IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KAREN A. STEVENSON,	)	NOS. 64529-3-I
	)	64792-0-I
Appellant,	)	(Consolidated Cases)
	)	
v.	)	DIVISION ONE
	)	
DAVID M. CANNING, PERSONAL REPRESENTATIVE OF THE ESTATE OF MARY LOUISE CANNING,	)	UNPUBLISHED OPINION
	)	FILED: February 21, 2012
Respondent.	)	

Lau, J. — Karen Stevenson filed a lawsuit after the personal representative of the Mary Louise Canning estate denied her creditor's claim. To avoid the estate's legitimate request to take her deposition, Stevenson responded with a plethora of baseless motions and abusive litigation tactics. Finding no reversible error, we affirm the trial court's order dismissing her lawsuit, impose sanctions under RAP 18.9, and award attorney fees and costs to the estate under RAP 18.1. And because the trial court made no findings to support its substantial reduction of the estate attorney fees and costs request, we vacate the fees and costs judgments and remand for

proceedings consistent with this opinion.

FACTS

In January 2005, Karen Stevenson filed a creditor's claim against the estate of Mary Canning ("the estate"). David Canning, personal representative of the estate, rejected Stevenson's claim. Stevenson filed this lawsuit in May 2005, alleging breach of contract and unjust enrichment.

The estate originally noted Stevenson's deposition for November 22, 2005. Stevenson's then-counsel, Gayle Brenchley, filed a notice of intent to withdraw on November 8, so the estate continued the deposition to November 30. Stevenson objected to her attorney's withdrawal, and the estate postponed the deposition. The trial court permitted Brenchley to withdraw on December 9. The estate renoted Stevenson's deposition for January 12, 2006. Stevenson failed to appear.

On January 25, the estate filed a motion to compel Stevenson to appear for her deposition. On February 2, James Bittner served a notice of appearance as new counsel for Stevenson (filed with the court on February 14) and requested that the motion to compel be stricken to allow him time to review the case files. Counsel for the estate agreed, consulted with Bittner, and rescheduled Stevenson's deposition for March 2, 2006.

On February 23, Bittner filed a notice of intent to withdraw as Stevenson's counsel. The notice stated the withdrawal would be effective March 6, 2006, unless Stevenson objected.[1] On March 2, while still representing Stevenson, Bittner appeared

[1] Stevenson objected on March 6, 2006. The trial court entered an order

for Stevenson's deposition. Stevenson failed to appear.

On March 16, the estate filed a second motion to compel. On March 24, the trial court ordered Stevenson to contact counsel for the estate

> and immediately provide available dates for her deposition which must be taken not later than April 17, 2006. In the event that she does not appear and have her deposition taken prior to that time, then pursuant to Civil Rule 37(b)(2)(C) her Complaint may be dismissed with prejudice upon proper motion filed with this Court.

Stevenson failed to comply, and the estate moved to dismiss her lawsuit based on discovery violations. The trial court granted the motion and dismissed Stevenson's case with prejudice. Stevenson appealed, the estate conceded error, and we reversed. Stevenson v. Canning, noted at 138 Wn. App. 1053, 2007 WL 1537029. We reasoned that the trial court did not "make and affirmatively state on the record findings of a willful violation, the prejudice to the other party, and the court's consideration of lesser sanctions" as required under Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 41 P.3d 1175 (2002). Stevenson, 2007 WL 1537029, at *2. We remanded the matter for additional findings. Despite this favorable appellate decision, Stevenson moved the panel to reconsider and petitioned our Supreme Court for review, both of which were denied. On August 20, 2008, we issued the mandate terminating review and remanded to the trial court for proceedings consistent with our opinion.

On August 27, the estate moved to assign the case to a new judge and establish

---

permitting Bittner to withdraw on March 28.

a new case schedule.[2] Stevenson joined in the estate's motion and "ask[ed] th[e] court to enter a new case schedule order allowing fair trial of this case." The court granted the motion on September 16 and assigned the case to Judge Chris Washington.[3]

On October 13, the estate served a notice on Stevenson—by e-mail and first class mail—to appear for a deposition on October 24. Stevenson failed to appear. Counsel for the estate contacted Stevenson by e-mail to schedule a CR 26(i) conference, but Stevenson failed to respond other than to indicate she would not participate in a conference until the trial court ruled on her motion to disqualify the estate's counsel.[4] On October 29, the estate moved to compel Stevenson to appear for her deposition.[5] The court granted the motion on November 17, filed the order on November 21, and the estate's counsel received a copy on November 25. The order required Stevenson to provide available dates for her deposition to be taken on or

[2] The case was originally assigned to Judge Richard Jones, who granted the estate's first motion to dismiss. Judge Jones was confirmed as a federal district judge in October 2007, so Stevenson's case was reassigned.

[3] The court clerk's office did not issue a new case schedule as ordered, and in November 2008, Stevenson moved for entry of a schedule: "Karen Stevenson, pro se Plaintiff, asks this Court to enter a new/amended case schedule order. David Canning through his attorney filed a motion for a new/amended case schedule order, and Stevenson joined in the motion, but no order apparently has been entered." (Capitalization omitted.) The court entered an order granting the motion and establishing a new case schedule on November 26, 2008.

[4] On October 7, 2008, Stevenson had moved to disqualify the estate's counsel due to an alleged conflict of interest. The trial court denied the motion on October 29.

[5] Stevenson responded by moving to strike portions of the declaration of counsel for the estate in support of the motion to compel, which the trial court denied. She also filed a response in opposition to the estate's motion to compel.

before November 26. The estate moved to amend the order due to tardy notice of the court's discovery order. The court issued an amended February 10, 2009 order:

> 1. Karen Stevenson is directed to contact Kevin B. Hansen, defendant's counsel, within 14 calendar days from the date of this Order (defined as the date the Order is signed) and provide at least 5 possible dates (during normal business hours on days that the Clerk's Office is open) on which her deposition could be taken, provided that the deposition must occur within 35 calendar days from the date of this Order.
>
> 2. Karen Stevenson is ordered to appear for her deposition at the office of defendant's counsel on the date that is chosen by defendant's counsel (of the 5 or more dates referenced above).
>
> 3. In the event that Karen Stevenson does not appear and have her deposition taken prior to that time, then pursuant to CR 37(b)(2)(C) her complaint may be dismissed with prejudice upon proper motion filed with this Court.

(Emphasis added.)

That same day, counsel for the estate e-mailed Stevenson to inform her about the court's amended order and asked her to provide him with available dates for her deposition. Counsel also mailed a copy of the order to Stevenson by both first class and certified mail. Stevenson neither contacted counsel nor complied with any aspect of the order. Counsel then e-mailed Stevenson on February 26, asking that she call him at 9:30 a.m. on March 4 or contact him to schedule a more convenient time for a King County Local Rule (KCLR) 37(e) telephone conference. Stevenson e-mailed back on February 27, questioning the court's authority and a reconsideration motion, but made no mention of counsel's attempt to schedule a KCLR 37(e) telephone conference. She neither called counsel on March 4 nor offered alternative dates.

On March 9, 2009, the estate moved to dismiss Stevenson's lawsuit on the

grounds that she repeatedly refused to appear for her deposition and failed to comply with court orders. The accompanying notice of hearing noted the motion to be heard on March 19, 2009, without oral argument. Stevenson responded with (1) a March 12 motion to continue the hearing, (2) a March 16 response in opposition to the estate's motion to dismiss, and (3) a March 18 declaration in opposition to the motion to dismiss. Stevenson also unsuccessfully moved for a change of judge, even though Judge Washington had earlier made discretionary rulings in the case.

