

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/31/2019 4:49 PM  
BY SUSAN L. CARLSON  
CLERK

No. 96853-5

---

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

FIRESIDE BANK f/k/a FIRESIDE THRIFT CO.  
(CAVALRY INVESTMENTS, LLC – Appellant of Record)

Respondent,

vs.

JOHN W. ASKINS and LISA D. ASKINS,

Petitioners.

---

**SUPPLEMENTAL BRIEF OF RESPONDENT**

---

Stephen C. Willey, WSBA #24499  
Brandi B. Balanda, WSBA #48836  
**SAVITT BRUCE & WILLEY LLP**  
1425 Fourth Avenue Suite 800  
Seattle, WA 98101-2272  
(206) 749-0500

Attorneys for Appellant

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. SUPPLEMENTAL COUNTERSTATEMENT OF THE  
CASE .....2

    A. The Judgment and Periodic Garnishments. ....2

    B. Askins Asserts the Judgment is Satisfied and Seeks  
    Release of the August 2015 Garnishment.....3

    C. Askins’ CR 60 Motion.....5

    D. The Trial Court’s Order. ....7

III. ARGUMENT .....7

    A. Grounds for Relief from a Judgment Under CR 60.....8

    B. Askins Did Not Meet His Burden Under CR  
    60(b)(6). ....10

    C. The “Equity” Provision of CR 60(b)(6) Is  
    Inapplicable.....12

    D. The Trial Court Abused its Discretion and Exceeded  
    its Authority by Ruling on Askins’ Affirmative  
    Claim on a Rule 60(b) Motion.....13

IV. CONCLUSION.....15

## TABLE OF AUTHORITIES

### Cases

<i>Adduono v. World Hockey Ass’n</i> , 824 F.2d 617 (8th Cir. 1987) .....	13
<i>Affordable Country Homes, LLC v. Smith</i> , 194 P.3d 511 (Colo. App. 2008).....	14
<i>Burlingame v. Consolidated Mines &amp; Smelting Co., Ltd.</i> , 106 Wn.2d 328, 722 P.2d 67 (1986).....	8
<i>Cty. of Durham v. Daye</i> , 195 N.C.App. 527, 673 S.E.2d 683 (2009).....	14
<i>Dalton v. State</i> , 130 Wn. App. 653, 124 P.3d 305 (2005).....	11
<i>Delay v. Gordon</i> , 475 F.3d 1039 (9th Cir. 2007) .....	9, 13
<i>Foster v. Wash. Dep’t of Ecology</i> , 200 Wn. App. 1035, 2017 WL 386841 (September 5, 2017).....	14
<i>Geonerco, Inc. v. Grand Ridge Prop. IV, LLC</i> , 159 Wn. App. 536, 248 P.3d 1047 (2011).....	13
<i>Griggs v. Averbeck Realty, Inc.</i> , 92 Wn.2d 576, 599 P.2d 1289 (1979).....	8
<i>Haley v. Highland</i> , 142 Wn.2d 135, 12 P.3d 119 (2000).....	8
<i>Harvest v. Castro</i> , 531 F.3d 737 (9th Cir. 2008) .....	12
<i>Houston v. Cty. of Boone</i> , 2019 WL 1928529 (D.Mo. April 30, 2019).....	14
<i>Jeff D. v. Otter</i> , 643 F.3d 278 (9th Cir. 2011) .....	11
<i>Kittitas Cty. v. Allphin</i> , 190 Wn.2d 691, 416 P.3d 1232 (2018).....	9
<i>Maraziti v. Thorpe</i> , 52 F.3d 252 (9th Cir. 1995) .....	12

<i>Metropolitan Park Dist. of Tacoma v. Griffith</i> , 106 Wn.2d 425, 723 P.2d 1093 .....	9, 12
<i>Nat’l Labor Relations Bd. v. Int’l Ass’n of Bridge, Structural, Ornamental &amp; Reinforcing Ironworkers Union, Local 433</i> , 891 F.3d 1182 (9th Cir. 2018) .....	11
<i>Schnall v. AT&amp;T Wireless Svcs., Inc.</i> , 171 Wn.2d 260, 259 P.3d 129 (2011).....	9
<i>State v. Ward</i> , 125 Wn. App. 374, 104 P.3d 751 (2005).....	9
<i>Thompson v. Thompson</i> , 4 Wn. App.2d 1005, 2018 WL 2715017 (June 5, 2018).....	12
<i>Tungseth v. Mutual of Omaha Ins. Co.</i> , 43 F.3d 406 (8th Cir. 1994) .....	12
<i>U.S. v. One (1) Douglas A-26B Aircraft</i> , 662 F.2d 1372 (11th Cir. 1981) .....	13
<b>Rules</b>	
CR 60(b)(11).....	9
CR 60(b)(6).....	9, 10, 11, 12
GR 14.1 .....	12, 14

## I. INTRODUCTION

The trial court erred in permitting Petitioner John Askins to prosecute an affirmative claim by way of a Rule 60 motion. And the trial court compounded its error by granting Askins' motion and making an affirmative finding against Respondent Cavalry Investments, LLC that had no support in the evidentiary record.

The Court of Appeals correctly held that Rule 60(b) has a specific and limited purpose. It is available to set aside a prior judgment or order in certain circumstances, but it is not a vehicle for affirmative relief.

Washington law provides a range of options to address the issues the Askins raise. If the Askins believe that the Judgment against them has been satisfied, they may bring a motion under CR 60(b)(6) and provide factual support to evidence satisfaction. And if the Askins wish to challenge a writ of garnishment, they may do so by controversion or a motion to quash. Finally, the Askins may elect to prosecute an affirmative claim if they believe there is a factual basis to do so. But, like any litigant, they must comport with the civil rules, procedural requirements, and burdens of proof applicable to the asserted claim—all of which operate in service of due process.

This Court should decline the Petitioners' invitation to approve a trial-court process that was both procedurally and substantively

unfounded. There is no legal authority to support a fast-track litigation process whereby one category of claims—alleged Collection Agency Act claims arising in a post-judgment context—are prosecuted via a show cause hearing with an inverted burden of proof.

