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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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Court of Appeals No. 72397-9-I
King County Superior Court Cause No. 13-2-40091-0 KNT

WAYNE R. RICHARDSON,

Appellant,

v.

COAST REAL ESTATE SERVICES FOR
GREENTREE APARTMENTS IN KING COUNTY,
JEANETTA WALSTON (manager),

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Michael T. Callan, WSBA #16237

Peterson Russell Kelly PLLC
Attorneys for Respondents
Coast Real Estate Services and
Jeanetta Walston

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I. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Wayne Richardson appeals the Court of Appeals' decision affirming the trial court's order denying his CR 60 motion to vacate following the trial court's order granting summary judgment of dismissal to Coast Real Estate Services. He argues the trial court erred in denying the motion and that it erred by treating the motion as a motion to reconsider rather than a motion to vacate. Because Richardson 1) provided the Court and counsel with his change of address for service of pleadings, 2) failed to respond to Coast's Motion for Summary Judgment despite service at both addresses provided, and 3) failed to produce any admissible evidence to raise any issues of fact in opposition to summary judgment when he filed his motion for reconsideration, the trial court properly granted summary judgment to Coast Real Estate Services and properly denied the motion to reconsider. Richardson's Petition should be denied.

II. RESTATEMENT OF FACTS

Between February 2007 and early 2014, Wayne Richardson was a tenant in the Greentree Apartments, an apartment complex managed by Coast Real Estate Services.

On November 25, 2013, Richardson, representing himself, sued Coast Real Estate Services and Greentree Apartments Community Manager Jeanetta Walston (collectively, "Defendants") under RCW 59.18,

alleging various defects with his apartment.¹ Clerk's Papers (CP) at 1-17. Richardson failed to serve Coast with original process. On December 19, 2013 Richardson filed a motion for default and a motion for a temporary injunction against Defendants. Richardson's injunction motion sought to prevent Defendants from renting his unit or any other unit in his building until certain defects were fixed. Defendants objected, arguing lack of jurisdiction, improper service, and that the pleadings failed to comply with King County Local Civil Rule 7 (KCLCR) governing motions practice. On December 27, 2013 the trial court struck Richardson's motion for default for failing to comply with KCLCR 7. The court also denied Richardson's motion for a temporary injunction without prejudice.

On January 17, 2014, Richardson re-noted his motion for a temporary injunction. Defendants again objected on the basis of lack of service but also argued Richardson failed to show the elements necessary for a temporary injunction. On March 7, 2014 the trial court again denied Richardson's motion following a hearing.

On March 21, 2014 Richardson filed a motion for discovery and provided two new addresses for service of future pleadings - a post office box in Seattle and a campground in Kent, Washington. On May 20, 2014

¹ Richardson never notified the Defendants about the alleged defects as required by the lease before he filed his lawsuit. He also stopped paying rent.

Defendants filed a motion for summary judgment arguing that Richardson's failure to pay rent under RCW 59.18.080 bars his lawsuit.² A hearing on the motion was noted for June 20, 2014. Defendants sent the motion to both addresses Richardson provided in his motion for discovery. Based upon the undisputed facts, Mr. Richardson was timely served with Coast's summary judgment motion and related pleadings at the addresses that Mr. Richardson designated for service in the pleadings he served on Coast. Coast's summary judgment motion was timely noted, filed and served. Richardson never filed any response to Defendants' motion. Defendants filed a reply on June 16, 2014 confirming they had not received any response from Richardson. On June 27, 2014 the trial court granted defendants' motion for summary judgment, noting that Richardson failed to file a response and failed to appear at the summary judgment hearing.

On July 21, 2014 Richardson filed a motion to vacate the order granting defendant's summary judgment. The trial court treated Richardson's motion as a motion for reconsideration and denied the motion.

² The Residential Landlord-Tenant Act, ch. 59.18 RCW, provides that a tenant "shall be current" in rent and utility payments "before exercising any remedies" under the act. When the motion was filed, Richardson was in arrears on rent in the amount of \$2,170 and had vacated the apartment following an unlawful detainer action.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Standard of Review

The court of appeals reviews an order granting summary judgment de novo, considering whether “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” CR 56(c); *see Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

Moreover, a trial court's denial of a motion to reconsider or a motion to vacate is reviewed for an abuse of discretion. *Singleton v. Naegeli Reporting Corp.*, 142 Wn. App. 598, 175 P.3d 594 (2008); *State v. A.N.W. Seed Corp.*, 44 Wn. App. 604, 607, 722 P.2d 815 (1986). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

B. Summary Judgment

Richardson argued that the trial court erred when it denied his motion to vacate the order granting summary judgment to Defendants. However, summary judgment was proper because Richardson was timely served with Defendants' summary judgment motion and failed to respond.

