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SUPREME COURT
STATE OF WASHINGTON
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SC#93525.4

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON--DIVISION I
NO. 73367-2-I

MASHAWNA AUSLER, Petitioner APPELLANT

vs.

FOSTER JONES, RESPONDENT

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR
DISCRETIONARY REVIEW BY SUPREME COURT

William Budigan
Attorney for Petitioner Appellant Ausler
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Seattle, WA 98199
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 ORIGINAL

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR
DISCRETIONARY REVIEW BY SUPREME COURT, I declare as
follows:

I filed the Petition for Review to the Supreme Court herein with the Court of Appeals on August 29, 2016 by fax submitted to the COA regular fax number before 5pm end of the court day and this was within 30 days of the Court of Appeals decision on Reconsideration of 7/28/16 because the Court Rules say that 30 days falling on weekends, as ours did, are extended to the next court working day, which in this case was Monday 8/29/16 . I only faxed the Petition for Discretionary Review and the Certificate of Service and no other document in three faxes to assure less than 20 pages each, as that is a common fax limitation at the COA, which I know from my prior fax filings. After the three fax portions of the Petition were transmitting, I talked with my client, who was there at the Ct of Appeals with the \$200 filing fee. She arrived there about 4:45 and we were talking at 4:50 to confirm the clerk was receiving the faxes.

My client could see from where she was at the court of appeals front counter that my faxes were coming through. All three were faxed before 5 pm and I received verifications from my fax machine that the faxes were good (transmitted the correct number of pages) and all indicate faxing started well before 5pm because of the number of pages sent and completed time stamps, but the clerk would not confirm receipt because of other duties and politely asked my client to please leave for the day at 5pm. She asked my client to bring the original and copy and money the next day at opening 8am because she would not take her \$200 filing fee, though my client was there inside the office and the documents were transmitting and it was not 5 pm yet. We discussed this before 5 pm closing inside the clerk's office and, of course agreed to do as asked.

I am concerned that the clerk's office may stamp the Petition in as of Tuesday 8/30/16 from the fax tray the next morning because the Clerk chose not to process my received documents that day before 5pm and is waiting until Tuesday 8/30/16 and therefore I am standing on the position that my 3 faxes were timely received at the COA. So I had a hard copy of the entire brief and the appendices and the filing fee hand-delivered to the Court of Appeals the very first thing when they opened the next morning, 8/30/16.

If the Court rules that a motion for extension of time is necessary here, please allow this for the one second of business hour difference

between closing Monday and opening for business the next day first thing, for the reasons below, per RAP 18.8 (b) and RAP 1.2(a).

I understand that the Court takes a hardline on filing deadlines and allows exceptions for substantial compliance, reasonable diligence, and circumstances beyond a party's control and also where it would be a miscarriage of justice to deny the filing. All of these apply to me. I clearly substantially complied because the Petition was faxed in before 5pm 8/29/16 and another copy hand-delivered the next morning at opening. There is nothing else for a diligent person to do other than what I did. My case is not like the many days or weeks delays other cases faced. I could not have possibly controlled the circumstances other than wait for the machine to work and was limited by the COA page buffer. I really thought there was sufficient time to clearly have it stamped in by 5pm from the machine at the court. Yes, this would be a huge miscarriage of justice because my client's case has significant merit regarding family law and mortgage law issues and involved the loss of her house and being homeless, as explained in the Petition and to dismiss it due to the time of processing a fax received before 5pm would be a miscarriage of justice indeed. There is absolutely no prejudice to respondent from an overnight

extension of time, as he was faxed the Petition 8/29/16, as well as next day delivered a hard copy.

In Schaefco, Inc. v. Columbia River Gorge Com'n, 849 P.2d 1225, 121 Wn.2d 366 (1993), the dissent wrote:

RAP 1.2(a) provides that

[t]hese rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

RAP 18.8(b) provides that the appellate court will " in extraordinary circumstances and to prevent a gross miscarriage of justice" extend the time within which a party must file a notice of appeal.