## **II. SUPPLEMENTAL COUNTERSTATEMENT OF THE CASE**

### **A. The Judgment and Periodic Garnishments.**

In 2007, Fireside Bank obtained a Judgment against the Askins for their failure to repay a car loan. CP 12-13. The Judgment comprised (i) a principal sum of \$7,754.39; (ii) prejudgment interest in the amount of \$1,847.41; and (iii) attorney fees and costs of \$643. *Id.* The total amount of the Judgment was **\$10,244.80**, subject to a post-judgment interest at a rate of 18.95% per annum. *Id.*

The Askins did not satisfy the Judgment. From 2008 – 2012, Fireside issued periodic writs of garnishment to Mr. Askins' employer.<sup>1</sup> The garnishments were sporadic and for small amounts.<sup>2</sup> Each of the writs separately listed the elements of the underlying Judgment (the amount of the original balance, interest, and costs and attorneys' fees that

---

<sup>1</sup> CP 17-19; CP 25-27; CP 60-62; CP 74-76; CP 93-97; CP 122-126; CP 136-140; CP 158-162; CP 180-184; CP 213-217; CP 236-240; CP 249-253; CP 268-272; CP 281-285.

<sup>2</sup> *Id.*

were awarded).<sup>3</sup> They each also listed estimated garnishment costs as required by statute.<sup>4</sup>

Fireside assigned the Judgment to Cavalry in July 2012. CP 297. In 2013, Cavalry issued a handful of garnishment writs and collected a small amount on the Judgment.<sup>5</sup> Each of these writs stated a balance amount, and estimated garnishment costs and fees as required by statute.<sup>6</sup> Cavalry issued no garnishment writs in 2014.

In 2015, Cavalry issued two writs of garnishment. CP 354-358; CP 359-363. Both went unanswered.

**B. Askins Asserts the Judgment is Satisfied and Seeks Release of the August 2015 Garnishment.**

The Askins did not take any action to make payment against the Judgment and they did not respond to or challenge any of the periodic garnishments over the years.

In November 2015, Cavalry's collection counsel received a letter from an attorney representing John Askins. CP 374-375. The attorney asserted that it was "unclear" (1) whether the total amount owed under the Judgment exceeded the amount that had been previously garnished; and

---

<sup>3</sup> *E.g.* CP 17-19; CP 25-27; CP 60-62.

<sup>4</sup> *Id.*

<sup>5</sup> CP 300-303; CP 315-321; CP 325-329; CP 337-339; CP 324-346.

<sup>6</sup> *E.g.* CP 317-321; CP 325-329.

(2) “what the remaining principle balance should be.” CP 374. Askins’ attorney further stated that he had “requested a complete copy of the court file and intend to do a full accounting of the garnishment to answer these questions.” *Id.* Askins’ attorney also demanded that Cavalry “immediately” serve Askins’ “employer with a release of garnishment until the proper balance on the judgment can be determined.” *Id.*

Cavalry then filed a full release of the pending garnishment writ, which had been issued in August 2015. CP 364-365; CP 361-363. In December 2015 and January 2016, Cavalry and Askins’ attorneys had further discussions regarding the issues Askins’ attorney had raised. CP 377-378. Following those discussions, Askins’ attorney sent Cavalry’s attorney another letter in February 2016. CP 377-378. Askins’ attorney asserted that it was how “clear” to him “that the underlying judgment is fully satisfied”. CP 378. He did not explain how he had come to this conclusion, but demanded that Cavalry enter a full satisfaction of judgment. *Id.*

In April 2016, Askins’ attorney emailed Cavalry’s attorney asking for an update regarding his demand for entry of a satisfaction of judgment. CP 422-423. Cavalry’s attorney responded with an explanation of there was a balance due on the Judgment, including small periodic garnishments, the passaged of time and the ongoing accrual of interest. *Id.*

He included various court documents, as well as an illustrative account statement he had prepared to reflect the Judgment balance prior to its assignment to Cavalry. *Id.*, CP 372 (the “April 7 Email”).<sup>7</sup>

**C. Askins’ CR 60 Motion.**

On June 24, 2016, Askins filed a Motion for Order to Show Cause. CP 366-404. The Motion cited and relied upon CR 60 and invoked the show cause procedure of CR 60(e). CP 404; CP 405-406. The Motion itself, however, sought substantive relief well beyond the scope of CR 60.

Askins argued that it was “impossible for [the Judgment having a balance due] to lawfully be true” and he requested that the court “[c]ompel entry of a full satisfaction of judgment.” CP 381, CP 396. But Askins also asserted an affirmative claim, arguing that Cavalry had violated the Collection Agency Act (“CAA”) and he asked the court to “[m]ake a finding that [Cavalry] violated RCW 19.16.250(21) by collecting, or attempting to collect, unlawful amounts.” CP 389-93, CP 396. Askins

---

<sup>7</sup> In the April 7 email, Cavalry’s counsel erroneously indicated that the \$643 of attorney’s fees and costs awarded in the Judgment (CP 12-14) had been requested in each of Fireside’s writs. CP 422-423. Similarly, the illustrative account statement listed this same amount. CP 372. But the actual Fireside garnishments are contrary and do not seek fees and costs other than as permitted by statute. The misstatement by Cavalry’s collection counsel appears to have created confusion, as Askins’ attorney asserted, based on the account statement, that Cavalry sought unlawful and inflated attorney’s fees. CP 389-390; RP 4:12-19.

further requested sanctions against Cavalry and an order requiring the return of funds collected in excess of the principal amount of the original debt. CP 396.<sup>8</sup>

With respect to the Judgement, Askins asserted that he “believed the judgment should have been fully satisfied based on the prior garnishments and the accounting represented in the easily obtainable online court docket.” CP 387:5-11 (emphasis supplied). Askins did not, however, submit any accounting based on the online docket or the actual records of garnishment. Nor did Askins make mention of the continuing effect of the applicable post-judgment interest rate over the passage of time. In short, Askins presented no evidence or accounting to support his assertion that Judgment had been satisfied. CP 366-404.

For the alleged CAA violation, Askins argued that the Court should find that Cavalry had attempted to and did collect unauthorized amounts based solely on the April 7 Email. CP 366-404. Askins made no argument and presented no evidence regarding Cavalry’s actual collection attempts as reflected in the court docket. *Id.*

---

<sup>8</sup> Askins also asked the court to quash the August 2015 writ of garnishment. CP 396, CP 403. That writ had been released some six months earlier and there was nothing to quash. CP 364-365. The trial court did not address this request. CP 427; *see generally* RP 3-17.