To resolve the discovery dispute, the court attempted to schedule a status conference hearing in a series of e-mails to the parties. On March 24, the court proposed several possible hearing dates and times. Counsel for the estate replied on March 25 with his availability. Stevenson asked about some documents but failed to address her availability for the hearing. The court replied that those documents would be discussed at the hearing, again attempted to obtain available dates from Stevenson, and warned her that "[i]f a mutually agreeable time cannot be found judge Washington will set a date." Stevenson did not respond. The afternoon of March 25, the court scheduled the hearing for April 6, 2009, at 8:30 a.m. On April 3, Stevenson notified the court that she was unavailable but proposed no alternate dates.[6] Counsel for the estate appeared at the April 6 hearing. Stevenson did not. The trial court granted the estate's motion to dismiss the case with prejudice due to Stevenson's failure to appear

[6] The same day, Stevenson filed a declaration "in opposition to purported CR 16 status conference."

or comply with discovery.[7] The court also granted the estate's request to file a separate motion for an award of fees and costs. Stevenson moved for reconsideration and "other relief," which the trial court denied on October 29, 2009.

The trial court awarded fees and costs to the estate in two separate orders. On October 29, 2009, the trial court found $28,013.50 in attorney fees and $1,013 in costs reasonable. Yet it inexplicably reduced the total fees and costs award to $9,013. Similarly, on February 11, 2010, the trial court found the estate's request for $10,699 in fees and $230.07 in costs reasonable but reduced the total fees and costs award to $5,230.07.

Stevenson appeals, alleging 54 assignments of error. The estate cross appeals the court's October 29 and February 11 orders awarding attorney fees and costs.[8]

ANALYSIS

Standard of Review

Our Supreme Court recently discussed the standard of review for discovery sanctions:

> We review a trial court's discovery sanctions for abuse of discretion.

[7] The court also denied Stevenson's motion for change of judge but declined to rule on a number of pending motions for reconsideration, finding them "moot at this time."

[8] The estate cross appealed the court's October 29 order on December 4, 2009. Stevenson argues that the estate failed to file a notice of appeal for the February 11, 2010 attorney fee order. But RAP 7.2(i) gives the trial court authority to rule on the estate's second motion for attorney fees and costs. Under RAP 7.2(i), the trial court "has authority to act on claims for attorney fees, costs and litigation expenses" after review is accepted. A party may obtain review of a decision on attorney fees in the review proceeding regarding the judgment "without filing a separate notice of appeal . . . ." RAP 7.2(i).

> Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). "A trial court exercises broad discretion in imposing discovery sanctions under CR 26(g) or 37(b), and its determination will not be disturbed absent a clear abuse of discretion." Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (citing Fisons, 122 Wn.2d at 355-56, 858 P.2d 1054). "A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds." Fisons, 122 Wn.2d at 339, 858 P.2d 1054 (citing Holbrook v. Weyerhaeuser Co., 118 Wn.2d 306, 315, 822 P.2d 271 (1992)). "A discretionary decision rests on 'untenable grounds' or is based on 'untenable reasons' if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is 'manifestly unreasonable' if 'the court, despite applying the correct legal standard' to the supported facts, adopts a view 'that no reasonable person would take.'" Mayer, 156 Wn.2d at 684, 132 P.3d 115 (internal quotation marks omitted) (quoting State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).
>
> "There is a natural tendency on the part of reviewing courts, properly employing the benefit of hindsight, to be heavily influenced by the severity of outright dismissal as a sanction for failure to comply with a discovery order." Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 642, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976). However since the trial court is in the best position to decide an issue, deference should normally be given to the trial court's decision. Fisons, 122 Wn.2d at 339, 858 P.2d 1054. A trial court's reasons for imposing discovery sanctions should "be clearly stated on the record so that meaningful review can be had on appeal." Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). If a trial court's findings of fact are clearly unsupported by the record, then an appellate court will find that the trial court abused its discretion. Mayer, 156 Wn.2d at 684, 132 P.3d 115. An appellate court can disturb a trial court's sanction only if it is clearly unsupported by the record. See Ermine v. City of Spokane, 143 Wn.2d 636, 650, 23 P.3d 492 (2001) (noting that a reasonable difference of opinion does not amount to abuse of discretion).

Magaña v. Hyundai Motor Am., 167 Wn.2d 570, 582-83, 220 P.3d 191 (2009)

(footnotes omitted).

Before dismissing a lawsuit under CR 37,[9] Rivers requires a trial court to

[9] When a party fails to comply with a court order, CR 37(b)(2)(C) authorizes the trial court to impose sanctions, including dismissal:
"[T]he court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
". . . .

consider on the record whether (1) the refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) a lesser sanction than dismissal of the action in its entirety would have sufficed. Rivers, 145 Wn.2d at 686. The trial court's reasoning with respect to each factor must be clearly stated for meaningful review. Rivers, 145 Wn.2d at 686. We review challenged findings of fact for substantial evidence, which is evidence "sufficient to persuade a rational, fair-minded person of the truth of the finding." In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). We generally will not consider claims unsupported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

Discovery Sanction Dismissal Order (Assignments of Error 15, 40, 41)

Stevenson argues the trial court improperly dismissed her case as a discovery sanction.[10] The estate responds that the court made proper findings to support dismissal as a sanction under CR 37(b) consistent with the mandate.

Washington's civil rules permit broad discovery. Magaña, 167 Wn.2d at 584.

"(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party."

[10] As part of her argument on this issue, Stevenson reiterates her arguments concerning the trial court's failure to comply with the mandate and entry of the order compelling discovery when no case schedule order had been entered. We address these contentions below.

Parties may not simply ignore or fail to respond to discovery requests—they must answer, object, or seek a protective order. CR 37(d);[11] Magaña, 167 Wn.2d at 583. "Trial courts need not tolerate deliberate and willful discovery abuse." Magaña, 167 Wn.2d at 576. If a party fails to comply with a motion to compel discovery, trial courts may impose sanctions under CR 37. To dismiss a case under CR 37(b), "the record must clearly show (1) one party willfully or deliberately violated the discovery rules and orders, (2) the opposing party was substantially prejudiced in its ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would have sufficed." Magaña, 167 Wn.2d at 584.

Willful or Deliberate

The record shows Stevenson repeatedly refused to appear for her deposition and ignored court orders intended to ensure compliance.[12] "'A party's disregard of a court order without reasonable excuse or justification is deemed willful.'" Magaña, 167 Wn.2d at 584 (quoting Rivers, 145 Wn.2d at 674). Here, the court found that Stevenson failed to appear for three scheduled depositions and failed to comply with three separate discovery orders.[13] It is undisputed that by the time the trial court dismissed the lawsuit in April 2009, she had never (1) submitted to her deposition, (2)

[11] "The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 26(c)." CR 37(d).

[12] As discussed above, Stevenson also thwarted the trial court's efforts to schedule a status conference to address the deposition issue.

[13] To the extent Stevenson specifically challenges the trial court's findings supporting dismissal, those challenges are addressed in the relevant section below.

complied with the trial court's discovery orders, or (3) sought a protective order. Stevenson argues she challenged the discovery orders and "had a legitimate reason not to comply with orders that were under challenge." Appellant's Br. at 51. We disagree. Even "a court order that is 'merely erroneous' must be obeyed . . . ." In re Estates of Smaldino, 151 Wn. App. 356, 366, 212 P.3d 579 (2009) (quoting Seattle Nw. Sec. Corp. v. SDG Holding Co., 61 Wn. App. 725, 733, 812 P.2d 488 (1991)). In contrast, an order is void "[w]here a court lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order . . . ." Smaldino, 151 Wn. App. at 366. As discussed below, the court acted well within its authority to order Stevenson to appear for her deposition. Her contrary claim is meritless. We conclude the record clearly supports the trial court's conclusion that Stevenson willfully and deliberately refused to submit to her deposition or comply with discovery orders intended to compel compliance.

