IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the relationship of: JOSEPHINE G. MILLER, Appellant, v. SEAN A. LEAGUE, an unmarried man; GEORGE LEAGUE and SANDRA LEAGUE, husband and wife; DAN GERHARDS and JANE DOE GERHARDS, husband and wife; SEAN'S ASTRONOMY SHOP, a Washington Partnership, Respondents.	No. 40857-1-II UNPUBLISHED OPINION

Hunt, J. — Josephine G. Miller appeals the superior court's denial of her motion to vacate dismissal of her dissolution petition. Finding no abuse of discretion, we affirm; we also grant attorney fees to League.

FACTS

On December 20, 2004, Josephine G. Miller filed a petition for dissolution of her committed intimate relationship with Sean A. League, seeking an equitable division of assets they had accumulated. On April 6, 2005, a superior court commissioner dismissed the petition, finding that Miller had not shown the presence of a committed intimate relationship. On April 22, a

superior court judge granted Miller's motion to revise the commissioner's order of dismissal. On November 1, Miller amended her complaint to add additional parties.[1] On May 31, 2006, League moved to compel Miller's answer to League's interrogatories; the superior court granted this motion on June 16.

On April 27, 2007, the superior court dismissed Miller's complaint without prejudice for want of prosecution. On May 23, 2008, the superior court granted Miller's motion to reinstate her complaint. On April 13, 2009, Miller's case was called for trial, but she did not appear; her counsel presented a letter from Martin L. Smart, M.D., stating that Miller was suffering from stress and anxiety that made her not medically capable of going through with the trial, although he thought her condition would stabilize in two to three weeks. League moved to dismiss with prejudice, arguing that Miller's case had already been dismissed three times before and that she had delayed the case for far too long by resisting discovery and drawing out proceedings. The superior court granted League's motion, dismissed Miller's complaint with prejudice, entered an order of dismissal, and entered a judgment of $250.00 in statutory attorney's fees[2] in favor of League and against Miller.

On May 29, 2009, Miller moved to vacate the dismissal order and to reinstate her case.[3] On September 25, Miller's counsel withdrew. On April 7, 2010, appearing pro se, Miller moved for an order to show cause why the May 29, 2009 order should not be vacated; accompanying

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[1] Miller added Sean's Astronomy Shop and Infobtainers, partnerships in which Sean League, George League, and Dan Gerhards were partners.

[2] RCW 4.84.010.

[3] The record before us on appeal does not indicate a superior court ruling on this motion until April 7, 2010.

this show cause motion, she filed an affidavit purporting to be in support of her earlier May 29, 2009 motion to vacate the dismissal order. In her affidavit, she reiterated her arguments in her May 29, 2009 motion to vacate and asserted that (1) League's counsel misrepresented facts to the court and improperly moved for dismissal; (2) the superior court had erred in failing to continue the trial because of her medical condition; and (3) the superior court had erred entering the order dismissing her petition. On May 7, the superior court denied both Miller's motion to show cause and her motion to vacate the order dismissing her case. Miller appeals.[4]

ANALYSIS

I. Denial of Miller's Motion to Vacate

Miller argues that the six attorneys who represented her and League's four attorneys "hijacked" her case with a prearranged dismissal, which caused the superior court to dismiss her petition improperly. Br. of Appellant at 3. The record does not support her argument.

We review orders denying motions to vacate for an abuse of discretion. *Weems v. North Franklin Sch. Dist.,* 109 Wn. App. 767, 777, 37 P.3d 354 (2002). Miller's unsupported allegations of improper conduct by the attorneys, however, do not show that the superior court abused its discretion in denying her motion to vacate, which she brought under CR 60(b)(1), (4), (9) and (11).[5]

[4] A commissioner of this court initially considered Miller's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[5] CR 60(b) provides:

> 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;

Miller asserts that her counsel told her not to appear in court on the day of the trial and that her counsel was not prepared for trial. But she presents no competent evidence to support these assertions.

