

FILED
SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 101136-9
COA Division II No. 55151-9-II

THE SUPREME COURT FOR THE STATE OF WASHINGTON

On Appeal from Grays Harbor County Superior Court

Honorable Judge David Mistachkin

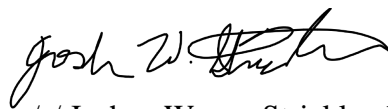
In re Custody of A.S. 19-3-00229-14

ELAINE M. GEBHARDT, Respondent,

v.

JOSHUA WAYNE STRICKLAND, Appellant.

MOTION TO EXTEND TIME TO FILE PETITION FOR REVIEW



/s/ Joshua Wayne Strickland

Joshua W. Strickland

Appellant, Pro-Se

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I. IDENTITY OF MOVING PARTY

Appellant Mr. Strickland, appearing pro-se, moves this honorable court for relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Appellant Mr. Strickland seeks permission from this court for an extension of time to file Appellant's Petition for Review of the November 16th, 2021 Unpublished Opinion in this matter to August 2nd, 2022. Mr. Strickland seeks this request pursuant to RAP 18.8 as extraordinary circumstances exist warranting an extension.

III. FACTS RELEVANT TO MOTION

Appellant Mr. Strickland and Respondent Mrs. Gebhardt appeared before Judge David Mistachkin in Grays Harbor County Superior Court to enter a Final Parenting Plan on Mrs. Gebhardt's Motion to Modify. After lengthy proceedings and a trial, a Final Parenting Plan was entered on July 13th, 2020. CP 354-370. That Parenting plan placed .191 restrictions on Mr. Strickland due to CPS founded findings of sexual abuse relating

to then 5-year-old R-J.S.¹ The Superior Court also incorporated an Order of Dependency against Mr. Strickland in Dependency of A.S. 19-7-00125-14² and ordered Mr. Strickland to engage in services ordered in the dependency as part of the Final Parenting Plan. Mr. Strickland appealed.

Mr. Strickland sought Discretionary Review of the psychosexual evaluation requirement levied against him in the related dependency matter Dependency of A.S. 19-7-00125-14. The Court of Appeals Division II Commissioner Schmidt ruled in Dependency of A.S. 55565-4-II on August 16th, 2021 that Mr. Strickland was no longer under obligations to undergo a psychosexual evaluation as the Dependency matter was dismissed. The state also agreed that no evaluation was necessary against Mr. Strickland.

¹ Mr. Strickland appealed the CPS findings letter in the Office of Administrative Hearings. After a 2 ½ year stay of proceedings to allow the appeal in the overlapping case Dependency of A.S. 19-7-00125-14 to commence, the CPS appeal is now proceeding forward. A Motion hearing for Summary Judgment favorable to Mr. Strickland was held on May 19th, 2022 before the ALJ; an order on said motion is pending.

² Mr. Strickland appealed the Order of Dependency including the findings of fact and conclusions of law under Dependency of A.S. 55105-5-II.

After a lengthy appeal in this current case, the Court of Appeals Division II reviewing panel affirmed the Final Parenting Plan (CP 354-370) and the findings of fact/conclusions of law “at face value” On November 16th, 2021 in an Unpublished Opinion. The Court of Appeals found that Mr. Strickland failed to provide an adequate record on appeal for review.³

Nearly 4 months after entry of the Unpublished Opinion in this appeal, in an “inextricably linked” appeal under Dependency of A.S. 55105-5-II, Commissioner Schmidt from the Court of Appeals Division II **vacated** the Order of Dependency against Mr. Strickland including the findings of fact and conclusions of law on March 2nd, 2022.

Mr. Strickland, on March 8th, 2022, moved the Court of Appeals to vacate the Unpublished Opinion entered on November 16th, 2021 in this case in light of his appeal win in

³ The Court of Appeals Division II would then recall their mandate in January 2022 for further review. Mr. Strickland interpreted this as a recall of the Unpublished Opinion.

Dependency of A.S. 55105-5-II. The clerk of the Court of Appeals Division II considered Mr. Strickland's motion as an untimely Motion for Reconsideration and denied the request. Mr. Strickland then filed reconsideration, which was granted by the panel, holding that Mr. Strickland's "Motion to Vacate" was more characterized as a Motion to file supplemental brief or Motion to file late Motion for Reconsideration. The Motion was sent to the panel and Mr. Strickland's "Motion to Vacate" was denied.⁴

Mr. Strickland petitioned for review to the Washington Supreme Court on May 19th, 2022 but has since filed a motion to voluntarily dismiss review with the Supreme Court, as procedurally, Mr. Strickland must seek reconsideration of the Unpublished Opinion by this court before review can be granted.

⁴ It is unclear at this time whether the panel reviewing the appeal case in Court of Appeals Division II considered Mr. Strickland's "Motion to Vacate" as a Motion to file Supplemental Brief or Motion to file late Motion for Reconsideration. The order states "Mr. Strickland's Motion to Vacate... is DENIED".

Mr. Strickland sought reconsideration of the Unpublished Opinion in Court of Appeals Division II and the Court of Appeals denied Mr. Strickland's motion on June 29th, 2022.

Mr. Strickland now seeks review in this honorable court.

