No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARCUS D. SMITH, Petitioner, v. NORTHWEST MOTORSPORT, INC., AND NORTHWEST MOTORSPORT, LLC, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Marcus D. Smith, Petitioner pro se
16825 163rd Place SE, Renton, WA 98058
(206) 391-4900 · marcusmds@gmail.com

INDEX TO APPENDIX

Appendix A — Opinion, Court of Appeals of Washington, Division II, No. 60047-1-II (Oct. 14, 2025) (unpublished) 1a

Appendix B — Order and Judgment Denying Plaintiff's Motion to Strike Settlement, Superior Court of Washington for Pierce County, No. 23-2-04491-1 (July 26, 2024); Order on Reconsideration (Aug. 19, 2024) 28a

Appendix C — Order Denying Petition for Review, Supreme Court of Washington, No. 104770-3 (Mar. 4, 2026) 35a

Appendix D — Order Denying Motion to Modify and Motion for Limited Record Clarification, Supreme Court of Washington, No. 104770-3 (Sept. 2, 2026) 37a

Appendix D-2 — Ruling Awarding Attorney Fees and Costs, Court of Appeals of Washington, Division II, No. 60047-1-II (Sept. 16, 2026) 39a

Appendix E — Commissioner's Ruling (July 8, 2024) and Order Granting Motion to Modify (Aug. 22, 2024), Court of Appeals of Washington, Division II, No. 59144-8-II (related proceeding; not under review) 43a

Appendix F — Constitutional and Statutory Provisions: U.S. Const. amend. XIV, § 1; 28 U.S.C. § 1257(a) 46a

Appendix G — Petition for Review, Supreme Court of Washington, No. 104770-3 (filed Nov. 13, 2025) (federal question raised; Rule 14.1(g)(i)) 48a

Appendix H — Respondents' Answer to Petition for Review, No. 104770-3 (Dec. 12, 2025), cover and pp. 14–16, 20–23 (excerpts) 56a

Appendix I — Settlement Agreement (signed June 28 and July 2, 2024), as filed as Ex. 1 to Decl. of Michael A. Goldfarb (CP 59–61) 65a

Appendix J — Emergency Motion re Chicago Title Records, Supreme Court of Washington, No. 104770-3, Filing ID 20261016095452SC495088 (Oct. 16, 2026), and Deputy Clerk's letter of the same date (exhibits omitted; on file under the Filing ID) 69a

Appendix K — Email thread "23-2-04491-1 Civil Bond" (June 20, 2024): Pierce County Clerk's Office court-registry instructions and Petitioner's forward to Respondents' counsel (excerpts) (Rule 14.1(i)(vi)); not part of the record reviewed below; referenced at CP 93. 75a

Appendix L — Respondents' Response to Plaintiff's "Proposed Order for a Bond," Superior Court of Washington for Pierce County, No. 23-2-04491-1 (June 7, 2024) (Rule 14.1(i)(vi)); not part of the record reviewed below; see App. D 80a

Appendix M — Verbatim Report of Proceedings, Superior Court of Washington for Pierce County, No. 23-2-04491-1 (July 26, 2024), excerpts: cover and pp. 5–6, 13–14 (1 VRP) 84a

Appendix N — Escrow emails (June 20, 2024) and Chicago Title emails (Oct. 14–15, 2026) (Rule 14.1(i)(vi)); not part of the record reviewed below; see App. J 90a

APPENDIX A

Opinion, Court of Appeals of Washington, Division II, No. 60047-1-II (Oct. 14, 2025) (unpublished)

Filed
Washington State
Court of Appeals
Division Two

October 14, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARCUS D. SMITH, Appellant, v. NORTHWEST MOTORSPORT, INC., and NORTHWEST MOTORSPORT, LLC, Respondent.	No. 60047-1-II UNPUBLISHED OPINION

LEE, J. — Marcus D. Smith challenges the superior court's (1) order denying his motion to vacate a settlement agreement, (2) order denying reconsideration, and (3) award of attorney fees to Northwest Motorsport, LLC. Smith argues the superior court erred in denying the motion to vacate the settlement agreement because Smith included new facts in his reply brief that demonstrated economic duress, which Northwest Motorsport allegedly failed to object to. Smith presents no argument on his challenge to the superior court's order denying reconsideration or the attorney fees award.

Because Smith fails to demonstrate economic duress by clear, cogent, and convincing evidence, we hold the superior court did not abuse its discretion when it denied Smith's motion to vacate the settlement agreement and when it denied Smith's motion for reconsideration. Because Smith presents no argument regarding the award of attorney fees, we decline to address his challenge. Accordingly, we affirm the superior court's order denying the motion to vacate the settlement agreement, order denying the motion for reconsideration, and award of attorney fees to Northwest Motorsport.

Finally, Northwest Motorsport requests attorney fees on appeal, as well as sanctions against Smith and his counsel for pursuing frivolous litigation. Because Smith breached the terms of his settlement agreement and because Northwest Motorsport is the prevailing party, we award Northwest Motorsport attorney fees on appeal pursuant to RAP 18.1(a). Because Smith presented virtually no citation to legal authority to support his arguments and, based on the overwhelming evidence in the record, presented no debatable issue upon which reasonable minds might differ, we hold Smith's appeal is frivolous and sanction Smith and his counsel jointly and severally pursuant to RAP 18.9(a).

FACTS

A. BACKGROUND

Smith is a former executive of Northwest Motorsport, LLC. Northwest Motorsport terminated Smith in January 2020, following various workplace incidents and a human resources investigation. Then, in January 2023, Smith, as a self-represented litigant, filed a complaint against Northwest Motorsport under the Washington Law Against Discrimination,[1] alleging wrongful termination based on racial discrimination[2] and retaliation. Smith requested $10 million in damages. However, Smith never provided any evidence of his claims.

Northwest Motorsport moved for summary judgment, arguing in part that Smith could not substantiate his claims. In response to the summary judgment motion, Smith filed a motion to amend his complaint. In his motion to amend, Smith wrote:

---

[1] Chapter 49.60 RCW.

[2] Smith identifies as a Black person.

> [I]t has become apparent that I should have written my original complaint differently. . . .
>
> . . . .
>
> Currently, there are a number of causes of action in my complaint. Also, currently, [Northwest Motorsport has] filed for summary judgment on all of these causes of action.
>
> I believe that I could draft a declaration in an attempt to support these causes of action and keep them alive post summary judgment. *However*, after reading [Northwest Motorsport's] materials and discussing them with an attorney, I believe that I might have difficulties at trial with respect to these causes of action. This being the case, I am *abandoning the majority of these claims, and not including them in the proposed amended complaint.*[3]

Clerk's Papers (CP) at 470-71 (emphasis in original). Smith never responded to the substance of Northwest Motorsport's motion for summary judgment.

The superior court denied Smith's motion to amend as time-barred. The superior court then granted summary judgment in favor of Northwest Motorsport and dismissed Smith's complaint.

The week following dismissal of the complaint, Smith retained counsel, Carl Colbert.[4] Smith's counsel filed a motion for reconsideration of the superior court's order granting summary judgment to Northwest Motorsport and dismissing Smith's complaint. In the motion for

---

[3] Smith's "proposed amended complaint" is not part of the record on appeal. However, the record suggests that Smith attempted to advance an entirely new claim "based on an alleged promise [from Northwest Motorsport] to grant him some unspecified 'equity' interest." Clerk's Papers (CP) at 486.

[4] Smith had previously retained counsel in September 2023 prior to Northwest Motorsport's motion for summary judgment. However, that counsel withdrew less than two weeks later. Based on facts described in a Northwest Motorsport motion at the trial court, it appears that Smith's counsel withdrew because Smith wanted to proceed with litigation when he could not substantiate his claims.

reconsideration, Smith's counsel discredited Smith's discrimination claims, stating: "'Unfortunately, acting as a pro se, [Smith] drafted his complaint with a focus on issues of race rather than those of breach of contract. . . . After recently conferring with counsel, [Smith] realized that he should have drafted his Complaint differently.'" CP at 487 (second alteration in original). The superior court denied Smith's motion for reconsideration.

Northwest Motorsport then filed a motion for attorney fees and costs pursuant to CR 11 and RCW 4.84.185. Northwest Motorsport requested $122,868.71 for attorney fees and costs that "were reasonably incurred defending against Smith's frivolous lawsuit." CP at 484. Meanwhile, Smith appealed the superior court's orders denying his motion to amend his complaint, granting summary judgment in favor of Northwest Motorsport, and denying reconsideration (Appeal).

The superior court awarded Northwest Motorsport $75,653.71 in attorney fees and costs pursuant to CR 11 and RCW 4.84.185. In the order and judgment granting fees to Northwest Motorsport, the superior court stated, in relevant part:

> 1. [Northwest Motorsport's] Motion for Fees and Costs asserts that in [Smith]'s Complaint and subsequent filings with the Court, [Smith] made frivolous claims in violation of CR 11 and RCW 4.84.185. [Smith], in his Opposition, concedes the claims were frivolous.
>
> 2. [Northwest Motorsport] is entitled to compensation pursuant to CR 11 and/or RCW 4.84.185.

CP at 597. Smith's counsel then withdrew.

B. BOND NEGOTIATIONS

Despite the pending Appeal, Smith did not post a supersedeas bond following the judgment in favor of Northwest Motorsport. Northwest Motorsport proceeded with collection efforts by

filing an abstract of the judgment in superior court. A judgment lien was placed on various properties Smith owned, including investment properties and his primary residence.

Smith filed a "Proposed Order for a Bond" with the superior court, which stated: "I am proposing a bond in the amount of $115,000.00 and no more than $125,000.00 dollars." CP at 85. A court date was scheduled to hear Smith's motion on the bond.

According to Smith, he wanted to "obtain a bond to stay enforcement of [Northwest Motorsport]'s judgment while he pursued his appeal." CP at 110. Smith determined it was impossible for him to post a bond without refinancing one of his properties. Smith was also separately hoping to gain "a bid bond for a potential (annualized) contract in the amount of $1,200,000.00" and "refinanc[e] another property that ha[d] a high cost of interest." CP at 2. Smith claimed his lack of access to funds "prevented funding for [his] business and next business ventures." CP at 2. However, Smith's lender refused to make a loan while Northwest Motorsport's lien encumbered Smith's title.

Smith contacted Northwest Motorsport to discuss an arrangement that would allow Smith to refinance his primary residence. Northwest Motorsport was not willing to release its judgment lien; however, it offered to subordinate its lien to Smith's lender in exchange for the bond. On June 17, 2024, Northwest Motorsport prepared draft subordination documents and sent them to Smith.

The day after Northwest Motorsport agreed to subordinate its lien to Smith's lender in exchange for the bond, Smith unilaterally e-mailed the superior court to strike the court date on his motion for a bond. Smith's e-mail stated: "I have a scheduled court date on Friday, June 21st

to discuss proposed order for a bond. In the meantime, this has been worked out with opposing counsel and I wish to cancel the court date." CP at 87.

In response to Smith's message to the superior court, Northwest Motorsport e-mailed Smith:

> You are free to strike your own motion, and Northwest Motorsport has no objection in that regard. However, in light of your statement to the Court that "this has been worked out with opposing counsel," we wish to again clarify that there is, at present, no agreement between the parties regarding any lien / bond arrangement. Northwest Motorsport is attempting to cooperate in good faith with your request, but all relevant parties must review, approve, and sign a complete set of deal documents (including the form of bond) before any binding agreement is in place.

CP at 87. Smith then replied: "Agreed, I . . . misspoke about the agreement." CP at 87.

Later that same day, Smith reached out to Northwest Motorsport and informed it that his lender would not accept a subordination. The lender required an "'unconditional release'" of Northwest Motorsport's judgment before it made any loan to Smith. CP at 90. Smith further wrote to Northwest Motorsport:

> I am willing to consider other language that stipulates that I will fund the Supersedeas Bond. This is a conundrum and what other options or alternatives can we work out here?
>
> In good faith, I assumed that this would all work out and hence; why I canceled the court meeting on Friday.
>
> My escrow and title are ready to close and this is the last part to coordinate.
>
> Please advise as to other agreements that are possible; I would like to fund this bond this week.

CP at 90. Smith proceeded to send Northwest Motorsport various proposals that all included Northwest Motorsport entering a release of its judgment lien. Then, on June 20, Northwest Motorsport replied to Smith:

Your claims against Northwest Motorsport resulted in a judgment against you for frivolous litigation. When your appeal was filed, your then counsel was asked if you would be posting a bond. The answer was "no." Since then, your counsel withdrew and has not been replaced, you have missed two filing dates for your opening brief, and you have failed to even make arrangements for a proper record on appeal.[5] Your appeal, which we regard as without basis, continues to cause Northwest Motorsport to incur unnecessary additional fees and costs. And of significance here, since you filed your appeal, you have had ample time both to seek new counsel and to post a bond.

