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COURT OF APPEALS
DIVISION ONE

SEP 9 - 2015

Received
Washington State Supreme Court

No. 91983-6

SUPREME COURT
OF THE STATE OF WASHINGTON

SEP 14 2015
E
Ronald R. Carpenter
Clerk

KAREN A. STEVENSON, Petitioner

v.

DAVID M. CANNING, PERSONAL REPRESENTATIVE OF THE
ESTATE OF MARY LOUISE CANNING, Respondent

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 SEP -9 PM 12:57

PETITION FOR REVIEW (AMENDED)

COA Nos. 70994-1-I,
71594-1-I, 71794-4-I, & 72026-1-I

On appeal from King County Superior Court
Case No. 05-2-16751-3 SEA,
the Honorable Laura Gene Middaugh presiding.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Barry v. USAA, 98 Wn. App. 199, 989 P. 2nd 1172 (1999)...7,11

State v. Brom, 178 Wn. App. 70, 312 P. 3d 1017 (2013)...7,9,11

State v. Chhom, 162 Wn. 2d 451, 173 P. 3d 234 (2007).....8,11

RAP 5.2(e)(1).....8,9,11

CR 59(b).....,7,11

4 Karl B. Tegland, WASHINGTON PRACTICE: RULES PRACTICE (6th ed. 2013).....9

I. IDENTITY OF PETITIONER.....4

II. CITATION TO COURT OF APPEALS DECISIONS.....4

III. ISSUE PRESENTED FOR REVIEW.....4

IV. STATEMENT OF THE CASE.....4

V. ARGUMENT

THE COURT OF APPEALS ERRED IN CONCLUDING THAT A NOTICE OF APPEAL OF AN ORDER MUST BE FILED WITHIN 30 DAYS OF ENTRY OF THE TRIAL COURT ORDER DENYING THE INITIAL CR 59 MOTION FOR RECONSIDERATION OF THAT ORDER.....7

VI. CONCLUSION.....10

VII. APPENDIX..... 12

I. IDENTITY OF PETITIONER

Karen Stevenson, pro se plaintiff in the trial court and appellant in the Court of Appeals, is the Petitioner herein.

II. CITATION TO THE COURT OF APPEALS DECISIONS

Petitioner seeks review (1) of the order of the Court of Appeals filed March 16, 2015 which denied her motion to modify the ruling of Commissioner Mary Neel filed January 20, 2015; and (2) of the order of the Court of Appeals filed May 26, 2015 denying her motion for reconsideration of the order of the Court of Appeals filed April 7, 2015 that dismissed these consolidated appeals. Copies of the subject orders are attached as Appendix.

III. ISSUE PRESENTED FOR REVIEW

Whether the decisions of the Court of Appeals are in conflict with a decision of the Supreme Court. RAP 13.4(b)(1).

Whether the decisions of the Court of Appeals are in conflict with another decision of the Court of Appeals. RAP 13.4(b)(2).

IV. STATEMENT OF THE CASE

In February 2013, the Court of Appeals filed its mandate in the trial court. CP 18-59. The subject mandate stated that “because the trial court made no findings to support its substantial reduction of the estate

attorney fees and costs request, we vacate the fees and costs judgments and remand for proceedings consistent with this opinion.” CP 20.

An order awarding further attorneys’ fees to the defendant David Canning, on remand, was entered by the trial court with judgment on May 16, 2013. CP 326-336, 324-325. Stevenson filed a timely CR 59 motion for reconsideration and CR 52(b) motion to amend the findings. CP 370-383. After several successive timely CR 59 motions were denied, Stevenson filed her appeal on September 10, 2013 of the August 12, 2013 order denying her last motion for reconsideration.

After this Court denied discretionary review of a Court of Appeals decision, Commissioner Mary Neel of the appellate court consolidated the three appeals by ruling filed January 20, 2015 and, in No. 70994-1-I, limited review to the trial court order filed August 12, 2013. The commissioner’s ruling stated as follows:

A party is allowed 30 days in which to file a notice of appeal. RAP 5.2(a). This time limit can be extended by 10 days by filing a motion for reconsideration. RAP 5.2(a), (e). The judgment/order was filed on May 16, 2013, and the order denying reconsideration was filed on June 4, 2013. A timely notice of appeal of these orders would have been due no later than July 5, 2013. Stevenson did not file a notice of appeal before that date and instead waited until September 11, 2013, when she filed a notice of appeal challenging the August 12, 2013 order. *Thus, review in No. 70994-1-I is limited to the August 12, 2013 order.* [Emphasis supplied] *January 20, 2015 Ruling, at 10.*

The appellate court on March 16, 2015 denied Stevenson's motion to modify that ruling; Stevenson's motion for discretionary review of that order was dismissed as moot in a ruling of the commissioner filed August 10, 2015 in No. 91479-6.

