

FILED
COURT OF APPEALS
DIVISION II

NO. 36891-9-II

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

KAREN KNOUD, Appellant

vs.

GREGGORY JOHNSON, Respondent

Appeal from the Superior Court of Pierce County
The Honorable Frederick W. Fleming
Pierce County Superior Court Cause No. 05-2-10081-3

BRIEF OF RESPONDENT

By: Christopher R. Boutelle
Christopher R. Boutelle
Attorney for Respondent
WSB# 704

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TABLE OF AUTHORITIES

Cases

Griggs v. Averbeck Realty, 92 Wn.2d. 576, 599, P.2d 1289 (1979)7
Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 5268, 10

Rules

CR 60(b)1,4,5,6,16
CR 60(b)(1)5,6,8
CR 60(b)(2) 1,5,11,12,13,14,15
CR 60(b)(4).....1,5,9,10,11
CR 60(b)(9).....5,8,9
CR 69(b)(11).....14
CR 60(e).....15

A. ASSIGNMENTS OF ERROR.

1. Did the trial court abuse its discretion when it denied the defendant's motion for relief under CR 60, which motion the defendant claims presented a prima facie case for relief under CR 60(b)(2),(4)?

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court fail to apply the correct legal standard when ruling on the defendant's motion to vacate judgment?

2. Did the trial court err when it failed to decide whether Knoud had established a prima facie case that the plaintiff's claims were fraudulent and that such fraud required vacation of the judgment?

3. Did the trial court err when it failed to decide whether Knoud had established a prima facie case that the proceedings were held despite her lack of mental soundness and whether that condition was not fully known or should have been known to the trial court?

C. STATEMENT OF THE CASE

1. Procedure.

On or about January 16, 2003, Gregory Johnson, Plaintiff below, purchased a home from the Defendant for the sum of \$170,000.00. This was a home that Karen Knoud, the Defendant below, received in a dissolution and rented out. The Defendant had received an offer to purchase this home for \$160,000.00. However, the Plaintiff agreed to purchase the home for \$170,000.00 which the Defendant accepted. Plaintiff paid the Defendant in cash at the time of closing the sum of \$40,743.36, and executed a Promissory Note and Deed of Trust in the sum of \$25,500.00 to pay the balance of Defendant's equity in the home. As part of the closing, the Defendant's outstanding obligation of \$90,672.97 owed against the home was paid.

Both the Plaintiff and Defendant were present during the closing of the sale at Chicago Title Insurance Company's Escrow office and both signed all documents.

At the time that this transaction occurred, the Plaintiff and Defendant were living together in the Plaintiff's home, not in the rental home that the Plaintiff purchased from the Defendant. The parties

separated in June, 2004.

Between September 4, 2003, through July 21, 2004, the Plaintiff made payments on the Promissory Note owed to the Defendant in the sum of \$27,927.05 in checks, either directly to the Defendant or on behalf of the Defendant, which the Defendant used to purchase a Day Spa business in Puyallup, Washington.

In June, 2005, the Plaintiff decided to sell the property he purchased from the Defendant. However, the title report disclosed the outstanding Deed of Trust held by the Defendant against the property. When the Plaintiff requested that the Defendant execute the necessary documents to reconvey the Note and Deed of Trust back to him, as he had paid the \$25,500.00 to her or on her behalf, she refused to do so. As a result, the Plaintiff was forced to file a Complaint to Quiet Title against the Defendant. CP 3-6.

When the matter came to trial on or about July 20, 2006, the Defendant did not appear as she was incarcerated in the Pierce County Jail. However, the Court was given a letter written by the Defendant setting forth her position on the matter. SCP 1.

Supplemental Clerk's Paper 1 is the letter from the Defendant, Karen A. Knoud, dated and filed on July 14, 2006. Appendix A.

After reviewing the letter from the Defendant, and reviewing the Defendant's Answer to the Complaint on file, the Court permitted the trial to proceed and, based upon the evidence presented by the Plaintiff, the Court found that the Plaintiff had in fact paid the amount owed to the Defendant on the Promissory Note that he had executed to her. CP 27-28.

On July 31, 2006, the Court signed a Judgment quieting title in the real property to the Plaintiff and as part of the Judgment, set forth arrangements for the appointment of a third party to execute the documents necessary to reconvey the Note and Deed of Trust to the Plaintiff in the event Defendant refused to do so. CP 38-41. The Defendant refused to do so and the third party executed the documents in her behalf pursuant to Court Order.