..."Appropriate action" [under RAP 18.8 (b)] , however, does not automatically mean dismissal. "This court, in aid of its appellate jurisdiction ... possesses all inherent power of courts of equity, and when it is made to appear that a party is being denied relief to which in equity and good conscience he is entitled, it is the duty of this court to find some method within its jurisdiction by which such relief may be granted." State ex rel. Davis & Co. v. Superior Ct. for King Cy., 95 Wash. 258, 261, 163 P. 765 (1917). As we stated more recently, "[w]hile a failure to meet jurisdictional requirements has generally mandated dismissal of the appeal, this court has always retained, and occasionally exercised in unusual cases, its authority to nevertheless hear the case on the merits." State v. Ashbaugh, 90 Wash.2d 432, 437-38, 583 P.2d 1206 (1978). See, e.g., Myers v. Harris, 82 Wash.2d 152, 155, 509 P.2d 656 (1973). In Myers, we declined to dismiss the appeal despite

the fact that appellants [849 P.2d 1228] timely submitted notice of appeal without payment of fees (at that time a jurisdictional requirement). We declined to dismiss the appeal because the mistake was made in good faith and the respondents suffered no prejudice. Myers, at 155, 509 P.2d 656. See also State v. Sorenson, 2 Wash.App. 97, 101, 466 P.2d 532 (1970), in which the Court of Appeals found substantial, but not literal, compliance with jurisdictional requirements sufficient.

...Our prior willingness to consider unusual circumstances in exercising our authority to hear such cases comports with the judge-made doctrine of "unique circumstances". See Wolfsohn v. Hankin, 376 U.S. 203, 84 S.Ct. 699, 11 L.Ed.2d 636 (1964) (per curiam); Thompson v. Immigration & Naturalization Serv., 375 U.S. 384, 84 S.Ct. 397, 11 L.Ed.2d 404 (1964) (per curiam). ...United States v. Heller, 957 F.2d 26, 28, 31-32 (1st Cir.1992) (per curiam) ("unique circumstances" doctrine enables the court to inquire [849 P.2d 1229] into the reasonableness of the party's conduct in its totality).

Here too, the "appropriate action" would not be dismissal, but allow the main Petition pleading received timely to be accepted and any portions potentially alleged to be after 5pm to be extended for filing to the next morning of 8/30/16.

In Reichelt v. Raymark Industries, Inc., 764 P.2d 653, 52 Wn.App. 763 (1988), the court ruled:

RAP 1.2(a) generally compels a liberal interpretation of the Rules on Appeal to the end that each cause and issue be decided on its merits. [1] Explicit exceptions to that rule of liberality exist, however. One such exception, specifically referenced in RAP 1.2(a), severely restricts this court's authority to grant Raymark's motion to extend time to file its notice of appeal. RAP 18.8(b) permits such an extension "only in extraordinary circumstances

and to prevent a gross miscarriage of justice" and clearly favors the policy of finality of judicial decisions over the competing policy of reaching the merits in every case. See Comment, 3 L. Orland, Wash.Prac., Rules Practice §§ 4521-25, @ 424-28 (3d ed. 1978).

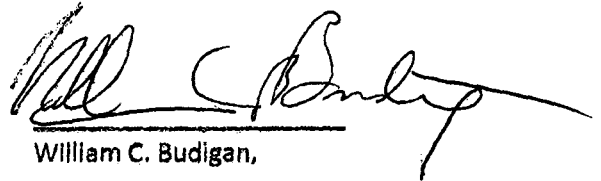
This rigorous test has rarely been satisfied in reported caselaw since the effective date of the Rules of Appellate Procedure on July 1, 1976. RAP 10.4(h). In each of those cases, the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged. See *Weeks v. Chief of State Patrol*, 96 Wash.2d 893, 895-96, 639 P.2d 732 (1982), notice timely filed, but filed in wrong court; *State v. Ashbaugh*, 90 Wash.2d 432, 438, 583 P.2d 1206 (1978), notice timely filed but rejected by court for lack of filing fee; *Structurals N.W., Ltd. v. Fifth & Park Place, Inc.*, 33 Wash.App. 710, 714, 658 P.2d 679 (1983), notice timely when filed within 30 days of entry of stipulated "amended" judgment. In each case, the defective filings were upheld due to "extraordinary circumstances", i.e., circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct. RAP 18.8(b).