Prejudice

Stevenson's refusal to attend her deposition and failure to comply with related court orders substantially prejudiced the estate's ability to prepare for trial. Stevenson's claim was based on a series of eight promissory notes allegedly signed in her favor by the decedent, Mary Canning, over an 18-year period, from 1982 until 2000. Under the court case schedule, trial was scheduled for September 28, 2009. The estate was required to disclose primary witnesses by April 27, 2009. Here, the trial court found that "[a]s the personal representative of the estate, Mr. Canning cannot

obtain meaningful information about and defend against the claim without taking Ms. Stevenson's deposition." At the time of dismissal, the estate was defending against an action arising from transactions that occurred more than nine years earlier. Stevenson's failure to submit to a deposition prevented the estate from preparing a defense for the upcoming trial, which had not been stayed, while witnesses were still available and memories still clear. The record amply supports the trial court's conclusion that Stevenson's discovery violations substantially prejudiced the estate's ability to prepare for trial. See Johnson v. Horizon Fisheries, LLC, 148 Wn. App. 628, 201 P.3d 346 (2009) (holding substantial evidence supports trial court's finding that failure to disclose primary witnesses, together with failure to comply with order awarding costs, constitutes substantial prejudice).

Consideration of Lesser Sanctions

Discovery sanctions "should be proportional to the discovery violation and the circumstances of the case." Magaña, 167 Wn.2d at 590. "'Before resorting to the sanction of dismissal, the trial court must clearly indicate on the record that it has considered less harsh sanctions under CR 37. Its failure to do so constitutes an abuse of discretion.'" Magaña, 167 Wn.2d at 590 (quoting Rivers, 145 Wn.2d at 696).

The trial court explicitly considered whether a lesser sanction would have sufficed, and it properly determined it would not:

21. This Court has considered whether a lesser sanction than dismissal

> would suffice to compel Ms. Stevenson to appear for her deposition. In considering Mr. Canning's motion to compel, this Court declined to impose monetary sanctions against Ms. Stevenson when granting the motion, and it does not appear to the Court that monetary sanctions would have any effect upon Ms. Stevenson's conduct. In Delany v. Canning, 84 Wn. App. 498, 929 P.2d 475, aff'd, 131 Wn.2d 1026, 937 P.2d 1101 (1997), Ms. Stevenson's conduct was unaffected by the fact that the trial court, court of appeals, and the Supreme Court all imposed monetary sanctions against her for discovery abuses and frivolous pleadings.
>
> 22. In the present case, Ms. Stevenson failed to appear twice for her deposition in 2006 before being ordered to appear with the specific warning that her failure would result in the lawsuit being dismissed. Even after receiving such a warning, Ms. Stevenson refused to comply with the 2006 order, which resulted in the lawsuit being dismissed. Although the dismissal was later reversed because the necessary findings were not stated in the order of dismissal as required by Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 41 P.3d 1175 (2002), there was no suggestion that Ms. Stevenson should be excused from appearing for her deposition. In October 2008, Ms. Stevenson again, for the third time, failed to appear for her scheduled deposition. This Court again ordered Ms. Stevenson to appear for her deposition with the explicit warning that her refusal to comply would result in a dismissal of the lawsuit. The Court would expect that given the prior dismissal and the repeated and explicit warnings, Ms. Stevenson would be willing to comply with the most recent order. Yet she continues to flout this Court's orders. Ms. Stevenson has had ample opportunity to comply with her obligations under the Civil Rules and with this Court's order. Her conduct has consumed precious judicial resources, harming not only her party-opponent but the judicial system itself. Her repeated and persistent refusal leads the Court to conclude that no lesser sanction than dismissal would be likely to obtain her compliance with any order of this Court.

Substantial evidence supports the court's findings. By the time the trial court dismissed the case, Stevenson had demonstrated that she would not comply with the court's orders or submit to her deposition. There was no reason to think that less harsh sanctions would result in anything other than a repetition of the delays and noncompliance the court had already seen.

Because the trial court satisfied the Rivers requirements before resorting to

dismissal, we hold that it did not abuse its discretion by granting the estate's motion to dismiss.

Trial Court's Failure to Comply with Mandate (Assignment of Error 1)

Stevenson argues the trial court erred in failing to comply with our August 20, 2008 mandate following her first appeal to this court. She claims the trial court on remand "was obliged to provide the findings that Judge Jones failed to include in the [original order dismissing the case], not to enter a new order dismissing the complaint based on events that took place years after Judge Jones dismissed the complaint in May 2006." Appellant's Br. at 31. The record indicates Stevenson failed to raise this issue anywhere in the materials she submitted to the trial court prior to dismissal of her lawsuit in April 2009. Accordingly, she failed to preserve this issue for appeal.[14] RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

Stevenson argues she properly raised the mandate issue under RAP 12.9, which allows the appellate court to recall the mandate "to determine if the trial court has complied with an earlier decision of the appellate court given in the same case."

[14] Stevenson contends that the estate is judicially estopped from arguing she waived the mandate issue because it previously indicated she could raise the issue on appeal. Appellant's Reply Br. at 17-18. But Stevenson fails to include a citation to any of the more than 2,500 pages of clerk's papers to support this allegation. Pursuant to RAP 10.4(f), Stevenson has the burden to identify where in the record the estate indicated Stevenson could pursue the mandate issue on appeal. Even if estoppel applied here, Stevenson's arguments concerning the mandate lack merit (see analysis below). Stevenson also claims counsel for the estate admitted in the trial court that "he in effect encouraged the trial judge not to comply with the mandate." Appellant's Br. at 33. Because we find the trial court complied with the mandate, we need not address this argument.

Assuming without deciding that Stevenson properly invoked RAP 12.9,[15] we conclude the trial court complied with our mandate. Stevenson argues, "The trial court failed to comply with RAP 12.2 which obliges the lower court to follow the decision taken by a higher court." Appellant's Br. at 30. We have held, "Superior courts must strictly comply with directives from an appellate court which leave no discretion to the lower court." State v. Schwab, 134 Wn. App. 635, 645, 141 P.3d 658 (2006). We also recently held that the language "'we remand for further proceedings'" signals our "expectation that the trial court will exercise its discretion to decide any issue necessary to resolve the case." In re Marriage of Rockwell, 157 Wn. App. 449, 454, 238 P.3d 1184 (2010) (quoting Schwab, 134 Wn. App. at 645). Our May 29, 2007 decision concluded that the record before us lacked necessary findings and remanded the case to the trial court "for proceedings consistent with this opinion." Our August 20, 2008 mandate remanded the case to the trial court "for further proceedings in accordance with [our May 29, 2007] decision." There is nothing inconsistent with our mandate in granting the parties' joint motion to set a new case schedule and assign a new judge.[16]

---

[15] RAP 12.9(a) provides an appellant with two choices—file a motion to recall the mandate or initiate a separate review of the lower court decision entered after issuance of the mandate.

[16] Stevenson cites Harp v. American Surety Co., 50 Wn.2d 365, 311 P.2d 988 (1957) and McCausland v. McCausland, 129 Wn. App. 390, 118 P.3d 944 (2005), rev'd on other grounds, 159 Wn.2d 607, 152 P.3d 1013 (2007), for the rule that mandates are binding on the trial court and must be strictly followed. But the Harp court distinguished between mandates with specific directions (which the trial court must strictly follow) and mandates that merely require the trial court to "consider (i.e.: exercise its discretion)" certain issues. Harp, 50 Wn.2d at 368. The McCausland court referenced this distinction and held that a trial court "may exercise discretion where an appellate court directs it to 'consider' an issue, although in doing so, it must adhere to

The trial court acted well within its discretion and the mandate. Stevenson's claim fails.[17]

Failure to Enforce September 16, 2008 Order Establishing a New Case Schedule (Assignment of Error 8)

Stevenson argues the trial court's "failure" to enforce the September 16, 2008 "Order Revoking/Lifting Stay; Clerk to Issue New Scheduling Order and Assign Judge" furthered the estate's "stratagem of arranging for the trial judge not to comply with the mandate." Appellant's Br. at 43. Stevenson failed to raise this issue below and thus waives it on appeal.[18] See RAP 2.5(a); Lindblad v. Boeing Co., 108 Wn. App. 198, 207, 31 P.3d 1 (2001). This speculative collusion claim lacks any basis in the record. And in any event, when the clerk's office failed to issue a new case schedule as ordered, the court granted Stevenson's motion for entry of a schedule and a new case schedule was issued on November 26, 2008.