TIMELINE

- June 4, 2013 Judge Middaugh files order denying CR 59 motion for reconsideration of May 16, 2013 order and judgment. CP 416-417. (Dkt. No. 510)
- June 14, 2013 Stevenson files CR 59 motion for reconsideration of June 4, 2013 order. CP 451-473. (Dkt. No. 524)
- June 14, 2013 Judge Middaugh denies June 14th CR 59 motion. CP 449-450. (Dkt. No. 523)
- June 24, 2013 Stevenson files CR 59 motion for reconsideration of order filed June 14th. CP 502-514. (Dkt. No. 532)
- Aug. 12, 2013 Judge Middaugh denies Stevenson's June 24th CR 59 motion. CP 522. (Dkt. No. 537): "The motions filed under docket number 530 and 532 is denied."
- Sept. 11, 2013 Stevenson files notice of appeal of Aug. 12th order. CP 523-540. (Dkt. No. 538)
- Jan. 20, 2015 Commissioner Mary Neel of the Court of Appeals files her ruling limiting review in No. 70994-1-I to the August 12, 2013 order of the trial court.
- March 16, 2015 The Court of Appeals denies Stevenson's motion to modify the January 20th ruling.

March 26, 2015 Stevenson files motion for discretionary review of the Court of Appeals' interlocutory order.

May 26, 2015 The Court of Appeals denies Stevenson's motion for reconsideration of the order dismissing the appeal.

June 25, 2015 Stevenson files petition for review.

August 10, 2015 The Supreme Court Commissioner dismisses the March 16, 2015 motion for discretionary review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

THE COURT OF APPEALS ERRED IN CONCLUDING THAT A NOTICE OF APPEAL OF AN ORDER MUST BE FILED WITHIN 30 DAYS OF ENTRY OF THE TRIAL COURT ORDER DENYING THE INITIAL CR 59 MOTION FOR RECONSIDERATION OF THAT ORDER

This Court should grant review and reverse the Court of Appeals because its March 16, 2015 decision and its May 26, 2015 decision are in direct conflict with the decision of the Supreme Court in *State v. Chhom*, 162 Wn. 2d 451, 173 P. 3d 234 (2007) and with the decision of the Court of Appeals in *Barry v. USAA*, 98 Wn. App. 199, 989 P. 2nd 1172 (1999). Commissioner Mary Neel in her ruling filed Jan. 20, 2015 stated as follows:

A party is allowed 30 days in which to file a notice of appeal. RAP 5.2(a). This time limit can be extended by 10 days by filing a motion for reconsideration. RAP 5.2(a), (e). The judgment/order was filed on May 16, 2013, and the order denying reconsideration was filed on June 4, 2013. A timely notice of appeal of these orders would have been due no later than July 5, 2013. Stevenson did not file a notice of appeal

before that date and instead waited until September 11, 2013, when she filed a notice of appeal challenging the August 12, 2013 order. *Thus, review in No. 70994-1-I is limited to the August 12, 2013 order.* [Emphasis supplied] *January 20, 2015 Ruling*, at 10.

The commissioner's ruling in effect was that an order denying a CR 59 motion for reconsideration of an order and judgment does not bring up for review the order and judgment, unless the CR 59 motion was the *initial* CR 59 motion challenging the order and judgment. This mistaken ruling was kept in place by the Court of Appeals. RAP 5.2(e)(1) provides that a notice of appeal of orders "deciding certain timely motions designated in this section" must be filed in the trial court within 30 days after entry of the order deciding the subject timely subsequent motion. In *State v. Brom*, 178 Wn. App. 70, 312 P. 3d 1017 (2013), the Court of Appeals held as follows:

We interpret a court rule as though it were enacted by the legislature, giving effect to its plain meaning as an expression legislative intent. *State v. Chom*, 162 Wn. 2nd 451, 458, 173 P. 3rd 234 (2007). Plain meaning, in turn, is discerned by "reading the rule as a whole, harmonizing its provisions, and using related rules" to help identify the intent behind its. *Chom*, 162 Wn. 2nd at 458.

The Court of Appeals commissioner ignored the provision of RAP 5.2(e)(1), by which a notice of appeal of an order denying a motion for reconsideration is not due until 30 days after entry of the order denying a follow-on motion for reconsideration of that order. Where there has been

a follow-on motion for reconsideration, the due date for filing the notice of appeal is 30 days after entry of the trial court order denying the follow-on CR 59 motion. Karl B. Tegland states as follows: “[I]t is possible for a party to move for reconsideration of a court’s ruling on a motion for reconsideration.” 4 *Washington Practice Series* (2013), at 557. In *Barry v. USAA*, 98 Wn. App. 199, 203, 989 P. 2nd 1172 (1999), the Court of Appeals held as follows:

Nothing in CR 59 leads this court to declare a one-reconsideration limit for trial court decisions.

* * *

Ms. Barry’s motion for reconsideration. . . was at any rate considered by trial court without challenge.