Miller also asserts that League's counsel misrepresented the facts during the April 13, 2009 hearing by stating that her petition had already been dismissed three times and that Miller had failed to prosecute the case. Miller is correct that League's counsel mistakenly represented that her case had been dismissed three times, when it actually had been dismissed only twice under this particular cause number;[6] this asserted error, however, does not rise to the level of a material misrepresentation. Furthermore, the record shows that the superior court dismissed Miller's case with prejudice because she failed to appear for trial on April 13, 2009, not because there had been three, rather than two, prior dismissals of her action. *See* Clerk's Papers at 29.

Miller further asserts that the superior court judge who, on May 7, 2010, denied her April 13, 2009 motion to vacate the dismissal order was biased against her and should have disqualified himself. She bases this assertion on the judge's comment, in granting her counsel's motion to withdraw, that her former counsel would "now be running away fast."[7] Report of Proceedings at

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. . . .

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

. . . .

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

. . . . or

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

[6] A third order of dismissal was entered in a separate case that apparently raised the same claims. The record of that case is not properly before us in this appeal.

[7] The judge's remark apparently referred to Miller's former counsel's statement on May 29, 2009,

20. Although lacking tact, the judge's remark demonstrated neither actual nor potential bias. Accordingly, Miller fails to carry her burden of presenting evidence of actual or potential bias. *See State v. Post*, 118 Wn.2d 596, 619, 837 P.2d 599 (1992).

Miller next asserts that League's counsel improperly moved for a dismissal with prejudice; but she provides no authority for her contention. Therefore, we do not further address this issue. We need not consider arguments that are not developed in a party's briefing and for which the party has not cited authority. *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990); RAP 10.3(a)(6) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record).

Finally, Miller asserts that the superior court erred in granting League's motion to dismiss with prejudice rather than continuing the trial date to accommodate her medical condition, which she did not reveal to the court until the morning trial was to begin. Given the tardiness of her continuance request on the morning of trial and the protracted procedural history of the case, including having twice been dismissed and then reinstated, we hold that the superior court did not abuse its discretion in dismissing the case rather than continuing the trial. Furthermore, absent showing an abuse of the earlier court's discretion in dismissing her case, Miller cannot show that the trial court abused its discretion when it later denied her motion to vacate the earlier order of dismissal.

II. Attorney Fees

League argues that Miller's appeal is frivolous and, therefore, requests that we award him attorney's fees under RAP 18.9. Agreeing that Miller's appeal is frivolous under RAP 18.9(a),

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that he "basically want[ed] out of the case." Report of Proceedings at 17.

we grant League's request and award damages to League in the amount of the attorney fees that he incurred in defending against Miller's frivolous appeal.

RAP 18.9(a) authorizes us to order a "party or counsel" who "files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by . . . the failure to comply." RAP 18.9(a). *See also Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872, *review denied*, 138 Wn.2d 1022 (1999). Washington courts hold an appeal is "frivolous" if there are no debatable issues upon which reasonable minds might differ and the appeal is so totally devoid of merit that there was no reasonable possibility of reversal. RAP 18.9(a); *See Fay v. Northwest Airlines, Inc.*, 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990).

Considering this litigation as a whole, Miller's appeal was frivolous: The chance for reversal was slim at the time of filing, and the appeal lacks merit. Miller's appeal (1) presents no debatable point of law; (2) asserts that the superior court's decision was improper, without developing argument to illustrate aspects of the superior court's decision that lacked a factual basis; and (3) cites no relevant case law to support her positions. In addition, Miller has continuously delayed her trial and caused League to incur significant legal costs repeatedly, even after the court below dismissed her case more than once. Accordingly, we award League attorney fees and costs incurred in this appeal in an amount to be set by our commissioner under RAP 18.9(a).

We affirm the trial court's denial of Miller's motion to vacate the order of dismissal and we grant attorney fees and costs to League under both RCW 4.84.010 and RAP 18.9, upon his compliance with RAP 18.1(d).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Armstrong, J.