Recently, you apparently decided you now want to post a bond. But in seeking a bond, you have no right to demand that Northwest Motorsport assist you in any way—including releasing lien rights. Northwest Motorsport considered a rough proposal to potentially subordinate its judgment lien on a single property and went so far as to prepare a possible subordination agreement. But your lender summarily rejected that document. Northwest Motorsport is not willing to release its judgment lien in its entirety, which is what your lender appears to require. And, against that backdrop, the proposed bond language you provided—while also potentially problematic—is moot. For similar reasons, your most recent email, apparently proposing a cash bond of some kind, does not appear to resolve any of the underlying issues.

Northwest Motorsport already has incurred additional expense in communicating with you, in trying to determine what exactly would be required by your lender, and in drafting a proposed document—which was then immediately rejected by your lender. You have not offered to reimburse Northwest Motorsport for its efforts, and you rejected our suggestion that you allow us to speak directly to your lender. The most recent emails you have circulated contain various undocumented scenarios under which a bond would be posted, but only if Northwest Motorsport enters some form of release. Your original request was complicated and has only become more so as you have suggested additional elements including additional properties, payments into the Court registry and so on—and all of this is predicated on Northwest Motorsport at its expense drafting a document for your benefit that does not exist and that would reflect a proposed agreement that also does not exist. Against that backdrop, Northwest Motorsport is not willing to invest further resources concerning your desire to bond the judgment and further discussions regarding a bond are pointless. The bottom line is that if you wish to post a bond, you should do so, but Northwest Motorsport will not be involved.

---

[5] While Smith engaged in negotiations with Northwest Motorsport, Smith missed multiple filing dates for the Appeal. This court granted Smith two extensions to file his opening brief, with the final extension deadline set for July 15, 2024. Smith never filed an opening brief for the Appeal.

> One alternative is for you to simply pay the judgment and dismiss the appeal. In response, Northwest Motorsport would provide a Satisfaction of Judgment, resulting in the extinguishment of the judgment lien. There appear to be sufficient funds available for you to pay the Judgment, as the payoff amount is well under the $125,000 you are evidently prepared to finance for a bond. A payoff figure was provided to your escrow agent at their request. But if we understand correctly, you are unwilling to pay the Judgment amount and dismiss the appeal. In any event, Northwest Motorsport is not obligated to find you a way to bypass the judgment without paying it and without dismissing the appeal.
>
> . . . To the extent that you have timing issues, they are entirely of your own making as the issue of a bond could have and should have been addressed months ago. Finally, we did not do anything to induce you to cancel your hearing that was scheduled for tomorrow. You struck that hearing on your own and without any agreement on our part. In fact, you misrepresented to the Court in your email that there was some agreement and when we pointed that out, you said you "misspoke."
>
> Please let us know if a bond is posted.

CP at 93-94.

After this communication, Smith sent two additional "scenarios" to Northwest Motorsport, which again included Northwest Motorsport releasing its lien. CP at 93. Northwest Motorsport again replied it was not willing to engage in further discussions with Smith about Smith posting a bond and based on the scenarios Smith proposed, it was not clear what exactly Smith wanted Northwest Motorsport to do.

On June 21, Smith made the following proposal to Northwest Motorsport:

> If I dismiss the appeal with an agreement sent from your firm today and reducing the judgement [sic] from its current outstanding balance from $75k to $50k, I will drop the appeal with a reply by 5:00 pm and agreement today.

CP at 92. Northwest Motorsport countered:

> We are authorized to resolve this matter by your payment of $70,000 and your dismissal of the appeal. This proposal is open until 5:00 p.m. today and can be fully documented Monday morning if you accept. No further discount is available.

CP at 92. Smith accepted Northwest Motorsport's counteroffer.

C. SETTLEMENT AGREEMENT

Northwest Motorsport prepared the settlement agreement. The settlement agreement provided that in exchange for the resolution of their litigation, Northwest Motorsport would accept $70,000 in full satisfaction of the judgment it had against Smith. Further, Smith would release Northwest Motorsport from any existing claims and the parties would execute a stipulation for dismissal of the Appeal. The settlement agreement also stated:

> 6. In the event that any party or Released Party incurs attorney's fees or costs as a result of a breach of this Agreement, the non-breaching party or Released Party shall be entitled to recover such attorney's fees and costs from the breaching party.

CP at 61. Smith signed the settlement agreement on June 28, and Northwest Motorsport countersigned on July 2. Northwest Motorsport also signed a satisfaction of judgment, and Smith and Northwest Motorsport signed a stipulation for voluntary withdrawal of the Appeal.

Smith's loan closed on July 5.[6] Northwest Motorsport was wired $70,000 from escrow, and Northwest Motorsport filed the satisfaction of judgment and stipulation for voluntary withdrawal of appeal with the superior court and this court.

D. MOTION TO VACATE SETTLEMENT AGREEMENT

1. Motion Filings

Also on July 5, at 10:55 a.m., Northwest Motorsport e-mailed Smith, advising him that the stipulation and satisfaction of judgment had been filed with the courts. Then, approximately 90

[6] Because Smith refinanced his primary residence, Smith had a three-day rescission option prior to closing. Smith did not exercise the option.

minutes later, Smith filed with superior court a "Motion to Strike and/or Null in Void Agreement with 'Litigation' including Pierce County 'The Judgement' [sic] and Washington Court of Appeals, Division II Case No. 591448 'The Appeal'" (Motion to Vacate Settlement Agreement).[7,8] CP at 602. In his motion, Smith claimed he signed the settlement agreement "under duress." CP at 602.

Smith's Motion to Vacate Settlement Agreement argued that Northwest Motorsport "agreed to a release" based on Smith posting a $125,000 bond, but then told Smith's lender it would not release its judgment lien unless Smith dropped his appeal. CP at 1. Because of this, Smith claimed:

> With no access to funds, and Judgement [sic] looming; it then prevented me from gaining a bid bond for a potential (annualized) contract in the amount of $1,200,000.00 dollars. Cross Country Mortgage errored [sic] in a refinance that could have prevented all of this along with Chicago Title not upholding their original agreement with me. It also prevented me from refinancing another property that has a high cost of interest, and prevented funding for my business and next business ventures that are well documented.[9]

CP at 2.

---

[7] Smith initially failed to note his Motion to Vacate Settlement Agreement for the superior court motion docket. On July 10, he refiled the Motion to Vacate Settlement Agreement twice and noted the motion for hearing.

[8] Smith also filed an unsigned "Stipulation to Reject Voluntary Withdraw[a]l of Appeal" and an unsigned "Motion to Stay Until Judgment is Adjudicated in the Superior Court," requesting a stay of the appeal pending resolution of the Motion to Vacate Settlement Agreement. CP at 98, 101. Our court commissioner issued a ruling granting "the stipulated motion to withdraw the appeal" and dismissed the appeal "without prejudice to any further proceedings related to the validity of the settlement agreement." CP at 4.

[9] Smith did not attach any supporting documentation regarding his business ventures in his motion.

Northwest Motorsport objected to Smith's Motion to Vacate Settlement Agreement and requested fees and costs based on breach of contract, CR 11, and RCW 4.84.185. Northwest Motorsport argued that Smith "fraudulently entered the settlement to obtain a Satisfaction of Judgment while planning to move to set the remainder of the settlement aside as soon as the Satisfaction was filed." CP at 37. Northwest Motorsport also argued that Smith's claim of duress failed because Smith did not provide any evidence of duress, let alone evidence that met the clear, cogent, and convincing standard.

The hearing on Smith's Motion to Vacate Settlement Agreement was set for July 26. On July 23, Smith's prior counsel, Colbert, filed a notice of appearance. Then, on July 24, Smith filed a reply in support of his Motion to Vacate Settlement Agreement.

Smith argued for the first time in his reply brief that when he and Northwest Motorsport came to an agreement regarding settlement, Smith never agreed to drop the Appeal. Instead, Smith asserted that the "agreement was merely that [Northwest Motorsport] would be paid a certain amount in exchange for a satisfaction of judgment." CP at 111. Then, Smith argued, "[a]t the last minute . . . rather than continue according to the terms that [Northwest Motorsport] had struck with [Smith], [Northwest Motorsport] added the demand that [Smith] drop his appeal." CP at 111. Smith alleged that Northwest Motorsport was aware Smith "was in dire straits financially" and strung him along during the settlement negotiations to make "him more and more desperate" before the late demand to drop the Appeal. CP at 112. Smith asserted:

> [Smith] was, indeed, in dire straits and desperately needed financing for his personal wellbeing as well as to keep his properties and businesses going. [Smith] would have lost various of his properties and business opportunities costing him hundreds of thousands of dollars if he did not close his refinance.

CP at 112 (citation omitted).

Smith attached a single declaration in support of his reply. Smith's declaration, in its entirety, stated:

> I, MARCUS D. SMITH, hereby declare and state as follows:
>
> 1. I am the Plaintiff in the above captioned action.
>
> 2. I am fully competent to testify herein.
>
> 3. I worked with my attorney to write the factual assertions contained in my reply brief filed on even date herewith.
>
> 4. I worked with him carefully to make these recitations of fact completely accurate and made sure that the final copy that was filed with the Court was completely true and correct.

CP at 117. Smith did not include any exhibits or other documentation with his declaration.

On July 24, Northwest Motorsport filed an objection to Smith's reply brief and requested the superior court strike the new evidence Smith presented because it was not in strict reply. Northwest Motorsport argued, in part, that Smith's contentions were "conclusory and unconnected to any alleged facts" and that "the actual record clearly and directly refutes Smith's narrative." CP at 120, 121.

2. Hearing on Motion to Vacate Settlement Agreement

During the hearing on July 26, Smith's counsel presented the same argument as in Smith's reply brief filed on July 24—that Northwest Motorsport changed the terms of the settlement at the last minute. The superior court asked Smith's counsel about any written document that indicated Smith's alleged original agreement. Smith's counsel replied:

> Those were—there is no document that memorializes that. These were communications between Mr. Smith, Mr. Goldfarb, and sometimes Mr. Ritchie, who is one of Mr. Goldfarb's associates.
>
> [COURT]: No email, no memos, just Mr. Smith's say-so.
>
> [SMITH'S COUNSEL]: Mr. Smith's say-so. And we can verify that what he's saying is correct. We can verify it because we know that [Northwest Motorsport] wrote yesterday—or the day before yesterday a very detailed response to Mr. Smith's reply brief. In that detailed response [Northwest Motorsport] doesn't provide a declaration that [it] did not make this agreement. It would have been very easy to do that. Instead [Northwest Motorsport] simply recites the fact that [it] doesn't believe there's enough evidence in the record.

1 Verbatim Rep. of Proc. (VRP) at 7-8.

The superior court then asked about Northwest Motorsport's filing. The superior court had not seen Northwest Motorsport's objection to Smith's reply, nor did the court have a copy at the hearing. However, the superior court understood Northwest Motorsport's objection: "I understand. Your point is that there were matters raised in strict reply that were new." 1 VRP at 8.

Smith's counsel proceeded to argue that Northwest Motorsport caused Smith's economic duress because of its alleged "[bait] and switch" during settlement negotiations. 1 VRP at 10. Smith's counsel then referenced Northwest Motorsport's July 24 objection, arguing that Northwest Motorsport did not deny Smith's bait and switch argument:

> [SMITH'S COUNSEL]: . . . And there is a reason why [Northwest Motorsport], who took the time to write a multi-page response yesterday, didn't make that statement.
>
> [COURT]: Well, don't refer to something that's not in the record. That just doesn't help me at all.
>
> [SMITH'S COUNSEL]: Okay. So I'll step back and say there's been no response whatsoever. Since it's not in the record, I'm trying to give the most benefit

> possible to the defendants because they did file it. But there's nothing in the record then.
>
> [COURT]: Okay.

1 VRP at 11.

In response, Northwest Motorsport pointed to the documentation they filed in response to Smith's motion, which included e-mails leading up to the settlement agreement that contradicted Smith's version of events. Northwest Motorsport argued that any financial duress Smith suffered was of his own making and Smith failed to demonstrate exigent circumstances. In rebuttal, Smith's counsel argued:

> But those emails would not have happened had he not been under the economic duress that he was under based upon the being led down the garden path and then the bait and switch.
>
> [COURT]: So—
>
> [SMITH'S COUNSEL]: Both of which are the—sort of the illegal and inappropriate behaviors that led to this claim.
>
> [COURT]: What I understood the position to be was that this issue of dismissal of the appeal was inserted at the last minute after the settlement document was proposed. It appears to me it was contemplated all along.
>
> [SMITH'S COUNSEL]: That's not Mr. Smith's recollection and that's not his testimony. His testimony is that—
>
> [COURT]: That's what I garnered from the email chain.

1 VRP at 16.

The superior court denied Smith's motion, stating:

> So economic duress is an extraordinary remedy. The Court does favor the resolution of disputes by contract settlement agreements. I am not persuaded with clear[,] cogent[,] and convincing evidence that there was economic duress and I'm going to deny the motion.

1 VRP at 17.

Northwest Motorsport requested attorney fees based on breach of contract. Smith objected on the grounds that even though he failed to prove duress by clear, cogent, and convincing evidence, he was "close." 1 VRP at 18. The superior court awarded $13,695 in attorney fees to Northwest Motorsport.

