11-17). At the hearing Appellant's counsel provided no legal argument and provided no reason for the application of the civil rules cited in his brief under CR 60 and CR 59.

The Appellate Court defers to the trial of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. *Boeing Co. v. Heidy*, 147 Wn.2d 78, 87, 51 P.3d 793 (2002). And, an appellate court may not substitute its evaluation of the evidence for that made by the trier of fact. *Goodman v. Boeing Co.*, 75 Wn.App 60, 82-83, 877 P.2d 703 (1994). "The substantial evidence standard is deferential and requires the appellate court to view all evidence and inference in the light most favorable to the prevailing party." *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 468, 139 P.3d 1078 (2006). Judge Benton acted will within her discretion and certainly did not abuse her discretion in awarding CR 11 sanctions. Further, Judge Benton acted reasonably and did not act arbitrarily capricious

or contrary to law in choosing to award terms for Respondent's defense of Appellant's frivolous motion.

(2)(A) APPELLANT FAILED TO TIMELY PRESERVE ANY OBJECTIONS REGARDING THE FINDINGS OF FACTS AND CONCLUSIONS OF LAW FOR APPEAL.

A party seeking review before the Court of Appeals must timely preserve the issue for appeal. An appellate court may refuse to review any claim of error which was not raised at the trial court level. RAP 2.5(A); *Postema v. Postema Enterprises, Inc.*, 118 Wn.App 185, 193, 72 P.3d 1122 (2003). More specifically, unchallenged Findings of Fact are verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Appellant appeals on numerous Findings of Facts and Conclusions of Law, yet filed no objections at the trial level. Because Appellants failed to file any objections at the trial court level, the trial court lacked an opportunity to correct any errors.

(2)(B) THE TRIAL COURT DETERMINED THAT APPELLANT'S COUNSEL'S FAILURE TO APPEAR FOR THE DECEMBER 16, 2011, PRESENTATION OF JUDGMENTS AND FINDINGS OF FACT AND CONCLUSIONS OF LAW WAS WILLFUL AND ALL OBJECTIONS WERE WAIVED.

All opportunities for Appellant and her counsel to file objections to the Findings of Fact and Conclusions of Law are waived. This is both by own their failure to act and by the misrepresentations to Respondent's counsel and the trial court at the hearing on December 16, 2011.

Despite ample opportunity to file objections to the Findings of Fact and Conclusions of Law, Appellant and her counsel failed to do so. Instead, two days before the December 16, 2011, Motion for Presentation of Judgment and Presentation of Findings of Fact and Conclusions of Law, Appellant's counsel claimed previous court

commitments prevented his attendance at the hearing and objected by sending to Respondent's counsel his Objection to Notice via facsimile (CP 95 lns 26-27 and 97 lns 9-11).

This Objection stated that Appellant's counsel never received the Notice for Motion, but states nothing about the other pleadings.³ (CP 95 lns 26-27 and 97 lns 9-11). The objection contradicts the fact that Respondent's counsel sent the Notes for Motion via both U.S. Mail and email. Pursuant to CR 5(b)(2)(A) service via mail is complete upon the third day after mailing. (CP 262-263). In addition to the Notice, Respondent's counsel also sent two Judgments, and the Findings of Facts and Conclusions of Law. **All pleadings clearly stated in the upper right hand corner of the first page in bold type, the date and time of the hearing.** (CP 279, 281, 232).

Respondent's counsel timely sent the Notes for Motion and gave Appellant's counsel almost a **month's notice**, although Respondent's counsel admitted filing the Declaration of Mailing for the Notices at a later date. (CP 262-264 VR. p. 4, lns 17-25, p. 5, lns 1-8, December 16, 2011). The Notes for Motion were mailed on November 21, 2011, and emailed to Appellant's counsel on November 20, 2011. (CP 262, 263). The tardy filing of the Declaration of Mailing failed to prejudice Appellant.

Further, on December 05, 2011, Respondent's counsel mailed to Appellant's counsel the transcription of the September 23, 2011, hearing along with the proposed Findings and Conclusions of Law and Judgments. (CP 260). Appellant filed no objections to either. Yet, Appellant argued to Judge Benton that no notice was provided.

³Appellant's Brief One alluded that Ms. Johnson made irregularities and referenced a Declaration from Mr. Schonbachler. "please review Michael Schonbahler's declaration of August 19, 2011 reporting the mailing irregularities he had experienced from Ms. Johnson's firm." (ABO p.39). Whereas, Mr. Shonbachler, *pro se*, had a home address and a "rental address." However, the "rental address" was the address he listed with the court on his Notice of Appearance (CP 170). Therefore, Appellant sent documents to that address and tried to send documents to another address as well, as a courtesy.

