Case No. 73100 1 COA
Supreme 93722-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

JOSEPH R. AND MELANIE W. ELENBAAS,
husband and wife, and the marital community composed thereof.

Appellants/Defendants

v.

BANNER BANK, a Washington Corporation,

Respondent/Plaintiff

APPENDED APPELLANT ELENBAAS PETITION FOR REVIEW BY WASHINGTON SUPREME COURT

Joseph and Melanie Elenbaas, Pro Se
600 East Smith Road
Bellingham, WA 98226
Tel: 360 961-1917
Fax: 360 398-1917

Comes now Appellants Elenbaas, appending our request and stating as follows:

We incorporate and expand on the original request filed (mailed) on 21 October 2016, which due to weekend and holiday you received on 24 October, and our request subsequently filed on 23 November, 2016.

Without belaboring the entire content of Banner's Answer to our Request for an Extension, let me clarify and demonstrate the incorrectness of Banner's first allegation. They allege that we "...have established a pattern of late filings in this litigation". This alleges too much. Their first allegation is that we caused a twenty two day delay due to "avoidance of service of process of the complaint". We cannot speak to what chicanery Banner's counsel employed by the actions they undertook at that time, but subsequent to other named Defendant's asking us about the matter when they were served, and as we had not been served, we wrote Banner Bank, asking if there was indeed an action being contemplated against us, and if so, were we going to receive service. Following our request, we were served and responded in a timely manner. There existed no avoidance on our part. Banner's counsel immediately undertook action to forestall any Discovery on our part, even taking action to disallow adequate time for us to receive representation. In fact, despite our "learning on the fly", we do not believe there exists a single example on the record, where the Court sanctioned us for delay, nor are we aware of any action by Banner to move for sanctions against us.

Timely filing for a motion to reconsider the trial court's ruling on summary judgment and making an effort for a preliminary injunction to halt the sheriff's sale appeared to be legitimate exercises of procedure. Due to extreme health conditions on the part of both appellant's and the costs related thereto, we could not afford counsel. Because we did have limited assets, we were not qualified for assistance in representation. We were forced to research and use that understanding of procedure in the fast-moving, unfamiliar, and intimidating environment of the Courts.

Though Banner alleges that there is "nothing hidden or complicated about RAP 18.8(b)" their attorneys have had years of specialized education in a law school and years of practice to master the complexity of law. Perhaps in isolation there is nothing complex about any particular rule,

however unlike Banner's attorneys, for us each step is new, and it appears the general rule to be that a paper submitted to a court was considered filed on the date of the mailing. In fact, in our review of the Supreme Court procedures, I took away from the earliest listed generalities, that a matter as ours would not be discarded by virtue of its time of filing. Despite this mistake in understanding on our part, because our livelihood was in jeopardy, we made sure the petition was mailed before the deadline, but due to a weekend, followed by a holiday, our submission arrived late, per your rule. Nowhere did we find alternate means of email or fax service, which is probably common knowledge for any attorney.

It appears that the Rules of Appellate Procedure permit an extension of time only for extraordinary circumstances or to prevent a gross miscarriage of justice. It is our assertion that both apply to our plight.

Our reading further seems to indicate that "[t]he appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time". "...Ordinarily...", is a word on which we have hope, and herein relay.

While finality of judgments is arguably a sound policy, the above language seems to contemplate some situations are out of the ordinary. An essential element of our petition is that we are not lawyers, and as such we were effectively denied a fair hearing at the trial court. Banner moved for summary judgment at the earliest time permitted. When Banner would not continue the hearing despite our demonstration of prior travel arrangements to help get a 79 year old gentleman out of a bad nursing home environment, we attempted to acquire an attorney to appear at said hearing to get a continuance to allow discovery. We contacted over a dozen attorney's, none of which desired to stand against a bank, and on the last day possible, we obtained counsel, who apparently did not, at the hearing, make the right request, and unfortunately, charged us double the fee for which we contracted, while not satisfying the purpose. When we filed a pro se appeal to the Court of Appeals, we lacked the info that Discovery would have provided, we think the record demonstrates that the COA upheld the trial court grant of summary judgment on an incomplete record on a narrow point. Allowance of Discovery would likely have changed the result. Clever lawyering and use of obfuscating tactics on the part of Banner's counsel controlled the dialogue.