**D. The Trial Court’s Order.**

The trial court granted Askins’ Motion, and ruled that Cavalry had “violated RCW 19.16.250(21) by attempting to collect, through applications for writs of garnishment, amounts of money greater than allowed by law.” (“Violation Finding”) CP 427 (emphasis supplied). The Violation Finding did not identify any application for writ of garnishment that violated the statute nor did it specify what amount Cavalry had attempted to collect that was greater than allowed by law. *Id.*; *see generally* RP 3-17. The trial court subsequently denied Cavalry’s motion for reconsideration. CP 462-463.

**III. ARGUMENT**

The Court of Appeals held that the trial court exceeded the scope of its authority under CR 60 by awarding relief pursuant to the CAA as enforced through the Consumer Protection Act (the “CPA”). *Fireside Bank v. Askins*, 6 Wn.App.2d 431, 439, 430 P.3d 1145 (2014).

The Court of Appeals also noted that “it is unclear on this record whether the trial judge believed the Askins had met their burden under CR 60(b)(6).” 6 Wn.App.2d at 439. As a result, the Court of Appeals reversed and remanded for further proceedings “and without prejudice to seeking relief outside the strictures of CR 60.” *Id.* at 440.

In seeking review by this Court, the Askins argue that the Court of Appeals ruling leaves judgment debtors without recourse if a judgment creditor violates the CAA. But as discussed in Cavalry's Answer, existing law provides various means for addressing alleged CAA violations, by an independent action through the CPA and/or by controversion or a motion to quash an improper writ.

Simply put, the Court of Appeals ruled that CR 60(b) may not be used to obtain relief on an affirmative claim and the Askins did not show the Judgment had been satisfied so as to obtain relief under CR 60(b)(6). This unremarkable ruling is correct and should be affirmed.

**A. Grounds for Relief from a Judgment Under CR 60.**

CR 60 governs relief from judgments and orders in civil cases. CR 60(a) permits the correction of clerical mistakes and CR 60(b) provides for relief from a judgment or order in certain defined circumstances.

*Burlingame v. Consolidated Mines & Smelting Co., Ltd.*, 106 Wn.2d 328, 336, 722 P.2d 67 (1986). Under CR 60(b), “a court may relieve a party ... from a final judgment, order, or proceeding...’ under specified circumstances.” *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000); *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979) (“the grounds and procedures for relief from a judgment are set forth in CR 60.”); *see also Delay v. Gordon*, 475 F.3d 1039, 1044 (9th

Cir. 2007) (“Rule 60 of the Federal Rules of Civil Procedure provides a means of altering a judgment in limited circumstances.”).<sup>9</sup>

Although Askins did not identify a specific ground for relief in his CR 60 Motion, CR 60(b)(6) provides for relief where “[t]he judgment has been satisfied, released, or discharged ... or it is no longer equitable that the judgment should have prospective application.” Given the substance of Askins’ Motion and requested relief, this appears to be the subsection he relied upon. CP 382-396; CP 403-404; *see also* 6 Wn.App.2d at 438 (“We believe this provision [CR 60(b)(6)] was the one relied on in the request for relief, although the calendaring order simply stated ‘CR 60’.”).

In addition, CR 60(b)(11) provides a “catch-all” “intended to serve the ends of justice in extreme, unexpected situations.” *State v. Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005). A party can obtain relief under CR 60(b)(11) only if the circumstances do not permit moving under another subsection of CR 60(b). *Id.*; *see also Metropolitan Park Dist. of Tacoma v. Griffith*, 106 Wn.2d 425, 442 at n. 3, 723 P.2d 1093 (“Use of

---

<sup>9</sup> *Kittitas Cty. v. Allphin*, 190 Wn.2d 691, 709 416 P.3d 1232 (2018) (analysis of a nearly identical Federal Rule of Civil Procedure is persuasive guidance as to the application of our comparable state rule); *Schnall v. AT&T Wireless Svcs., Inc.*, 171 Wn.2d 260, 271, 259 P.3d 129 (2011) (“Because CR 23 is identical to its federal counterpart, cases interpreting the analogous federal provision are highly persuasive.”)

CR 60(b)(11) is limited to situations not covered by any other section of the rule.”).

The procedure for obtaining relief under CR 60 is set forth in CR 60(e). That procedure provides for a show-cause hearing, with a predicate motion “supported by the affidavit of the applicant or the applicant’s attorney setting forth a concise statement of the facts or errors upon which the motion is based[.]” CR 60(e)(1)-(2). This is the procedure invoked by Askins in the trial court.<sup>10</sup> CP 404:1-3; CP 405-406.

**B. Askins Did Not Meet His Burden Under CR 60(b)(6).<sup>11</sup>**

Under CR 60(b)(6), Askins had the burden to prove the Judgment had been satisfied.<sup>12</sup> Askins failed to meet his burden. He produced no

---

<sup>10</sup> The Askins’ argument before this Court—that “[t]he show cause procedure actually used by the Askins was not a CR 60(b) motion”—is contradicted by their own trial court motion. *Compare* Petition for Discretionary Review (“Pet.”) at 17 *with* CP 404. Further, the Askins’ assertion that they modeled their motion on show cause proceedings based in family law is inapt. Pet. at 17. RCW 26.09.160(2)(a) provides for a motion to initiate a contempt action “to coerce a parent to comply with an order establishing residential provisions for a child.” This sort of circumstance, enforcing compliance with a court order with executory application, is wholly distinct from using a show cause process to prosecute a new cause of action.

<sup>11</sup> John Askins and Lisa Askins and the judgment debtors. CP 12-14. The CR 60 motion at issue in this appeal, however, was brought only in the name of John Askins. CP 366-CP 404.

<sup>12</sup> *See, e.g., Puget Sound Med. Supply v. Dept. of Social and Health Services*, 156 Wn.App. 364, 373, n.9, 234 P.3d 246 (2010) (for CR 60(b)(1) relief, movant must show (1) prima facie defense to claims, (2) it failed to timely respond for one of the specified reasons, (3) it acted with

accounting or any other evidence to show the Judgment had been satisfied. CP 366-404; 6 Wn.App.2d at 439 (recognizing that “CR 60(b) allowed the Askins to establish that the judgment had been satisfied through their payments, but they did not directly attempt to do so.”).

Instead, Askins simply argued that because the total amount garnished over the years exceeded the initial balance of the underlying Judgment, it must have been satisfied. CP 367 at ¶ 9; CP 382; CP 387. This ignored both the fact and accrual of post-judgment interest at 18.95% per annum. Despite having the court docket record of payments, Askins did not make any showing that these periodic garnishments over the years had satisfied the Judgment. CP 387.

