

such motion that fails to incorporate the legal authority providing for the relief sought may be deemed abandoned and denied by the Court. *See* C.R.C.P. 121, § 1-15(3).

4. Harrington fails to provide a proper legal basis for his request and his Motion should therefore be denied. However, his substantive objections to this Court's Order of December 29, 2009 are meritless.

5. A trial court may award reasonable attorney's fees against any party who has brought or defended a civil action, either in whole or in part, that the court determines: (1) lacked substantial justification, (2) was interposed for delay or harassment or (3) was unnecessarily expanded by other improper conduct. C.R.S. § 13-17-102(2) & (4). In this context, lacking substantial justification means substantially frivolous, substantially groundless, or substantially vexatious. C.R.S. § 13-17-102(4).

6. A *pro se* party shall be assessed attorneys fees only when the court finds that the party clearly knew or reasonably should have known that his action or defense lacked substantial justification. C.R.S. § 13-17-102(6).

7. The determination of whether a claim or defense is groundless or frivolous for purposes of an award of attorney's fees is within the discretion of the trial court, and that discretion will not be disturbed if it is supported by the record. *Double Oak Const., LLC v. Cornerstone Development Intern., LLC*, 97 P.3d 140, 151 (Colo.Ct.App. 2003).

8. If the trial court finds that a party to a marital dissolution action proceeded without substantial justification, the court lacks discretion to deny a request for fees against that party. *See In re Marriage of Barnes*, 907 P.2d 679, 685 (Colo.Ct.App. 1995).

9. In its February 24, 2009 Order, this Court denied all of Harrington's claims against Wilson because they were waived and/or without merit. Furthermore, in its February 24, 2009 Order, this Court found that Harrington knew or should have known that his claims against Wilson were substantially frivolous, groundless and vexatious.

10. In determining the amount of an attorney fee award, the court shall exercise its sound discretion, and the order granting the award of fees shall set forth the reasons for the award. C.R.S. § 13-17-103(1).

11. In granting and determining the amount of an award of attorneys fees, the court shall consider the eight factors set forth in C.R.S. § 13-17-103(1). However, nothing in the statute requires the court to discuss the eight factors or explicitly delineate them. Rather, the trial court is not required to make a finding on every statutory factor addressed by the parties; it need only specify the reasons for the award. *See In re Marriage of Ensminger*, 209 P.3d 1163 (Colo.Ct.App. 2008).

12. This Court's February 24, 2009 Order, which is specifically referenced and implicitly incorporated in its December 29, 2009 Order, aptly specifies the reasons for the attorneys fees award. Furthermore, the December 29, 2009 Order specifies that Harrington's arguments lack merit.

13. Harrington suggests that his right to a hearing on the issue of attorney's fees has not been satisfied. However, a hearing was held on October 8, 2009. Harrington should not be allowed to request a second hearing due to his decision not to address everything he felt was relevant at the first hearing.

WHEREFORE, Wilson respectfully requests this Court to deny Harrington's Motion for Reconsideration.

Dated this 5th day of February, 2010.

Respectfully submitted,

*Original signature on file at the offices of
Huff & Leslie, LLP per C.R.C.P. Rule 121 § 1-26(9)*

By: s/Brett N. Huff

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ATTORNEY FOR MADELINE WILSON, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE TO RULE 59 MOTION FOR RECONSIDERATION** was served by email and/or deposited in the United States mail, postage prepaid, this 5th day of February, 2010, addressed to the following:

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/s/ Brett N. Huff