The Estate's October 28, 2008 Motion to Compel and February 10, 2009 Motion to Amend Order Compelling Discovery (Assignments of Error 7, 12, 44)

Stevenson argues the trial court erred in granting the estate's October 29, 2008

---

the appellate court's instructions, if any." McCausland, 129 Wn. App. at 399. Our August 2008 mandate contained no specific instructions other than to proceed in accordance with our May 2007 opinion. The court's actions here adhered to our mandate.

[17] The estate argues that even if the trial court failed to follow our mandate, the error was invited. The invited error doctrine "prohibits a party from 'setting up error in the trial court and then complaining of it on appeal.'" State v. Armstrong, 69 Wn. App. 430, 434, 848 P.2d 1322 (1993) (quoting State v. Young, 63 Wn. App. 324, 330, 818 P.2d 1375 (1991)). Finding no error, we need not address whether any error was invited.

[18] For reasons discussed above, Stevenson's claim that RAP 12.9(a) precludes the estate's waiver argument fails in light of our conclusion that the trial court complied with the mandate.

motion to compel discovery and February 10, 2009 motion to amend the order compelling discovery. She claims the estate failed to comply with the "meet and confer" requirements imposed by CR 26(i)[19] and KCLR 37(e) and (f)[20] and the trial court had no authority to compel discovery given no case schedule order was on file at the time the estate filed these motions.

The estate's October 29, 2008 motion stated that counsel "complied with CR 26(i) prior to filing the present motion." Further, the counsel for the estate included a sworn declaration in support of the motion to compel, attesting that he

> contacted Ms. Stevenson via e-mail to schedule a CR 26(i) conference for Tuesday, October 28, 2008 at 9:00 a.m., and asked Ms. Stevenson to contact

[19] At the time the estate filed these motions, CR 26(i) provided: "The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met." Former CR 26(i) (2008).

[20] At the time the estate filed these motions, KCLR 37(e) and (f) provided:
"(e) Conference of Counsel. The court will not entertain any motion or objection with respect to Civil Rules 26 through 37, unless it affirmatively appears that counsel have met and conferred with respect thereto. Counsel for the moving or objecting party shall arrange such a conference. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules is served, willfully refuses to meet and confer, or having met, willfully refuses or fails to confer in good faith, the court may take appropriate action to encourage future good faith compliance.
"(f) Certificate of Compliance. At the time of noting motion or objection for consideration, counsel for the moving or objecting party shall serve and file a certificate of compliance with this rule and enumerate therein the matters remaining for disposition by the Court." Former KCLR 37(e)-(f) (2009).

> me if the time and date were not convenient for her. . . . Ms. Stevenson did not contact me on October 28 and failed to respond to my request for a discovery conference, other than to indicate in two email[s] that she would not participate in a conference until this Court rules on her motion to disqualify me and my law firm.

The record amply supports counsel's claim. Stevenson stonewalled counsel's efforts to comply with the meet and confer requirements.[21] The law does not require a party to engage in a useless act. Moratti ex rel. Tarutis v. Farmers Ins. Co. of Washington, 162 Wn. App. 495, 504-05, 254 P.3d 939 (2011).

Stevenson relies on Clarke v. State Attorney General's Office, 133 Wn. App. 767, 138 P.3d 144 (2006), Case v. Dundom, 115 Wn. App. 199, 58 P.3d 919 (2002), and Rudolph v. Empirical Research Systems, Inc., 107 Wn. App. 861, 28 P.3d 813 (2001), to argue that CR 26(i) requires literal compliance and the trial court lacks authority to hear a motion to compel when the parties do not certify that they have conferred. But we rejected that reasoning in Amy v. Kmart of Washington LLC, 153 Wn. App. 846, 854 n. 10, 223 P.3d 1247 (2009). We reasoned that "a failure to comply strictly with the requirements of CR 26(i) raises the question of whether and to what extent a procedural irregularity may affect a court's ability to reach the merits of a discovery motion." Amy, 153 Wn. App. at 854. We acknowledged that CR 26(i) "'should be a shield that protects the court from becoming involved in half-baked

[21] Stevenson asserts that former KCLR 37(e) required the estate to file a motion to compel her to attend a discovery conference. See Appellant's Br. at 39. But the rule contained no such requirement. Stevenson also argues that counsel for the estate was required to agree to an agenda before conducting a CR 26(i) conference, but neither former CR 26(i) nor former KCLR 37(e) and (f) contained such a requirement and Stevenson cites to no other authority establishing one.

discovery disputes, not a sword for the discovery violator to wield against the court.'" Amy, 153 Wn. App. at 857 (quoting Case, 115 Wn. App. at 205 (Morgan, J., dissenting)). Under Amy, courts have discretion to decide whether to hear a motion even if the moving party fails to strictly comply with

CR 26(i), and we disturb such decisions only if they are "manifestly unreasonable or based on untenable grounds." Amy, 153 Wn. App. at 856. Here, Stevenson failed to appear for multiple depositions and failed to cooperate with counsel's request to schedule a CR 26(i) conference.[22] Given the record in this case, the court's decision to decide the estate's discovery motions was reasonable and based on tenable grounds.

Stevenson argues throughout her brief that the estate was not entitled to engage in discovery and the trial court lacked authority to compel her to appear for her deposition before a case schedule was entered. We disagree. She cites no authority for this assertion and thus waives it. See RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809. Further, her own litigation strategy below contradicts this baseless argument—Stevenson engaged in discovery and filed motions before the court entered the case schedule.[23]

Findings of Fact in April 6, 2009 Order (Assignments of Error 2, 3, 15-38)[24]

[22] Stevenson argues that her communications about a pending motion to disqualify the estate's counsel constituted notice that she would not appear for her October 24, 2008 deposition. Appellant's Br. at 40. But review of those communications shows she provided no such notice.

[23] Stevenson claims that under our mandate, only she could engage in discovery. The mandate contains no such limitation.

[24] To the extent Stevenson (1) argues she may challenge any decision or finding

Stevenson assigns error to numerous findings of fact in the trial court's April 6, 2009 order dismissing her lawsuit. As previously discussed, "Appellate review of a trial court's findings of fact and conclusions of law for abuse of discretion is limited to determining whether the trial court's findings are supported by substantial evidence in the record and, if so, whether the conclusions of law are supported by those findings of fact." Scott v. Trans-System, Inc., 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003).

Our review of the record shows that substantial evidence supports the challenged findings of fact and the findings support the conclusions of law.[25]

April 6, 2009 Status Conference (Assignments of Error 4, 6, 39)

Stevenson argues the trial court erred in setting up an "ex parte" status conference "without entering an order as required by CR 16(a)" and without giving adequate notice. Appellant's Br. at 35. She also challenges the court's April 6, 2009 order dismissing her lawsuit and argues the trial court erred by denying her motion to vacate that order.[26]

---

of the trial court as exceeding or otherwise not complying with the mandate or (2) contends findings are in error because the estate had no right to discovery under the mandate and no case schedule order was yet issued, these arguments are addressed above.

[25] Stevenson points to findings of fact 2 and 10, which contain two minor clerical errors. Neither error undermines the court's findings and conclusions. See Anfinson v. FedEx Ground Package Sys., 159 Wn. App. 35, 44, 244 P.3d 32 (2010) ("'A harmless error is an error which is trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.'") (quoting State v. Wanrow, 88 Wn.2d 221, 237, 559 P.2d 548 (1977)).