The trial court therefore could not have granted Askins’ CR 60 Motion based on purported satisfaction of the Judgment. CR 60(b)(6); *see also Tungseth v. Mutual of Omaha Ins. Co.*, 43 F.3d 406, 409 (8th Cir.

---

due diligence after discovering the judgment, and (4) plaintiff would not experience substantial hardship if the court vacated the judgment); *Dalton v. State*, 130 Wn. App. 653, 665-66, 124 P.3d 305 (2005) (defendant’s burden of proof under CR 60(b)(4) requires clear and convincing evidence); *Nat’l Labor Relations Bd. v. Int’l Ass’n of Bridge, Structural, Ornamental & Reinforcing Ironworkers Union, Local 433*, 891 F.3d 1182, 1186 (9th Cir. 2018) (movant has burden of proof under analogous Federal Rules of Civil Procedure Rule 60(b)(5)); *Jeff D. v. Otter*, 643 F.3d 278 (9th Cir. 2011) (defendants have the burden of proving they met Rule 60’s requirements to show satisfaction of judgment; district court erred by imposing burden of proof on plaintiff).

1994) (affirming denial of Rule 60(b) request where debtor “failed to provide the district court with that information or an accounting or any explanation” which would show the judgment had been fully satisfied).

**C. The “Equity” Provision of CR 60(b)(6) Is Inapplicable.**

To the extent Askins’ Motion might be construed as requesting relief because it is no longer equitable that the Judgment should have prospective application under CR 60(b)(6), that provision does not apply. The Judgment is an ordinary money judgment. CP 12-14. Accordingly, Askins was not entitled to relief under this section of CR 60(b)(6), which was “designed to deal with problems arising under a judgment that has a continuing effect, where a change in circumstances after the judgment is rendered makes it inequitable to enforce the judgment.” *Griffith*, 106 Wn.2d at 438-39; *Harvest v. Castro*, 531 F.3d 737, 748 (9th Cir. 2008) (“The standard used in determining whether a judgment has prospective application is whether it is executory or involves the supervision of changing conduct or conditions.”).<sup>13</sup>

---

<sup>13</sup> See also *Thompson v. Thompson*, 4 Wn. App.2d 1005, 2018 WL 2715017, at \*2 (June 5, 2018) (discussing what types of judgments have “prospective application” under CR 60(b)(6); “Prospective application exists only when the judgment is ‘executory or involves the supervision of changing conduct or conditions.’”) (quoting *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995)). Per GR 14.1, Cavalry cites this unpublished decision as nonbinding authority.

**D. The Trial Court Abused its Discretion and Exceeded its Authority by Ruling on Askins' Affirmative Claim on a Rule 60(b) Motion.**

Rather than requiring Askins to show that the Judgment had been satisfied, the trial court ruled that Cavalry was liable for violating RCW 19.16.250(21) by attempting to collect unlawful amounts from Askins. But as discussed above, Rule 60(b) allows a party to obtain relief from a judgment only on specific grounds. And it does not provide a means to litigate an affirmative claim for relief. *Geonerco, Inc. v. Grand Ridge Prop. IV, LLC*, 159 Wn. App. 536, 542, 248 P.3d 1047 (2011).

This limitation on a court's authority regarding relief from a judgment under Rule 60(b) is well-settled and recognized in jurisdictions across the country. *See, e.g. Delay v. Gordon*, 475 F.3d 1039, 1044-1047 (9th Cir. 2007) (affirming denial of relief under Rule 60(b) where party sought finding of liability against United States under takings theory); *Adduono v. World Hockey Ass'n*, 824 F.2d 617 (8th Cir. 1987) (trial court did not have authority to award affirmative relief of sanctions and attorneys' fees); *U.S. v. One (1) Douglas A-26B Aircraft*, 662 F.2d 1372, 1377 (11th Cir. 1981) ("claims for affirmative relief beyond the reopening of a judgment cannot be adjudicated on a Rule 60(b) motion but must be asserted in a new and independent suit"); *Houston v. Cty. of Boone*, 2019

WL 1928529, at \*5-6 (D.Mo. April 30, 2019) (court is without authority to grant relief on unjust enrichment claim asserted in Rule 60(b) motion).<sup>14</sup>

The Court of Appeals correctly ruled that the trial court abused its discretion by permitting Askins to litigate a claim that Cavalry had violated the CAA without having to assert a CPA claim. 6 Wn.App.2d at 439. The trial court awarded Askins affirmative relief that was not part of and unrelated to the underlying Judgment, and was not a defense to the Complaint. CP 1-11 (Complaint for Breach of Contract; CP 12-14. Askins' claim in his CR 60 Motion was a new cause of action, alleging violations of the CAA after the entry of Judgment. As discussed in Cavalry's Answer, if Askins wishes to assert that claim, he may do so in an independent action. This is a straight-forward procedure and well-known to Askins' counsel, who has previously brought CPA claims on behalf of judgment debtors against judgment creditors for alleged

---

<sup>14</sup> See also *Affordable Country Homes, LLC v. Smith*, 194 P.3d 511 (Colo. App. 2008) (trial court lacked authority to grant relief on new claims asserted in Rule 60(b) motion); *Cty. of Durham v. Daye*, 195 N.C.App. 527, 673 S.E.2d 683 (2009) (trial court did not have authority to award damages and fees on Rule 60 motion; defendants could have filed independent action seeking damages sought in Rule 60 motion); *Foster v. Wash. Dep't of Ecology*, 200 Wn. App. 1035, 2017 WL 386841, at \*6 (September 5, 2017) (trial court abused discretion where ruling not only relieved party from adverse judgment, but also granted affirmative relief not contained in prior judgment). Per GR 14.1, Cavalry cites this unpublished decision as nonbinding authority.

violations of the CAA in post-judgment garnishment proceedings. *See* Answer at pp. 15-16.

#### IV. CONCLUSION

The Court of Appeals correctly held that while CR 60(b) allows a party to establish a judgment has been satisfied, Askins made no such showing. The Court of Appeals also correctly held that the trial court abused its discretion by granting affirmative relief on Askins' claim that Cavalry was liable for violating the CAA.

There is no basis in the record or the law to uphold the trial court's erroneous decision and improper procedure, and this Court should affirm the Court of Appeals.

DATED: May 31, 2019.