On July 31, 2007, the Defendant filed her Motion and Order to Show Cause with the Court requesting that the Court vacate the judgment entered against her on July 31, 2006. CP 42. The Motion was brought pursuant to CR 60(b).

After listening to argument of counsel, on September 21, 2007, the Court denied the Defendant's Motion and the appeal to this Court followed.

Appendix B – CR 60(b)

D. ARGUMENT.

The Defendant is basing her appeal from the Court's ruling denying her Motion to Vacate the Judgment against her pursuant CR 60(b). It is the Respondent's position in this appeal that the Defendant is basing her argument upon the following two (2) issues:

1. DID THE TRIAL COURT ABUSE IT'S DISCRETION WHEN IT DENIED THE DEFENDANT'S CR (60)(b)(1) and (9) MOTION FOR RELIEF FROM JUDGMENT WHEN THE DEFENDANT FAILED TO APPEAR FOR TRIAL?
2. DID THE TRIAL COURT ABUSE IT'S DISCRETION WHEN IT DENIED THE DEFENDANT'S CR 60(b)(4) MOTION WHERE IT FOUND THAT DEFENDANT HAD NOT PROVEN A PRIMA FACIE CASE OF FRAUD WHICH WOULD HAVE AFFECTED THE OUTCOME OF THE TRIAL?
3. DID THE TRIAL COURT ABUSE IT'S DISCRETION WHEN IT DENIED THE DEFENDANT'S MOTION UNDER CR 60(b)(2) WHERE IT IS ALLEGED THAT THE DEFENDANT WAS INCOMPETENT AT THE TIME OF THE TRANSACTION WHICH LED TO THE SALE OF HER HOME TO THE PLAINTIFF?

With respect to each of these issues, the Respondent states as follows:

1. **Did the trial court abuse its discretion when it denied the Defendant's CR (60)(b)(1) and (9) Motions for relief from judgment based upon the premise that the Defendant failed to appear for trial?**

In its CR (60)(b) Motion to Vacate, the Defendant states that CR 60(b)(1), permits her to obtain relief due to the fact that she was incarcerated and could not appear before the court for trial and that the failure of the Court to grant a continuance in the case constitutes an abuse of discretion on the trial court's part. RP 9-21-2007, 11-12.

The Respondent disagrees with the Defendant's claim.

The Respondent would argue that Defendant's claim for relief under CR 60(b)(1) is not valid for several reasons.

First, CR 60(b)(1) sets forth grounds to seek relief from a judgment. However, none of those grounds exist. The Plaintiff's judgment was not entered due to any mistake. He appeared in Court, provided the evidence to prove his claims as set forth in his Complaint. With respect to irregularity in obtaining a judgment, there was no irregularity to the proceedings. The Plaintiff appeared at the time of trial. Even though the Defendant failed to appear for trial, the Court knew where she was and her reasons for not appearing. He further reviewed her Answer and considered

the letter that she wrote setting forth her position, the same as if she were in the Court testifying. CP 27-28. SCP 1. If anything, the Court gave the Defendant the benefit of the doubt by taking all of the documents into consideration before deciding to proceed with the trial. RP 7-20-2006, 4.

Based upon the Defendant's Answer filed by her attorney, the Defendant's only defense was that she never received any money from the Plaintiff. CP 27-28. At the time of the trial, the Plaintiff did in fact provide evidence which the Court concluded proved that he had in fact paid the Defendant all monies owed to her. RP 7-20-2006, 13.

As stated in Griggs v. Averbek Realty, 92 Wn. 2d. 576, 599 P.2d 1289 (1979), on page 582, the Court quoted as follows:

“Several other elements are to be considered. This motion to vacate is addressed to the sound discretion of the trial court and this court, on appellate review, will not disturb the trial court disposition unless it clearly appears that discretion has been abused.”

In this instance, as the only defense the Defendant set forth in her Answer was that she never received any monies from the Plaintiff, either directly or indirectly, and further, that she had provided the court with a letter setting forth her position on the issues. CP 27-28. SCP 1. The Court took the Defendant's letter and Answer into consideration and, further, the

Court received proper documentation showing complete payment to the Defendant on her Promissory Note. RP 7-20-2006, 13-14. Therefore, it is the Plaintiff's position that the court did not abuse its discretion in proceeding to trial without personal presence of the Defendant as all of her information that she relied upon in her Answer was disproved based upon the evidence received by the Court.

Second, as set forth in Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990), the Court stated as follows on page 596:

1. CR 60(b)(1).

Motions to vacate based on CR 60(b)(1) must be made within 1 year of the entry of a judgment.

The Judgment in the trial Court was entered on July 31, 2006, and Defendant's Motion, from which she is appealing, was filed on July 31, 2007. CP 38-41. CP 42. Thus, it is the Respondent's position before this Court that the Defendant's Motion violated the conditions of CR 60(b)(1) as it was not filed within one (1) year from the date of entry of the judgment. As a result, the Defendant's Motion under CR 60(b)(1) should have been denied.

Appendix C – CR 60(b)(1)
Appendix D – CR 60(b) (9)

Finally, the Defendant also seeks relief from this Court based upon a violation of CR 60(b)(9), which states relief can be granted for “(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending.”

With respect to this claim, the Plaintiff would argue that it was Defendant’s own voluntary actions that placed her in the Pierce County Jail. She knew when the trial date was and through her own misconduct, she made it possible to be in a position that she could not attend the trial. This is not unavoidable.

Further, again, any Motion for relief from a judgment under CR 60(b)(9) must be “filed within a reasonable length of time.” Here, the Defendant waited for over a year. This violates the conditions for filing such a motion under CR 60(b)(9) and the Court was correct in denying the Motion under this section.

2. **Did the trial court abuse its discretion when it denied the Defendant’s Motion under CR 60(b)(4) where it found that the Defendant had not proven a prima facie case of fraud which would have affected the outcome of the trial?**

With respect to this claim, the Defendant alleges that the Court abused its discretion in denying her relief from the judgment entered

should be denied for the following reasons:

First, CR 60 (b)(2) states that a judgment can be vacated

CR 60(b)(2) “For erroneous proceedings against a minor or a person of unsound mind, when the condition of such defendant does not appear in the record nor the error in the proceedings.”

The basis of this claim rests on a Guardian Ad Litem’s Report that was submitted to the Court as part of an attempt to establish a guardianship for the Defendant in 1999. CP 80-106. (Report of Guardian Ad Litem)

This Report, which was attached to the Defendant’s Motion to Vacate Judgment, states that she was incapacitated in of April 6, 1999, due to attempted suicide, but that the Defendant is making great progress. As a result, no guardianship was established for the Defendant and the Petition for the Appointment of a Guardian was dismissed. All of this occurred more than three (3) years prior to the Plaintiff and Defendant living together.

Again, it should be noted that the issue of the Defendant’s mental capacity was never set forth as a defense of any nature in her Answer to Plaintiff’s Complaint. CP 27-28. The first time it was raised was at the time of the filing of her Motion to Vacate Judgment. RP 7-21-2007, 4-5.

If the Defendant is, in some way, arguing that the judgment entered against her on July 31, 2006, was void and should be vacated pursuant to CR 60(b)(2) because the original Purchase and Sale Agreement was void due to being of “unsound mind” at the time of signing the same, this claim must fail.

First, CR 60(b) clearly states that any such motion must be filed within one (1) year from the date that the disability ceases. With respect to this argument, by the Defendant’s own words in her Motion to Vacate Judgment, it is stated that the Defendant’s disability ceased in 2005, before any judgment had been entered against her. CP 45-70, Page 46, line 1. In fact, as no judgment has ever been entered against her based upon the Purchase and Sale Agreement, there is no Motion that she could have brought before the Court for relief under CR 60(b)(2) and that further, this argument should be dismissed by the Court as not being relevant to the issue before the trial court, to-wit: should the judgment entered on July 31, 2007, in favor of the Plaintiff for Quiet Title be vacated after evidence of payment of all outstanding obligations owed to the Defendant was proven? CP 43-44.

Based upon the statements of the Defendant and evidence submitted to the trial court, it is the Plaintiff’s opinion that the judgment

that was entered on July 31, 2007, does not fall under the provisions of CR 60(b)(2) and this argument should be dismissed by this Court.