Smith moved for reconsideration. In his motion, Smith argued that Northwest Motorsport failed to object to Smith's reply brief and then tactically erred by not requesting a continuance. Accordingly, Smith asserted that the contents of his reply brief were "*unopposed and uncontroverted.*" CP at 134 (emphasis in original). Smith then argued:

> It follows then, that since [Smith's] unopposed and uncontroverted reply materials quite clearly made his case for economic duress and business compulsion by clear, cogent and convincing evidence, he should have prevailed on July 26.

CP at 134. The superior court denied Smith's motion for reconsideration.

Smith appeals.

ANALYSIS

Smith argues the superior court erred when it (1) denied his motion to vacate the settlement agreement, (2) denied his motion for reconsideration, and (3) awarded Northwest Motorsport attorney fees. We disagree.[10]

[10] In his reply brief filed in this appeal, Smith moves to strike materials "discussing unrelated aspects of the Parties' prior litigation history." Reply Br. of Appellant at 9. Smith argues that those "materials" have "nothing to do with the issue before the Court in this appeal." Reply Br. of Appellant at 9-10 (italics omitted). However, Smith fails to identify what "materials" he wants stricken. Reply Br. of Appellant at 9.

A. MOTION TO VACATE SETTLEMENT AGREEMENT

1. Legal Principles

We review a superior court's ruling on a motion to vacate for abuse of discretion. CR 60(b); *Rush v. Blackburn*, 190 Wn. App. 945, 956, 361 P.3d 217 (2015). A superior court's decision to enforce a settlement agreement pursuant to CR 2A is also reviewed for abuse of discretion. *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357, *review denied*, 122 Wn.2d 1020 (1993). "An abuse of discretion occurs when a decision of the trial court is manifestly unreasonable or based on untenable grounds or reasons." *Id.*

Settlement agreements are governed by principles of contract law. *Condon v. Condon*, 177 Wn.2d 150, 162, 298 P.3d 86 (2013). "Washington follows the objective manifestation theory of contracts, which has us determine the intent of the parties based on the objective manifestations of the agreement, rather than any unexpressed subjective intent of the parties." *Id.* "'The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs.'" *Cruz v. Chavez*, 186 Wn. App. 913, 920, 347 P.3d 912 (2015) (internal

---

Smith also moves to strike the "'Supplemental Declaration of Michael A. Goldfarb Regarding Objection Submitted on July 24, 2024.'" Reply Br. of Appellant at 10. Smith claims the declaration was filed "in direct violation [of] RAP 9.1 which limits review to matters in the record at the time the order challenged below was entered." Reply Br. of Appellant at 10.

We note that Smith completely fails to cite to the record. Not only that, Smith misstates RAP 9.1, which *does not* support his argument that review is limited to matters in the record at the time of the challenged order. *See generally* RAP 9.1. Furthermore, the motions to strike contained in Smith's reply are in violation of RAP 17.4(d), which provides "[a] party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits." The granting of either motion would not preclude a hearing on the merits of the case. *See also Hays Elliott Props., LLC v. Horner*, 25 Wn. App. 2d 868, 875 n.8, 528 P.3d 827 (2023) (A motion raised in a reply brief is improper under RAP 17.4(d), "which permits a motion in an opening or responsive brief, to which the opposing party has an opportunity to reply."). Thus, we deny Smith's motions to strike raised in his reply.

quotation marks omitted) (quoting *H.D. Fowler Co. v. Warren*, 17 Wn. App. 178, 180, 562 P.2d 646 (1977)). Thus, when a party signs a contract, there is a presumption that the party has objectively manifested assent to its contents. *Id.* at 920-21.

However, a settlement agreement may be void in cases of "fraud, deceit, misrepresentation, coercion, or other wrongful acts." *Id.* at 921. Economic duress, or business compulsion, is a circumstance where a party may repudiate a settlement agreement. *Retail Clerks Health & Welfare Tr. Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944, 640 P.2d 1051 (1982). An individual claiming duress must demonstrate that the other party's wrongful and oppressive conduct compelled the individual to involuntarily enter into the agreement. *Puget Sound Power & Light Co. v. Shulman*, 84 Wn.2d 433, 443, 526 P.2d 1210 (1974); *see also Retail Clerks*, 96 Wn.2d at 944-45; *Barker v. Walter Hogan Enterprises, Inc.*, 23 Wn. App. 450, 452-53, 596 P.2d 1359 (1979). However, a threat "to exercise a legal right made in good faith is neither duress nor coercion in law." *Pleuss v. City of Seattle*, 8 Wn. App. 133, 137, 504 P.2d 1191 (1972).

A claim of duress requires proof of more than financial embarrassment or reluctance to enter into the agreement. *Retail Clerks*, 96 Wn.2d at 944 ("The mere fact that a contract is entered into under stress or pecuniary necessity is insufficient."); *see also Puget Sound Power & Light Co.*, 84 Wn.2d at 443. "Generally, circumstances must demonstrate a person was deprived of his free will at the time he entered into the challenged agreement." *Retail Clerks*, 96 Wn.2d at 944-45. Duress must be demonstrated through clear, cogent, and convincing evidence. 6A WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 301.10, at 189 (7th ed. 2019); *see In re Welfare of J.N.*, 123 Wn. App. 564, 576-77, 95 P.3d 414 (2004), *review denied*, 154 Wn.2d 1003 (2005).

2. Smith Fails to Demonstrate Duress

Smith's opening brief contains no citation to any legal authority; instead, he copies the facts section from his reply brief filed in superior court into the argument section of his opening brief on appeal. It is well established that "[w]e do not consider conclusory arguments that do not cite authority." *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012); RAP 10.3(a)(6); *see, e.g.*, *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *C.A. Carey Corp. v. City of Snoqualmie*, 29 Wn. App. 2d 890, 909-10, 547 P.3d 247, *review denied*, 3 Wn.2d 1012 (2024); *Cook v. Brateng*, 158 Wn. App. 777, 794, 262 P.3d 1228 (2010). Thus, Smith's deficient briefing alone dooms his appeal.[11]

Regardless of his deficient briefing, Smith fails to prevail on the merits. While we need not venture into the merits to determine this appeal, we do so to demonstrate Smith's and his counsel's disregard for our judicial process, and to make clear that we disavow such conduct.

Here, the record shows that Smith and Northwest Motorsport engaged in prior litigation. The matter was dismissed on summary judgment in favor of Northwest Motorsport. The superior court awarded Northwest Motorsport $75,653.71 in fees and costs pursuant to CR 11 and RCW 4.84.185. Smith appealed. Smith failed to post a supersedeas bond pending the Appeal.

[11] Not only does Smith's briefing doom his appeal, but it is also a violation of RAP 10.3, which provides to the parties briefing instructions that are necessary for our review. *See generally* RAP 10.3. As stated above, Washington case law unequivocally holds that such deficient briefing as we have here—one that fails to cite to *any* authority—does not merit our consideration. *E.g.*, *In re Muenster*, 195 Wn.2d 276, 283, 457 P.3d 1139, *cert. denied*, 141 S. Ct. 662 (2020); *SYNNEX Corp. v. Dep't of Revenue*, 34 Wn. App. 2d 857, 876, 572 P.3d 1214 (2025); *Brownfield v. City of Yakima*, 178 Wn. App. 850, 876, 316 P.3d 520 (2014); *West*, 168 Wn. App. at 187.

Accordingly, Northwest Motorsport recorded its judgment, and a lien was placed on Smith's properties.

The record also shows that Smith wanted to refinance one or more of his properties. It is not clear whether Smith wanted to do so solely to obtain cash to post a bond or whether it was for other business purposes unrelated to the proceedings with Northwest Motorsport—indeed, Smith makes both contentions. Northwest Motorsport offered to subordinate its lien and even prepared subordination documents for Smith. However, Smith's *lender* rejected the possibility of subordination and would accept only a satisfaction of judgment from Northwest Motorsport. Northwest Motorsport clearly stated to Smith that it was unwilling to release its lien rights, and indeed, informed Smith it no longer wished to continue bond negotiations.

Then, Smith began making several settlement proposals to Northwest Motorsport, which Northwest Motorsport rejected. On June 21, *Smith* made a settlement offer in which he would dismiss the Appeal:

> *If I dismiss the appeal* with an agreement sent from your firm today and reducing the judgement [sic] from its current outstanding balance from $75k to $50k, I will drop the appeal with a reply by 5:00 pm and agreement today.

CP at 92 (emphasis added). After receiving this settlement proposal from Smith, Northwest Motorsport proposed a counteroffer that incorporated Smith's proposal to dismiss the Appeal but required a payment of $70,000 from Smith. Smith accepted Northwest Motorsport's counteroffer. The parties signed the settlement agreement a week later.

Thus, the record unequivocally shows that Northwest Motorsport did not engage in wrongful and oppressive conduct when negotiating the settlement agreement. *Puget Sound Power & Light Co.*, 84 Wn.2d at 443. By recording its judgment against Smith, Northwest Motorsport

was exercising in good faith a legal right it possessed—the exercise of the right is not coercion or duress as a matter of law. *Pleuss*, 8 Wn. App. at 137. Northwest Motorsport also engaged in good faith negotiations with Smith when it offered to subordinate its lien and prepared subordination documents at its own expense to assist Smith with his efforts to refinance his properties.

Furthermore, it was *Smith* who offered to dismiss the Appeal if a settlement was reached, doing so a full week before he signed the settlement agreement and 11 days before the agreement was fully executed. Based on the evidence showing that it was Smith who offered to dismiss the Appeal, it cannot be said that he was deprived of his free will when he signed the settlement agreement. *Retail Clerks*, 96 Wn.2d at 944-45. To the extent Smith felt compelled to offer to drop the Appeal, there is nothing in the record to show that it was at the urging of Northwest Motorsport. Indeed, Smith even stated in his Motion to Vacate Settlement Agreement it was his *lender* who prompted his financial stress:

> With no access to funds, and Judgement [sic] looming; it then prevented me from gaining a bid bond for a potential (annualized) contract in the amount of $1,200,000.00 dollars. *Cross Country Mortgage errored* [sic] *in a refinance* that could have prevented all of this along with *Chicago Title not upholding their original agreement* with me. It also prevented me from refinancing another property that has a high cost of interest, and prevented funding for my business and next business ventures that are well documented.

CP at 2 (emphasis added). Although the inability to gain a bid bond for a contract and desire to refinance a property at a high interest rate may have caused Smith financial stress, those circumstances do not rise to the level of duress. *Retail Clerks*, 96 Wn.2d at 944.

Moreover, Smith failed to provide any supporting documentation or evidence regarding his financial circumstances or business ventures. Instead, Smith's declaration in support of his reply brief merely stated: "I worked with [counsel] carefully to make these recitations of fact completely

accurate and made sure that the final copy that was filed with the Court was completely true and correct." CP at 117. Accordingly, because Smith did not provide any supporting documentation and Northwest Motorsport provided evidence to dispute Smith's version of events, Smith's "recitations of fact" become a credibility determination. "[C]redibility determinations are for the trier of fact and are not subject to appellate review." *McCallum v. Allstate Prop. & Cas. Ins. Co.*, 149 Wn. App. 412, 427, 204 P.3d 944, *review denied*, 166 Wn.2d 1037 (2009).

Smith's entire argument on appeal is centered on Northwest Motorsport's alleged failure to object to his reply brief filed in the superior court. However, Smith's assertion is belied by the record. The record shows that Northwest Motorsport filed an objection to Smith's reply brief and made an oral objection during the hearing. Thus, Smith's argument is unpersuasive.

The record shows that Northwest Motorsport did not engage in wrongful or oppressive conduct in negotiating the settlement agreement with Smith, it was Smith's lender who dictated the terms of his refinance, and Smith failed to provide any supporting documentation of his financial stress—or that such stress was caused by Northwest Motorsport. Given this record, Smith fails to demonstrate economic duress with clear, cogent, and convincing evidence. Therefore, the superior court did not err when it denied Smith's motion to vacate the settlement agreement.

B. MOTION FOR RECONSIDERATION

1. Legal Principles

On the motion of a party, a judgment may be vacated and the court may grant reconsideration of an issue in certain circumstances. CR 59(a). Those circumstances include

irregularities in court proceedings, misconduct, or newly discovered evidence, among other situations. CR 59.

We review denial of a motion for reconsideration for an abuse of discretion. *Constr. Loan Servs. II, LLC v. ECM Riverside, LLC*, 32 Wn. App. 2d 281, 291, 554 P.3d 1252 (2024). "A trial court abuses its discretion if its decision is 'manifestly unreasonable or exercised on untenable grounds or for untenable reasons.'" *Dynamic Res., Inc. v. Dep't of Revenue*, 21 Wn. App. 2d 814, 824, 508 P.3d 680 (2022) (quoting *McCoy v. Kent Nursery, Inc.*, 163 Wn. App. 744, 758, 260 P.3d 967 (2011), *review denied*, 173 Wn.2d 1029 (2012)).

