IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

TORI A. KRUGER-WILLIS, individually and on behalf of her marital community, Appellant, v. HEATHER HOFFENBURG and JOHN DOE HOFFENBURG, and the marital community comprised thereof, Respondents, DEREK S. LEBEDA and JANE DOE LEBEDA, and the marital community comprised thereof, Defendants.	No. 42417-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Tori Kruger-Willis appeals the trial court's award of attorney fees and costs following a trial de novo, arguing that Heather Hoffenburg's motion for fees and costs was untimely, that Hoffenburg's insurance company lacked standing to request fees and costs, and that the trial court erred in awarding fees incurred before Hoffenburg requested the trial de novo. Finding no error, we affirm.

Facts

This action arises out of a motor vehicle collision that occurred on February 21, 2008. Hoffenburg was driving a truck that struck and damaged Kruger-Willis's parked vehicle. GEICO, Hoffenburg's insurance company, paid to repair Kruger-Willis's vehicle. Kruger-Willis then sued Hoffenburg to recover the diminished value of her repaired vehicle. Counsel for GEICO represented Hoffenburg throughout the proceedings that followed.

Kruger-Willis responded to Hoffenburg's request for a statement of damages by listing her damages as $6,353. The case proceeded to mandatory arbitration, and the arbitrator made an award of $5,044 in favor of Kruger-Willis. Hoffenburg filed a request for a trial de novo and a demand for a jury trial. She then provided Kruger-Willis with an offer of judgment for $1,000 that Kruger-Willis declined. On April 28, 2011, following a three-day trial, the jury rendered a zero dollar verdict in Hoffenburg's favor.

On May 27, 2011, Hoffenburg moved for statutory costs and reasonable attorney fees. At the June 6 hearing, and upon Hoffenburg's further motion, the trial court entered judgment upon the jury's verdict in her favor and set the matter over for further detail regarding her request for attorney fees.

On June 16, Hoffenburg filed a second motion for costs and attorney fees. At the June 27 hearing on that motion, the trial court awarded her $11,490 in costs and fees. This amount included $500 in costs, which included the jury demand and trial de novo filing fees, and $10,990 in attorney fees based on 62.8 hours multiplied by a rate of $175 per hour.

Kruger-Willis appeals this award.

Discussion

We review de novo a trial court's determination as to whether a particular statutory or contractual provision authorizes an award of attorney fees. *Gray v. Pierce County Housing Auth.*, 123 Wn. App. 744, 760, 97 P.3d 26 (2004). Hoffenburg sought attorney fees under RCW 4.84.250 and RCW 4.84.270 and costs under RCW 4.84.010. RCW 4.84.250 provides,

> [I]n any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is [$10,000] or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees.

The plaintiff is the prevailing party if the plaintiff's recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff. RCW 4.84.260. The defendant is the prevailing party if the recovery is as much or less than the amount offered in settlement by the defendant. RCW 4.84.270. The prevailing party may recover filing fees under RCW 4.84.010(1).

Timeliness

Kruger-Willis argues initially that Hoffenburg's motion for fees and costs pursuant to these statutes was untimely because it followed an untimely presentation of the judgment. Kruger-Willis contends that under CR 54(e), Hoffenburg's attorney was required to present a proposed form or order of judgment no later than 15 days after the entry of the verdict. The pertinent provision of the rule provides,

> The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct.

CR 54(e). While acknowledging that this provision grants a trial court discretion to enlarge the

15-day time period, Kruger-Willis contends that the court's discretion is limited by the following provisions of CR 6(b):

> **Enlargement**. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), 59(d), and 60(b).

Kruger-Willis cites no authority for her assertion that a trial court may exercise its discretion to direct entry of judgment under CR 54(e) "at any other time" only where the prevailing party's failure to act within 15 days of the verdict is the result of excusable neglect, and we reject this reading of the rules. CR 54(e) expressly grants trial courts the discretion to extend the 15-day period for presenting a proposed judgment, and that discretion is not limited by the conditions on time enlargement in CR 6(b). *See State v. Kone*, 165 Wn. App. 420, 435, 266 P.3d 916 (2011) (where a court rule's meaning is unambiguous, we need look no further), *review denied*, 173 Wn.2d 1034 (2012).

Because Hoffenburg's presentation of the order of judgment was timely under CR 54(e), her motion for costs and fees was timely under CR 54(d), which provides that unless otherwise provided by statute or court order, claims and motions for costs and fees must be filed no later than 10 days after entry of judgment. CR 54(d)(1), (2); 4 Karl B. Tegland, Washington Practice: Rules Practice CR 54, at 41 (supp. 2012). Hoffenburg complied with this temporal requirement by filing her second motion for fees and costs 10 days after entry of the judgment. *See Corey v. Pierce County*, 154 Wn. App. 752, 774, 225 P.3d 367 (timeliness requirement of CR 54(d)

applies only after the underlying claim is reduced to judgment in court), *review denied*, 170 Wn.2d 1016 (2010).

Standing

Kruger-Willis next contends that GEICO lacked standing to move for an award of fees and costs. This contention is based on her allegation that GEICO was not an aggrieved party that could file a request for trial de novo under MAR 7.1. Under this rule, any aggrieved party that has not waived the right to appeal may request a trial de novo within 20 days after the arbitrator's award is filed. MAR 7.1; 4A Karl B. Tegland, Washington Practice: Rules Practice MAR 7.1, at 54 (7th ed. 2008). The party seeking review must be named in the notice for trial de novo. *Wiley v. Rehak*, 143 Wn.2d 339, 345, 20 P.3d 404 (2001).

The record shows, however, that Hoffenburg was the aggrieved party named in the notice for trial de novo and that Hoffenburg filed the motion for fees and costs. The fact that GEICO is defending Hoffenburg does not render the insurance company a party or somehow diminish Hoffenburg's standing as either the aggrieved party in the underlying action or the prevailing party entitled to fees and costs under RCW 4.84.250.

MAR 7.3

Finally, Kruger-Willis contends that the trial court erred in compensating Hoffenburg for attorney fees incurred before the trial de novo. As support, she cites MAR 7.3, which provides,

> The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. . . . Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

This rule does not apply for two reasons. First, Kruger-Willis did not appeal the

arbitration award. Second, Hoffenburg requested fees pursuant to RCW 4.84.250, which does not contain MAR 7.3's limitation on an award of fees. The trial court properly awarded reasonable attorney fees under RCW 4.84.250 where the amount pleaded by Kruger-Willis in response to Hoffenburg's request for a statement of damages was less than $10,000. *See Pierson v. Hernandez*, 149 Wn. App. 297, 303, 202 P.3d 1014 (2009) (request for damages triggers pleading of damages required under RCW 4.84.250). Kruger-Willis does not succeed in showing that the trial court erred in awarding Hoffenburg reasonable attorney fees and costs.

In the final sentence of her brief, Hoffenburg asserts that "[c]osts and reasonable attorney's fees associated with this appeal should also be awarded." Br. of Resp't at 15. Because she fails to include supporting argument or authority for her request for attorney fees on appeal, we deny it. *In re Marriage of Taddeo-Smith*, 127 Wn. App. 400, 407, 110 P.3d 1192 (2005); *see also* RAP 18.1(b) (party must devote section of opening brief to request for fees). Hoffenburg is entitled to costs upon compliance with RAP 14.4.

Affirmed.

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

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

WORSWICK, C.J.