

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

J. PHILLIP RHODES,

Respondent,

v.

ALEXANDER McLAREN,

Appellant.

No. 65844-1-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: December 17, 2012

PER CURIAM – Alexander McLaren appeals the trial court’s damage award to J. Phillip Rhodes for breach of a real estate sale contract. He also appeals the court’s subsequent supplemental judgment awarding attorney fees and costs to Rhodes. Because his appeal of the first judgment is untimely, and because his appeal of the supplemental judgment lacks merit, we dismiss in part and affirm in part.

On March 11, 2010, the trial court entered a judgment awarding Rhodes damages for McLaren’s breach of contract. The judgment also awarded Rhodes attorney’s fees as the prevailing party, “subject to possible offset. . . in an amount to be determined separately . . . in a supplemental judgment.” McLaren did not timely appeal from this judgment.

On July 9, 2010, the trial court entered a supplemental judgment awarding Rhodes attorney’s fees and costs. On August 6, 2010, McLaren filed a notice of appeal from both judgments.

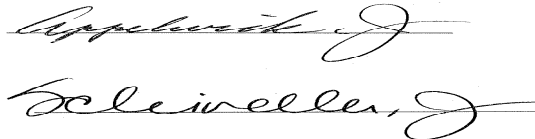
Under RAP 2.2(a)(1), a party may appeal a final judgment in any action or

proceeding, regardless of whether the judgment reserves for future determination an attorney fee or cost award. The party must file a notice of appeal within 30 days after the trial court enters its decision.¹ When, as in this case, a party does not timely appeal such a judgment but does timely appeal a supplemental judgment fixing the amount of attorney's fees, the notice of appeal "does not bring up for review [the] decision previously entered in the action. . . ." RAP 2.4(b).² Thus, the March 11, 2010 judgment is not before us.

McLaren briefly argues that the attorney fees awarded to Rhodes should have been offset by fees McLaren incurred for successfully defending a pre-trial motion that Rhodes later won on a second attempt. But he cites no supporting authority or citations to the record.³ Furthermore, his claim is contrary to the court's finding accompanying the unappealed judgment that "McLaren may submit his attorney's fees for the *issues* on which he prevailed for possible offsetting against the Plaintiff's attorney fees." (Emphasis added) CP 308. McLaren concedes that he did not prevail on the issue in these motions.

Because McLaren's appeal of the March 11, 2010 judgment is untimely, and because his timely appeal of the subsequent supplemental judgment lacks merits, we dismiss in part and affirm in part.

FOR THE COURT:



¹ RAP 5.2(a).

² Bushong v. Wilsbach, 151 Wn.App. 373, 376-77, 213 P.3d 42 (2009).

³ Cowiche Canyon Conservancy, 118 Wn.2d 801, 809, 828 P.2d 549 (1992)(appellate court will not consider arguments not supported by authority or citations to the record).

No. 65844-1-I /3

Sperry, A.C.