2. Motion for Reconsideration Properly Denied

Smith assigns error to the superior court's denial of his motion for reconsideration. However, Smith advances no argument as to how or why the superior court erred when it denied the motion. "Appellate courts need not consider arguments that are unsupported by pertinent authority, references to the record, or meaningful analysis." *Cook*, 158 Wn. App. at 794. Thus, we decline to review Smith's challenge.[12]

[12] We note that Smith relied on Pierce County Local Rules (PCLR) 7(c)(1), PCLR 7(c)(2), and PCLR 7(c)(3) for his motion for reconsideration. But PCLR 7 and its subsections are procedural rules specific to Pierce County Superior Court. PIERCE COUNTY SUPER. CT. LOCAL CIV. R. (PCLR) 7. The subsections cited by Smith did not provide any legal support for Smith's argument nor did Smith explain why the superior court should have reconsidered its ruling. PCLR 7(c)(1)-(3). Smith's motion did not once reference CR 59 or even allude to one of the possible circumstances that may justify reconsideration. Smith's argument in his motion for reconsideration is more or less a version of his argument on appeal—essentially, because Northwest Motorsport allegedly failed to object to Smith's reply brief, Smith prevails by default. For the reasons discussed above, this is neither accurate nor persuasive.

C. SUPERIOR COURT'S AWARD OF ATTORNEY FEES TO NORTHWEST MOTORSPORT

Smith also challenges the superior court's award of attorney fees following its denial of the motion to vacate. But Smith provides no argument regarding his challenge to the attorney fee award in either his opening brief or reply brief.

As stated above, "[a]ppellate courts need not consider arguments that are unsupported by pertinent authority, references to the record, or meaningful analysis." *Id.* Thus, because Smith provides no argument, we decline to consider Smith's appeal of the attorney fee award.

D. ATTORNEY FEES AND SANCTIONS ON APPEAL

Northwest Motorsport requests this court to award fees on appeal pursuant to RAP 18.1 and to sanction Smith and Smith's counsel pursuant to RAP 18.9. We agree.

1. Attorney Fees under RAP 18.1

Under RAP 18.1(a), we may award attorney fees on appeal "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review." Attorney fees may be "'authorized by contract, statute or recognized ground in equity.'" *Dankievitch v. Lawrence*, 22 Wn. App. 2d 749, 761, 513 P.3d 804 (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 271, 138 P.3d 943 (2006)), *review denied*, 200 Wn.2d 1017 (2022). Moreover, in any action on a contract where the contract provides for attorney fees, the prevailing party is entitled to attorney fees. RCW 4.84.330.

Here, paragraph 3 of the settlement agreement stated:

> The parties will execute a stipulation for dismissal of the Appeal . . . to Escrow, to be filed by Northwest Motorsport upon closing of the Refinance. The parties agree to submit any other notices, stipulations, motions, or other paperwork necessary to terminate the Litigation.

CP at 30. The settlement agreement also contained a fee provision:

> In the event that any party or Released Party incurs attorney's fees or costs as a result of a breach of this Agreement, the non-breaching party or Released Party shall be entitled to recover such attorney's fees and costs from the breaching party.

CP at 61.

When Smith filed his stipulation to reject the voluntary withdrawal of the appeal, he breached his contract with Northwest Motorsport because Smith's motion was contrary to terminating the litigation, as required by paragraph 3. Thus, because the settlement agreement provides for an award of fees and because Northwest Motorsport is the prevailing party in this appeal, we award Northwest Motorsport attorney fees on appeal.

2. Sanctions under RAP 18.9

RAP 18.9(a) provides that appellate courts may order a party or counsel who has filed a frivolous appeal to pay compensatory damages or to pay sanctions to the court. "'Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party.'" *Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009) (quoting *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849, *review denied*, 164 Wn.2d 1037 (2008)). "'[A]n appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.'" *In re Receivership of Applied Restoration, Inc.*, 28 Wn. App. 2d 881, 902, 539 P.3d 837 (2023) (alteration in original) (quoting *Streater v. White*, 26 Wn. App. 430, 435, 613 P.2d 187, *review denied*, 94 Wn.2d 1014 (1980)), *review denied*, 3 Wn.3d 1012 (2024).

Smith's appeal is frivolous. Smith's opening brief is virtually devoid of any legal authority. Smith's opening brief provides only one legal citation—a citation to Washington Pattern Jury

Instructions: Civil 301.10, which sets forth the clear, cogent, and convincing burden of proof to invalidate a contract due to duress. Smith asserts that simply because he declared his statements were true, the superior court should have taken them as true despite the overwhelming evidence in the record, *including Smith's own e-mails*, that directly refutes his statements. Smith cites no authority supporting his proposition, nor does he cite *any* evidence in the record on appeal; rather, Smith only emphasizes his self-serving "factual recitations" to support his arguments on appeal.

Furthermore, Smith's conduct with Northwest Motorsport reflects what Smith himself has described as a "bait and switch." The record clearly shows that *he* proposed dropping his appeal and *he* accepted Northwest Motorsport's counteroffer. Then, *a full week later*, he signed the settlement agreement and a stipulation for voluntary withdrawal of the Appeal. Once Northwest Motorsport advised Smith that the stipulation and satisfaction of judgment had been filed with the courts, Smith filed his Motion to Vacate Settlement Agreement *less than two hours later*. Smith's Motion to Vacate Settlement Agreement is comprised of multiple pages with attached exhibits, which gives the distinct impression that his motion was prepared far more than an hour in advance of its actual filing. This evidence points to Smith engaging in a bait and switch with Northwest Motorsport. Such conduct is even more incredible in light of Smith's appeal to this court, wherein he accuses Northwest Motorsport of "string[ing] [him] along." Br. of Appellant at 10.

In addition to his violation of RAP 10.3, Smith also violated the rules of appellate procedure when he included two non-dispositive motions to strike evidence in his reply brief on appeal. RAP 17.4(d). In addition, as noted above, Smith misstated RAP 9.1 to this court. *See* RAP 9.1.

The fact that Smith has proceeded in such a manner, and under the guidance of an attorney, demonstrates a disrespect for the legal process. Thus, in addition to granting Northwest Motorsport attorney fees on appeal pursuant to RAP 18.1(a), we grant Northwest Motorsport's request for attorney fees on appeal as a sanction against both Smith and his counsel, jointly and severally, for a frivolous appeal.

CONCLUSION

We affirm the superior court's order denying the motion to vacate the settlement agreement, order denying the motion for reconsideration, and award of attorney fees to Northwest Motorsport. And we award to Northwest Motorsport attorney fees on appeal, both under RAP 18.1(a) and as a sanction against both Smith and his counsel, jointly and severally, for a frivolous appeal.

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.

Lee, J.

We concur:

Cruser, C.J.

Price, J.

APPENDIX B

Order and Judgment Denying Plaintiff's Motion to Strike Settlement, Superior Court of Washington for Pierce County, No. 23-2-04491-1 (July 26, 2024); Order on Reconsideration (Aug. 19, 2024)

23-2-04491-1 59606107 OR 07-30-24

7/31/2024 10:00 0146

THE HONORABLE STANLEY J. RUMBAUGH
Noted for Hearing: July 26, 2024 at 9:00 AM
With Oral Argument

FILED
DEPT 13
IN OPEN COURT
JUL 26 2024
PIERCE COUNTY, Clerk
By BM DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

MARCUS D. SMITH, Plaintiff, v. NORTHWEST MOTORSPORT, INC., and NORTHWEST MOTORSPORT, LLC, Defendants.	No. 23-2-04491-1 **[PROPOSED] ORDER AND JUDGMENT DENYING PLAINTIFF'S MOTION TO STRIKE SETTLEMENT AGREEMENT AND GRANTING DEFENDANT'S REQUEST FOR ATTORNEY'S FEES**

JUDGMENT SUMMARY

Judgment Creditor:	Northwest Motorsport, LLC
Attorneys for Judgment Creditor:	Michael A. Goldfarb Goldfarb & Huck Roth Riojas, PLLC 925 Fourth Avenue, Suite 3950 Seattle, Washington 98104
Judgment Debtor:	Marcus D. Smith
Principal Judgment Amount:	N/A
Pre-Judgment Interest:	N/A
Attorney's Fees:	$13,695.00
Costs:	N/A
Total Judgment Amount:	$13,695.00

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Main: 206.452.0260

7/31/2024 10:00 0147

THIS MATTER having come before the Court on Plaintiff's "Motion to Strike and/or Null In Void Agreement With 'Litigation' Including Pierce County 'The Judgement' and Washington Court of Appeals, Division II Case No. 591448 'The Appeal" (the "Smith Motion"), and on Defendant Northwest Motorsport, LLC's request for attorney's fees with respect to the same, and the Court having considered the pleadings and papers filed by the parties, the arguments presented by parties and counsel, and all other matters properly before the Court, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Smith Motion is DENIED. Smith has failed to demonstrate by clear, cogent and convincing evidence that his decision to enter a settlement with Northwest Motorsport, and to execute the Settlement Agreement and associated documents, was the product of duress. Accordingly, Smith is bound by the Settlement Agreement.

2. Northwest Motorsport is entitled to an award of attorney's fees under the fee provision of the Settlement Agreement for hours incurred in this motion and for related work in the Court of Appeals. All of the below-referenced hours were reasonably incurred in enforcing Northwest Motorsport's rights under the Settlement Agreement, and are thus compensable under the same.

3. In addition, the Smith Motion is frivolous and was filed in bad faith, in violation of CR 11 and RCW 4.84.185 and Northwest Motorsport is entitled to an award of attorney's fees pursuant to CR11 and/or RCW 4.84.185.

4. The Court has reviewed Northwest Motorsport's billing documentation and finds that all the hours claimed in the request for fees were reasonably incurred by Northwest Motorsport in response to the frivolous Smith Motion and Smith's related actions in the Court of Appeals, and that Northwest Motorsport's claim for the following hours is reasonable:

a. Michael Goldfarb: 15.9 hours

b. Brian Ritchie 27.7 hours

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Main: 206.452.0260

5. In its prior Judgment awarding fees to Northwest Motorsport, dated February 9, 2024, the Court found the following rates to be reasonable: $600 per hour for attorney Michael A. Goldfarb; and $150 per hour for law clerk Brian Ritchie. Those rates are again approved as reasonable, including based on their experience and qualifications, the complexity of the litigation, and the amount at issue.

6. Based on the hours and rates listed above, Northwest Motorsport's request for a total of $13,695.00 in attorneys' fees and legal staff time is reasonable and that request is granted.

7. Therefore, pursuant to CR 11 and RCW 4.84.185, the Settlement Agreement, Northwest Motorsport is entitled to an award of $13,695.00 in attorney's fees.

8. Accordingly, as set forth in the Judgment Summary above, judgment is hereby entered in favor of Defendant Northwest Motorsport, LLC, and against Plaintiff Marcus D. Smith, in the total amount of $13,695.00.

9. Post-judgment interest shall accrue on these amounts at the rate of 12% per annum from the date of entry of such judgment until paid in full.

10. The Court shall retain jurisdiction over Plaintiff for purposes of enforcing this Judgment.

DATED this 26 day of July, 2024.

THE HONORABLE STANLEY J. RUMBAUGH

FILED
DEPT 18
IN OPEN COURT
JUL 26 2024
PIERCE COUNTY, Clerk
By DEPUTY

* Mr. Smith shall have until October 25, 2024 to pay this judgment without interest accruing. SJR

7/31/2024 10:00 0148

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Main: 206.452.0260

7/31/2024 10:00 0149

Presented by:
Goldfarb & Huck Roth Riojas, PLLC

/s/ Michael A. Goldfarb
Michael A. Goldfarb, WSBA No. 13492
925 Fourth Avenue, Suite 3950
Seattle, WA 98104
Telephone: 206.452.0260
Facsimile: 206.397.3062
E-mail: goldfarb@goldfarb-huck.com

Attorneys for Defendants Northwest Motorsport, Inc., and Northwest Motorsport, LLC

Approved as to Form

Cal Culbertson
29916

7/31/2024 10:00 0150

CERTIFICATE OF SERVICE

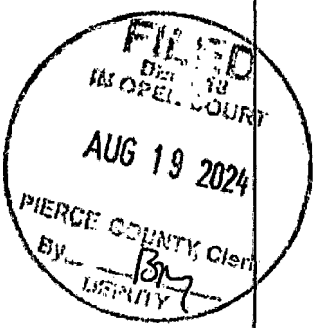
I certify that on this 22nd day of July, 2024, a copy of this document was sent as stated below.

Marcus D. Smith, *pro se Plaintiff* 16825 163rd Place SE Renton, WA 98058 marcusmds@gmail.com	☒ via efiling/email ☐ via legal messenger ☐ via US Mail ☐ via fax

DATED this 22nd day of July, 2024.