#### SAVITT BRUCE & WILLEY LLP

By: /s/ Stephen C. Willey  
Stephen C. Willey, WSBA # 24499  
Brandi B. Balanda, WSBA #48836  
Savitt Bruce & Willey LLP  
1425 Fourth Ave., Suite 800  
Seattle, WA 98101  
Tel: (206) 749-0500  
Fax: (206) 749-0600  
Email: [swilley@sbwllp.com](mailto:swilley@sbwllp.com)  
Email: [bbalanda@sbwllp.com](mailto:bbalanda@sbwllp.com)

*Attorneys for Respondent  
Cavalry Investments, LLC*

**CERTIFICATE OF SERVICE**

On this date I caused a copy of the foregoing document to be served upon the attorneys of record listed below by E-Filing, with a courtesy copy by Email/PDF:

Karen Hammer, WSBA #35608  
Patrick Layman, WSBA #5707  
Suttell, Hammer & White, P.S.  
P.O. Box C-90006  
Bellevue, WA 98009  
Tel: (425) 455-8220  
Fax: (425) 453-3239  
Email: [karen@suttelllaw.com](mailto:karen@suttelllaw.com)  
[patrick@suttelllaw.com](mailto:patrick@suttelllaw.com)

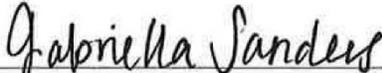
Scott M. Kinkley, WSBA #42434  
Northwest Justice Project  
1702 W. Broadway Ave.  
Spokane, WA 99201-1818  
Tel: (509) 324-9128  
Fax: (509) 324-0065  
Email: [scottk@nwjustice.org](mailto:scottk@nwjustice.org)

*Attorneys for Petitioners*

*Attorneys for Respondent*

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 31<sup>st</sup> day of May 2019, at Seattle, Washington.

  
\_\_\_\_\_  
Gabriella Sanders

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/31/2019 4:49 PM  
BY SUSAN L. CARLSON  
CLERK

No. 96853-5

---

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

FIRESIDE BANK f/k/a FIRESIDE THRIFT CO.  
(CAVALRY INVESTMENTS, LLC – Appellant of Record)

Respondent,

vs.

JOHN W. ASKINS and LISA D. ASKINS,

Petitioners.

---

**APPENDIX OF UNPUBLISHED OPINION IN SUPPORT OF  
SUPPLEMENTAL BRIEF OF RESPONDENT**

---

Stephen C. Willey, WSBA #24499  
Brandi B. Balanda, WSBA #48836  
**SAVITT BRUCE & WILLEY LLP**  
1425 Fourth Avenue Suite 800  
Seattle, WA 98101-2272  
(206) 749-0500

Attorneys for Appellant

**CASES**

**TAB**

*Houston v. Cty. of Boone,*  
2019 WL 1928529 (D.Mo. April 30, 2019)..... 1

DATED: May 31, 2019.

**SAVITT BRUCE & WILLEY LLP**

By: /s/ Stephen C. Willey  
Stephen C. Willey, WSBA # 24499  
Brandi B. Balanda, WSBA #48836  
Savitt Bruce & Willey LLP  
1425 Fourth Ave., Suite 800  
Seattle, WA 98101  
Tel: (206) 749-0500  
Fax: (206) 749-0600  
Email: [swilley@sbwllp.com](mailto:swilley@sbwllp.com)  
Email: [bbalanda@sbwllp.com](mailto:bbalanda@sbwllp.com)

*Attorneys for Respondent  
Cavalry Investments, LLC*

# TAB 1

2019 WL 1928529

Only the Westlaw citation is currently available.

United States District Court,  
W.D. Missouri, Central Division.

Derrick HOUSTON, Plaintiff,

v.

COUNTY OF BOONE, et al., Defendants.

No. 2:16-cv-04204-NKL

|

Signed 04/30/2019

#### Attorneys and Law Firms

Derrick Houston, Glasgow, MO, pro se.

[James Trivett Thompson](#), [Elizabeth Legacie Van Erem](#),  
Edelman & Thompson, Kansas City, MO, for Plaintiff.

[David S. Baker](#), Fisher, Patterson, Sayler & Smith,  
Kansas City, MO, [Marshall V. Wilson](#), [Theodore Lindsey  
Lynch](#), Berry Wilson, LLC, [Michael G. Berry](#), Michael  
G. Berry, L.L.C., Jefferson City, MO, [Nichole Caldwell](#),  
Fisher, Patterson, Sayler & Smith, Overland Park, KS, for  
Defendants.

#### ORDER

[NANETTE K. LAUGHREY](#), United States District  
Judge

\*1 Pending before the Court is the Attorney Intervenor  
Edelman and Thompson, LLC's motion for summary  
judgment, Doc. 144, which is opposed by both Boone  
County and Insurer Intervenor Missouri Public Entity  
Risk Management Fund (MOPERM). For the following  
reasons, the motion is granted with respect to the County's  
unjust enrichment claim and denied with respect to the  
County's request to set aside the final judgment.

#### I. Statement of Uncontroverted Material Fact<sup>1</sup>

On July 13, 2016, Plaintiff Derrick Houston filed  
a complaint against the County of Boone and six  
of its employees. Doc. 159, ¶ 1. Houston alleged  
constitutional violations and state law claims arising  
out of an incident on October 3, 2015 and claimed  
that the incident caused Houston to suffer [spine injuries](#)

and paralysis. *Id.* Attorney Intervenor Edelman and  
Thompson represented Houston, and the County's  
insurer, Missouri Public Entity Risk Management Fund  
(MOPERM), assumed the defense for both the County  
and the individual defendants. *Id.* at ¶¶ 2–3.

Parties were scheduled to make their initial disclosures by  
November 1, 2016, and complete discovery by August 1,  
2017. *Id.* at ¶ 7. On November 1, 2016, Houston made  
initial disclosures, which identified six individuals with  
discoverable information regarding “pre-and post-injury  
life” and approximately 40 health care providers. *Id.* at  
¶¶ 7–10. Medical records provided by Houston indicated  
that as of October 31, 2015, he had “full strength in the  
upper extremities[,] 0/5 strength in lower extremities” and  
“absent sensation to light touch and pinprick below T2  
and below,” and that Houston had been diagnosed with  
an “incomplete T2 ASIA B Injury.” *Id.* at ¶ 12.

On March 17, 2017, Houston was deposed. *Id.* at ¶ 19. The  
following exchange took place during the deposition:

Q: Are you able to get up out of that chair and walk  
today---

A: No, sir.

Q: ---around the house?

A: I wish I could. I really wish I could, man.

Q: If you had something to lean on, can you stand and  
lean?

A: No, sir.