IV. ARGUMENT

This court has the authority to extend time for filing briefs. RAP 18.8(a). RAP 1.2(a) directs this court to interpret its rules liberally to promote justice and facilitate the decision of cases on the merits. State v. Graham, 194 Wn.2d 965, 454 P.3d 114 (2019); Weeks v. Chief of Wash. State Patrol, 96 Wn.2d 893, 639 P.2d 732 (1982). Such a motion will be granted only “in extraordinary circumstances and to prevent a gross miscarriage of justice[.]” RAP 18.8(b). City of Mount Vernon v. Weston, 68 Wn. App. 411, 417, 844 P.2d 438, 440 (1992).

This court should grant Mr. Strickland an extension of time to file a Petition for Review of the Unpublished Opinion entered November 16th, 2022. Mr. Strickland is asking for an extension to July 29th, 2022.

As stated above, this appeal stems from a Final Parenting Plan that flowed from an Order of Dependency against Mr. Strickland that has since been vacated and reversed by Commissioner Schmidt on March 2nd, 2022 in Dependency of A.S. 55105-5-II. That appeal order was entered 4 months after the Unpublished Opinion. If Mr. Strickland would have filed reconsideration within 30 days of the Unpublished Opinion being entered, it would have been a meritless motion because the appeal ruling from Dependency of A.S. 55105-5-II was not reached until 4 months later on March 2nd, 2022.

RAP 18.8 can be interpreted alongside CR 60(b)(11) which allows for vacating a ruling because substantial justice has not been done.

CR 60(b)(11) is a “catchall” provision. **See State v. Ward**, 125 Wn. App. 374, 379, 104 P.3d 751 (2005) (“CR 60(b)(11) is a catch-all provision, intended to serve the ends of justice in extreme, unexpected situations.”). Relief under CR

60(b)(11) is limited to “extraordinary circumstances” relating to “irregularities extraneous to the action of the court or questions concerning the regularity of the court's proceedings.” In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985).

The use of CR 60(b)(11) “should be confined to situations involving extraordinary circumstances not covered by any other section of the rule”. State v. Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982). The courts have stressed the need for the presence of “unusual circumstances” before CR 60(b)(11) will be applied. In Re Henderson, 97 Wn.2d 356, 360, 644 P.2d 1178 (1982).

In this current situation, we have an Unpublished Opinion entered November 16th, 2021 that affirmed a Final Parenting Plan entered by the trial court July 13th, 2020 (CP 354-370). That parenting plan flowed from an Order of Dependency against Mr. Strickland in Dependency of A.S. 19-7-00125-14. The Court of Appeals stated that Mr. Strickland

failed to provide an adequate record on appeal for effective review.

The Order of Dependency was **vacated** by Commissioner Schmidt including the findings of fact and conclusions of law on March 2nd, 2022 in Dependency of A.S. 55105-5-II yet Mr. Strickland is still held to RCW 26.09.191 restrictions as well as still being required to undergo a psychosexual evaluation as part of the Unpublished Opinion in this case that flowed from a now Vacated Order of Dependency.

As such, extraordinary circumstances exist, as Mr. Strickland, nor the Court of Appeals panel hearing this case, knew at the time of the Unpublished Opinion that Mr. Strickland would be the prevailing party in the Dependency of A.S. 55105-5-II appeal, which overlaps this parenting plan case significantly.

Although this court desires finality of their orders, Motions to Extend Time should be granted to prevent the

miscarriage of justice in this appeal matter. Additionally, this situation has created extraordinary circumstances warranting reconsideration of this court's Unpublished Opinion entered November 16th, 2021.

Lastly, Mr. Strickland has been out of state, away from his desk, court documents, and laptop since June 23rd, 2022 as he was in Las Vegas, Nevada to assist his mother who was diagnosed with breast cancer and had surgery to remove it July 15th, 2022. Mr. Strickland did not return back to Washington State until July 25th, 2022. Mr. Strickland is almost complete with his Petition for Review but needs additional time to attach appendices, review for corrections, and file.

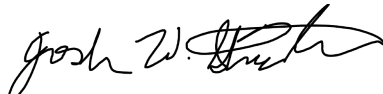
This court should grant Mr. Strickland's Motion for Extension of Time to File Appellant's Petition for Review to August 2nd, 2022 by 5:00pm.

CONCLUSION

For all the reasons argued above, Appellant Mr. Strickland asks this court to grant his request to extend the time to file his Petition for Review of the Unpublished Opinion filed November 16th, 2021 and the Order denying Reconsideration entered June 29th, 2022, to August 2nd, 2022.

Respectfully submitted and dated this 1st day of August, 2022.

This Brief was prepared using 14 point Times New Roman Font on Microsoft Word 365 and contains 1610 words, including words excluded from the word count.


/s/ Joshua Wayne Strickland
Joshua W. Strickland, Pro-Se
Appellant

JOSHUA STRICKLAND - FILING PRO SE

August 02, 2022 - 4:34 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Elaine Marie Gebhardt, Respondent v. Joshua Wayne Strickland, Appellant (551519)

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- elaine.m.gebhardt@gmail.com
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Appellants Pet for Review, mtn to extend time to file pet for review, and mtn to waive filing fee

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