[26] To the extent Stevenson discusses the mandate in relation to her arguments here, we address the mandate issue above.

As discussed above, the court selected Monday, April 6 for the status conference hearing after Stevenson failed to respond. The court notified the parties about the hearing date by e-mail on March 25. Eight days later on April 2, Stevenson filed an objection, stating she received no motion from the estate or order from the court and "there is no basis at this time for a pretrial conference." Stevenson also e-mailed the court on April 3, stating, "The first Monday of any month is not a date that is acceptable to me, due to scheduling issues." Counsel for the estate appeared for the April 6 status conference hearing. Predictably, Stevenson did not. At the hearing, the court noted that Stevenson refused to "pose her own dates" and "only responded after a date had been set, unilaterally indicating that she would not be here, with no explanation and with no other date offered." The court dismissed Stevenson's case "for failure to appear at this hearing for purposes of scheduling, for failure to make herself available for discovery purposes, in response to properly noted deposition notices."

Stevenson argues that the court erred in holding the April 6 hearing absent a motion by either party or a court order as required under CR 16(a). She also argues that no report of the conference results was filed as required under CR 16(b).[27]

---

[27] At the time of the status conference, CR 16 provided:

"(a) Hearing Matters Considered. By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

". . . .

"(5) Such other matters as may aid in the disposition of the action.

"(b) Pretrial Order. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered . . . ." Former CR 16(a)(5), (b) (2008-2009) (boldface omitted) (emphasis added).

When a lawsuit is commenced, "the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings." RCW 4.28.020; Seattle Seahawks, Inc. v. King County, 128 Wn.2d 915, 917, 913 P.2d 375 (1996). The court's exercise of this power is discretionary. Swan v. Landgren, 6 Wn. App. 713, 716, 495 P.2d 1044 (1972).

Although neither party moved for a hearing and the court did not enter an order under CR 16, "[a]s long as [a] party has a meaningful opportunity to be heard and adequate time to prepare, [a] technical deviation from proper procedure is inconsequential." Lindgren v. Lindgren, 58 Wn. App. 588, 594, 794 P.2d 526 (1990). Thus, even assuming the court failed to comply with CR 16(a) or (b), Stevenson filed a declaration and a response opposing the estate's motion to dismiss. The court considered both before granting the motion. Stevenson had a meaningful opportunity to be heard.[28]

But we question whether Stevenson's reliance on CR 16 applies here. A trial court's sua sponte authority to schedule a status conference rests firmly on the inherent power of the courts to manage and control litigation. Woodhead v. Discount

---

[28] For the same reasons, Stevenson's CR 54(f)(2) argument concerning the order dismissing her complaint lacks merit. CR 54(f)(2) provides, "No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment . . . ." Failure to give notice under CR 54(f)(2) generally renders a judgment invalid. But here, the estate filed and served its motion to dismiss and a proposed order on March 9, 2009. The court entered its dismissal order on April 6. Stevenson received more than the required five days' notice, and she had an adequate opportunity to respond to the estate's motion.

Waterbeds, Inc., 78 Wn. App. 125, 129, 896 P.2d 66 (1995); Wagner v. McDonald, 10 Wn. App. 213, 217, 516 P.2d 1051 (1973). Superior courts frequently schedule informal status conferences, particularly for cases involving unrepresented litigants. The record shows that the trial court properly sought to hail Stevenson into court "[to get] the case back on track" given her "confusing pleadings" and persistent failure to submit to a deposition. By that point, Stevenson had unjustifiably failed to appear three times for a properly scheduled deposition and ignored three court orders to compel her attendance.

In addition to the court's inherent authority, under CR 77(k) (the rule in effect at the time), "the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions." Former CR 77(k) (2008-2009).

The parties dispute whether Stevenson properly requested oral argument in her response to the estate's motion to dismiss as required by former KCLR 7(b)(4)(C) (2009) ("Any party may request oral argument by placing 'ORAL ARGUMENT REQUESTED' on the upper right hand corner of the first page of the motion or opposition."). We need not resolve this conflict because even if Stevenson properly requested oral argument, the trial court was not obligated to grant her request. "[O]ral argument is not prescribed for motions under CR 37 for sanctions for discovery abuse . . . ." Rivers, 145 Wn.2d at 697. Oral argument on a motion is not a due process right—due process "'requires only that a party receive proper notice of proceedings and

an opportunity to present [its] position before a competent tribunal.'" Rivers, 145 Wn.2d at 697 (alteration in original) (quoting Parker v. United Airlinles, Inc., 32 Wn. App. 722, 728, 649 P.2d 181(1982)). Stevenson had an opportunity to present her position and have the trial court consider it. Due process requires nothing more. See Rivers, 145 Wn.2d at 696-97 (no irregularity when the trial court dismissed a case on a dispositive motion without oral argument).

CR 59 Motion for Reconsideration and CR 60 Motion to Vacate April 6, 2009 Dismissal Order (Assignments of Error 6, 9, 39, 53)

Stevenson argues the trial court erroneously denied her CR 59 motion to reconsider and her CR 60 motion to vacate the April 6, 2009 order dismissing her lawsuit. She claims the April 6 ex parte conference was an "irregularity," requiring vacation of the order under CR 60. Appellant's Br. at 39. She also argues that the irregularity permits a new trial or reconsideration under CR 59.

CR 60(b)(1) allows the trial court to "relieve a party or his legal representative from a final judgment, order, or proceeding for . . . [m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." CR 60(b)(4) allows vacation for "[f]raud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." CR 59(a) provides for reconsideration or new trial if irregularity in court proceedings "materially affect[ed] the substantial rights" of the parties. We review for abuse of discretion a trial court's decision to grant or deny a CR 60(b) or CR 59(a) motion. Estate of Treadwell ex rel. Neil v. Wright, 115 Wn. App. 238, 249, 61 P.3d 1214 (2003); Aluminum Co. of Am. v.

Aetna Cas. & Sur. Co., 140 Wn.2d 517, 537, 998 P.2d 856 (2000).

Regarding her April 16, 2009 CR 60 motion, Stevenson first argues the trial court erroneously denied the motion without stating its grounds or reasons. CR 60 does not explicitly require the trial court to set forth its grounds or reasons, and Stevenson cites no authority establishing such a requirement.[29] Next, Stevenson claims she had no "notice of the hearing on the motion to dismiss the complaint." Appellant's Br. at 66. She claims this was an irregularity justifying vacation. As discussed above, Stevenson had notice of the April 6 conference, failed to request alternative dates, and failed to appear. In addition, the estate properly filed and served its motion to dismiss on

March 9 and 10, 2009. It noted the motion without oral argument for March 19. Stevenson filed her opposition response on March 16. The estate filed a reply brief on March 17. Nothing required the court to give the parties advance notice of its ruling. And the court had authority to dismiss the case without oral argument.[30] See Rivers, 145 Wn.2d at 696-97. The trial court properly exercised its discretion when it denied

[29] Stevenson cites Treadwell for the proposition that trial courts must give grounds or reasons for denying a CR 60 motion. But in Treadwell, we noted that the trial court was presented with two bases for denying reconsideration but did not specify which basis it relied on. Treadwell, 115 Wn. App. at 251. We held that under either basis, the trial court abused its discretion. Treadwell, 115 Wn. App. at 251. Treadwell provides no support for Stevenson's contention.

[30] Stevenson also speculates the court deceived her when it called the April 6 hearing a "status conference." Appellant's Br. at 67. She claims it was actually a hearing on the estate's motion to dismiss. Regardless, the court had authority to dismiss the case under the reasoning discussed above.

Stevenson's CR 60 motion to vacate.