Q: What have the doctors told you about what you can  
expect down the road as far as improvement or no  
improvement?

A: No improvement.

*Id.* at ¶ 22. The same day, Houston made a demand  
to settle his claims in exchange for payment equal to  
MOPERM's policy limits. *Id.* at ¶ 17. The demand letter  
stated it was open for 14 days and that the present value of  
Houston's estimated life care plan was \$5.7 million, based  
on an enclosed report prepared by Craig H. Lichtblau. *Id.*  
at 18; Doc. 145-1, pp. 6–7 (Demand Letter).

On March 22 and March 23, MOPERM was advised  
regarding potential liability for acting in bad faith with

respect to Houston's demand for settlement, as defense counsel was concerned that Houston was "trying to set up a bad faith claim." Doc. 159, ¶¶ 23–24, 28. Counsel advised that Houston's "prospects for recovering some ability to ambulate" was not known, but that "there is at least a 50% chance" that the County will be found liable, in which case there would likely be a verdict in excess of the limits of MOPERM's insurance policy. *Id.* at ¶¶ 25–26, 33(d).

\*2 The County opposed settling the case, in part because it doubted Houston was paralyzed, but at least one individual defendant demanded settlement. *Id.* at ¶¶ 29–30. When MOPERM was deciding whether to settle, MOPERM considered other factors besides whether Houston could walk. *Id.* at ¶ 34. MOPERM also considered "the facts, the law, the location, the likability or believability of involved parties in trying to come to a reasonable conclusion." Doc. 145-4 (Weber Deposition), p. 67. At the time of settlement, counsel for the defendants had corresponded with, but not engaged, an expert to comment on liability and damages or review Houston's medical records, nor had the County interviewed or deposed any of the witnesses identified as having discoverable information. Doc. 159, ¶ 35; Doc. 145-2 (Berry Deposition), p. 208. Boone County never served interrogatories, requests for production of documents, or admissions. Doc. 159, ¶ 55.

Defendants sought an extension of time to respond to Houston's demand for settlement, but the extension was denied. Doc. 161, ¶ 1. Houston accepted an offer to settle his claims against all defendants in exchange for \$2 million on April 5, 2017. Doc. 159, ¶ 38. On April 19, 2017, Houston signed a release, which stated, in part,

3. Basis for Settlement. It is understood and agreed that this settlement is the compromise of a disputed claim, and that the payment made is not be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace. The undersigned hereby declares and represent that the injuries sustained are or may be

permanent and progressive and that recovery therefrom is uncertain and indefinite ....

*Id.* at ¶ 39. Houston filed a notice of voluntary dismissal on May 22, 2017, and the Clerk's Order of Dismissal was entered the following day. Doc. 62; Doc. 63.

On April 25, 2017, Houston was captured on a body camera video at a hotel. Doc. 161, ¶¶ 2, 5. In the video, Houston is fully able to walk on his own without the aid of any mobility assistive device, there is no evidence he had an assistive device with him in his hotel room, and he is seen carrying several bags out of the hotel room without assistance. *Id.* at ¶¶ 3–5. On June 5, 2017, the County's city counselor notified defense counsel of the encounter with Houston, and in July 2017, counsel notified the U.S. Attorney and hired an investigator to search for Houston's assets. Doc. 159, ¶¶ 41, 44–45.

## II. Procedure

On April 23, 2018, Boone County filed a motion seeking to set aside the judgment in this case pursuant to [Federal Rule of Civil Procedure 60\(b\)](#). Doc. 64. The judgment was entered after the plaintiff voluntarily dismissed the case based on a settlement the parties reached. Doc. 62. In an amended motion for relief, the County claims that Plaintiff procured the settlement through fraud and seeks to recover funds retained by Attorney Intervenors under an unjust enrichment theory.<sup>2</sup> Doc. 118. The County seeks to set aside the Clerk's Order dismissing this case, nullify the settlement agreement, recover any funds paid to the Attorney Intervenors, and have the case dismissed with prejudice.<sup>3</sup> *Id.*

Attorney Intervenors argue that summary judgment denying the County [Rule 60\(b\)](#) relief is appropriate because Boone County cannot establish that Houston committed fraud or that such fraud prevented the County from presenting its case, and Boone County did not seek relief within a reasonable period of time. Doc. 145. Attorney Intervenors also argue that, as a matter of law, Boone County's unjust enrichment claim fails. *Id.*; Doc. 169 (Supplemental Briefing). Plaintiff Derrick Houston has not made any appearance before the Court since the County filed its first [Rule 60\(b\)](#) motion, and therefore, does not challenge any of the County's allegations.

### III. Standard

\*3 “Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Anderson v. Durham D & M, LLC*, 606 F.3d 513, 518 (8th Cir. 2010); *Fed. R. Civ. P. 56(a)*. The Court must enter summary judgment “ ‘against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’ ” *Bedford v. Doe*, 880 F.3d 993, 996 (8th Cir. 2018) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) ). However, courts give “the nonmoving party the benefit of all reasonable inferences which may be drawn without resorting to speculation.” *Johnson v. Securitas Sec. Servs. USA, Inc.*, 769 F.3d 605, 611 (8th Cir. 2014). Summary judgment is not appropriate when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

### IV. Discussion

Attorney Intervenors argue that the County cannot show that Houston committed fraud or misconduct, but that even if it can, the County has failed to show that such fraud prevented it from fully and fairly presenting its case. Doc. 145 (Suggestions in Support). Attorney Intervenors also argue that the County’s motion for relief was not timely, and that Attorney Intervenors are entitled to judgment as a matter of law with respect to the County’s unjust enrichment claim. *Id.*; Doc. 169.

#### A. Rule 60 Motion

*Federal Rule of Civil Procedure 60(b)(3)* permits a court to “relieve a party ... from a final judgment, order, or proceeding for ... fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.” However, “*Rule 60(b)* ‘provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances.’ ” *Paige v. Sandbulte*, 917 F.2d 1108, 1109 (8th Cir. 1990) (citation omitted). Thus, “[t]o prevail on a *Rule 60(b)(3)* motion, the movant must show, ‘with clear and convincing evidence, that the opposing party engaged in a fraud or misrepresentation that prevented the movant from fully and fairly presenting its case.’ ” *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 935 (8th Cir. 2006)

(citation omitted). Additionally, a *Rule 60(b)(3)* motion must be filed within a reasonable period of time, but no more than one year of the final judgment. *Fed. R. Civ. P. 60(c)(1)*.