The record showed that Richardson was timely served with Defendants' motion for summary judgment. CR 56(c) requires a party

moving for summary judgment to serve the motion “not later than 28 calendar days before the hearing.” CR 5(2)(A) states that when a party elects to serve by mail, such service is “complete upon the third day following the day upon which [relevant documents] are placed in the mail “ CR 5(2)(A). Because Defendants mailed their motion for summary judgment and related materials on May 20, service was complete on May 23, 28 days before the scheduled hearing on June 20.

Further, the record shows that Defendants mailed their summary judgment motion to both addresses Richardson provided. On a motion submitted March 24, Richardson noted two addresses at which he could receive service. Richardson admitted that he mistyped one of these addresses. But Richardson never notified the trial court about this error, despite his duty to keep the court and counsel informed of his correct address. CR 13(e); *see also Edwards v. Le Due*, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010) (A trial court must hold pro se parties to the same standards to which it holds attorneys). In any event, Defendants mailed the summary judgment pleadings to both addresses, and nothing in the record indicates the other address Richardson provided was invalid for purposes of mail service.

Because Richardson failed to respond after receiving sufficient service, summary judgment was proper. *See Davies v. Holy Family Hosp.*,

144 Wn. App. 483, 499-500, 183 P.3d 283 (2008); *see also Weatherbee v. Gustafson*, 64 Wn. App. 128, 131, 822 P.2d 1257 (1992) (“The granting of summary judgment is proper if the nonmoving party, after the motion is made, fails to establish any facts which would support an essential element of its claim.”)

C. Motion to Vacate or Reconsider

Richardson contends that the trial court erred by denying his motion to vacate and that the trial court erred by treating his motion as a motion to reconsider. But whether Richardson’s motion was properly considered as a motion to reconsider or a motion to vacate is irrelevant because the court concluded his motion failed under either standard. First, for the reasons discussed above, the court of appeals correctly determined that the trial court properly granted Defendants’ motion for summary judgment. No evidence was submitted that the trial court abused its discretion when it treated Richardson’s motion under the more generous reconsideration standard. *See Wagner Dev. Inc., v. Fidelity & Deposit Co. of Maryland*, 95 Wn. App. 896, 906, 977 P.2d 639 (1999).

But even if the trial court treated the motion as a motion to vacate, Richardson’s failure to submit a supporting affidavit or declaration defeats the motion. CR 60(e) provides that a party seeking vacation of a final order must support his motion to vacate with an affidavit setting forth a set

of facts upon which the motion is based. CR 60(e). Because Richardson failed to provide a supporting affidavit or declaration, the trial court did not abuse its discretion when it denied Richardson's motion. *See Gustafson v. Gustafson*, 54 Wn. App. 66, 70, 772 P.2d 1031 (1989) (A trial court's decision on a motion to vacate "will not be reversed in the absence of a manifest abuse of that discretion."); *see also Davidson Serles & Assocs. v. City of Kirkland*, 159 Wn. App. 616, 624, 246 P.3d 822 (2011) ("On summary judgment review, we may affirm the trial court's decision on any basis within the record."). *See also Redding v. Virginia Mason Med. Ctr.*, 75 Wash.App. 424, 426, 878 P.2d 483 (1994).

IV. CONCLUSION

For the reasons discussed above, the Court of Appeals properly affirmed the trial court's order granting summary judgment and denying Richardson's motion for reconsideration/motion to vacate.

Respectfully submitted this 12th day of November, 2015.

PETERSON RUSSELL KELLY PLLC
Attorneys for Respondents
Coast and Jeanetta Walston



By _____
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No. _____

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WAYNE R. RICHARDSON,

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COAST REAL ESTATE SERVICES FOR
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Respondents.

CERTIFICATE OF SERVICE

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I, Jenny Lebeau, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed with the law firm of Peterson Russell Kelly PLLC, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to this action, and am competent to be a witness herein.

I hereby certify that on November 12, 2015, I caused to be served a copy of Respondents' Answer to Petition for Review and this Certificate of Service to the following Plaintiff/Appellant at his last known address via the method indicated below:

Wayne R. Richardson	<input checked="" type="checkbox"/>	Via U.S. Post Office Priority Mail
PO Box 78618		Express and U.S. Post Office First Class
SEATTLE WA 98178		Mail

Dated: November 12, 2015, at Bellevue, Washington.


Jenny Lebeau, Paralegal

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v.
Coast Real Estate Services for Greentree Apartments in King County, Jeanetta Walston (manager),
Defendants/Respondents
King County Superior Court Cause No. 13-2-40091-0 KNT
Court of Appeals, Div. I Case No. 72397-9-I

Good afternoon:

Attached for Electronic Filing with the Supreme Court please find the following:

- Respondents' Answer to Petition for Review; and
- Declaration of Service

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Please contact me with any questions. Thank you.

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