IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WOODINVILLE ASSOCIATES, LLC, a Washington limited liability company,	)	
Appellant,	)	No. 65052-1-I
v.	)	DIVISION ONE
CITY OF WOODINVILLE, a Washington municipal corporation,	)	UNPUBLISHED OPINION
Respondent.	)	FILED: November 15, 2010

LAU, J. — A judgment or order entered in violation of CR 54(f) is voidable if the party alleging the violation suffered prejudice. Because appellant has shown no prejudice from the alleged rule violation in this case, we affirm the superior court's denial of appellant's motion to vacate an order dismissing its complaint.

FACTS

Woodinville Associates ("W.A.") is the developer of a mixed use project in the city of Woodinville (City). In 2009, W.A. filed a complaint against the City for declaratory relief under a contract for street improvements. The City moved to dismiss the action as untimely. The parties submitted written arguments and, in accordance

with KCLCR 7(S)(c), attached proposed orders. Following oral argument, the court took the matter under advisement.

On June 30, 2009, the court sent a letter opinion to the parties in which it concluded that W.A.'s suit should be dismissed. Included with the letter was a signed copy of the City's proposed order of dismissal with the word "proposed" crossed out. The order was entered the next day—July 1, 2009.

On August 3, 2009, W.A. filed a notice of appeal. This court notified the parties that the notice was untimely. W.A. moved for an extension of time, arguing, among other things, that "extraordinary circumstances" warranting an extension existed because the trial court's order was entered in violation of procedures prescribed by CR 54(e) and (f). Alternatively, W.A. asked that the matter be remanded for the court to consider vacating its order in light of the alleged violation of CR 54.

On November 20, 2009, this court entered an order dismissing review. The order stated in part that the notice of appeal was not timely filed and that W.A. had not shown extraordinary circumstances warranting an extension of time under RAP 18.8(b). W.A. moved for reconsideration on the ground that this court "appeared not to have considered the . . . issue of whether or not the judgment from which appeal was sought to be taken was void by reason of its entry not having been in compliance with CR 54(e) and (f)." This court denied the motion without comment.

W.A. then filed a petition for discretionary review in the Washington State Supreme Court. It also returned to the superior and moved to vacate the order of

dismissal under CR 60(b)(1), (5), and (11) for noncompliance with CR 54. On March 5, 2010, the superior court denied the motion to vacate. W.A. now appeals that ruling.

On March 31, 2010, Commissioner Goff of the State Supreme Court entered a ruling denying discretionary review of this court's decision denying an extension of time on W.A.'s first notice of appeal. The commissioner rejected W.A.'s argument under CR 54 and noted that even if a violation of the rule could be shown, the dismissal order was invalid only if W.A. could establish prejudice. Because counsel received the signed dismissal order long before the deadline for filing a notice of appeal, the commissioner concluded there was no prejudice and the dismissal order was not void. W.A.'s motion to modify Commissioner Goff's ruling was denied.

DECISION

W.A. assigns error to the denial of its motion to vacate the order dismissing its complaint. In general, we review the denial of a motion to vacate under CR 60 for manifest abuse of discretion. Haley v. Highland, 142 Wn.2d 135, 156, 12 P.3d 119 (2000). When the ground asserted for vacation is that the final order is void, our review is de novo. In re Marriage of Wilson, 117 Wn. App. 40, 45, 68 P.3d 1121 (2003). We conclude the superior court did not abuse its discretion or otherwise err in denying W.A.'s motion to vacate under CR 60(b)(1), (5), and (11).

W.A. contends the superior court should have vacated the order of dismissal because it was entered in violation of CR 54(f)(2). That rule states in part, "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 . . . ."[1] Although W.A. concedes the parties filed and served proposed orders with their pleadings weeks before the court signed and entered its order of dismissal, it contends it was entitled under CR 54 to five days' notice of the signing and entry of the order. According to W.A., this omission warranted vacation of the order under CR 60(b)(1), (5), and (11). Respectively, those provisions allow relief from a judgment or order for irregularities in obtaining a judgment, void judgments, and "any other reason justifying relief from the operation of the judgment." CR 60(b)(11). The City responds that W.A.'s arguments regarding CR 54 are flawed and, in any event, are barred by the law of the case doctrine.

We conclude it is unnecessary to address the parties' arguments under CR 54 or the law of the case doctrine. Even assuming a violation of CR 54 occurred and the law of the case doctrine does not apply, the superior court did not abuse its discretion or otherwise err in denying W.A.'s motion to vacate. W.A. cites Burton v. Ascol, 105 Wn.2d 344, 352, 715 P.2d 110 (1986) for the proposition that a judgment entered in violation of CR 54(f)(2) will generally be considered void. But W.A. fails to mention the very next sentence of that opinion, which states, "A judgment entered without the notice required by CR 54(f)(2) is not invalid, however, where the complaining party shows no

[1] We note that CR 54(f) requires notice of presentation, not notice of entry of the order or judgment. 4 Karl B. Tegland, Washington Practice CR 54, at 302 (5th ed. 2006) ("Although CR 54 requires notice of presentation of an order or judgment, the rule does not require the prevailing party to notify the other parties of the date that the order or judgment was actually entered. The other parties have an obligation to monitor the entry of the judgment, so that any post-trial motions or appeals are timely.").

resulting prejudice." Burton, 105 Wn.2d at 352. Applying that rule to the present matter, the Supreme Court commissioner concluded,

> The King County local rule on motion practice requires the parties to provide proposed orders with their pleadings. KCLCR 7(5)(C) . . . . Notice of the proposed order is provided by attaching it to pleadings served on opposing counsel. . . . Here, both parties presented the court with proposed orders attached to their pleadings, before oral argument, each also serving the other side with their pleadings and proposed orders. Thus, Woodinville Associates was given notice of the proposed order in early June 2009, well before entry of the order on July 1, 2009. And counsel admits that his office received the signed order on July 6, 2009, long before the time for filing a notice of appeal was to run.[2] Under the circumstances, notice was adequate and Woodinville Associates cannot show prejudice in any event. Burton v. Ascol, 105 Wn.2d at 352–53. The failure to timely appeal cannot be attributed to lack of notice . . . . The judgment of dismissal was not void.[3]

We agree.

Given the notice W.A. received, it suffered no prejudice from the alleged rule violation and the superior court was well within its discretion in denying the motion to vacate under CR 60(b)(1), (5), and (11).

Affirmed.

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WE CONCUR:

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[2] Unless it directed otherwise, the court was obligated to enter the order "immediately" after it was signed. CR 58(a).

[3] Ruling denying review at 7.