As to her April 16, 2009 CR 59 motion to reconsider, Stevenson first argues the trial court erroneously denied the motion without providing grounds or reasons. But CR 59 does not require the trial court to specify its grounds and reasons for denying a motion; it requires "definite reasons of law and facts for its order" only when the court grants a motion for new trial, which did not occur here. CR 59(f). Stevenson cites Beers v. Ross, 137 Wn. App. 566, 573-74, 154 P.3d 277 (2007), for the proposition that a trial court errs when it summarily denies a motion for no apparent reason. But given the record here, we cannot say the trial court had "no apparent reason" to deny Stevenson's motion. Beers, 137 Wn. App. at 574. As discussed above, the trial court properly dismissed Stevenson's case as a discovery sanction without oral argument. She also fails to show a material effect on any substantial right as required under CR 59(a). We conclude the trial court properly exercised its discretion in denying Stevenson's CR 59 motion for reconsideration.

October 29, 2009 Omnibus Order (Assignment of Error 10)

Stevenson argues the trial court erred by entering the October 29, 2009 omnibus order[31] because there was no notice of presentation as required under CR 54(f)(2).

CR 54(f)(2) provides, "No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment . . . ." Failure to give notice under CR 54(f)(2) generally renders a judgment invalid. Burton v. Ascol, 105 Wn.2d 344, 352, 715 P.2d

[31] The omnibus order denied several of Stevenson's pending motions.

110 (1986). But such a judgment is valid unless the complaining party shows resulting prejudice. Burton, 105 Wn.2d at 352. A party alleging injury is not prejudiced if it is able to timely appeal and argue any issues it wishes to raise. Burton, 105 Wn.2d at 352-53.

As a preliminary matter, Stevenson did not argue below that the court lacked authority to enter the estate's proposed order without a CR 54(f) notice of presentation. This claim is waived. RAP 2.5(a). Even considering the merits of her argument, the claim fails. Here, Stevenson received notice. On October 13, 2009, the court e-mailed the parties to ask for a list of outstanding motions. The court requested the parties to provide an original order on each motion and notified them that "Judge Washington will review the lists/orders and let you know if he wants oral argument on any motion." Stevenson made a "procedural objection" to the court's request but failed to provide a list of pending motions or any proposed orders. Counsel for the estate responded on October 14. He submitted two proposed orders (including a list of outstanding motions) and provided copies to Stevenson by October 22. Stevenson thus had notice of the estate's proposed orders at least five days in advance of the court's ruling.

To the extent Stevenson argues that a formal notice of presentation was required under CR 54(f)(2), its absence was inconsequential. Under Burton, Stevenson demonstrates no prejudice. She timely appealed and raised any issue related to the omnibus order. And when a party has a meaningful opportunity to be heard and adequate time to prepare, technical deviations from proper procedure are inconsequential. Lindgren, 58 Wn. App. at 594. Stevenson had more than five days'

notice and a meaningful opportunity to be heard.[32]

Timely Ruling on Motions (Assignments of Error 5, 40, 43, 46, 49, 50, 51)

Stevenson argues the trial court failed to timely rule on several of her motions and thus failed to determine motions in a timely, logical, and fair manner.[33]

CR 59(b) specifies the timing and content requirements for all motions brought under CR 59. The provision requires that a motion for new trial or reconsideration must be served and filed not later than 10 days after the entry of the judgment and that the motion shall be heard within 30 days of entry of judgment unless the court directs otherwise. CR 59(b). "A trial court, as a general rule, has the discretion to rule on motions in whatever order the judge believes is most logical and efficient." State ex rel. Keeler v. Port of Peninsula, 89 Wn.2d 764, 766, 575 P.2d 713 (1978). We review the trial court's action in this regard for abuse of discretion. Keeler, 89 Wn.2d at 766.

First, Stevenson claims the trial court never ruled on her November 29, 2010

[32] Stevenson argues unpersuasively that in State ex rel. LeDuc v. Napier, 49 Wn. App. 783, 746 P.2d 832 (1987) and City of Seattle v. Sage, 11 Wn. App. 481, 523 P.2d 942 (1974), we viewed "violation of Civil Rule 54(f)(2) as a per se triggering of a ruling that the resulting order is void." Appellant's Reply Br. at 37. Burton controls.

[33] Specifically, Stevenson assigns error to the trial court's untimely ruling (or failure to rule) on her November 29, 2010 motion for reconsideration of the order imposing sanctions, her October 4, 2010 motion for reconsideration of the order imposing sanctions, her April 15, 2009 CR 59 motion for reconsideration of the April 6, 2009 order dismissing her complaint, her April 8, 2009 motion for the trial court to produce a copy of the notice of hearing, her February 20, 2009 motion for reconsideration of the amended discovery order, her December 1, 2008 CR 59 motion for reconsideration of the order compelling discovery, and her November 4, 2008 CR 59 motion for reconsideration of the order denying her motion to strike a portion of the declaration of the estate's counsel.

motion for reconsideration of the order denying her motion to vacate the order imposing sanctions, her October 4, 2010 motion for reconsideration of the reinstated sanctions order, and her April 8, 2009 motion to produce a copy of the notice of hearing. She is incorrect regarding the October 4 motion—the trial court denied it on March 23, 2011. As for the April 8 motion, Stevenson cites no controlling, relevant authority for the proposition that a trial court is required to produce a purported notice regarding a status conference. Although no order ruling on the November 29 motion appears in our record, we are confident the trial court would have denied this motion given the record here.[34] And the error, if any, is harmless because we address the merits of the sanction order in this appeal. See Anfinson v. FedEx Ground Package Sys., Inc.,159 Wn. App. 35, 44, 244 P.3d 32 (2010).

Next, Stevenson argues the trial court erred by granting the estate's motion to dismiss before ruling on several of her pending motions and failing to determine motions in a logical, fair, and timely manner. But as the estate points out, the court's delay in ruling on motions affected both parties, not just Stevenson. Stevenson argues that our Supreme Court in Keeler held "the trial court must decide motions in a logical order." Appellant's Reply Br. at 28. Stevenson misstates the case. Keeler held that trial courts have discretion to rule on motions "in whatever order the judge believes is most logical and efficient." Keeler, 89 Wn.2d at 766. Given Stevenson's litigious history and burdensome motion strategy, we decline to fault the trial court under these

[34] See RAP 7.2(e) (postjudgment motions made after appellate court accepts review shall first be heard and decided by the trial court).

circumstances. Finally, the error, if any, is harmless. See Anfinson, 159 Wn. App. at 44.

Failure to Enter Order to Show Cause for Consideration of Motions to Vacate (Assignment of Error 50)

Stevenson argues the trial court erred by refusing to enter an order to show cause after she filed her April 16, 2009 CR 60 motion to vacate the order dismissing her complaint, by not requesting further briefing, and by not conducting an oral hearing on the motion.[35]

We conclude that no hearing was required before the motion to vacate was denied. CR 60 provides the procedure by which a judgment may be vacated. A party must file a motion stating the grounds for the requested relief, supported by an affidavit, "setting forth a concise statement of the facts or errors upon which the motion is based . . . ." CR 60(e)(1). CR 60(e)(2) provides, "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." Stevenson argues that the trial court abused its discretion when it denied her motion without a show cause

[35] The estate argues Stevenson did not actually move to vacate. Our review of the record shows that Stevenson did not mention vacation on the front of her motion, but on the second page she asked for "Vacation of the April 6, 2009 order dismissing the complaint pursuant to CR 60(b)(1) or CR 60(b)(4)." The estate responded to Stevenson's CR 60 argument in its opposition response. In denying the motion, the court acknowledged Stevenson's request that it vacate the order dismissing her case.

hearing. We disagree. Stoulil v. Edwin A. Epstein, Jr., Operating Company, 101 Wn. App. 294, 298, 3 P.3d 764 (2000), controls. In Stoulil, Epstein filed a CR 60(b) motion to vacate, which the trial court denied without scheduling a hearing or taking evidence. We held that the trial court did not err by ruling on the motion without a hearing. Stoulil, 101 Wn. App. at 298. Although CR 60(e)(2) indicates that the court "shall order" a hearing, the clear intent of the rule is to give parties who may be affected by a proposed vacation the opportunity to oppose it. Stoulil, 101 Wn. App. at 298; see also Allen v. Allen, 12 Wn. App. 795, 797, 532 P.2d 623 (1975). Because the nonmoving party received notice of the motion to vacate and had an opportunity to respond, the trial court did not err by issuing an order in favor of the nonmoving party without hearing oral argument. Stoulil, 101 Wn. App. at 298. Further, the trial court did not err in denying Epstein's motion without a hearing because his CR 60 motion did not warrant relief. Stoulil, 101 Wn. App. at 298-99.