/s/ Brian Ritchie
Brian Ritchie

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Main: 206.452.0260



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

MARCUS D. SMITH Plaintiff(s) , vs. NORTHWEST MOTORSPORT INC., NORTHWEST MOTORSPORT, LLC Defendant(s) .	Cause No: 23-2-04491-1 **ORDER ON RECONSIDERATION**

On August 2, 2024 Plaintiff filed a Motion for Reconsideration of the Court's July 26, 2024 Order and Judgment Denying Plaintiff's Motion to Strike Settlement Agreement and Granting Defendant's request for Attorney's Fees. The Court has reviewed Plaintiff's Motion for Reconsideration and pursuant to PCLR 7(c)(3) it is hereby

ORDERED, ADJUDGED and DECREED that Defendants are not required to file a response, and Plaintiff's Motion for Reconsideration is DENIED.

DATED this 19th day of August, 2024.

Judge Stanley J. Rumbaugh

cc: counsel of record

APPENDIX C

Order Denying Petition for Review, Supreme Court of Washington, No. 104770-3
(Mar. 4, 2026)

FILED
SUPREME COURT
STATE OF WASHINGTON
3/4/2026
BY SARAH R. PENDLETON
CLERK

THE SUPREME COURT OF WASHINGTON

MARCUS D. SMITH, Petitioner, v. NORTHWEST MOTORSPORT, INC., et al., Respondents.	)	No. 104770-3 **ORDER** Court of Appeals No. 60047-1-II

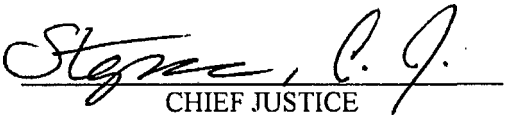
Department I of the Court, composed of Chief Justice Stephens and Justices Johnson, González, Montoya-Lewis, and Mungia, considered at its March 3, 2026, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied and the Respondents' request for attorney fees for filing an answer to the petition for review is granted. The Respondents are awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), the Respondents should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington, this 4th day of March, 2026.

For the Court



CHIEF JUSTICE

APPENDIX D

Order Denying Motion to Modify and Motion for Limited Record Clarification, Supreme Court of Washington, No. 104770-3 (Sept. 2, 2026)

FILED
SUPREME COURT
STATE OF WASHINGTON
9/2/2026
BY SARAH R. PENDLETON
CLERK

THE SUPREME COURT OF WASHINGTON

MARCUS D. SMITH, Petitioner, v. NORTHWEST MOTORSPORT, INC., et al., Respondents.	)	No. 104770-3 **ORDER** Court of Appeals No. 60047-1-II

Department II of the Court, composed of Chief Justice Stephens and Justices González, Montoya-Lewis, Mungia and Angelis, considered this matter at its September 1, 2026, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Deputy Clerk's ruling and motion for limited record clarification are both denied.

DATED at Olympia, Washington, this 2nd day of September 2026.

For the Court

Stephens, C. J.
CHIEF JUSTICE

APPENDIX D-2

Ruling Awarding Attorney Fees and Costs, Court of Appeals of Washington, Division II, No. 60047-1-II (Sept. 16, 2026)

Filed
Washington State
Court of Appeals
Division Two

September 16, 2026

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARCUS D. SMITH, Appellant, v. NORTHWEST MOTORSPORT, INC., and NORTHWEST MOTORSPORT, LLC, Respondent.	No. 60047-1-II RULING AWARDING ATTORNEY FEES AND COSTS

In its October 14, 2025 unpublished opinion, this court awarded Respondent Northwest Motorsport, Inc. and Northwest Motorsports, LLC (Northwest Motorsports) "attorney fees on appeal as a sanction against [Marcus] Smith and his counsel, jointly and severally, for a frivolous appeal" pursuant to RAP 18.1(1). Slip op. at 26. This court wrote, "[i]n addition to [Smith's] violating of RAP 10.3, Smith also violated the rules of appellate procedure when he included two non-dispositive

motions to strike evidence in his reply brief on appeal," "Smith misstated RAP 9.1 to this court," and further "[t]he fact that Smith has proceeded in such a manner, and under the guidance of an attorney, demonstrates a disrespect for the legal process." Slip op. at 25-26 (citing RAP 10.3, RAP 17.4(d), RAP 9.1, and RAP 18.1(1)).

Respondent Northwest Motorsports requests attorney fees of $68,250 in attorney fees, and $338 in costs. Smith has objected to Northwest Motorsport's attorney fee request. He claims that Northwest Motorsport's attorney fee request is "excessive" and requests this court for a reduction in the attorney fee award. Obj. to Attorney Fees at 4. Although Smith states that Northwest Motorsports attorneys per hour fee "seem reasonable," he asserts that

> to counter [Smith's] doomed argument (which has already been determined to have been frivolous and sanctionable) might have taken, reasonably, more like 10 hours, at a blended cost . . . of perhaps $4,250.00.

Obj. to Attorney Fees at 5.

In calculating what should be awarded as reasonable attorney fees, this court employs the "lodestar" method. The court determines the attorney fees to be awarded by multiplying the respective reasonable hourly rates by the number of hours reasonably expended by counsel for the prevailing party. *Bowers v. Transamerica Title Ins., Co.*, 100 Wn.2d 581, 593-94, 675 P.2d 193 (1983). The party requesting attorney fees must provide basic documentation of the work performed sufficient to inform the Court of the number of hours worked, the type of work, and

the category of the attorneys or other professionals who performed the work. *Id.* at 597. The determination as to what are reasonable hours for which counsel can fairly be compensated requires the Court to exclude wasted or duplicative hours. *Mahler v. Szucs*, 135 Wn.2d 398, 433-34, 957 P.2d 632 (1998). The evaluative process requires at least a passing knowledge of what has been considered a reasonable expenditure of efforts and reasonable hourly rates in prior similar litigation.

As Smith concedes, Northwest Motorsport's attorneys are experienced and their rates are typical for appellate attorneys with similar experience. As to Smith's primary objection, the hours spent on this appeal are reasonable. This court is very experienced with the work needed to answer an appeal like Smith's. And Northwest Motorsport cannot be faulted for mounting a complete and comprehensive response brief. Accordingly, it is hereby

ORDERED that Respondent Northwest Motor Sports is awarded $68,250 in attorney fees, and $388 in costs against Appellant Marcus Smith and his attorney Carl Colbert.



Karl R. Triebel
Court Commissioner

cc: Marcus D. Smith, Pro Se
Carl P. Colbert
Michael A. Goldfarb
Howard M. Goodfriend
Ian C. Cairns

APPENDIX E

Commissioner's Ruling (July 8, 2024) and Order Granting Motion to Modify (Aug. 22, 2024), Court of Appeals of Washington, Division II, No. 59144-8-II (related proceeding; not under review)

Washington State Court of Appeals
Division Two

909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

July 8, 2024

Marcus D. Smith
16825 163rd Place SE
Renton, WA 98058
marcusmds@gmail.com

Michael Alan Goldfarb
Goldfarb & Huck Roth Riojas PLLC
925 4th Ave Ste 3950
Seattle, WA 98104-1510
goldfarb@goldfarb-huck.com

CASE #: 59144-8-II Marcus D. Smith, Appellant v. Northwest Motor Sport Inc., Respondent

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER BEARSE:

The parties filed a stipulated motion to withdraw this appeal due to settlement. Appellant then filed a document stating that he wishes to withdraw his request to dismiss this appeal because he is challenging the settlement in the superior court. He also asks this court to stay this appeal pending a superior court decision on his motion to vacate the settlement. Because this resolution of this matter is currently governed by a settlement agreement, the stipulated motion to withdraw the appeal is granted and this appeal is dismissed without prejudice to any further proceedings related to the validity of the settlement agreement.

Sincerely,

Derek M. Byrne
Court Clerk

Filed
Washington State
Court of Appeals
Division Two

August 22, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARCUS D. SMITH, Appellant, v. NORTHWEST MOTORSPORT, INC. & NORTHWEST MOTORSPORT, LLC, Respondents.	No. 59144-8-II ORDER GRANTING MOTION TO MODIFY

Respondent moves to modify a Commissioner's ruling dated July 8, 2024, in this case. Following consideration, the court grants the motion. The appeal is dismissed with prejudice. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Price, Che

FOR THE COURT:

Maxa, J.

MAXA, P.J.

APPENDIX F

Constitutional and Statutory Provisions: U.S. Const. amend. XIV, § 1; 28 U.S.C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

APPENDIX G

Petition for Review, Supreme Court of Washington, No. 104770-3 (filed Nov. 13, 2025) (federal question raised; Rule 14.1(g)(i))

FILED
SUPREME COURT
STATE OF WASHINGTON
11/13/2025 1:15 PM
BY SARAH R. PENDLETON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Marcus D. Smith,

Case #: 1047703

Appellant,

v.

Northwest Motor Sport Inc., et al.,

Respondents.

Court of Appeals Case No. 60047-1

Superior Court Case No. 23-2-04491-1

Dear Clerk:

Please find enclosed Petitioner's Petition for Review, submitted pursuant to RAP 13.4, for filing with the Washington Supreme Court. The accompanying materials are prepared in accordance with the Rules of Appellate Procedure and include proof of service to the Respondent.

Respectfully submitted,

/s/ Marcus D. Smith

Marcus D. Smith, Pro Se Petitioner

16825 163rd Pl SE

Renton, WA 98058

(206) 391-4900

Marcusmds@gmail.com

PETITION FOR REVIEW

TABLE OF CONTENTS

1. Statement of the Case 1

2. Table of Authorities 1

3. Procedural History 2

4. Assignments of Error 3

5. Issues Presented for Review 4

6. Statement of Facts 5

7. Summary of Argument 7

8. Argument 8

I. Respondent's Conduct Constituted a Material Breach of the Escrow Agreement and Coerced Appellant Under Duress

II. Respondent's Actions Undermined the Neutrality and Integrity of the Escrow Process

III. Conditioning Lien Release Upon Dismissal of an Appeal Violates the Right to Appellate Review and Constitutes Coercion

IV. The Trial Court Erred in Denying Appellant's Motion to Vacate Settlement

9. Conclusion and Prayer for Relief 13

TABLE OF AUTHORITIES

Cases:

In re Pers. Restraint of Stenson, 174 Wn.2d 474 (2012)

Mathews v. Eldridge, 424 U.S. 319 (1976)

Tanner v. King County, 20 Wn. App. 2d 1037 (2021)

State v. McFarland, 127 Wn.2d 322 (1995)

Smith v. Orthopedics Int'l, Ltd., 170 Wn. App. 684 (2012)

Constitutional Provisions:

U.S. Const. amend. XIV, § 1

Wash. Const. art. I, § 3

Rules:

RAP 9.2(a), 13.4(b), 13.7(b); RPC 3.3

STATEMENT OF THE CASE

Appellant and Respondent executed an escrow agreement in the amount of $125,000.00 through a neutral escrow firm. The escrow's purpose was to hold and disburse funds in accordance with mutually agreed terms. Appellant's lender required that Respondent release the judgment lien before funding would be disbursed. Respondent's counsel initially agreed but later reversed position, instructing the escrow officer not to release the lien unless Appellant dismissed a pending appeal (Case No. 59XXX). This condition was not part of the escrow agreement and contradicted prior representations to the lender and escrow officer.

By conditioning lien release upon dismissal of an appeal, Respondent acted outside the scope of the escrow agreement, coerced Appellant under duress, and undermined the neutrality of the process. The trial court denied Appellant's motion to vacate the settlement, and the Court of Appeals affirmed without addressing these due process concerns.

During proceedings, opposing counsel engaged in coercive conduct related to a lien but purposely chose not to respond to the Petitioner's motion raising that issue. That silence effectively prevented both the trial court and the Court of Appeals from addressing misconduct.

Additionally, opposing counsel submitted untimely motions—including a pretrial motion, a motion during court proceedings, and a motion to the Washington State Court of Appeals—each styled as a 'strict reply' despite being outside procedural deadlines. These repeated untimely submissions created prejudice and procedural imbalance, particularly where Petitioner, as a pro se litigant, complied with all filing requirements.

The Court of Appeals later characterized the Petitioner's claims as 'frivolous,' without acknowledging that opposing counsel's procedural tactics and omissions deprived the record of necessary factual content.

PROCEDURAL HISTORY

Following judgment in the Superior Court, the parties negotiated a $125,000.00 settlement through a neutral escrow. Respondent refused to release the judgment lien unless Appellant dismissed a pending appeal. Appellant, under coercion, signed the settlement. The Superior Court denied Appellant's Motion to Vacate Settlement, and the Court of Appeals affirmed. Appellant now seeks review under RAP 13.4.

ASSIGNMENTS OF ERROR

1. The trial court erred by failing to find that Respondent's conditioning of lien release upon dismissal of the appeal constituted a material breach of the escrow agreement and coerced Appellant under duress.

2. The trial court erred in denying Appellant's Motion to Vacate Settlement despite uncontroverted evidence of coercion and breach of neutrality.

3. The trial court erred in failing to protect Appellant's right to appellate review under Washington and federal constitutional law.

4. The trial court erred in failing to recognize that Respondent's conduct violated principles of procedural fairness, due process, and the integrity of neutral escrow arrangements.

ISSUES PRESENTED FOR REVIEW

1. Whether conditioning lien release upon dismissal of a pending appeal constitutes coercion and a material breach of an escrow agreement.