Clearly, Commissioner Neel, and the Court of Appeals, were incorrect in determining that Stevenson could not timely appeal the May 16, 2013 judgment and order unless the notice of appeal was filed by July 5, 2013. As noted by Karl B. Tegland:

Reconsideration of reconsideration. The courts have held that a ruling on a motion for reconsideration is, itself, subject to reconsideration, thus opening the door to multiple motions.

4 Karl B. Tegland, *WASHINGTON PRACTICE: RULES PRACTICE* (6th ed. 2013), at 526.

Commissioner Neel of the Court of Appeals ruled that Stevenson was obliged to file her notice of appeal of the judgment filed May 16, 2013 no

later than July 5, 2013. In so ruling, she declared in effect that a motion for reconsideration of an order denying a motion for reconsideration of a judgment, does not bring up for review the judgment itself. This is tantamount to holding that an order denying a motion for reconsideration of a judgment is not subject to a further motion for reconsideration, and that Stevenson was obliged to file a notice of appeal even while awaiting a decision on her motion for reconsideration - -a position for which the appellate court commissioner cited no authority and for which the Mary Canning Estate provided no authority.

E. CONCLUSION

Stevenson has shown that the Court of Appeals in its decisions in effect dismissed her appeal of all orders of the trial court entered prior to August 12, 2013, on grounds the appeal was untimely - - ignoring RAP 5.2(e)(1). This decision is in direct conflict with the decision of the Court of Appeals in *Barry v. USAA*, 98 Wn. App. 199, 203, 989 P. 2nd 1172 (1999), that there is nothing in CR 59 that limits a party to filing one motion for reconsideration of an given order and it is in direct conflict with the Supreme Court's decision in *State v. Chomm*, 162 Wn. 2nd 451, 458, 173 P. 3d 234 (2007) that the plain meaning of a rule must be discerned by reading it as a whole, "harmonizing its provisions, and using related rules" to help identify the intent behind it. Accordingly, review

should be granted and the Court of Appeals should be reversed by this Court.

Respectfully submitted September 9, 2015

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PROOF OF SERVICE

Karen Stevenson declares under penalty of perjury that on September 9, 2015 she deposited in the US Mail at Seattle Washington, correct postage prepaid, a copy of this document addressed to Kevin B. Hansen, 121 Third Ave., PO Box 908, Kirkland WA 98083-0908.

Karen A. Stevenson
Karen A. Stevenson

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STATE OF WASHINGTON
2015 SEP - 9 PM 12: 57

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

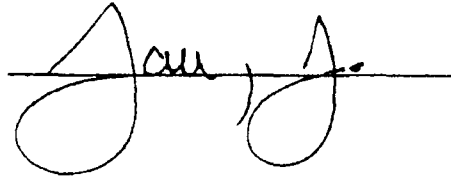
KAREN A. STEVENSON,	)	NO. 70994-1-1
	)	consolidated with
Appellant,	)	No. 71594-1-1
	)	No. 71794-4-1
v.	)	No. 72026-1-1
)	
DAVID M. CANNING,)	
Personal Representative of the Estate)	
of Mary Louise Canning,)	
	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
Respondent.)	

Appellant Karen Stevenson has filed a motion for reconsideration of the court's order dismissing her consolidated appeal filed on April 7, 2015. The panel has determined that the motion should be denied; therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 26th day of May 2015.

FOR THE PANEL:



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STATE OF WASHINGTON
2015 MAY 26 PM 2:35

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

KAREN A. STEVENSON,	)	No. 70994-1-I
	)	consolidated with
Appellant,	)	No. 71594-1-I
	)	No. 71794-4-I
v.	)	No. 72026-1-I
)	
DAVID M. CANNING, Personal)	
Representative of the Estate of)	ORDER DENYING
Mary Louise Canning,)	MOTION TO MODIFY
)	
Respondent.)	
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Appellant Karen Stevenson has moved to modify the commissioner's January 20, 2015 ruling lifting the stay previously imposed, consolidating the above referenced cause numbers under No. 70994-1, and determining the scope of review. Respondent has filed an answer, and appellant has filed a reply. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Appellant has failed to file her opening brief, which was due on March 6, 2015. The opening brief, limited to 50 pages, is due not later than 15 days after the date of this order. No further extensions will be granted. The due date of the opening brief in this court shall remain the same even if appellant seeks further review in the supreme court. Appellant's failure to file the opening brief within 15 days may result in the dismissal of review without further notice.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied; and, it is further

ORDERED that appellant's opening brief, limited to 50 pages, is due not later than 15 days after the date of this order; and, it is further

ORDERED that no further extensions will be granted; and, it is further

ORDERED that the due date of the opening brief shall remain the same even if appellant seeks further review in the Supreme Court; and, it is further

ORDERED that the failure to file the opening brief within 15 days may result in dismissal of review without further notice.

DONE this 16th day of March, 2015.

Leach, J.

Jan, J.
Drye, J.

FILED
CLERK OF APPELLATE COURT
STATE OF WASHINGTON
2015 MAR 16 PM 4:10