(VR p. 4 lns 17-21 December 16, 2011). The Appellate Court defers to the trial of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. *Boeing Co. v. Heidi*, 147 Wn.2d 78, 87, 51 P.3d 793 (2002).

Appellant's counsel's office argued that because they received no "Note for Motion" Appellant's counsel could not be present for the December 16, 2011 hearing. (CP 95 lns 26-27, 97 lns 9-11.). Initially, Appellant's counsel's paralegal stated in a sworn declaration to the Superior Court that Appellant's counsel needed to be present at a Federal Court case: "Mr. Kombol is not available for any hearing on December 16, 2011, because he is schedule to appear at a Federal District Court hearing that day." (CP 95 lns 26-27, 97 lns 9-11.).

Thereafter, Respondent's counsel contacted the U.S. District Court and learned that the scheduled hearing requiring Appellant's counsel was **without oral argument** and informed Appellants she would not continue the motion. (CP 103 lns 13-17).

Then, on December 15, 2011, at 4:30 PM, the day before the Presentation of Judgments and Findings of Facts and Conclusions of Law, Appellant's counsel further objected stating he needed to attend four hearings scheduled in Pierce County Superior Court on December 16, 2011. (VR p. 6, lns 18-29 December 16, 2011). Respondent's counsel informed the Court regarding about these four hearings Appellant's Counsel's office stated they both scheduled and confirmed.

MS. JOHNSON: The first case, Cause No 06-4-01183-2, was a show cause hearing for an estate that was filed in 2006, requiring a notice of completion. That completion was filed yesterday, so -- my understanding from the Court is, he didn't need to show up for that.

(VR p. 7, lns 9-13, December 16, 2011).

MS. JOHNSON: The second case, Guardianship of Trevor Kane, which is Cause No. 07-4-00824-4, was a guardianship, which is a simple accounting, which is at 9:00 this morning, before Judge Serko. My appearances before Judge Serko have been such that guardianships always go first, and a simple accounting could have brought him here on time.

(VR p. 7, lns 24-25 and p. 8. lns 1-4, December 16, 2011).

The third one, Shannon Atkinson vs. Jerry Edward Atkinson, Cause No. 09-3-04059-1, this was-- this was the most disturbing to me. Mr. Kombol actually filed this motion on December 12th, with an order to show cause - or an order to shorten time to have it scheduled today, which I thought was very unfair.

And the--the fourth one, Cause No. 11-2-08534-7, Baja Properties vs. SDC Homes, was an order of default entered on September 30th, 2011. All that Mr. Komol had to do in that case was file a declaration supporting his order of default. And if he did not do so by today, then a review hearing was done-- was required for today. He didn't do so, so a review hearing was required for today.

(VR p. 8, lns 5-18, December 16, 2011).

After hearing about the Federal Case and the Pierce County cases, Judge Benton stated: "...You know, in other words, I'm not satisfied that his failure to appear is anything but willful, so I'm going forward as though he's --he's forfeited any objection."

(VR p. 11, lns 13-16, December 16, 2011). Therefore, **Appellant waived any objections** in their intentional and repeated misrepresentations to the court in the form of a declaration.

The Court normally will not vacate a verdict and grant a new trial for errors of law if the party seeking a new trial failed to object to or invited the error. *In re K. R.*, 128 Wn.2d 129, 147 904 P.2d 1132 (1995). As a result, in all cases Appellant waived the right to review of the Findings of Fact and Conclusions of law and the Judgments at the

Appellate level. No party appealed regarding any decision made at the December 16, 2011, hearing.

(3) APPELLANT WAIVED ANY RIGHT TO ASSERT ERROR FOR APPEARANCE OF BIAS AND PREJUDICE.

Appellant raised no issue of bias and prejudice at the trial level or in her Notice of Appeal and, therefore, is time barred. (CP 287-307). Under RAP 2.5(a), the Appellate Court may "...refuse to review any claim of error which was not raised in the trial court... The doctrine of waiver applies to bias and appearance of fairness claims." *State v. Morgensen*, 148 Wn.App 81, 91, 197 P.3d 715 (2008). As a result, this claim is waived.

