

FILED
Court of Appeals
Division II
State of Washington
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NO. 54507-1-II

FILED
SUPREME COURT
STATE OF WASHINGTON
2/22/2022
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COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION II

Eric C. Betten and Michael R. McPherson, as Co-Personal
Representatives of the Estate of Julia H. Betten, Deceased,

Respondents,

v.

Allen McPherson and Nikkala L. McPherson, husband and
wife, and the marital community comprised thereof; and J.
DOES 1-10 and all other occupants of 1148 S. Pekin Rd.,
Woodland Washington 98674,

Appellants,

ON APPEAL FROM COWLITZ COUNTY SUPERIOR COURT
Hon. Steven Warning

**RESPONDENTS' MEMORANDUM OPPOSING APPELLANTS'
MOTION FOR EXTENSION OF TIME**

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Attorneys for Respondents

On January 19, 2022, in an unpublished opinion, this court affirmed
the judgment of the trial court. This was a decision terminating review.
Under RAP 13.4(a), a party seeking review by the Supreme Court must file

a petition for review within 30 days after the decision was filed. Thirty days from January 19, 2022, was Friday, February 18, 2022.

Appellants did not file a petition for review by February 18, 2022. Instead, over the following weekend, they filed a 9-page Petition to Review to the Washington Supreme Court. The Petition was unsigned. And (on information and belief), was not accompanied with the payment of the statutory filing fee to the clerk of the court of appeals, as required by RAP 13.4. Then, they later filed a second 67-page Petition for Review, coupled with a Motion for Extension. Because these documents were all filed during a weekend, they bear a filing date of the next court date of February 22, 2022, (February 21st being President's Day).

It appears from the Appellant's motion, that they believed that their initial filing was timely. Therefore, in paragraph 2, under the "Statement of Relief Sought," they have merely asked for "an extension of time to comply with rule 13.4 . . . *we would like to amend* the unfinished petition for review that was already sent in." It would be a pointless gesture to permit an amendment of their petition, when the original petition itself was untimely. For this reason, the motion should be denied.

If, however, this court construes their motion as one to seek to excuse the late filing of the petition for review itself, we offer the following additional arguments in opposition.

First, the Appellants have not offered any basis for extending the deadline for filing a petition for review. Appellants have cited RAP 18.8 which permits extensions of time under “extraordinary circumstances.” However, the only circumstance they have cited is (a) their status as pro se litigants, and (b) that at some unspecified earlier date, they were informed that an attorney would not be made available to them by a non-profit.

Pro se litigants are held to the same standards as attorneys under the rules of court. And as to the inability of some non-profit to provide them with counsel, the Appellant’s motion does not say whether this happened six months ago or six weeks ago, or imminently before the filing deadline. Without this information the court would have no basis to find that they were left suddenly without counsel right before a filing deadline. Moreover, none of the grounds seeking to justify an extension of time have even been given under oath.

Moreover, the Appellant’s own motion acknowledges they were indeed aware of the relevant deadline. Paragraph 2 states that “This was due on 2/18/2022.” Therefore, this was not a situation where a deadline slipped by without them being aware of it due to their lack of legal knowledge. Instead, the original petition for review reflects that it was submitted on February 19, 2022, at 12:27 a.m.; e.g. just after midnight. And the unsigned petition states “I ran out of time to finish and pray the court

will allow us to finish.” And in the filing comments at the bottom of their petition for review, it states “Please accept this review. I tried my best to get in [sic] in on time. Thus, this was not a case of a pro se being unaware of the rules and therefore missing a deadline. It was a case of someone who *being fully aware* of a 30-day deadline *waited* until *near midnight* to hobble together their petition, but then lost track and time and filed too late. This is not an “extraordinary circumstance.” It is not even excusable neglect. Its just common ordinary neglect.

We have also seen no indication that that the Appellants have tendered the fee required to appeal to the Supreme Court.

Ultimately, it would be up to the Supreme Court and not this court to judge timeliness of a petition to the Supreme Court.

Based on the above, the court should deny the Appellants motion for the narrow relief they have requested, viz. of amendment. The court should not do the pointless act of permitting an untimely amendment to a petition that was itself untimely.

What the court should now do is this. RAP 12.5 provides that “the clerk will issue the mandate: Thirty (30) days after the decision is filed unless . . . (ii) a petition for review to the Supreme Court *has been earlier filed.*” No petition to the Supreme Court was “earlier filed” before this 30-day deadline. And on information and belief, no fee has been paid that

would obligate this court to do anything. Accordingly, the court should simply deny the motion and issue the mandate.

Respectfully submitted: February 22, 2022.

BAUMAN & WOLF, PLLC

s/s: Bradley S. Wolf

By _____
Bradley S. Wolf, WSBA No. 21252
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am the attorney for Respondents, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed parties record by the methods noted:

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DATED: February 22, 2022

BAUMAN & WOLF, PLLC

/s/: Bradley S. Wolf

By _____
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Transmittal Information

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Appellate Court Case Number: 54507-1
Appellate Court Case Title: Eric Betten et al., Respondents v. Allen McPherson et al., Appellants
Superior Court Case Number: 18-2-01334-9

The following documents have been uploaded:

- 545071_Answer_Reply_to_Motion_20220222132712D2436343_4640.pdf

This File Contains:

Answer/Reply to Motion - Response

The Original File Name was Respondents Memorandum Opposing Motion for Extension of Time.pdf

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- nikkala66@gmail.com

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