Here, the estate had notice and an opportunity to respond to Stevenson's motion to vacate and the court issued an order in its favor. Therefore, the trial court did not err when it denied the motion without a hearing.[36] As discussed above, Stevenson's

[36] Stevenson cites to a recent decision by our Supreme Court for the rule that "[a] motion under CR 60 does not allow for immediate relief but requires notice and a hearing and lists no exceptions to the notice and hearing requirement." In re Disciplinary Proceeding Against Ferguson, 170 Wn.2d 916, 935, 246 P.3d 1236 (2011). Ferguson does not help Stevenson. In Ferguson, the court granted the moving party's CR 60 motion without notice and hearing, thus denying the opposing party the opportunity to show cause why the order should not be granted. Ferguson, 170 Wn.2d at 925, 932-35. Here, however, the court denied Stevenson's CR 60 motion, and because no relief was granted to her, a show cause hearing was unnecessary. Having already decided that the motion should not be granted, the court had no reason to direct "all parties to the action or proceeding who may be affected thereby [here, the

motion warranted no relief.

Bias, Appearance of Fairness, and Denial of Motion for Change of Judge (Assignments of Error 11, 42, 52)

Stevenson argues Judge Washington demonstrated bias and violated the appearance of fairness doctrine because he "stalled, delayed ruling on the motions for reconsideration of the discovery order and the amended discovery order, and ultimately failed to decide the motions until six months after he dismissed the complaint for failure to comply with the discovery order." Appellant's Br. at 69. She also argues Judge Washington erred and showed bias when he failed to determine her motion seeking a change of judge before he dismissed the complaint.

Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require that a judge disqualify himself from hearing a case if that judge is biased against a party or if his or her impartiality may be reasonably questioned. Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). But the trial court is "presumed . . . to perform its functions regularly and properly without bias or prejudice." Wolfkill, 103 Wn. App. at 841. "A party claiming to the contrary must support the claim; prejudice is not presumed as it is when a party files an affidavit of prejudice under RCW 4.12.050." Wolfkill, 103 Wn. App. at 841. A party alleging judicial bias must present "evidence of a judge's or decision[]maker's actual or potential bias." State v. Post, 118 Wn.2d 596, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992).

---

estate] to appear and show cause why the relief asked for should not be granted." CR 60(e)(2).

Stevenson presents no evidence of actual or potential bias sufficient to overcome the presumption that the trial court performs its functions properly and without bias. Additionally, Stevenson's claim that Judge Washington failed to determine her October 4, 2010 and January 11, 2011 CR 59 motions for reconsideration is contradicted by the record—Judge Washington denied both motions on March 23, 2011.[37]

Because Stevenson provides no argument or authority to support her claim that the trial court erred by not deciding her motion to change judge before dismissing the complaint, the claim is waived. See RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809. This claim nonetheless fails because the trial court made numerous discretionary rulings before Stevenson moved for change of judge. A party in a superior court proceeding has a right to one change of judge upon timely filing an affidavit of prejudice. RCW 4.12.040, .050; State v. Dennison, 115 Wn.2d 609, 619, 801 P.2d 193 (1990). "To be timely filed this affidavit of prejudice must be filed before the trial judge has been called upon to make a ruling involving the discretionary powers of the judge." Dennison, 115 Wn.2d at 619; see also RCW 4.12.050.

Stevenson's Objection to the Status Conference (Assignment of Error 45)

Stevenson argues, "The trial judge erred by failing to rule on Stevenson's

[37] Stevenson also argues the trial court failed to request responses from the estate to either CR 59 motion "even though Local Rule prohibits granting such a motion when a response has not been requested." Appellant's Br. at 70; see also KCLR 59(b) ("No motion for reconsideration will be granted without such a request."). Because the trial court denied both motions, we need not address this argument.

objection to a status conference, prior to his hearing [the estate's] motion to dismiss the complaint and by confusing CR 16(a) and CR 26(f)." Appellant's Br. at 71.

Stevenson fails to respond to the estate's argument that "Stevenson did not file a motion regarding her objections, did not file a notice of hearing, and did not submit a proposed order, all as required under KCLR 7(b)(4) & (5)." Resp't's Br. at 55. And her remaining contentions are meritless.

2006 Trial Court Proceedings (Assignments of Error 14, 47, 48)[38]

Stevenson argues the trial court erred in denying (1) her CR 60 motion to vacate the March 28, 2006 discovery order and (2) her motion to reconsider the May 9, 2006 order dismissing her complaint for the first time. She also claims the previous trial judge erred when he granted the estate's first motion to dismiss in May 2006. The estate contends that these issues are moot. We agree.

"A case is moot if a court can no longer provide effective relief." SEIU Healthcare 775NW v. Gregoire, 168 Wn.2d 593, 602, 229 P.3d 774 (2010). Stevenson requested the trial court to reconsider or vacate orders another judge ruled on years earlier. In the interim, her case was dismissed, appealed, reversed, and remanded to the trial court for further proceedings. We decline to review these moot claims.

Fees and Costs Award (Assignments of Error 13, 54)

[38] To the extent Stevenson bases her argument here on her claims regarding the mandate, we address the mandate issue above.

Stevenson challenges the October 29, 2009 order awarding the estate attorney fees and costs, claiming the trial court erred by entering findings of fact and conclusions of law 1 through 7. She also makes baseless claims that the estate and the trial court participated in a scam to avoid compliance with our mandate. Stevenson abandons this claimed error because she provides no argument, analysis, or record citations. See RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809 (assignments of error unsupported by reference to the record or argument will not be considered on appeal). Because Stevenson fails to provide coherent argument supporting her challenge to the

October 29 order, we treat the findings of fact in that order as verities on appeal. See Zunino v. Rajewski, 140 Wn. App. 215, 220, 165 P.3d 57 (2007) ("Unchallenged findings of fact are verities on appeal."). Regardless, substantial evidence supports the findings and the findings support the conclusions.

The Estate's Cross Appeal

The estate challenges the trial court's substantial reduction of its October 29, 2009 and February 11, 2010 attorney fees and costs awards. Stevenson responds that (1) the estate cannot obtain review of the February 11, 2010 order because it filed no notice of appeal for that order, (2) the attorney fees and costs were unreasonable because the estate's attorneys colluded against her, and (3) the court's failure to comply with our mandate and other actions precludes the award. Appellant's Reply Br. at 12.

Courts should use the lodestar method to calculate fees. Mahler v. Szucs, 135 Wn.2d 398, 433, 957 P.2d 632 (1998). The court must determine that counsel charged a reasonable rate and expended a reasonable number of hours, excluding hours that were wasteful, duplicative, or related to unsuccessful claims. Mahler, 135 Wn.2d at 434. In its determination of reasonableness, the court can consider the factors set forth in the Rules of Professional Conduct, such as the difficulty of the issues, time limits, and the lawyers' skill and reputation. Mahler, 135 Wn.2d at 434. The amount of recovery, while a relevant consideration, is not a conclusive factor in determining the reasonableness of fees. Mahler, 135 Wn.2d at 434 n.20. The court will not overturn a large fee award merely because the amount at stake is small. Mahler, 135 Wn.2d at 433. In "rare instances" the lodestar fee, calculated by multiplying the hourly rate by the number of hours expended, can be adjusted upward or downward. Mahler, 135 Wn.2d at 434 (emphasis added). The party seeking fees bears the burden of proving reasonableness. Mahler, 135 Wn.2d at 434.