If the Court were to choose to review a claim of bias, it should acknowledge the Appellant provided no evidence to support any such claim of partiality. A trial court is presumed to perform its functions regularly and properly without bias or prejudice. *In re Marriage of Meredith*, 148 Wn.App 887, 903, 201 P.3d 1056 (2009). In order to show bias, "evidence of a judge's actual or potential bias is required." *Id.*

The Appellant first argues bias occurred when Respondent won motions before the court based on the Appellant's counsel's lack of timeliness and failure to provide any legal basis for a Motion for Reconsideration. Appellant then argues that counsel's request for a motion was stricken. The motion was to review Respondent's counsel's actions under the Rules of Professional Conduct, which is not reviewable in Superior Court. Clearly this is not a basis for bias and prejudice.

Judge Benton's comments included no threats. She simply advised Appellant's counsel that he was headed down the wrong path, a path that may lead him to the

Washington State Bar Association. (VR p. 16, lns 13-14 September 23, 2011 and VR p. 9, lns 5-7 December 16, 2011).

(4) APPELLANT'S ASSERTION OF ERROR REGARDING THE DUPLICATION OF JUDGMENTS IS FRIVOLOUS. APPELLANT COULD HAVE REMEDIED THIS CLERICAL ERROR UNDER CR 60(a) AT THE SUPERIOR COURT.

Appellant attempts to raise an issue regarding the signing of a second set of judgments on January 03, 2012. This clerical error could have been remedied under CR 60(a).

Clerical Mistakes. Clerical mistakes **in judgments**, orders or other parts of the record and errors therein arising from **oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party** and after such notice, if any, as the court orders.

Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(emphasis added). Further, Appellant failed to file a motion or bring the issue of duplicate Judgments to the attention of Respondent's counsel prior to filing this Appeal. Additionally, Appellant's counsel remains remiss in seeking correction of this issue pursuant to RAP 7.2(e). Therefore, this issue is waived.

(5)(A) APPELLANT'S SECOND BRIEF IS TIME BARRED AND AN APPELLANT ONLY HAS THE OPPORTUNITY TO FILE ONE BRIEF.

The filing of Appellant's Brief Two is time barred under RAP 10.2 and also violates RAP 10.1(b). Pursuant to RAP 10.2, a brief of an appellant should be filed with the appellate court within forty-five days after filing the report of proceedings in the trial court. In this case, a motion for an extension was filed for "Appellant Delores Van Hoof Brief One," but not for a second brief, "Appellant Delores Van Hoof Brief Two." As a result, Appellant Van Hoof's Brief Two is time barred.

In addition, RAP 10.1, titled "Briefs Which May Be Filed in Any Review," provides: "The following may be filed in any review: ...a brief of appellant..." "A brief" denotes the singular form, or in this case only one brief. However, because no ruling has been entered at the time this brief was filed, Respondents cautiously responded to both of Appellants briefs, without waiving Respondent's objections.

(5)(B) APPELLANT VAN HOOF IS RESPONSIBLE FOR THE ACTIONS OF HER ATTORNEY.

In Appellant's Brief Two, Appellant argues that she should not be responsible for the actions of her attorney, who committed the "dilatory conduct." *Engstrom v. Goodman*, 166 Wn.App 905, 916 271 P.3d 959, 965, (2012), provides:

Once a party has designated an attorney to represent the party in regard to a particular matter, the court and the other parties to an action **are entitled to rely upon that authority until the client's decision to terminate it has been brought to their attention.**(citing *Haller v. Wallis*, 89 Wn.2d 539, 547 P.2d 1302 (1978).) **Absent fraud, the actions of an attorney are authorized to appear for a client are generally binding on the client.**

(citing *Haller v. Wallis*, 89 Wn.2d 539, 545-47, 573 P.2d 1302 (1978) *Rivers v. Wash. State Conference of Mason Contractors* 145 Wn.2d 674, 679, 41 P.3d 1175 (2002)) (emphasis added). As a result, Respondent's counsel should be able to rely on the fact that Appellant hired Mr. Kombol to represent her and never terminated Mr. Kombol even though he committed "dilatory conduct." Appellant was present at the mediation on April 26, 2011. Appellant knew of the communications between the parties. Nonetheless, Appellant failed to act to change the course or remedy the situation, including terminating her counsel. As a result, Appellant is bound generally with those decisions.

The decision by the Trial Court is generally in accord with case law when it sanctioned Appellant. CR 11, provides that

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.

Appellant should not be permitted to sit idly and watch the escalating frustration and surmounting costs of Respondent in dealing with Appellant's counsel without facing accountability for Appellant's inaction. Taking no action provides tacit acceptance of the Appellant counsel's actions in this case. The sanctions against Appellant were appropriate.

(6) THE TRIAL COURT DID NOT ERR IN IMPOSING SANCTIONS AGAINST A CLIENT BECAUSE IT WAS NOT DIFFICULT FOR THE ATTORNEY TO PERFORM.

The Trial Court committed no error by imposing sanctions against the client or the attorney in this case, as no difficulty prevented them from performing the requirements. Both Appellant and Appellant's counsel attended the mediation on April 26, 2011, and became familiar with the provision that Appellant's counsel was required to draft "initial pleadings." The fact that Appellant and Appellant's counsel failed to complete this task in four months time, fails to make the requirement in the Order difficult to complete. Nowhere does it state that the final pleadings were required. Simply the "initial pleadings."

The fact that Appellant's counsel faced a staffing shortage and took a month-long vacation fails to make the Order difficult to complete. Appellant remains responsible for

the actions of her attorney and her actions because she failed to take action to move this case forward.

Further, Appellate review of the admission of evidence is limited to the grounds for the objection specifically raised at trial. *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985) *Smith v. Behr Process Corp*, 113 Wn.App 306, 338, 54 P.3d 665 (2002) (sweeping objections to evidence without explanation or specific objection insufficient.) No one raised issue at the Trial Court regarding the difficulty of the task. An objection that contains no specific valid reason for the exclusion of evidence is inadequate to preserve error. *Seattle v. Carnell*, 79 Wn.App 400, 403, 902 P.2d 186 (1995).

7) APPELLANT'S REQUEST FOR CR 11 IS DEVOID OF MERIT AND IS FRIVOLOUS.

Appellant's request for CR 11 is devoid of merit. Appellant argues that a Notice of Unavailability filed by Respondent's counsel, which indicated her absence on the date of December 16, 2011, misled Appellant's counsel. However, Appellant fails to disclose that almost a month before the motion, on November 18, 2011, Appellant's counsel filed an Amended Notice of Unavailability indicating her unavailability started on December 17, 2011. (CP 224 ln 27).

Appellant's other arguments include citing scrivener's errors in Appellant's pleadings. This is an absurd argument, as scrivener's errors were in no way meant to harass or cause increase in the cost of litigation.

8) THIS APPEAL IS FRIVOLOUS AND THE COURT SHOULD SANCTION APPELLANT AND APPELLANT'S COUNSEL PURSUANT TO THE RULES OF APPELLATE PROCEDURE 18.9(a) and CR 11.

An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised. *Johnson v. Jones*, 91 Wn. App 127, 137, 955 P.2d 826 (1988). Pursuant to 18.9(a), this Court's sanctions against Appellant and Appellant's attorney may include an award of "terms or compensatory damages" (such attorney's fees and costs) to "any other party who has been harmed" by Appellant and Appellant's counsel.

Appellant's appeal is so devoid of merit that it is frivolous. Reasonable minds could not differ that his complaint lacked merit and that the Trial Court properly imposed CR 11 sanctions. Because there exists no reasonable basis to argue that the Trial Court abused its discretion, the Respondents respectfully ask for sanctions in the amount of a reasonable cost and fees on behalf of Respondent and his law firm, Acebedo & Johnson, LLC.

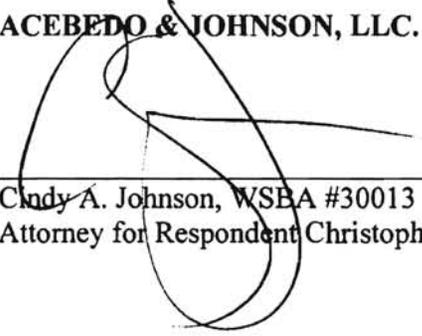
If this court issues an opinion in favor of Respondent Chris Matson, then pursuant to RAP 14.2, the court should award him costs. Costs may be awarded to a party prevailing on appeal. *N.W. Television Club, Inc. v. Gross Seattle, Inc.*, 96 Wn.2d 973, 640 P.2d 710 (1981).

V. CONCLUSION

The Respondent Christopher Matson respectfully requests that this Court AFFIRM the trial court's decision, strike Appellant's Brief Two, strike any reference to any claim made by Barry Kombol or Rainier Legal Center, Inc., P.S., and provide reasonable fees and attorney's fees and costs pursuant to CR 11 and RAP 18.9

RESPECTFULLY SUBMITTED THIS 2nd DAY OF OCTOBER, 2012

ACEBEDO & JOHNSON, LLC.



Cindy A. Johnson, WSEA #30013
Attorney for Respondent Christopher Matson