IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	
	)	No. 67225-8-I
ROMULO Y. SARAUSAD,	)	
	)	DIVISION ONE
Respondent,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
ROSA M. SARAUSAD,	)	
	)	FILED: February 19, 2013
Appellant.	)	

Grosse, J. — Imposing sanctions for bringing an action to vacate a judgment in an untimely manner is not an abuse of discretion. In denying the motion to vacate, the trial court found Rosa Sarausad acted in bad faith when she moved to vacate her more than 14-year-old decree of dissolution on the grounds that she was unaware that she was divorced until confronted by her ex-husband's spouse in 2009. But Rosa represented herself as a divorced single mother of four in legal documents she filed in a separate action that same year. Under these circumstances, the trial court did not abuse its discretion in denying the motion to vacate and awarding attorney fees to Romulo Sarausad for having to defend the action. Affirmed.

FACTS

In 1969, Rosa and Romulo Sarausad were married in the Philippines in March and again in a religious ceremony in Seattle in August. Romulo filed a petition for dissolution on August 11, 1995, in Snohomish County Superior Court, and Rosa also signed that petition. Romulo had appeared before the commissioner at the time of the dissolution and the record demonstrates that he was sworn in and testified. Both

parties signed the decree, and Rosa's signature waived notice of its presentation. The dissolution was granted in 1996.

Rosa denied signing the petition for dissolution and claimed that her signature was forged. She also claimed that, until 2009, she was unaware she was divorced pursuant to a decree entered on September 25, 1996. However, one month after the dissolution was entered, Rosa represented herself as a divorced mother of four in litigation involving the Board of Industrial Appeals (Board) in three separate instances: (1) in an October 10, 1996 letter to Judge Kathryn Guykeme of the Board; (2) in an August 11, 1999 letter to Gary Moore, who was then the Director of the Washington State Department of Labor and Industries (L & I); and (3) in responsive answers to a questionnaire from L & I.

Rosa filed a petition for dissolution in King County Superior Court in May 2010. After Rosa's counsel was advised that a proceeding already existed in Snohomish County, he voluntarily dismissed the action and withdrew as counsel. Rosa, pro se, contested the voluntary withdrawal and the action was reinstated. Romulo then moved to dismiss based on the previously granted dissolution in Snohomish County. King County dismissed the action with prejudice on February 23, 2011.[1] Rosa did not respond to Romulo's motion; instead, she filed a motion to vacate the decree of dissolution previously entered in Snohomish County.

Rosa's basis for the vacation was that her signature was forged and that she did not know that her marriage was dissolved until Romulo's second wife confronted her in

[1] King County No. 10-3-03656-7.

2009.[2] On March 4, 2011, Rosa appeared with her then-attorney before Commissioner Lester Stewart. Because Rosa had failed to obtain and serve an order to show cause on Romulo, the matter was dismissed and Rosa was ordered to pay Romulo's attorney fees in the amount of $300.00 for his limited appearance in court. Rosa renoted the motion to vacate and the matter was heard March 21, 2011.

The commissioner dismissed the motion and awarded attorney fees to Romulo, finding that Rosa had acted in bad faith. Rosa's motion for revision was denied.

Rosa appeals, arguing that the 1996 decree was fraudulently obtained. Rosa asserts that her signature on the document is forged and that she was unaware that she was in fact divorced until sometime in 2009, when she was confronted by Romulo's second wife.

A party may obtain relief from a default judgment based on CR 60(b). That rule states, in relevant part:

> **(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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> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
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> . . .
>
> (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (5) The judgment is void;
>
> . . . .
>
> 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. [3]

[2] On December 6, 2008, Romulo married Lourdes Limbo.
[3] CR 60.

A dissolution decree may be vacated for extraordinary circumstances to overcome a manifest injustice. A decision on a motion to vacate a default judgment is discretionary and will not be disturbed unless the trial court abused its discretion.[4] A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons.[5] Here, we cannot say that the trial court abused its discretion. Rosa brought this action some 14 years after the decree of dissolution was entered. She argues that she thought the parties only agreed to a legal separation, not dissolution. She denies appending her signature to the dissolution and thus disclaims all knowledge that she was divorced. Such allegations fail in the face of Rosa's subsequent legal actions in which she asserted that she was a divorced mother of four. Indeed, in her own petition for dissolution that she filed in King County, Rosa admits that she claimed she was divorced in other legal proceedings. Accordingly, the court had sufficient grounds on which to base its denial of Rosa's untimely motion.

In denying the motion, the court found Rosa's action to be in bad faith. The determination of a violation of CR 11 is within the sound discretion of the trial court.[6] But the court must create an adequate record for review by identifying the sanctionable conduct and explaining its reasons for imposing sanctions.[7] The trial court found Rosa's motion to be frivolous and filed in bad faith. The court imposed the sanctions for the burden and expense of responding to the improper motion. The court's actual

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[4] Griggs v. Averbeck Realty, Inc., 92 Wn.2d 576, 582, 599 P.2d 1289 (1979).
[5] In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).
[6] Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993).
[7] Biggs v. Vail, 124 Wn.2d 193, 201, 876 P.2d 448 (1994); Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992).

order, however, only made a finding of "bad faith." But we note that the hearing was digitally recorded. The following language was found under the caption entitled "Proceedings/Court's Findings":

> Under the applicable principles of equity, timeliness is important. The thing that is more persuasive to the Court is that there was an appeal filed by the Respondent through an insurance inquiry that stated she knew and was aware that she was divorced. The court will deny the motion today.
> The court will award attorney's fees in the amount of $1,200.00 due to the motion being brought in bad faith.

The insurance inquiry referred to was an L & I claim submitted by Rosa as a result of an injury she sustained while employed by the University of Washington. Rosa's time-loss compensation was based in part on the number of her dependents, and L & I noted that that portion of compensation would not be paid until they received the information which included a response to the question of whether she was married. Rosa responded: "Yes, I was married from 1969 to 1996." This signed document was received by L & I on May 28, 1998.

Although we cannot tell from the record whether the transcription in the minute entry was from the digital recording and the actual judge's ruling, the verbiage suggests that it was the judge's actual words. This, coupled with the clear evidence in the record that Rosa knew she was married only between the years 1969 and 1996, supports the judge's finding of bad faith. Moreover, it was the responsibility of Rosa to supply the record from which she was appealing and failure to do so will not be rewarded.

Attorney Fees on Appeal

Romulo seeks attorney fees on appeal. A party may recover attorney fees only when authorized by a private agreement, statute, or recognized ground of equity.[8]

"Under RAP 18.9(a), an appellate court may impose sanctions for a frivolous appeal. An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there is no reasonable possibility of reversal."[9]

Here, Rosa, acting pro se, filed this appeal. There are no debatable issues upon which reasonable minds might differ. The evidence shows that Rosa signed the dissolution and represented herself as divorced in subsequent litigation. A motion to vacate 14 years after the court issued its judgment is clearly outside the timeliness requirements under CR 60(b). This appeal is frivolous and Romulo is entitled to attorney fees.

Grosse, J.

WE CONCUR:

Spearman, A.C.J.

Becker, J.

[8] Mellor v. Chamberlin, 100 Wn.2d 643, 649, 673 P.2d 610 (1983).
[9] Carlile v. Harbour Homes, Inc., 147 Wn. App. 193, 217, 194 P.3d 280 (2008) (citing State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 905, 969 P.2d 64 (1998)).