The trial court must provide articulable grounds for its fee award so that the record is adequate to permit review of the award. Mahler, 135 Wn.2d at 435. "[A]n award of substantially less than the amount requested should indicate at least approximately how the court arrived at the final numbers and explain why discounts were applied." Taliesen Corp. v. Razore Land Co., 135 Wn. App. 106, 146, 144 P.3d 1185 (2006). Where the trial court fails to make findings explaining how it calculated the fee award and the basis for its reduction from the amount requested, the fee award

must be remanded for the entry of such findings. Taliesen Corp., 135 Wn. App. at 147; Mahler, 135 Wn.2d at 435.

Here, the trial court in both the October 29, 2009 and the February 11, 2010 orders made express findings of fact and conclusions of law as required by Mahler and Taliesen. The court found that the estate was entitled to fees under the terms of the promissory notes Stevenson relied on. The court reviewed declarations submitted by counsel for the estate setting forth the hours expended and tasks performed. The court found counsel's hourly rates were "comparable to or less than rates charged by other King County firms for lawyers for similar experience and background, and thus [were] reasonable." The court found that no hours for which fees were sought included duplicative efforts, unproductive time, or time on issues unrelated to the lawsuit. In her response to the estate's first motion for an award of fees and costs, Stevenson did not dispute the estate's right to an award, the hourly rates of counsel, the number of hours expended in this lawsuit, or the amounts requested for fees and costs. Stevenson filed no response to the estate's supplemental motion for fees and costs other than a letter to the trial court and pleadings relating to a motion to strike and continue the hearing. In those documents she made no challenge to the reasonableness of counsel's hourly rate or the amount of time counsel expended.

In the October 29, 2009 order, the trial court found the total number of hours counsel expended reasonable and necessary and the total amounts the estate requested ($28,013.50 in attorney fees and $1,013 in costs for a total of $29,026.50)

were reasonable. Despite the unchallenged reasonableness and necessity findings, the court drastically reduced the total amount of the award to $9,013, a greater than 68 percent reduction. Similarly, in its February 11, 2010 order, the trial court found the hours counsel expended by counsel were reasonable and necessary. Yet it crossed out the estate's requested amount for attorney fees ($10,699.07) and handwrote, "The award of $5,000 as attorneys fees in this case is reasonable and . . . the supplemental costs requested by [counsel for the estate], $230.07, are reasonable," thus awarding only $5,230.07, a drastic reduction of more than 50 percent. In both awards, the court failed to explain its reasoning.

In applying the lodestar method, the trial court's discretion is limited to examining the "contingent nature of success, and the quality of work performed." Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 598, 675 P.2d 193 (1983). Here, there is nothing indicating a contingency agreement. The trial court's discretion was limited to assessing the quality of the work performed. This factor, however, has limited application because the quality of the work is reflected in the reasonable hourly rate. Bowers, 100 Wn.2d at 599. Here the trial court made no reduction for allowable hours based on "duplicative work or other unproductive time." The trial court's findings, which are supported by substantial evidence in the record, conflict with its reduced award. Under Taliesen and Absher Construction Company v. Kent School District No. 415, 79 Wn. App. 841, 848, 917 P.2d 1086 (1995), the trial court must provide an explanation of how it computed the reduced award and why it deviated substantially from the

amount requested, particularly given its findings and the "rare instances" justifying downward adjustments.[39] Mahler, 135 Wn.2d at 434.

Fees on Appeal

The estate requests attorney fees and costs under RAP 18.1 and the promissory notes, and RAP 18.9 and CR 11 for a frivolous appeal and meritless arguments made for the purpose of delay. We grant the estate's request for fees and costs under RAP 18.1 as determined by this court.

Sanctions on Appeal

RAP 18.9(a) allows the appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." Lutz Tile, Inc. v. Krech, 136 Wn. App. 899,

[39] Stevenson's arguments in opposition to the fee award lack merit. To the extent Stevenson argues the estate's attorney fees and costs are inappropriate because the trial court failed to comply with the mandate, we address the mandate issue above. As for Stevenson's argument that the estate failed to file a notice of appeal for the February 10, 2010 attorney fee order, RAP 7.2(i) gives the trial court authority to rule on the estate's second motion for attorney fees and costs. Under RAP 7.2(i), the trial court "has authority to act on claims for attorney fees, costs and litigation expenses" after review is accepted. A party may obtain review of a decision on attorney fees in the review proceeding regarding the judgment "without filing a separate notice of appeal." RAP 7.2(i). Concerning Stevenson's arguments about collusion, scams, and other misconduct, she makes only baseless allegations unsupported by the record and repeatedly found meritless by the trial court.

906, 151 P.3d 219 (2007). "A frivolous action is one that cannot be supported by any rational argument on the law or facts." Rhinehart v. Seattle Times, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990). We resolve doubts in favor of the appellant. Lutz Tile, 136 Wn. App. at 906.

This is a second appeal from a trial court order dismissing Stevenson's lawsuit for willful and deliberate refusal to attend her deposition. Without reasonable excuse or justification, Stevenson failed to appear three times for a deposition and flagrantly ignored three orders to compel her deposition. Even resolving all doubts in favor of Stevenson, we conclude that this appeal raises no debatable issues on which reasonable minds could differ. As discussed above, none of her numerous contentions undermine the discovery sanction dismissal order. Rather, they illustrate Stevenson's pattern of abusive and frivolous litigation.[40] This appeal is frivolous, and sanctions are warranted in the amount of $5,000.[41]

---

[40] The record shows over 460 docket entries at the trial court level. And Stevenson filed multiple additional appeals and motions, all of which are stayed pending this opinion.

As the Supreme Court commissioner observed in denying review on August 9, 2010: "Apparently a request for sanctions will likely be addressed by the Court of Appeals panel that decides this case. With that in mind, I note that Ms. Stevenson's motions to this court present nothing even minimally resembling a basis for review. Indeed, the only action by this court which may become appropriate, if Ms. Stevenson continues her campaign of ill-conceived filings that require the attention of opposing counsel and the court, is the imposition of sanctions under RAP 18.9. I therefore urge Ms. Stevenson to abandon this misguided litigation strategy."

[41] Stevenson's frivolous litigation conduct here is even more egregious given that a previous court entered a default order and judgment against Stevenson and James Canning as a sanction based on willful and deliberate refusal to comply with the

In addition, Stevenson's right to participate further in proceedings arising out of this litigation[42] before this court is conditioned on her payment of the sanction to this court. Stevenson will be permitted to file (1) a motion for reconsideration—if any—of this opinion, (2) objection to the estate's RAP 18.1 attorney fees and costs affidavit, and (3) petition for review. No further filings will be permitted in this court until the sanction is paid in full. If the sanction is not paid within 60 days of the opinion filing date, this court will transmit the award to the superior court and direct entry of judgment in accordance with the award. Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) (court is authorized to "place reasonable restrictions on any litigant who abuses the judicial process . . . [and] to enjoin a party from engaging in litigation upon a 'specific and detailed showing of a pattern of abusive and frivolous litigation.'") (quoting Whatcom County v. Kane, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981)).

CONCLUSION

court's order to comply with discovery in unrelated litigation. Delany, 84 Wn. App. at 508. Stevenson was well aware of the risks posed by her litigation tactics in this case, yet she persisted undeterred by prior sanctions.

[42] This includes all pending appeals and motions under cause numbers 58341-7-I, 64792-0-I, 65121-8-I, 65221-4-I, 65524-8-I, 66520-1-I, and 67021-2-I.

In sum, we affirm the order dismissing Stevenson's lawsuit but vacate the attorney fees and costs judgments and remand to the trial court for proceedings consistent with this opinion.

WE CONCUR: