

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LUBA PEKISHEVA,)	
)	No. 64832-2-1
Appellant,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
LYNN J. MOSER,)	
)	
Respondent,)	
)	
CHRISTIAN LEE HATCH,)	
)	FILED: September 19, 2011
Defendant.)	

Grosse, J. — In this quiet title action against three defendants, the trial court entered an order of dismissal without prejudice as to one defendant, as well as a series of orders and judgments for terms against the plaintiff and in favor the defendant, Lynn Moser. The plaintiff, Luba Pekisheva, filed this appeal assigning error to the trial court’s rulings, but her notice of appeal identified only the judgments as to one defendant. Because the judgments as to a single defendant do not dispose of all claims and parties in the case and the trial court did not enter findings required for finality under CR 54(b) and RAP 2.2(d), the judgments are not appealable at this time and we therefore dismiss the appeal.

FACTS

In September 2009, Luba Pekisheva filed a quiet title action in Whatcom County Superior Court. Pekisheva named Paradise Lakes Country Club, Lynn Moser, and Christian Lee Hatch as defendants. In November 2009, Moser moved for dismissal for lack of proper service. On December 18, 2009, the trial

court dismissed the action as to Moser without prejudice. On January 15, 2010, the trial court denied Pekisheva's motion for reconsideration and awarded terms of \$750 against Pekisheva in favor of Moser for Moser's costs in defending against the motion. On February 19, 2010, the trial court entered an order and judgment denying a second motion for reconsideration, upholding the award of terms of \$750, awarding additional terms of \$1,600, and stating, "The Plaintiff is also prohibited from filing any more pleadings regarding Defendant Moser in this action until said terms are paid in full to Defendant Moser." On May 14, 2010, the trial court denied Pekisheva's motion to vacate and motion for default and awarded additional terms of \$2,277.00.

Pekisheva appeals.¹ Moser did not file a respondent's brief.

ANALYSIS

Appealability of Judgment

We have the authority to determine whether a matter is properly before the court despite the parties' failure to raise the issue of appealability.²

Generally, a judgment is appealable as a matter of right only after the trial court disposes of all claims and all parties.³ A judgment that does not dispose of all claims as to all parties may be appealed only if the trial court makes the findings described in CR 54(b)⁴ and RAP 2.2(d),

¹ Although Pekisheva did not designate the challenged orders for the clerk's papers, she has attached copies of the orders to her notice of appeal, amended notice of appeal, and addendum to her amended notice of appeal.

² RAP 12.1(b); *State v. Aho*, 137 Wn.2d 736, 741, 975 P.2d 512 (1999).

³ *Fox v. Sunmaster Products, Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990).

⁴ CR 54(b) provides:

Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim,

⁵ or if this court grants discretionary review in accordance with RAP

2.3(b).⁶

In this case, the trial court has not yet resolved all claims as to all parties.

or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

⁵ RAP 2.2(d) provides:

Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

⁶ RAP 2.3(b) provides:

Considerations Governing Acceptance of Review. . . . [D]iscretionary review may be accepted only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

Pekisheva's claims against Hatch remain pending.⁷ The February 19 and May 14 judgments as to Moser do not purport to be final judgments. Nothing in the record indicates that any party requested or obtained the findings described in CR 54(b) and RAP 2.2(d) to support a determination that there was no just reason for delay. Such findings would require an affirmative showing in the record that there is in fact some danger of hardship or injustice that will be alleviated by an immediate appeal.⁸ Nothing in the record here suggests that delay in entry of a final judgment posed any such danger or injustice.

Even if we were to consider Pekisheva's notice of appeal as a notice for discretionary review,⁹ the criteria for such review have not been met here. Pekisheva assigns error to the trial court's decisions to deny reconsideration, award terms, deny a motion to vacate a judgment, deny a motion for default judgment, and place restrictions on litigation. We review a trial court's rulings on these matters for abuse of discretion.¹⁰ Given the record before this court, the arguments presented by Pekisheva and the lack of briefing by Moser, any error in the trial court's decisions is not obvious or probable. And given the procedural posture of the case as well as the interlocutory nature of the

⁷ By letter dated May 25, 2010, defendant Paradise Lakes Country Club notified this court that the superior court entered a stipulation and agreed order dismissing with prejudice all claims and counterclaims between Pekisheva and Paradise Lakes Country Club.

⁸ Fox, 115 Wn.2d at 502-03.

⁹ RAP 5.1(c) provides in pertinent part: "A notice of appeal of a decision which is not appealable will be given the same effect as a notice for discretionary review."

¹⁰ Wilcox v. Lexington Eye Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005) (reconsideration); State ex rel. Quick Ruben v. Verhaven, 136 Wn.2d 888, 903, 969 P.2d 64 (1998) (CR 11 sanctions); Haley v. Highland, 142 Wn.2d 135, 156, 12 P.3d 119 (2000) (motion to vacate judgment); Morrin v. Burris, 160 Wn.2d 745, 754, 161 P.3d 956 (2007) (motion for default judgment); In re Marriage of Giordano, 57 Wn. App. 74, 78, 787 P.2d 51 (1990) (restrictions on litigant who abuses judicial process).

judgment as to Moser, the entry of the judgment neither renders further proceedings useless nor substantially alters the status quo or limits any party's freedom to act for purposes of RAP 2.3(b)(1) or (2). Thus, we conclude that the judgment as to Moser is not presently appealable and that this appeal should be dismissed.

Dismissed.

Grosse, J.

WE CONCUR:

Elemyon, J.

Cox, J.