Attorney Intervenors assert that there is insufficient evidence for the Court to conclude that any of these three requirements are met.

#### I. Fraud or Misconduct

Attorney Intervenors first argue the County’s circumstantial evidence is insufficient to establish perjury by clear and convincing evidence. However, “[i]n both civil and criminal cases, circumstantial evidence is considered just as probative as direct evidence, and for that reason, circumstantial evidence may constitute evidence that is clear, unequivocal, and convincing.” *United States v. Hirani*, 824 F.3d 741, 747 (8th Cir. 2016) ). Therefore, the circumstantial nature of the County’s evidence is not grounds for summary judgment.

Attorney Intervenors also argue that the County has not produced any evidence to show that Houston could in fact walk, or stand and lean, on the day of his deposition. However, a fact finder could reasonably infer that Houston lied during his deposition given the likelihood of the alternative—that Houston spontaneously and fully recovered from his purported catastrophic injuries in less than two months. Although Attorney Intervenors state that individuals who suffer from incomplete *spinal cord injuries* can and do regain the ability to walk, the County disputes the likelihood of such scenario, and has engaged an expert who testified that “Mr. Houston’s ability to walk in a near normal fashion [in April 2017] is not consistent with him being paraplegic and wheelchair bound the month before at the time of his deposition.” Doc. 159-7 (Dubinsky Deposition), p. 73. This is also a conclusion that a lay person could reasonably reach, given the record.

\*4 Considering only the evidence currently before the Court, reasonable inferences could be drawn to find, by clear and convincing evidence, that Houston committed perjury. Because the Court must draw all reasonable inferences in favor of the nonmoving party, summary judgment on this basis is denied.

## 2. Full and Fair Presentation

Attorney Intervenors also argue that the County cannot establish that Houston's misconduct prevented the County from fully and fairly presenting its case because the County voluntarily settled the case before the expiration of the discovery deadline, without having investigated either liability or the extent of damages. Attorney Intervenors also argue that any reliance by the County on Houston's statements was unreasonable because the County's did a limited investigation and the County considered other factors besides Houston's perjury when it evaluated the County's risk.

First, the voluntary nature of the settlement does not, as a matter of law, establish that the County had a full and fair opportunity to present its case. See *White v. Nat'l Football League*, 756 F.3d 585, 595 (8th Cir. 2014) (holding that Rule 60(b)(3) applies to stipulated dismissals under Fed. R. Civ. P. 41(a)(1)(A)).

Second, a reasonable fact finder could find by clear and convincing evidence that Houston's testimony caused or contributed to cause the County's settlement decision. As is the norm, the County and MOPERM considered factors other than the alleged perjury before reaching a settlement. For example, the County considered the likelihood of an unfavorable jury panel, the likeability of the parties, the likelihood of success on the issue of liability, the timing of Houston's demand for settlement, et cetera. Nonetheless, a reasonable fact finder could conclude that, but for the alleged perjury and misrepresentations, the defendants would not have settled. Whether Houston could walk was a key issue in the case and had Houston told the truth in his deposition, a fact finder could conclude that the defendants would not have settled for \$2 million even given the other factors they considered. See *Quinn v. City of Kansas City*, 64 F. Supp. 2d 1084, 1091–93 (D. Kan. 1999) (“If plaintiff had not testified falsely, defendants would have had less incentive to settle the case and less risk of liability from their perspective.”); *Ebersole v. Kline-Perry*, 292 F.R.D. 316, 322–23 (E.D. Va. 2013) (finding that movant was prevented from fully presenting defense when plaintiff improperly withheld evidence and made misrepresentations at trial that “would have helped Defendant bolster her defense” and closed off an avenue

that “may well have led the defense attorneys to additional evidence”).

Third, a reasonable fact finder could conclude that the County and MOPERM reasonably relied on Houston's alleged perjury and misrepresentations when it settled the case for the \$2 million. The crux of Attorney Intervenors' argument to the contrary is that the County and MOPERM did not hire their own expert to investigate whether Houston was in fact paralyzed. However, Defendants already had a treating physician's diagnosis and Houston had presented an expert report that supported that diagnosis. Doc. 159, ¶¶ 12, 18. Houston also set a short time limit for its settlement demand, which defense counsel interpreted as an effort to set up a bad faith claim that could result in liability well beyond the limits of the County's insurance. *Id.* at ¶¶ 23–24, 28. For example, Houston's expert had opined that his life care plan alone would cost \$5.7 million. Under such circumstances, a fact finder could conclude that Defendants reasonably relied on Houston's alleged perjury and that reliance was reasonable.

\*5 Furthermore, Attorney Intervenors have presented no evidence that Defendants would have been able to uncover the alleged perjury even if they had hired their own expert. Arguably, Houston had misled his own expert as well as his treating physician. Hiring yet another expert to evaluate Houston may not have uncovered the alleged perjury. At least in the context of summary judgment, absent some evidence that it was more likely than not that a third professional would have succeeded where two had failed, there is insufficient evidence to resolve the issue as a matter of law.

Accordingly, summary judgment on this basis is denied.

## 3. Reasonable Period of Time

Attorney Intervenors argue that summary judgment is appropriate because the County failed to bring its Rule 60 motion within a reasonable period of time. “What constitutes a reasonable time is dependent on the particular facts of the case in question.” *Watkins v. Lundell*, 169 F.3d 540, 544 (8th Cir. 1999). Attorney Intervenors highlight that the County's city counselor and the County's attorneys knew that Houston was not paralyzed as early as June 5, 2017, Doc. 159, ¶ 41,

and claims that the County had MOPERM's consent to proceed with a motion as early as November 2017. *Id.* at ¶ 47. According to Attorney Intervenors, the County has not provided an adequate explanation for why it waited until April 23, 2018 to file its initial Rule 60 motion. The County claims that the motion was delayed, at least in part, because the case had been referred to a federal law enforcement agency for an investigation, which was still pending in November 2017, and that the timing was reasonable because the investigation might have changed the nature of or need for the relief requested.

Based on this record, a fact finder could find that the County's decision to investigate before pursuing a motion for relief was reasonable and that the Rule 60 motion was timely filed.

Accordingly, summary judgment on this basis is denied.

#### B. Unjust Enrichment

Finally, in supplemental briefing, Attorney Intervenors argue that the Court lacks authority to consider the County's unjust enrichment claim even if the Rule 60(b) motion is granted because ordering payment of their attorneys' fees would constitute affirmative relief not authorized under Rule 60(b).<sup>4</sup> Doc. 169, p. 2. For support, Attorney Intervenors cite *Adduono v. World Hockey Ass'n*, 824 F.2d 617, 620 (8th Cir. 1987).

