

FILED
CLERK OF COURT
BY: *[Signature]*

No. 366449-2-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

L.S., and individual,

Respondent-Cross-Appellant,

vs.

TITUS-WILL FORD SALES INC., a Washington Corporation, d/b/a MALLON
FORD, BILL HANFORD, HENRY KREBBS,

Cross-Appellants,

BRODERICK LaDRAE GORDON,

Defendant,

RICHIE CARTER,

Cross-Respondent,

MICHAEL R. DOLAJAK,

Appellant,

RESPONDENT-CROSS-APPELLANT'S REPLY BRIEF

John R. Connelly, Jr, WSBA No. 12183
Lincoln C. Beauregard, WSBA No. 32878
CONNELLY LAW OFFICES
2301 N. 30th Street
Tacoma, Washington 98403
(253) 593-5100
Fax (253) 593-0380
Attorneys for L.S.

 ORIGINAL

TABLE OF CONTENTS

I. REPLY 1

II. THE ARGUMENTS WHICH ARE OFFERED BY MR. BRIDGES IN RELATION CR 11 AND TO THE ENTRY OF JUDGMENT ARE WITHOUT MERIT..... 1

A. Mr. Bridges’ arguments related to the imposition of terms under CR 11 are frivolous..... 1

B. While asking for attorney fees, Mr. Bridges fails to clarify who he represents during these proceedings..... 3

C. Mr. Bridges is trying to mislead this Court when asserting a purported lack of candor on the part of the undersigned counsel during the proceedings before the trial court..... 4

D. The actions and inactions on the part of Mr. Bridges constitute neglect and incompetence as set forth under controlling case law and do not provide a proper basis upon which to vacate a judgment on the merits..... 6

III. CONCLUSION..... 7

TABLE OF AUTHORITIES

CASES

First Federal Savings & Loan v. Ekanger, 93 Wn.2d 777, 781, 613 P.2d 129
(1980)..... 2

In re Daley, 77 Wn. App. 29 (1994) 2

Lane v. Brown & Haley, 81 Wash. App. 102, 105-6, 912 P.2d 1040 (1996).....6

Tinker v. Kentucky Fried Chicken, 95 Wn. App. 761, 977 P.2d 627 (1999)..... 3

I. REPLY

L.S. submits this reply brief to the recent submission offered by Dan'L W. Bridges. It should be noted that Mr. Bridges raises this CR 11 issue for the first time on appeal while failing to clarify who he actually represents, failing to have properly raised the issue before the trial court, and failing to set forth a good faith basis to support making these arguments before this Court. The sum and substance of the arguments being offered by Mr. Bridges are a poorly contrived attempt to take the Court's attention away from the neglectful mistakes on the part of Mr. Bridges during the proceedings before the trial court. As is set forth herein, the arguments being offered by Mr. Bridges are without merit, and the judgments against Salesman Carter and Salesman Dolajak should stand.

II. THE ARGUMENTS WHICH ARE OFFERED BY MR. BRIDGES IN RELATION CR 11 AND TO THE ENTRY OF JUDGMENT ARE WITHOUT MERIT.

A. Mr. Bridges' arguments related to the imposition of terms under CR 11 are frivolous.

Mr. Bridges argues that the trial court abused its discretion by not considering and/or imposing sanctions under CR 11 in relation to the post judgment motions and proceedings. In so doing, Mr. Bridges has the burden of demonstrating that (1) the issue was properly raised below, (2) there was no good faith basis for the legal arguments that were asserted by L.S., and (3) that the trial court was completely wrong as to the ultimate rulings which were rendered. Mr. Bridges fails in every respect.

To begin, the CR 11 issue was not properly raised before the trial court. *See* RAP 2.5 (issues raised for first time of appeal not considered).¹ Moreover, each and every argument presented by L.S. to the trial court was grounded in the record and current law. L.S. relied upon *In re Daley*, 77 Wn. App. 29 (1994) as factual and legal precedent as to the issue pertaining to what is required to have a “hearing on the merits” under circumstances wherein the defendants fail to show up for the trial. Moreover, according to *Daley*, the presentation of evidence on the record for review by the appellate court to support to corresponding judgment constitutes a “hearing on the merits”, *i.e.*, in the words of L.S., a “mini trial”. For the most part, the trial court agreed with L.S. Mr. Bridges’ frivolous arguments pertaining to CR 11 are completely lacking in merit, L.S.’s arguments were/are well grounded in facts and law, and the frivolous arguments being offered by Mr. Bridges warrant the imposition of CR 11 sanctions against Mr. Bridges on appeal.

Additionally, the arguments which are offered by Mr. Bridges focus exclusively upon the form of the proceedings below, *i.e.* the splitting hairs about titles on the pleadings paper, while completely ignoring the substance of those same proceedings, *i.e.* the presentation of evidence consistent with CR 52 on the record. As was set forth in the opening brief, according to the Washington State Supreme Court, “whenever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form.” *First Federal Savings & Loan v. Ekanger*, 93 Wn.2d 777, 781, 613 P.2d 129 (1980). In this

¹ Trial Transcript dated May 7, 2007.

instance, the substance of what occurred was a hearing on the merits in accordance with *Daley*. The trial court expressly noted:

...And while there may be a mistake by Counsel in citing the incorrect rule, CR 40 over CR 55, there was a hearing on the merits.²

Because *Daley* was followed, and because substance should prevail over form, the judgments against Salesman Carter and Salesman. Dolajak should stand and Mr. Bridges' arguments are lacking in merit.

B. While asking for attorney fees, Mr. Bridges fails to clarify who he represents during these proceedings.

Mr. Bridges argues that the trial court erred in failing to grant *him* fees during the proceeding below while contemporaneously failing to explain how he has any standing to participate in these post judgment and/or appellate proceedings. *See Tinker v. Kentucky Fried Chicken*, 95 Wn. App. 761, 977 P.2d 627 (1999) (dismissed/settled party has no standing). The primary clients which were being represented by Mr. Bridges, the Mallon Ford defendants, settled all claims the Friday before trial and therefore have no continuing interest in these proceedings. *Id.* Before the trial court, Mr. Bridges argued for standing by explaining:

...to the extent I am in the cross hairs in this motion, I think I have standing, if nothing else, as an officer of the Court, to come in and provide briefing and authority and, frankly, evidence through declaration, which I have, that bears directly on a proceeding that I was a party to, which was this so-called mini-trial...³

² Trial Transcript dated June 8, 2007 page 34.

³ Trial Transcript dated June 8, 2007 page 15

If the Court elects to hear Mr. Bridges' arguments on appeal, then Mr. Bridges participation during these proceedings should also be construed as a concession that he was/is, in some capacity, acting as counsel for Salesman Carter and Salesman Dolajak.

Moreover, for the first time ever during any of these proceedings, on behalf of Salesman Carter and Salesman Dolajak, Mr. Bridges argues that they were entitled to a jury trial under CR 39. This argument was not raised before the trial court and, therefore, should not be considered on appeal. *See* RAP 2.5(a). Additionally, the jury demand was filed by L.S. and it defies common sense that a plaintiff is required to seat a jury and to hold a jury trial even when the defendants do not show up to defend themselves or oppose a motion for a directed judgment. In other words, Mr. Bridges is arguing for a right to a jury trial, and to require that the jury show up and review evidence, under a circumstance wherein the defendants do not bother to show up for the trial themselves. Under *Daley*, all that is required is the presentation of evidence on the record before the trial court which can be reviewed by the appellate court -- which is precisely what occurred in this instance.

C. Mr. Bridges is trying to mislead this Court when asserting a purported lack of candor on the part of the undersigned counsel during the proceedings before the trial court.

Mr. Bridges is making material and demonstrable misrepresentations to this Court in relation to what information was provided to the trial court by the undersigned counsel prior to the entry of judgment. Mr. Bridges erroneously claims that the trial court was not informed about the "statements" which were

filed (and later argued to be answers) by Salesman Carter and Salesman Gordon. During the proceedings below, as is reflected in the transcripts, the undersigned counsel informed the trial court that vague “statements” denying the allegations but that did not, in L.S.’s view, constitute answers under the civil rules were sent in the days immediately preceding the trial:

MR. BEAUREGARD: That’s not accurate. I checked LINX this morning. None of them have filed a formal answer. One of them filed a document that’s called a statement, which was not an answer, and either way, none of them have appeared...⁴

At one point, the trial court noted having stared at Salesman Carter’s “statement” for a very long time struggling with whether, or not, to consider it an “answer” under the civil rules.⁵ Those “statements” did not comport with the civil rules, are not proper answers, but were still disclosed to the trial court. It should additionally be noted, as is reflected by the trial court clerk’s docket, that not even the court clerk identified the “statements” as “answers” which were recognizable as such under the civil rules.⁶ Any and all attempts on the part of Mr. Bridges to advocate a lack of candor to the trial court are false, and should be given no weight.

Beyond that, Mr. Bridges completely failed in his own duty of candor to the trial court when failing to inform the trial court that he was in contact with Salesman Carter and Salesman Dolajak and had told them not to attend the trial.⁷

⁴ Trial Transcript dated May 7, 2007 page 33-34.