Second, there was no document or evidence presented to the trial court by the Defendant that states, by a Court Order, that the Defendant could not make any decisions for herself. The guardianship petition was dismissed. There was no evidence provided to the Court that states that her Attorney-in-Fact must approve and sign all major purchases and sale made by the Defendant. In fact, the Defendant purchased a business which she named "JUST BEACHY" in May or June of 2002, without the aid of her Attorney-in-Fact. She operated this business on her own. This was nine (9) months prior to the sale of the property to the Plaintiff. Thus, the argument that the signature of an Attorney-in-Fact may or may not have been a forgery is not relevant.

Third, the Defendant did not provide to the Court either prior to or at the time of trial, any medical evidence suggesting that, on January 16, 2003, she was of "unsound mind" as required under CR 60(b)(2) or (11). In fact, the evidence presented to the Court is to the contrary. As stated above, in May or June, 2002, the Plaintiff purchased one business. On September 9, 2003, she purchased another business and operated it. This

was nine (9) months after the sale of the property to the Plaintiff. On January 25, 2005, the Plaintiff filed a lawsuit against the person she purchased the property from. In that lawsuit, the Defendant does not allege as a defense that she was of “unsound mind” when she entered into the purchase agreement. As her disability, if she had one, ceased by January 25, 2005, at the latest, the judgment was entered against her more than a year after her disability ended. As a result, the trial court was justified in dismissing her Motion to Vacate brought under CR 60(b)(2).

CR 60 (e) requires a party seeking relief from a judgment pursuant to CR 60 to set forth **facts constituting at least a prima facie defense on the merits.** The Defendant’s allegations are her own self-serving statements and not supported by any evidence.

Thus, it is the Plaintiff’s position that based upon the pleadings and Declarations which were submitted by the Defendant to the trial court in support of her Motion to Vacate Judgment, these documents do not rise to the level of constituting prima facie evidence sufficient enough for the trial court to grant the Defendant’s Motion to Vacate Judgment under any of the provisions of CR 60(b) that the Defendant relies upon.

The trial Court did not abuse its discretion in denying the Defendant’s Motion to Vacate the Judgment entered against her.

E. CONCLUSION.

For the above reasons, the Plaintiff would argue to the Court that the trial court did not abuse its discretion in denying the Defendant's Motion to Vacate, and the Plaintiff would ask this Court to affirm the decision of the trial court and deny the Defendant's Motion to Vacate Judgment brought pursuant to CR 60(b).

DATED this 30th of July, 2008.



Christopher R. Boutelle, WSB# 704
Attorney for Respondent

Appendix A

8358 7 18 2006
8358 7 18 2006
8358 7 18 2006
July 16, 2006

Dear Your Honor Frederick W. Fleming, I am
regarding Superior Court Civil case 05-2-10081-3 a Quiet Title
Case Gregory Johnson VS Karen Knoud. I am incarcerated at
this time, I find myself in the same position as before with
Gregg Johnson in all of his attempts to get me out of the way
by making me unavailable to appear for this trial his motives
are to get the title to my house at 21311 109th Ave E Durham WA 98233
Gregg Johnson has been after the deed for me to sign it over to him
since May 2004, he has even threatened me and tried to bribe
me of signing again in the first week of May 2005 & I told
him no that I cant because Gregg has not paid me the money
he owes me. In the sales agreement of the Real Estate Note, Greg
claims he has paid me, but he hasn't & I do have the evidence to
provide & witnesses to be able to Testify and I'm sure Gregg is
well aware of what I can provide the Court with facts in this
case. Your Honor I have a sister Rita Thompson who lives in
Eastern Washington and she has Power of attorney I have been
trying to reach her to let her know that Gregg has had me
arrested & charged with vehicular assault 2 on an employee of his
Gary Caputo which is so false because I was never at the scene
& I haven't seen Gary Caputo since July 4, 2004, I also have
evidence to prove what I did on April 25, 2006 Tuesday & where I
was at the time that Gary Caputo - his mechanic & friend is allegedly
saying that I hit him with my vehicle & Gregg's new girlfriend
Chris Carpenter is also involved in Gregg Johnson's sick, malicious
scheme to get me out of the way & get sent to prison because Chris
called me on my cell phone threatening me about how I'm going to be
going to prison because that's where her & Gregg are going to be sending
me. she said to me they have been talking to the prosecution & he also