2. Whether the trial court erred in denying Appellant's Motion to Vacate Settlement when Respondent's conduct altered escrow terms under duress.

3. Whether Respondent's use of escrow to compel dismissal of an appeal violates constitutional and procedural fairness rights.

4. Whether the Court of Appeals erred by disregarding opposing counsel's procedural omissions, resulting in a denial of due process.

5. Whether unequal enforcement of procedural rules against a pro se litigant violates constitutional guarantees of fair process.

6. Whether the use of procedural silence to avoid judicial scrutiny raises issues of substantial public interest under RAP 13.4(b).

STATEMENT OF FACTS

After judgment entered in the Superior Court, the parties agreed to a $125,000 settlement via a neutral escrow. Respondent initially confirmed that lien release would precede loan disbursement, consistent with the lender's conditions. Later, Respondent refused to release the lien unless Appellant dismissed a pending appeal. Facing this coercive demand, Appellant signed under duress.

Appellant's subsequent Motion to Vacate Settlement was denied without the court addressing Respondent's alteration of escrow terms or the coercion claim. The appellate record (RAP 9.2(a)) contains the relevant Verbatim Report of Proceedings (VRP) and Clerk's Papers (CP) documenting these facts.

SUMMARY OF ARGUMENT

Respondent's conduct violated the neutrality of the escrow process and coerced Appellant into dismissing an appeal. This was a material breach of contract and a due process violation. The trial court's failure to address this misconduct warrants reversal. Escrow arrangements must remain neutral and free from coercion that interferes with appellate rights.

ARGUMENT

I. Respondent's Conduct Constituted a Material Breach of the Escrow Agreement and Coerced Appellant Under Duress

Respondent unilaterally imposed a condition outside the scope of the escrow agreement, violating established contract principles and rendering the settlement voidable under duress.

II. Respondent's Actions Undermined the Neutrality and Integrity of the Escrow Process

Escrow arrangements demand strict neutrality. Respondent's interference compromised that neutrality and prevented fair administration.

III. Conditioning Lien Release Upon Dismissal of an Appeal Violates the Right to Appellate Review

The Washington and U.S. Constitutions protect the right to judicial review. Conditioning lien release upon dismissal of an appeal coerces waiver of that right, contrary to public policy.

IV. The Trial Court Erred in Denying Appellant's Motion to Vacate Settlement

The trial court's refusal to vacate the coerced settlement endorsed conduct contrary to fundamental fairness and public confidence in the judiciary.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Reverse the trial court's denial of the Motion to Vacate Settlement;

2. Vacate any settlement or escrow instructions executed under duress;

3. Remand for enforcement of the original neutral escrow agreement; and

4. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 13th day of November 2025.

/s/ Marcus D. Smith

Marcus D. Smith, Pro Se

16825 163rd Pl SE

Renton, WA 98058

(206) 391-4900

Marcusmds@gmail.com

RECEIVED
NOV 05 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MARCUS SMITH

November 13, 2025 - 1:15 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Marcus D. Smith, Appellant v. Northwest Motor Sport Inc., et al, Respondents (600471)

The following documents have been uploaded:

- PRV_Petition_for_Review_Plus_20251113131216SC807906_6676.pdf
  This File Contains:
  Certificate of Service
  Petition for Review
  The Original File Name was Supreme Final Version.pdf

A copy of the uploaded files will be sent to:

- ccolbert@colbertlaw.com
- goldfarb@goldfarb-huck.com

Comments:

Sender Name: Marcus Smith - Email: marcusmds@gmail.com
Address:
16825 163RD PL SE
RENTON, WA, 98058
Phone: (206) 391-4900

Note: The Filing Id is 20251113131216SC807906

APPENDIX H

Respondents' Answer to Petition for Review, No. 104770-3 (Dec. 12, 2025), cover and pp. 14–16, 20–23 (excerpts)

FILED
SUPREME COURT
STATE OF WASHINGTON
12/12/2025 11:20 AM
BY SARAH R. PENDLETON
CLERK

No. 1047703
SUPREME COURT OF THE STATE OF WASHINGTON,

MARCUS D. SMITH,

Petitioner,

v.

NORTHWEST MOTORSPORT, INC., a Washington corporation, and NORTHWEST MOTORSPORT, LLC, a Washington limited liability company,

Respondents.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Michael A. Goldfarb, WSBA No. 13492
GOLDFARB & HUCK RIOJAS, PLLC
925 Fourth Avenue, Ste. 3950
Seattle, Washington 98104
Telephone: (206) 452-0260
Facsimile: (206) 397-3062
E-mail: goldfarb@goldfarb-huck.com

Attorneys for Defendants/Respondents

3. Smith Improperly Raises New Arguments on Review.

At least two of the threadbare arguments in Smith's Petition were not raised at the trial court or even the Court of Appeals. Smith fails to provide any reason why the Court should consider these new arguments – and there is none. *See Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 853, 50 P.3d 256 (2002) ("[A]rguments not raised in the trial court generally will not be considered on appeal.") (quoting *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993)); *see also* RAP 2.5(a).

The first of Smith's new arguments is that Northwest Motorsport violated some sort of "escrow agreement." This may be a variation of Smith's prior argument regarding a supposed "bait and switch," which the trial court rejected and the Court of Appeals found to be fabricated and sanctionable. But in any event, Smith newly alleged "escrow agreement" comes without any citation to the record and doesn't change the basic fact: there was no agreement between Smith and Northwest Motorsport,

"escrow" or otherwise, prior to the Settlement Agreement. The Settlement Agreement itself was implemented in part by the escrow agent so that Smith could execute a refinance that did not involve Northwest Motorsport. *See* Opinion, p.9. Northwest Motorsport fully performed under the Settlement Agreement. It was *Smith* who breached the Settlement Agreement, by trying to back out of his obligation to dismiss his appeal as soon as he received the refinance proceeds. *See id.*, pp.23-25 (awarding contractual attorneys' fees because Smith breached the Settlement Agreement, and noting the party who performed a "bait and switch" was *Smith*).

Incidentally, far from improving Smith's position, Smith's new "escrow" angle provides yet another reason Smith's alleged (but nonexistent) oral agreement is unenforceable. Escrow instructions are required to be *in writing and signed by the parties*. *See* WAC 208-680-540(1)(a).[4] Had the parties

[4] The (nonexistent) oral agreement alleged by Smith is also unenforceable under CR 2A and RCW 2.44.010, which require

"executed an escrow agreement in the amount of $125,000.00 through a neutral escrow firm" (Petition, p.3) prior to the Settlement Agreement, there would necessarily be a written record of that earlier agreement, including written escrow instructions. But Smith can point to no such record, because it never happened.

In the second of his new arguments, Smith now appears to contend that even if he failed to show duress, the Settlement Agreement is still unenforceable because it somehow deprived Smith of his supposed "due process" right to continue litigating. This too is a new argument not made below. And, as discussed further below, Smith's due process argument proves too much—under Smith's suggestion, all settlements that end litigation would violate due process.

---

settlement agreements to be in writing. *See* Brief of Respondent, pp. 56-57.

2. Significant Question of Constitutional Law (RAP 13.4(b)(3)).

Smith fares no better as to the third prong of the test: whether his case presents a significant question of law under the Constitutions of Washington or the United States. *See* RAP 13.4(b)(3). To begin with, Smith would need to identify what state or federal provision he claims applies. But he does not even do that.[5]

Here, at most, Smith's Petition makes a few generic but unsupported references to "due process," "the right to judicial review," and the like. But once again, Smith fails to support those conclusory references with analysis or any authority, and thus does not meet his burden.

[5] Smith's "Table of Authorities" includes a reference to the Fourteenth Amendment to the United States Constitution. But as with the cases in the "Table of Authorities," the Fourteenth Amendment is not cited in the body of Smith's brief. Nor do his vague references to "due process" cite or otherwise resemble any caselaw interpreting the Fourteenth Amendment.

Smith appears to be arguing that his right to due process was violated merely because the trial court and Court of Appeals enforced the Settlement Agreement, one term of which was the withdrawal of Smith's former appeal. This argument is not only unsupported; it is nonsensical and contrary to caselaw routinely holding that settlements terminating litigation are not only enforceable, but they are also favored. *See Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 414, 36 P.3d 1065 (2001) (The law ***favors*** the private settlement of disputes and is inclined to view them with finality.") (emphasis added).

Smith's argument also ignores how and why Smith's prior appeal was extinguished: it was because *Smith himself* proposed, and entered into, a Settlement Agreement that included dismissal of his appeal. *See* Opinion, p.20. "Most rights can be waived by contract or conduct." *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 106, 297 P.3d 677 (2013). And the "right" to continue with litigation is certainly one that can be waived by contract (*i.e.*, a settlement agreement). *See Romano v. Abraham*,

44 Wn.2d 848, 850, 271 P.2d 701 (1954) ("The settlement or agreement to compromise [] a claim is supported by sufficient consideration, the real consideration to each party being, not the sacrifice of the right, but the settlement of the dispute.") (citation and punctuation omitted).

Thus, to the extent Smith had a "right" to an appeal, he gave it up, in exchange for concessions which Northwest Motorsport was not otherwise obligated to provide, including a discounted payoff of the judgment and a release of the judgment lien. Smith's self-serving claims that he had no meaningful choice are simply another version of his duress argument, which the trial court and Court of Appeals properly found to be baseless. *See* Opinion, pp.18-21.

Smith's argument makes no sense. In typical settlement agreements, at least one of the parties gives up the "right" to further assert a legal claim. That's what settlement is. Thus, if the law were as Smith suggests, no settlement agreement would ever be enforceable, because the surrender of those claims would

always violate alleged "due process." But of course, settlement agreements are not prohibited; on the contrary, they are "favored." *Oregon Mut.*, 109 Wn. App. at 414.

Finally, Smith's so-called due process argument further fails because "[t]here is ***no constitutional right to appeal in civil cases***." *City of Bremerton v. Spears*, 134 Wn.2d 141, 148, 949 P.2d 347 (1998) (emphasis added). Rather, "the right exists in civil cases when granted by the Legislature or at the discretion of the court." *Id.* Thus, while the Petition fails to articulate *any* type of coherent question for review, it certainly does not present a *constitutional* question as required by RAP 13.4(b)(3).

Smith's Petition also cryptically references some additional alleged due process issue related to the timing of motions:

> Additionally, opposing counsel submitted untimely motions—including a pretrial motion, a motion during court proceedings, and a motion to the Washington State Court of Appeals—each styled as a 'strict reply' despite being outside procedural deadlines. These repeated untimely submissions created prejudice and procedural imbalance,

APPENDIX I

Settlement Agreement (signed June 28 and July 2, 2024), as filed as Ex. 1 to Decl. of Michael A. Goldfarb (CP 59–61)

SETTLEMENT AGREEMENT

Pursuant to Civil Rule 2A, Plaintiff Marcus D. Smith ("Smith") and Defendant Northwest Motorsport, LLC f/k/a Northwest Motorsport, Inc. ("Northwest Motorsport"), do hereby agree to resolve the lawsuit *Smith v. Northwest Motorsport, Inc. et al.*, (the "Litigation"), including Pierce County Superior Court Case No. 23-2-04491-1, Pierce County Superior Court Judgment No. 24-9-00491-3 (the "Judgment"), and Washington Court of Appeals, Division II Case No. 591448 (the "Appeal") as follows:

1. The parties will establish an escrow account ("the Escrow") at Chicago Title Company of Washington to conclude this settlement.
2. Northwest Motorsport will accept the sum of $70,000 (the "Settlement Payment"), to be paid from Escrow to the Goldfarb & Huck Roth Riojas, LLC trust account upon the closing of the refinance of Smith's primary residence (the "Refinance"), in full satisfaction of the Judgment. An executed form of Satisfaction of Judgment (attached as Exhibit A) will be placed into Escrow, with instructions to release only simultaneously with payment of the Settlement Payment.
3. The parties will execute a stipulation for dismissal of the Appeal (attached as Exhibit B), to Escrow, to be filed by Northwest Motorsport upon closing of the Refinance. The parties agree to submit any other notices, stipulations, motions, or other paperwork necessary to terminate the Litigation.
4. Effective upon closing of the Refinance, Smith, unconditionally and forever releases, discharges, and acquits each of the following:
    a. Northwest Motorsport, LLC;
    b. Northwest Motorsport, Inc.;
    c. HILT Venture Cap. Inc.;
    d. HILT Investment Holdings LLC;
    e. HILT Capital Partners LLC;

f. HILT Holdings Reinsurance Limited;

g. HILT 550 Reinsurance Company, LTD;

h. Tricor Reinsurance Company LTD;

i. Joy Drive OEM, LLC;

j. RFJ Auto Partners, Inc.;

k. RFJ Auto Partners Northern Holdings, Inc.;

l. Sonic Automotive, Inc.;

m. EchoPark Automotive, Inc.;

n. Donald Fleming;

o. Corey Forsberg;

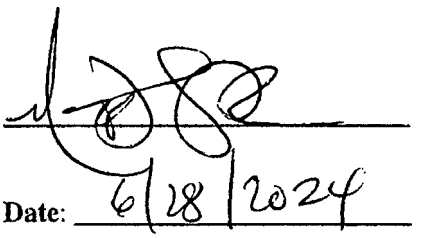
and each of their owners, affiliates, officers, directors, employees, and agents ("Released Parties") from any and all claims, every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, which have based upon, arising out of, or related to any matter, cause, fact, thing, act, event, representation, or omission whatsoever occurring or existing at any time up to and including the date of this Agreement, including without limitation based upon, arising out of, or related to the Litigation. Without limiting the foregoing, Smith expressly releases any employment-related claims, and any claims based on an alleged agreement of any kind with any of the Released Parties.

5. Except as to the $70,000 Settlement Payment, each party shall bear its own costs and fees with respect to the Litigation.

6. In the event that any party or Released Party incurs attorney's fees or costs as a result of a breach of this Agreement, the non-breaching party or Released Party shall be entitled to recover such attorney's fees and costs from the breaching party.

7. This Agreement may be executed in counterparts, and may be signed electronically with the same effect as if physically signed.

Marcus D. Smith, ***Pro Se***



Date: 6/28/2024

Northwest Motorsport, LLC f/k/a Northwest Motorsport, Inc.

BY: GOLDFARB & HUCK ROTH RIOJAS, PLLC

/s/ Michael A. Goldfarb

Michael A. Goldfarb, WSBA No. 13492
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Telephone: (206) 452-0260
Facsimile: (206) 397-3062
E-mail: goldfarb@goldfarb-huck.com

Attorneys for Defendants

Date: 7/2/2024

APPENDIX J

Emergency Motion re Chicago Title Records, Supreme Court of Washington, No. 104770-3, Filing ID 20261016095452SC495088 (Oct. 16, 2026), and Deputy Clerk's letter of the same date (exhibits omitted; on file under the Filing ID)

FILED
SUPREME COURT
STATE OF WASHINGTON
10/16/2026 11:13 AM
BY SARAH R. PENDLETON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

Petitioner, v. NORTHWEST MOTORSPORT, INC., et al., Respondents.

Supreme Court No. 10177[illegible]70-3

EMERGENCY MOTION FOR EXPEDITED DIRECTION REGARDING CHICAGO TITLE RECORDS, PROPOSED SUBPOENA PROCESS, AND CONDITIONAL REGULATORY ACCESS

RELIEF REQUESTED

Petitioner Marcus D. Smith, self-represented, respectfully requests urgent consideration and procedural direction before the applicable deadline for his corrected petition for writ of certiorari to the United States Supreme Court. He seeks a legally available means to obtain identified Chicago Title records, particularly correspondence following his June 20, 2024, 5:00 PM instruction through June 22, 2024. The Court is asked to act as promptly as its procedures permit, ideally by October 19, 2026. This motion does not represent that a subpoena has issued, that production is already compelled, or that the Supreme Court certiorari deadline has been extended.

SUPPORTING FACTS

1. In Pierce County Superior Court No. 23-2-04491-1, opposing counsel Michael A. Goldfarb issued a June 13, 2024 subpoena duces tecum directed to Chicago Title, demanding broad records concerning loan transactions, properties, petitioner's finances, the lawsuit, and judgment, with July 5, 2024 listed for production. A copy is provided as Exhibit 1.

2. The June 20, 2024 email chain includes petitioner's 5:00 PM message to Jaime Lawson, copied to John Jackson, stating: "I will pay judgement from proceeds." It also contains a quoted 5:18 PM response from Jaime Lawson concerning coordination of a signing. A later message in the same thread is separately time-stamped. Petitioner will attach the exported email chain as Exhibit 5. The preceding 4:41 PM correspondence is a distinct chronological anchor and should be verified against its original message before any characterization is made.

3. In October 2026 correspondence, J.L. Jackson IV stated Chicago Title would respond to a duly issued and properly served subpoena or other valid legal process and declined general voluntary production. An October 15, 2026, 3:45 PM message also transmitted certain documents related to the 2024 loan closing. This partial response does not establish that the complete requested escrow communications were produced. The original correspondence should be attached as Exhibit 2.

4. Petitioner is preparing a corrected petition for writ of certiorari to the United States Supreme Court and must meet the applicable filing deadline. He seeks expedited direction so that any authorized records process can proceed before that deadline, if feasible. The precise due date and any extension order should be confirmed and supplied to the Court as an exhibit or in a supporting declaration before filing. An October 13, 2026 printer estimate of $6,097.20 (excluding shipping and tax) reflects preparation costs; it is not evidence of the legal due date. Petitioner recognizes that obtaining additional records is not a prerequisite to filing a rule-compliant petition and will not treat this request as tolling federal deadlines.

5. This request seeks only the existing records needed to examine communications and actions after petitioner's June 20 instruction and the documented reasons, if any, for noncompletion of the proposed payoff. Petitioner does not request reconsideration, modification, or reversal of the Washington Supreme Court's final decision, nor does petitioner contend newly obtained records automatically become part of the record on certiorari.

GROUNDS AND PROCEDURAL REQUEST

6. Washington CR 45(a) governs issuance of subpoenas. CR 45(b)(2) ordinarily requires advance notice to other parties before a documents-only subpoena is served on its recipient, subject to lawful exceptions. Petitioner requests court direction and any legally available shortening of notice for good cause; he does not request unilateral waiver of applicable service, privilege, or objection protections.

7. This motion is presented for procedural direction under applicable appellate motion rules, including RAP 17.3 and RAP 17.4, only to the extent those rules permit relief in the present posture. Petitioner asks that the Court determine whether a records-production process may be authorized here, or whether an application must instead be directed to the Court of Appeals, Pierce County Superior Court, or another court with authority.

8. Petitioner respectfully requests a response as promptly as practicable, preferably by Monday, October 19, 2026, because of the imminent federal petition filing. If the Court is unable to direct production within that period, petitioner requests an expedited ruling on the proper procedure so he can pursue any available relief without delay. No immediate production is demanded absent lawful issuance, service, and court authorization.

9. Petitioner intends to copy OIC and DFI on the correspondence to provide regulatory notice. Any agency access to produced records would require that agency's own legal authority, a lawful disclosure arrangement, or court-approved terms. Merely copying an agency does not compel production or entitle it to confidential material.

10. Respect for final decision and request for direction. This application does not seek reconsideration, modification, or reversal of the Washington Supreme Court's final decision. If this request is before the wrong court or uses an improper procedural mechanism, I sincerely apologize for any procedural impropriety. I respectfully ask the Court to indicate, to the extent it may properly do so in an order, whether the appropriate authority rests with this Court, the Court of Appeals, Pierce County Superior Court, or another court of competent jurisdiction. Because the certiorari petition deadline is approaching, I ask for urgent consideration of that threshold issue and will await the Court's response before attempting further subpoena action.

DATED October 16, 2026.
/s/ Marcus D. Smith
Marcus D. Smith, Petitioner, self-represented
marcusmds@gmail.com

MARCUS SMITH

October 16, 2026 - 11:13 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,770-3
Appellate Court Case Title:	Marcus D. Smith v. Northwest Motorsport, Inc., et al.

The following documents have been uploaded:

- 1047703_Exhibit_20261016095452SC495088_9999.pdf
  This File Contains:
  Exhibit
  The Original File Name was Smith1047703CombinedSupportingExhibits20261016.pdf
- 1047703_Motion_20261016095452SC495088_8566.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was Smith1047703EmergencyMotionChicagoTitleRecords20261016.pdf

A copy of the uploaded files will be sent to:

- CSEnforceComplaints@dfi.wa.gov
- DCU@dfi.wa.gov
- Jamie.D.Lawson@ctt.com
- John.Jackson@ctt.com
- andrienne@washingtonappeals.com
- goldfarb@goldfarb-huck.com
- howard@washingtonappeals.com
- ian@washingtonappeals.com
- investigationR@oic.wa.gov

Comments:

Emergency motion requesting expedited procedural direction regarding Chicago Title records before pending U.S. Supreme Court certiorari filing deadline. The request concerns June 20-22, 2024 correspondence and does not seek reconsideration of the Washington Supreme Court's final decision. Respectfully requests prompt consideration and direction if relief must be sought in another court.

Sender Name: Marcus Smith - Email: marcusmds@gmail.com
Address:
16825 163RD PL SE
RENTON, WA, 98058
Phone: (206) 391-4900

Note: The Filing Id is 20261016095452SC495088

THE SUPREME COURT

SARAH R. PENDLETON
SUPREME COURT CLERK

REZA J. PAZOOKI
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

October 16, 2026

LETTER SENT BY E-MAIL ONLY

Marcus D. Smith
16825 163rd Place SE
Renton, WA 98058
marcusmds@gmail.com

Ian Christopher Cairns
Smith Goodfriend, P.S.
1619 8th Ave N
Seattle, WA 98109-3007
ian@washingtonappeals.com

Michael Alan Goldfarb
Goldfarb & Huck Riojas PLLC
925 4th Ave Ste 3950
Seattle, WA 98104-1510
goldfarb@goldfarb-huck.com

Howard Mark Goodfriend
Smith Goodfriend, P.S.
1619 8th Ave N
Seattle, WA 98109-3007
howard@washingtonappeals.com

Re: Supreme Court No. 1047703 – Marcus D. Smith v. Northwest Motorsport, Inc., et al.
Court of Appeals No. 600471 – Division II
Pierce County Superior Court No. 23-2-04491-1

Counsel and Marcus D. Smith:

On October 16, 2026, the Court received the Petitioner's "EMERGENCY MOTION FOR EXPEDITED DIRECTION REGARDING CHICAGO TITLE RECORDS, PROPOSED SUBPOENA PROCESS, AND CONDITIONAL REGULATORY ACCESS."

The petition for review in this matter was denied by the Court on March 4, 2026. Since this matter is no longer before the Court, the Court lacks authority to act on any request for relief. Additionally, the Court cannot provide legal advice regarding the proposed subpoena.

The letter has been placed in the closed case file. Any further requests related to this matter should be directed to the Court of Appeals or the trial court.

Sincerely,

Reza J. Pazooki
Supreme Court Deputy Clerk

RJP:sh

APPENDIX K

Email thread "23-2-04491-1 Civil Bond" (June 20, 2024): Pierce County Clerk's Office court-registry instructions and Petitioner's forward to Respondents' counsel (excerpts) (Rule 14.1(i)(vi)); not part of the record reviewed below; referenced at CP 93.

Gmail

Marcus Smith <marcusmds@gmail.com>

23-2-04491-1 Civil Bond

4 messages

Lahna Storlie <lahna.storlie@piercecountywa.gov> Thu, Jun 20, 2024 at 10:54 AM
To: "marcusmds@gmail.com" <marcusmds@gmail.com>

Good morning!

Pierce County Superior Court accepts civil bond deposits to the court registry and need to be made payable to Pierce County Clerk and brought in or mailed to the address:

Pierce County Superior Court Clerk

930 Tacoma Ave S.

Room 110

Tacoma, WA 98402

Kindest regards,

Lahna Mae Storlie

Accounting Assistant 4

Pierce County Office of the County Clerk

930 Tacoma Avenue South, Room 110

Tacoma, WA 98402-2117

lahna.storlie@piercecountywa.gov

Notice: Public documents and records are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

[Next message in thread omitted.]

[Portion of printout omitted.]

Marcus Smith <marcusmds@gmail.com> Thu, Jun 20, 2024 at 12:20 PM
To: Brian Ritchie <ritchie@goldfarb-huck.com>
Cc: Mike Goldfarb <goldfarb@goldfarb-huck.com>

Brian,

My communication was not a threat, in good faith I canceled court [June 21st 2024] because Mr. Goldfarb expressed in our phone conversation that he rather not attend and when I received a Linx notification soon after my initial response this morning seemed to coincidental. We have agreed to an amount to be held $125,000.00; and we know that I have a case in the Washington Courts, Division 2 #59144-8-II.

In order to access funds, the title company needs a release prior to funding the loan.

I am proposing another solution whereas we give instructions to escrow and the lender; the Title Company confirmed that they will ensure a Title as long as we are resulting in terms that pays the lien/judgement and since we are aware of the Appeal; we can explicitly pay funds to them directly to the courts as Ms. Lahna Storlie has provided below.

1) Opposing Counsel will release lien only if Marcus D. Smith and Lender immediately sends funds to Pierce County Superior Court to be held as a Civil Bond for case #23-2-04491-1.

2) Please provide any agreements that will 1st release this property and then instructs (necessary parties to fund Pierce County Court.

3) This will resolve and protect all parties and it will prevent unnecessary court solutions that have to be adjudicated from the Honorable Stanley Rumbagh.

4) I have another property that can be temporarily held in lien until this matter is resolved and/or funded if that provides more security.

I myself have aging parents in declining health. This matter is preventing me from providing the Assisted Care that they desperately need.

Please provide an agreement; so that we can move all parties forward.

Best regards,

Marcus Smith
206-391-4900

Begin forwarded message:
[Quoted text hidden]

[Remainder of printout omitted: later message dated Oct. 28, 2026, not part of the June 2024 thread.]

APPENDIX L

Respondents' Response to Plaintiff's "Proposed Order for a Bond," Superior Court of Washington for Pierce County, No. 23-2-04491-1 (June 7, 2024) (Rule 14.1(i)(vi)); not part of the record reviewed below; submitted with Petitioner's June 22, 2026 motion (see App. D). Petitioner's Proposed Order is CP 85.

THE HONORABLE STANLEY J. RUMBAUGH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

MARCUS D. SMITH, Plaintiff, v. NORTHWEST MOTORSPORT, INC., and NORTHWEST MOTORSPORT, LLC, Defendants.	CASE NO. 23-2-04491-1 **DEFENDANT NORTHWEST MOTORSPORT, LLC'S RESPONSE TO PLAINTIFF'S "PROPOSED ORDER FOR A BOND"**

While Northwest Motorsport has no objection to a proper and sufficient supersedeas, Plaintiff's so-called "Proposed Order for a Bond" is improper and indicates that Plaintiff is confused regarding supersedeas procedure. The "Proposed Order" appears to be some type of motion (though not noted as such), but it is unclear what exactly Plaintiff is seeking. Plaintiff is already free to either submit a bond through a surety company, or a cash supersedeas to the Court registry, without the need for prior authorization from the Court. *See* RAP 8(b). To the extent Plaintiff is asking the Court to determine the required amount of the bond, that is premature. *See* RAP 8(e). That said, Northwest Motorsport would consider the amount of $125,000 referenced in Plaintiff's "Proposed Order" the Court as sufficient.

RESPECTFULLY SUBMITTED this June 7, 2024.

GOLDFARB & HUCK ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
(206) 452-0260

GOLDFARB & HUCK ROTH RIOJAS, PLLC

/s/ Michael A. Goldfarb
Michael A. Goldfarb, WSBA No. 13492
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
Telephone: (206) 452-0260
E-mail: goldfarb@goldfarb-huck.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served as stated below:

Marcus D. Smith, *pro se Plaintiff* 16825 163rd Place SE Renton, WA 98058 marcusmds@gmail.com	☒ via efiling/email ☐ via legal messenger ☐ via US Mail ☐ via fax

DATED this June 7, 2024.

/s/ Brian Ritchie
Brian Ritchie

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, Washington 98104
(206) 452-0260

APPENDIX M

Verbatim Report of Proceedings, Superior Court of Washington for Pierce County, No. 23-2-04491-1 (July 26, 2024), excerpts: cover and pp. 5–6, 13–14 (1 VRP).

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

FILED
Court of Appeals
Division II
State of Washington
10/9/2024 9:57 AM

DEPARTMENT 18

MARCUS D. SMITH, Plaintiff,	)	
vs.	)	No. 23-2-04491-1
NORTHWEST MOTORSPORTS, INC., and NORTHWEST MOTORSPORTS, LLC, Defendants.	)	Court of Appeals No. 60047-1-II

VERBATIM TRANSCRIPT OF PROCEEDINGS

VOLUME I

July 26, 2024

County-City Building

Tacoma, Washington

before the

HONORABLE STANLEY RUMBAUGH

REPORTED BY: AMY E. JOYEUX, CCR

For the Plaintiff: MR. CARL COLBERT

For the Defendant: MR. MICHAEL GOLDFARB

it could be someone who signed a contract under economic duress or it's sometimes called business coercion.

Now in this case, my client has made his case that this agreement, the settlement agreement that was presented to the appellate court, was signed under business coercion and economic distress. The way this happened is Mr. Smith has been desperately trying to obtain an appellate bond so he can continue his appeal without having to pay the judgment that was ordered in this court. The parties --

THE COURT: It happens all the time.

MR. COLBERT: It happens all the time.

The parties made an agreement that he would obtain an appellate bond for $125,000. And the parties both attempted to make that happen by signing various documents and making agreements where an escrow would do a refinance for Mr. Smith, and he would be able to pull money out of one of his homes, his primary residence.

THE COURT: They wouldn't subordinate?

MR. COLBERT: Exactly. And that was tried. They tried to subordinate. No -- the lender was not having it. So the parties reached a different

agreement. Since it looked like they were not going to be able to ever get this $125,000 appellate bond, they agreed that Mr. Smith would pay $70,000 from escrow so that -- the defendant is actually getting paid a huge chunk of their judgment. I think it was like 75,000.

THE COURT: I think they agreed to take 50. No?

MR. COLBERT: I think it was 70 but I -- again, I wasn't there.

THE COURT: Maybe it was part of the negotiation, okay. Sorry.

MR. COLBERT: So I think it was 70. Mr. Goldfarb will correct me if I'm wrong because he was there, but I think it was 70. So they got a huge chunk of this, like almost everything. They got fully paid almost in exchange for Mr. Smith getting a satisfaction of judgment. Just that, satisfaction of judgment in exchange for $70,000.

Then at the last minute the defendants, like Darth Vader, altered the deal. And they said, no, that's not going to fly anymore. Now you've got to dismiss your appeal. The whole point of Mr. Smith struggling so hard to get that appellate bond was so he could continue with his appeal. The

the first time the parties stopped talking about some subordination or appellate bond. This is Mr. Smith coming to us starting an actual settlement discussion by saying, "If I dismiss the appeal and you reduce it from 75- to 50,000, I will drop the appeal. Let me know by 5:00 today."

THE COURT: Okay.

MR. GOLDFARB: And our response up the page, "We're authorized to resolve this matter by your payment of 70,000 and your dismissal of the appeal."

And we asked him to tell us by the end of the day. I think that was a Friday. We didn't hear from him. And then Monday came and he said, "I replied to your email after 5:00 as I didn't understand there was a deadline. Are we in agreement?"

And my answer at the top of the page, "Yes, we'll send the documents," which are the settlement agreement you have.

There was never ever a discussion, let alone an agreement that we would take $70,000 and release the satisfaction of judgment. We weren't willing to release the satisfaction of judgment against the whole $125,000 proposed bond because we

weren't sure what was going to happen with this.

But their -- I mean, for him to say, "Well, there is nothing in the record, so you should find it plausible." This document just shows categorically what actually happened. We would never make that other deal. We didn't make that other deal. It just didn't happen.

THE COURT: And the other deal you're referring to his filing a satisfaction of judgment without a dismissal of the appeal?

MR. GOLDFARB: Absolutely. Was never determined.

Your Honor, if I could just be very briefly heard on the whole concept of duress.

THE COURT: Go ahead.

MR. GOLDFARB: What Mr. Smith's financial problems may have been are of his making. We're not obligated to do anything. This is one of those no good deed goes unpunished situations where I actually said maybe we could subordinate. And his lender said no. At that point we said, This is getting too expensive and too complicated. We just stepped back and said, Post the bond. Don't post the bond. You know, do what you're going to do.

The only thing -- the only action we ever

APPENDIX N

Email of June 20, 2024 (5:00 p.m.) from Petitioner to Chicago Title escrow officer Jamie Lawson (cc: John Jackson), "I will pay judgement from proceeds," and her 5:18 p.m. reply; and emails of Oct. 14–15, 2026 from J.L. Jackson IV, Chicago Title, declining to produce escrow records absent a subpoena (Rule 14.1(i)(vi)); not part of the record reviewed below; filed with Petitioner's Oct. 16, 2026 motion, Supreme Court of Washington No. 104770-3 (see App. J). Private email addresses redacted.

From: **Marcus Smith** marcusmds@gmail.com
Subject: Re: Please coordinate a signing
Date: June 20, 2024 at 5:56 PM
To: Lawson, Jamie jamie.d.lawson@ctt.com
Cc: Jackson, John John.Jackson@ctt.com
Bcc: [redacted]



On Jun 20, 2024, at 5:18 PM, Lawson, Jamie <jamie.d.lawson@ctt.com> wrote:

Will do Marcus - I just need to update a few things and I will call you to set up a signing once everything is ready.

Thank you and have a great evening.

Jamie Lawson
Escrow Officer
LPO#11224 & WA License #153001271
D: 425-749-2867 O: 425-856-9760
F: 844-894-6840
E: Jamie.D.Lawson@ctt.com

15215 SE 272nd Street, #101 I Kent, WA 98042

-----Original Message-----
From: Marcus Smith <marcusmds@gmail.com>
Sent: Thursday, June 20, 2024 5:00 PM
To: Lawson, Jamie <jamie.d.lawson@ctt.com>
Cc: Jackson, John <John.Jackson@ctt.com>
Subject: Please coordinate a signing

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Hello Jamie,

Welcome back; I will pay judgement from proceeds.

Let's get this wrapped asap.

Marcus Smith
206-391-4900

NOTICE: The information contained in this message is proprietary and/or confidential and may be privileged. If you are not the intended recipient of this communication, you are hereby notified to: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.

This message was secured by Zix(R).

On Oct 14, 2026, at 3:45 PM, Jackson, John <John.Jackson@ctt.com> wrote:

Mr. Smith,

We acknowledge receipt of your request.

Chicago Title Company of Washington does not provide third parties with access to its company records or transaction files in response to informal requests. If records are sought in connection with litigation or another legal proceeding, the Company will respond to a duly issued and properly served subpoena or other valid legal process in accordance with applicable requirements.

Any such legal process should be directed to the Company through the appropriate channels for handling and response.

Thank you,

J.L. Jackson IV, Esq.
VP, Title Operations Manager

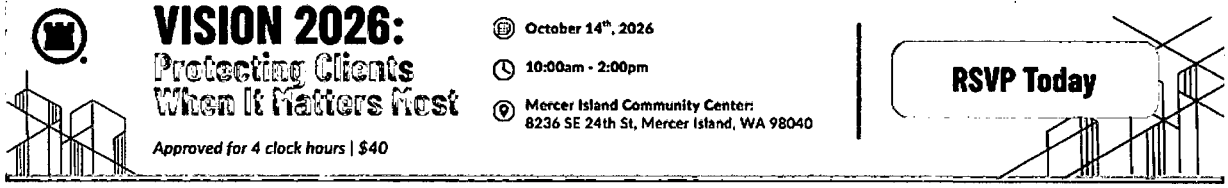
D: (206) 370-3102 M: (954) 821-0630
E: John.Jackson@ctt.com

701 5th Ave. Suite 2700 I Seattle, WA 98104
<image001.png>

<image002.png>
<image011.png>
<image012.png>
<image013.png>
<image014.png>

We Are Chicago
#WEARECHICAGO

<image015.png>



From: Marcus Smith <marcusmds@gmail.com>
Sent: Thursday, October 15, 2026 2:29 PM
To: Jackson, John <John.Jackson@ctt.com>
Cc: Jodie Barber [redacted] Hung Nguyen <hung.nguyen@ctt.com>; Anderson, Bob <Bob.Anderson@ctt.com>; investagationR@oic.wa.gov; csenforcecomplaints@dfi.wa.gov; DCU@dfi.wa.gov; WA-CTI-Seattle Unit 4 Inbox <CTISeattleTitleUnit4@ctt.com>; Lawson, Jamie <jamie.d.lawson@ctt.com>
Subject: Re: Urgent Request for Complete 2024 Escrow and Settlement File | Smith v. Northwest Motorsport

Good afternoon Mr. Jackson,

Thank you for your clarification and willingness to provide the documents available under your proposed accommodation.

I appreciate your assistance and will await the secure transmission.

I understand the distinction you've outlined regarding the remaining escrow and transaction records. For now, I will hold off on pursuing any additional records and revisit the matter if necessary.

Thank you again for your time and consideration.

Best regards,

Marcus D. Smith

> On Oct 15, 2026, at 12:18 PM, Jackson, John <John.Jackson@ctt.com> wrote:
>
> Mr. Smith,
>
> Thank you for your follow up.
>
> To clarify our prior response, the Company is not agreeing to provide access to its full escrow or transaction file, internal records, correspondence, or other materials maintained in connection with the

transaction in response to an informal request.

As a limited accommodation, we are willing to review our records to identify documents previously signed or executed by you and provide copies of those documents to you. This accommodation is limited to documents bearing your signature that were previously provided to or otherwise made available to you in connection with the transaction.

This should not be understood as an agreement to provide the full escrow file generally, including internal communications, correspondence among other parties (including you), title or escrow work product, lender communications, or other documents maintained in the Company's records.

To the extent you seek additional Company or transaction records for purposes of the litigation or legal proceedings referenced in your correspondence, the Company will respond to a duly issued and properly served subpoena or other valid legal process in accordance with applicable requirements.

I will respond to you directly on a separate email chain to provide a secure email transmission of certain documents, as they include private, confidential, and nonpublic information.

Sincerely,

J.L. Jackson IV, Esq.
VP, Title Operations Manager

D: (206) 370-3102 M: (954) 821-0630
E: John.Jackson@ctt.com

701 5th Ave. Suite 2700 I Seattle, WA 98104
<image001.png>

<image002.png>
<image003.png>
<image004.png>
<image005.png>
<image006.png>

We Are Chicago
#WEARECHICAGO