⁵ Trial Transcript dated June 8, 2007 page 34.

⁶ Trial Transcript dated June 8, 2007 page 34.

⁷ Trial Transcript dated May 7, 2007.

On the first day of trial, after the evidence was presented and the judgments were being entered, Mr. Bridges sat silent in relation to disclosing his fiduciary relationship with Salesman Carter and Salesman Dolajak, and sat silent thereafter in order to protect his own interests (of hiding his mistake) versus apprising the trial court, and the undersigned counsel, of the true circumstances.⁸ This tactic of failing to take responsibility for obvious errors, and trying to shift to focus upon others is the type of gamesmanship and unsavory tactic which has been employed by Mr. Bridges throughout the course of this litigation. Mr. Bridges failed to act with candor, failed to move for a continuance, failed to offer any substantive objection, and failed in his duty of candor to the trial court in addition to failing in relation to his fiduciary obligation owed to Salesman Carter and Salesman Dolajak. The only lack of candor in these proceedings has been on the part of Mr. Bridges.

D. The actions and inactions on the part of Mr. Bridges constitute neglect and incompetence as set forth under controlling case law and do not provide a proper basis upon which to vacate a judgment on the merits.

One of the focal questions on appeal is whether the actions and inactions on the part of Mr. Bridges constitute “neglect” or “incompetence” as illustrated in *Lane v. Brown & Haley*, 81 Wash. App. 102, 105-6, 912 P.2d 1040 (1996). In lieu of arguing the merits of the appeal, Mr. Bridges recasts these arguments as a personal attack against him.⁹ At the same time, Mr. Bridges offers aspersions

⁸ Trial Transcript dated May 7, 2007.

⁹ The newspaper article which was submitted to the Commissioner explained that Mr. Bridges was aware of L.S.’s intention to go forward against the salesmen and that he failed to update the

about the “contingency fee” lawyers, fictitious lacks of candor, and repeated commentary about the skill and length of experience on the part of the undersigned counsel. L.S. respectfully requests that this Court determine this appeal based upon the controlling law which, given the facts, calls for a determination that Mr. Bridges acted neglectfully and incompetently in relation to the fiduciary obligations he developed with Salesman Carter and Salesman Dolajak when he failed to properly advise them in relation to the ongoing proceedings and impending trial.

III. CONCLUSION

For the reasons set forth herein, Mr. Bridges’ arguments are completely lacking in merit, and the judgment against Salesman Dolajak and Salesman Carter should stand, and terms should be imposed against Mr. Bridges in relation to his neglect and involvement in these proceedings.

RESPECTFULLY SUBMITTED this 13 day of December, 2007

CONNELLY LAW OFFICES

By

John R. Connelly, Jr., WSBA #12183
Lincoln C. Beauregard, WSBA #32878
Attorneys for L.S.

salesmen about the status of the litigation because he “didn’t believe it” after expressly asking about and then being told this was the case.

FILED
CLERK OF COURT
STATE OF WASHINGTON
BY: *DM*
DEPT.

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

L.S., a single woman,

Plaintiff,

vs.

RICHIE CARTER and "JANE DOE CARTER"
husband and wife; BRODERICK LaDRAE
GORDON and "JANE DOE GORDON",
husband and wife; MICHAEL R. DOLAJAK
and "JANE DOE DOLAJAK" husband and
wife; and TITUS-WILL FORD SALES, INC., a
Washington corporation, d/b/a MALLON
FORD,

Defendants.

Court of Appeals No. 36449-2-II

AFFIDAVIT OF SERVICE

THE UNDERSIGNED, pursuant to CR 5(b), affirms that on the 13th day of December,
2007, she sent by ABC Legal Messenger a copy of Respondent-Cross-Appellant's Reply
Brief to the following at their respective address set forth below:

Edward S. Winskill
Davies Pearson, P.C.
920 Fawcett
Tacoma, WA 98403

AFFIDAVIT OF SERVICE - 1 of 2
(36449-2-II)

 ORIGINAL

CONNELLY LAW OFFICES
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

1 Zenon Olbertz
2 Law Offices
3 1008 South Yakima Ave. Ste. 302
4 Tacoma, WA 98405

5 Dan'L Bridges
6 McGaughey Bridges Dumlap, PLLC
7 325 - 118th Ave. SE Ste. 209
8 Bellevue, WA 98005

9 DATED this 13th day of December, 2007.

10 
11 _____
12 Vickie Shirer
13 Connelly Law Offices
14
15
16
17
18
19
20
21
22
23
24
25
26