

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

SUPREME COURT
OF THE STATE OF WASHINGTON

MARCUS DUELL, an individual,

Respondent,

v.

PENINSULA AVIATION SERVICES, INC., doing business as PenAir, a Delaware corporation,

Petitioner,

and

ALASKA AIRLINES, INC., a Delaware corporation; and DOES 1-20,

Defendants.

No. 102224-7

Ct. App. No. 83424-0-1

CORRECTED
ANSWER TO ALASKA AIRLINES, INC. AND ALASKA AIR GROUP, INC.'S MOTION FOR EXTENSION OF TIME TO FILE "JOINDER" IN PETITION FOR REVIEW

ERIN OLTMAN, individually and as Personal Representative of the Estate of David Oltman, and on behalf of REECE OLTMAN and EVAN OLTMAN, minors,

Respondents,

v.

PENINSULA AVIATION
SERVICES, INC., doing
business as PenAir, a
Delaware corporation,

Petitioner,

and

ALASKA AIRLINES
GROUP, INC., and
ALASKA AIRLINES, INC.,

Defendants.

**IDENTITY OF ANSWERING PARTY & RELIEF
REQUESTED**

Respondent Erin Oltman, individually and as Personal Representative of the Estate of David Oltman, and on behalf of Reece Oltman and Evan Oltman, minors, requests that this Court deny Alaska Airlines, Inc. and Alaska Air Group, Inc.'s Motion for Extension of Time to file a "joinder" in PenAir's Petition for Review (PFR).

FACTS RELEVANT TO MOTION

The Court of Appeals, Division One, issued its decision in ***Duell v. Alaska Airlines, Inc.***, ___ Wn. App. 2d ___, 530 P.3d 1015 (2023) on June 12, 2023.¹ Only the Oltmans and Petitioner Peninsula Aviation Services, Inc. (“PenAir”) participated in the appeal. Movants Alaska Airlines, Inc. and Alaska Air Group, Inc. (collectively “Alaska”) did not appear as a party in the appeal, nor did they participate in the oral argument.

On July 27, 2023, PenAir timely filed its PFR. Alaska did not join the PFR at that time.

Alaska attempted to file an “Answer in Joinder” to PenAir’s PFR on August 25, 2023. In a letter dated August 29, 2023, this Court rejected Alaska’s filing as untimely because its “Answer in Joinder” was *not* an Answer to

¹ The Oltmans’ lawsuit was consolidated with a case brought by Marcus Duell, and Duell settled his claims while the Court of Appeals’ proceeding was pending. ***Duell***, 530 P.3d at 1018 n.2.

PenAir's PFR, but instead was a petition "by a party on the same side seeking review of the same issues." In that same letter, this Court extended the Oltmans' time to respond to PenAir's PFR – to September 27, 2023.

On August 31, Alaska filed its motion for extension of time to file its proposed "joinder" in the PFR. By letter dated August 31, 2023, this Court ordered any answer to Alaska's motion to be filed by September 27, 2023.

ARGUMENT

This Court ordinarily may enlarge the time within which an act must be done on appeal to serve the ends of justice. RAP 18.8(a). But this Court will extend the time for a party to file a petition for review only in extraordinary circumstances and to prevent a gross miscarriage of justice. RAP 18.8(b). Alaska's request for an extension of time to "join" PenAir's PFR should be subject to the latter rule, which it does not even attempt to meet, as it cannot

possibly meet it. But even if RAP 18.8(a) applied, Alaska's "joinder" at this late date is contrary the ends of justice.

Although the document it filed clearly sought "discretionary review of [a] decision terminating review" under RAP 13.4, Alaska simply ignored the clear mandate of RAP 13.4(a): "a petition for review must be filed within 30 days after the decision is filed." RAP 13.4(a). Alaska has offered no compelling explanation – much less extraordinary circumstances and a gross miscarriage of justice – for its failure to follow this most fundamental rule, which undergirds this Court's proper jurisdiction.

Worse, having disregarded the deadline to petition for review, Alaska tried to disguise its petition as an "Answer in Joinder" so that it could be filed within the time provided to answer a PFR under RAP 13.4(d). This Court properly rejected Alaska's ploy.

Further, Alaska was not a party in the Court of Appeals. As the caption of this case accurately reflects,

Alaska did not file any notice of appeal from the trial court's decision denying PenAir's motion to dismiss; Alaska did not join in PenAir's Notice of Appeal; and Alaska did not participate in the oral argument.

Contrary to the ends of justice, the Oltmans would be prejudiced were Alaska allowed effectively to intervene in this case in this Court and submit separate, additional briefing, *after the Oltmans have already responded to PenAir's PFR*. Our Answer raises no new issues, so no Reply to it would be proper. RAP 13.4(d) ("A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review"). Alaska's dubious tactics should not be rewarded.

And in the unlikely event that this Court accepts review, PenAir would have the advantage of *two supplemental briefs* – one on its own behalf and a second one from Alaska. RAP 13.7(d). More paper does not serve the ends of justice.

The issue on appeal is whether Washington courts can exercise personal jurisdiction over *PenAir*, not Alaska. It would be extraordinary to allow Alaska to join this appeal where it is not a party – and a gross miscarriage of justice. This Court should deny Alaska’s motion.

CONCLUSION

This Court should deny Alaska’s motion and deny Alaska permission to join an appeal where it is not a party in this Court, which is contrary to the ends of justice.

The undersigned hereby certifies under RAP 18.1(2)(b) that this document contains **780** words.

RESPECTFULLY SUBMITTED this 28th day of September 2023.

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CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO ALASKA AIRLINES, INC. AND ALASKA AIR GROUP, INC.’S MOTION FOR EXTENSION OF TIME TO FILE “JOINDER” IN PETITION FOR REVIEW** on the 28th day of September 2023 as follows:

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Comments:

1. UNOPPOSED MOTION FOR LEAVE TO FILE CORRECTED ANSWER TO ALASKA AIRLINES, INC. AND ALASKA AIR GROUP, INC. S MOTION FOR EXTENSION OF TIME TO FILE JOIDER TO PETITION FOR REVIEW 2. CORRECTED ANSWER TO ALASKA AIRLINES, INC. AND ALASKA AIR GROUP, INC. S

MOTION FOR EXTENSION OF TIME TO FILE JOINDER IN PETITION FOR REVIEW

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