So too here, the dismissal of this case would be a miscarriage of justice given my diligence to get it fax-filed that day and very substantial compliance with the Rule and the significant loss to me of the entire case being over without this great court's review of all the issues and merits due to an allowed fax filing fax machine bumper page limit and immediate additional filing at opening the next morning.

I am hereby asking the court to grant my motion for extension of time to file my Petition from the original deadline to whatever date the Court of Appeals actually submitted it to the Supreme Court. We must be only talking something like a day extension if the Court of Appeals did not count the fax I sent in before 5 p.m. 8/29/16.

I certify that the above is true and correct under penalty of the perjury laws of Washington State.

DATED this 29th day of August, 2016 at Seattle, WA.

A handwritten signature in black ink, appearing to read 'William C. Budigan', written over a horizontal line.

William C. Budigan,

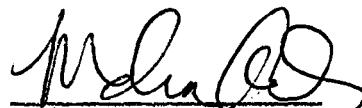
WSBA 13443 Attorney for
Petitioner Ausler

I am Petitioner herein. I was at the Ct of Appeals in Seattle on 8/29/16 with the \$200 filing fee to file my Petition for review to the Supreme court, arriving about 4:45pm. My attorney, William Budigan, was on the phone with me in his office, as he had faxed the Petition into the court and we were talking at 4:50 to confirm the clerk was receiving the faxes. I could see from where I was at the court of appeals front counter that my faxes were coming through, but the clerk would not confirm receipt or take my money because of other duties and politely asked me to please leave for the day at 5pm. She asked me to bring the original and copy and money the next day at opening 8am though I was there inside the office and the documents were transmitting and it was not 5 pm yet. My attorney and I discussed this inside the clerk's office and felt comfortable in the knowledge that the Petition had gotten there so doing the money transaction the next day with better copies than original *faxes* made sense so I complied and left.

Though I do not think it necessary, as I filed timely, I am hereby asking the court to grant my motion for extension of time to file my Petition from the original deadline to whatever date the Court of Appeals actually submitted it to the Supreme Court. We must be only talking something like a day extension if the Court of Appeals did not count the fax I sent in before 5 p.m. 8/29/16 and I would suffer great hardship if the court would not consider reviewing my case, as it affects my house situation and I need the court's assistance to no longer be homeless.

I certify that the above is true and correct under penalty of the perjury laws of Washington State.

DATED this 29th day of August, 2016 at Seattle, WA.


Mashawna Ausler, Petitioner

THE COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

In re the Relationship of:) No. 73367-2-I
FOSTER JONES,)
Respondent,) APPELLANT'S
V.) DECLARATION OF SERVICE
MASHAWNA AUSLER)
Appellant.)

CERTIFICATE OF SERVICE

I certify that In addition to fax filing the same with the Court of Appeals 8/29/16 before 5pm, on the 30th day of August, 2016, I caused a true and correct copy of: Appellant's Petition for Review to Supreme Court and this document and Petitioner's Motion for Extension of Time to be served on the following in the manner indicated below:

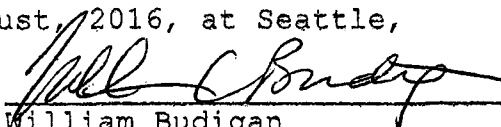
Clerk of the Court () U.S. Mail
(X) Hand Delivery
() E-filing by e-mail
() Via Fax (206) 389-2613

Address:
One Union Square
600 University St
Seattle, WA 98101

And to WA Supreme Court (X) E-filing by e-mail: supreme@courts.wa.gov

Counsel for Respondent
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Evan Lee Loeffler (X) Hand Delivery
Loeffler Law Group () by e-mail to
500 Union St. Ste 1025 () Via Fax 206 443-4545
Seattle, WA 980101-2300

DATED this 30 day of August, 2016, at Seattle, Washington.


William Budigan
Attorney for

Petitioner/Appellant