In *Adduono*, the Eighth Circuit held that Rule 60(b)(6) did not provide authority for a court to impose sanctions against an attorney accused of committing misconduct in the original proceeding. 824 F.2d at 618–19. In the underlying proceeding, the district court set aside the judgment after finding that the plaintiffs' attorney violated representations made in a settlement agreement. The district court also imposed sanctions against the attorney and ordered the attorney to pay attorneys' fees incurred by the defendants. In reversing the district court, the Eighth Circuit held that the district court "did not have authority ... to impose sanctions against [plaintiffs' attorney] and award attorney fees to the [defendants]" because "Rule 60(b) is available ... only to set aside a prior order or judgment. It cannot be used to impose additional affirmative relief." *Id.* at 620 (citation omitted).

\*6 The County and MOPERM argue that the unjust enrichment claim is not affirmative relief because it seeks

equitable restitution and "it would be patently unjust" to set aside the judgment based on Houston's fraud while allowing Attorney Intervenors to retain the benefit conferred by that fraud. Doc. 180, p. 5. They highlight that Rule 60(b) "is designed to prevent injustice by allowing a court to set aside the unjust results of litigation," *White*, 756 F.3d at 596, and argue that "a court granting relief under Rule 60(b) is given broad discretion as to the type of relief it might grant [and] express authority to 'impose just terms.'" *Conerly v. Flower*, 410 F.2d 941, 944 (8th Cir. 1969) (citing *Thorpe v. Thorpe*, 364 F.2d 692, 694 (D.C. Cir. 1966)).

However, the County and MOPERM read these cases too broadly. First, *White* did not speak to permissible relief under Rule 60(b), only whether the Rule applies to stipulated dismissals. 756 F.3d at 596. Second, the relief affirmed in *Conerly* was the district court's decision to reinstate a jury verdict, rather than merely set a new trial once the judgment was set aside. *Id.* at 943–44. The relief granted still pertained to the same controversy between the same parties for which the court's jurisdiction was originally invoked. See *id.* at 945. In this case, the requested relief is premised on a new legal claim sought against a new party. Thus, even though this claim is premised on principles of equity and only seeks restitution, the County's claim still amounts to affirmative relief relative to the prior proceedings in this case. See *Delay v. Gordon*, 475 F.3d 1039, 1046 (9th Cir. 2007) (concluding "a fortiori that Rule 60(b)(6) cannot be used to assert a new and distinct legal claim against a defendant that was not party to the original judgment").

Because the Court is without authority to grant the requested relief on a Rule 60(b) motion, the unjust enrichment claim is dismissed in this case without prejudice.

#### V. Conclusion

For the reasons set forth above, Attorney Intervenors' motion for summary judgment, Doc. 144, is granted in part and denied in part.

#### All Citations

Slip Copy, 2019 WL 1928529

Footnotes

- 1 The facts cited are taken from the County and MOPERM's response in opposition to Attorney Intervenors' statement of uncontroverted material facts, Doc. 159, and the Attorney Intervenors' reply, Doc. 161.
- 2 The original motion to set aside claimed that the Attorney Intervenors had participated in the fraud, but the amended motion omits allegations of fraud against the Attorney Intervenors. *Compare* Doc. 64 *with* Doc. 118.
- 3 The County also requests an award of fees and costs associated with bringing the [Rule 60\(b\)](#) motion and an injunction that prohibits both the Attorney Intervenors and the Plaintiff from disposing of any settlement proceeds.
- 4 Attorney Intervenors also argue they are entitled to judgment as a matter of law based on the merits of the unjust enrichment claim. Doc. 145, pp. 21–23. Because the Court lacks the authority to grant relief, the Court does not consider the merits of the unjust enrichment claim.

**CERTIFICATE OF SERVICE**

On this date I caused a copy of the foregoing document to be served upon the attorneys of record listed below by E-Filing, with a courtesy copy by Email/PDF:

Karen Hammer, WSBA #35608  
Patrick Layman, WSBA #5707  
Suttell, Hammer & White, P.S.  
P.O. Box C-90006  
Bellevue, WA 98009  
Tel: (425) 455-8220  
Fax: (425) 453-3239  
Email: [karen@suttelllaw.com](mailto:karen@suttelllaw.com)  
[patrick@suttelllaw.com](mailto:patrick@suttelllaw.com)

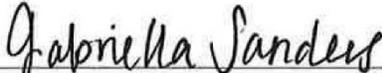
Scott M. Kinkley, WSBA #42434  
Northwest Justice Project  
1702 W. Broadway Ave.  
Spokane, WA 99201-1818  
Tel: (509) 324-9128  
Fax: (509) 324-0065  
Email: [scottk@nwjustice.org](mailto:scottk@nwjustice.org)

*Attorneys for Petitioners*

*Attorneys for Respondent*

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 31<sup>st</sup> day of May 2019, at Seattle, Washington.

  
\_\_\_\_\_  
Gabriella Sanders

**SAVITT BRUCE & WILLEY LLP**

**May 31, 2019 - 4:49 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96853-5  
**Appellate Court Case Title:** Fireside Bank, fka Fireside Thrift, Co. v. John W. Askins and Lisa D. Askins  
**Superior Court Case Number:** 07-2-00204-7

**The following documents have been uploaded:**

- 968535\_Briefs\_20190531164513SC256294\_7384.pdf  
This File Contains:  
Briefs - Respondents Supplemental  
*The Original File Name was Supplemental Brief of Respondent.pdf*
- 968535\_Other\_20190531164513SC256294\_7081.pdf  
This File Contains:  
Other - Appendix  
*The Original File Name was Appendix of Unpublished Opinion ISO Supplemental Brief of Respondent.pdf*

**A copy of the uploaded files will be sent to:**

- Karen@suttelllaw.com
- bbalanda@sbwllp.com
- patrick@suttelllaw.com
- scottk@nwjustice.org

**Comments:**

---

Sender Name: Devri Owen - Email: eservice@sbwllp.com

**Filing on Behalf of:** Stephen Charles Willey - Email: swilley@sbwllp.com (Alternate Email: eservice@sbwllp.com)

Address:  
1425 Fourth Avenue  
Suite 800  
Seattle, WA, 98101  
Phone: (206) 749-0500

**Note: The Filing Id is 20190531164513SC256294**