Again, we are not lawyers and possess no legal training. Melanie has spent her life as a very good homemaker. She is now mostly bedridden due to the almost twenty year ravages of colitis, diminished organ functions, and a drug induced psoriasis. Joe is a lifetime farmer, post being retired from the Navy. He has served his County and State as a Planning Commissioner, Charter Freeholder, four-time elected member of Charter Review Commissions, and a brief stint as an appointed State Senator. We have not petitioned for, nor accepted any pay for any of this service. We are not lacking in average intelligence, but as the spokesman for our family unit, Joe has been diagnosed as having lost some 50% of his cognitive skills due to a concussion suffered after being struck by a vehicle. The basis of our petition is that as non-lawyers, unaware of the detailed complexity of all of the procedural rules, we have been unable to develop and present the merits of our case.

Because of what we have suffered, knowing there exist individuals and families that are even more destitute or even less informed than we, it is felt that it is a matter of broad concern to address the question of whether the Courts and their rules have become so removed from the ordinary citizen as to be inaccessible to all but those who can afford a lawyers services or those who have one appointed to serve. Surely it is an extraordinary circumstance for citizens to be denied a fair hearing. [While reading and studying these rules, it certainly appears that lawyers have a higher standing that the regular people when Rule 10.6 permits amicus briefs only from licensed lawyers, apparently disallowing citizen participation.]

Banner now states that my "alleged" cognitive impairment has been mentioned to every Court that has heard the case. Banner could have tested my "alleged" impairment by demand of proof, but they have not. While we have struggled with making the connections that are impeded by this disability, we contend that, by all assurances of which we are aware, the Courts have an affirmative duty to provide for reasonable accommodation. The record will demonstrate, that neither Banner, nor the trial court, nor the Court of Appeals for that matter, have provided same. Most specifically, the trial court erred in not providing such accommodation and had to have tainted the proceedings to our disadvantage. Surely this rises to the level of a gross miscarriage of justice. And in the overall gravity of this matter, is a mistaken three day delay in the Court's receipt of our petition have an unduly affect on the preference for finality of judgments?

If the Courts can ignore the Disability Act, what purpose does said Act serve? Except for the defrauding of a totally helpless party, what better example exists of need for compliance than an adverse happening to one with a known mental impairment, trying to obtain information, understand the activities of the court, and represent their position in a foreign "minefield"?

In summary, we could not afford a lawyer when needed working up to the Summary Judgment process, local lawyers were reluctant to take the case, we attempted at all times to follow what we understood to be proper procedure in an unfamiliar situation with a substantial part of our livelihood at stake. Further, we believe we were deprived of our property without a full and fair hearing, ostensibly because we somehow did not use the right words to request a continuance to discover. We believe the record shows that any and all adverse parties in the Court process failed to make accommodation for our disability.

We request that the Supreme Court grant an extension of time, not only to rectify error in our case, but to address the perceived fundamental question of whether the courts of Washington can dispense justice in a fair and efficient manner to all citizens, not just those represented by lawyers in a closed technical system.

We realize that an extension to file is a privilege according to the rule. We ask the Court to grant this privilege so that we may make our argument for our right to justice.

Dated this 27th day if January, 2017.

Joseph R Elenbaas, Pro Se for
Joseph & Melanie W Elenbaas (360) 961-1917
600 East Smith Road, Bellingham, WA 98226

DECLARATION OF MAILING:

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 27th day of January, 2017, I mailed via First Class Mail, a true copy of the foregoing and attached Petition to:

Clerk of the Court of Appeals DIV 1, One Union Square, 600 University Street, Seattle, WA 98101-4170
Hacker & Willig, 520 Pike Street, Suite 2500, Seattle, WA 98101-1325
Clerk Erin L. Lennon, Temple of Justice, POB 40929, Olympia, WA 88504-0929

Joseph R. Elenbaas