2
told them that's who I will be going. Chr Carpenter brags about how she is the reason I got arrested on 6/15/04 because she made the calls to the sheriff & Prosecutor & made more false statements so I would get arrested. I have a prime witness that will be at trial testifying in my self defense who was also threatened by Chris & Gregg Johnson that they would & could get him charged with the charge I have on me. I am Gregg Johnsons ex-fiance & he stole money from me out of my bank account, he took advantage of me & gave my 99 Explorer title away after he signed off on it from using it to borrow against at the credit union for collateral. When Gregg put me he had nothing he was renting a house on South Hill pay & he had his mechanic shop. I had a home, the Graham house, I had a convertible & I had nice furniture & I had money. Today your Honor I have nothing, why? Because Gregg Johnson is a Con Artist, he's a scam he had plans to do this to me, I found evidence that will show the courts & my DAC that he was trying to get me out of the way for his motives, I've talked to attorneys & they can help me & file a lawsuit against Gregg they called it a Tort lawsuit, but I was told I need to get this case that I'm charged with settled first before they can do anything so this is what I am dealing with in the situation I am in.

Your Honor I'm asking you & the Superior Court to give me some time to be able to retain an attorney, I'm asking for a continuance please. I would be so grateful for a continuance. I would like to appear & if you would like me to please call the jail & they will send an officer to get me & escort me to your Court Room but your court room would need to call for me to be able to appear. I'm located at SW 225. This is really a sad case about Gregg's motives, money & his greed, he assaults me 1st June 2004, has charges put on me, tries to get me to sign the deal off to his because I don't he has more charges put on me, steals my furniture, all my assets, gets rid of my Explorer & gives my puppy away & I still won't sign so guess where I am again.

I just know that I have been done dirty mainly by Gregg & the people he associates with such as Gary his mechanic & Chris his current girlfriend that now lives in the home that Gregg paid for but with the \$35,000 he transferred out of my savings account & had a cashiers check made payable to his mortgage Co to buy his home, but it was paid for with my money. You see how deceitful Gregg Johnson is & there is so so much more evidence & facts on him that I have & will be given to the law firm for the attorney to file suit against him for taking advantage of me & stealing, for wrongful prosecution & how about the time I've lost, I can't get back my time since June 2004 the last 2 years of grief Gregg has caused my family. There's been alot of pain, & suffering for me & my parents throughout Gregg's way of being vindictive to me & retaliating against me after he was arrested & charged with assaulting me 4th degree ^{6/28/1} with District Court judge Judy Jaxprice, that's when he got release from jail & then his sick, twisted mind was starting the games ^{6/29/1} he was playing with my life, he's a real sick guy who's hands are very dirty. Gregg plays dirty. My trial is set for 7/31/1 8:30 Am, I just want this case over because I am innocent. I found the law-firm that want to take my case against Gregg, take it & him to Trial to show Gregg knew what he was doing, & he also knows better but because he is a deceitful guy, he uses the system, he lies, makes false charges to steal from a person all of this for his profits & greed. He stole from me to get his assets.

Please I need to have a continuance.

Thank You for your time to read my letter.

Sincerely Karen Kowal SWA29 (location)

Appendix B

RULE 60

RELIEF FROM JUDGMENT OR ORDER

(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).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. 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;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

Appendix C

RULE 60

RELIEF FROM JUDGMENT OR ORDER

(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).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. 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:

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- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
- (8) Death of one of the parties before the judgment in the action;
- (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
- (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
- (11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

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(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

Appendix D

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(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. 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;
- (2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;
- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
- (8) Death of one of the parties before the judgment in the action;
- (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
- (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
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The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

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DIVISION II

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COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

GREGGORY JOHNSON,)	
)	
Respondent,)	NO. 36891-9-II
)	
v.)	PROOF OF SERVICE
)	
KAREN ANN KNOUD,)	
)	
Appellant.)	
_____)	

AMANDA M. FIRTH, hereby declares under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

I am over the age of eighteen years, a citizen of the United States of America, and competent to be a witness in the above-entitled action.

That on Wednesday, July 30, 2008, at 12:30 p.m., I personally served a true and correct copy of the Brief of Respondent, on the Appellant, Karen A. Knoud, by delivering a copy of said document to her Attorney of record.

Barbara Corey, WSB# 11778
901 South "T", Suite 201
Tacoma, Washington 98402

DATED: 7-30-08


Amanda M. Firth

Proof of Service - I

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