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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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BY RONALD R. CARPENTER

RONALD LAVERNE GATES,)	No. 89265-2	_____
Respondent)		CLERK
)	ANSWER TO MOTION	
)	MOTION FOR EXTENSION	
)	OF TIME TO FILE	
)	PETITION FOR	
vs.)	DISCRETIONARY	
)	REVIEW	
)		
)	Division II Case No.	
)	No. 43574-8-II	
KYON CHA BRUNDAGE,)		
Appellant.)	Lewis County Superior	
_____)	Court No. 11-3-00226-0	

Pursuant to Rule of Appellate Procedure (“RAP”) 17.4(e), Respondent on appeal Ronald L. Gates (“Gates”) brings the instant Answer to Ms. Brundage’s Motion For Extension of Time to File Petition For Discretionary Review.

STATEMENT OF RELEVANT FACTS

The Division II Commissioner granted a motion on the merits and attorneys fees on April 12, 2013. A motion to modify that ruling was denied by a panel of judges on August 7, 2013. Her counsel, who has now withdrawn, has asked for multiple previous extensions in this appeal, and

ANSWER TO MOTION FOR EXTENSION OF TIME - 1

ORIGINAL

the record reflects that delay has been a running tactic of Brundage's during this litigation.¹

Meanwhile, Brundage used this appeal to file a *lis pendens* lien against every piece of property awarded to Gates in the dissolution. These properties were awarded to him because Brundage has dissipated all of Gates's other assets. The five *lis pendens* have prevented the sale of any of the properties awarded to Gates, and left him completely destitute, unable to pay debts or even cover basic living expenses. A sale of Gates's Lake Desire property has been repeatedly extended in hopes that this litigation would finally terminate, and the *lis pendens* lifted, based on a denial of the Motion To Modify. This sale will likely be lost by any further delays. Similarly, a sale of Gates's Avondale, Arizona property was extended and extended, but ultimately lost, due to the *lis pendens* and Brundage's endless appeal litigation, which has now been found to be meritless by the Court Commissioner and a full panel of Division II judges.

¹ See discussion, Motion To Dismiss and Motion On the Merits, pp. 10-13; see also, Declaration By Sharlynn Gates Supporting Motion For Order Directing Cancellation of Lis Pendens, Awarding Attorneys Fees and Directing Clerk To Release Funds In Registry ("Declaration By Sharlynn Gates"), Exhibit A. Many additional background facts supporting this motion are contained in that declaration.

At the same time, Gates cancer is rapidly advancing, and his health is deteriorating. The trial judge specifically ruled that Brundage had manipulated this litigation to take advantage of Gates's poor health.² Now, the evidence shows that Gates's cancer is no longer responding to chemotherapy. The chemotherapy had previously been keeping his Prostate Specific Antigen ("PSA") levels in the normal range, and now the PSA levels are high again. This shows the cancer is growing again, and doctors have given him a very short time to live.³

So as Gates's health is failing and his only assets are tied up by Brundage's frivolous litigation, debts continue to mount. Gates has just received a bill from the IRS for over \$18,000 for the money Brundage removed from his retirement account, for her own personal use, without paying taxes.⁴ Gates is paying on four credit cards left from the marriage.⁵ He has a \$111,000 bill from the bank for money still owed on the Port

² "It was very, very clear from all of this that her whole point in this was to delay this matter from being resolved and take advantage of Mr. Gates' physical condition." Respondent's Brief, Appendix, Verbatim Transcript of Proceedings (June 8, 2012) 19.

³ Declaration By Sharlynn Gates, Exhibit A, p. 4.

⁴ Id. at p. 3.

⁵ Id.

Angeles home that was foreclosed on due to Brundage's mismanagement.⁶ He has four judgments totaling nearly \$40,000 that he is currently negotiating, which were incurred by Brundage as power of attorney for Gates.⁷

ARGUMENT

As Brundage herself has argued repeatedly in this litigation, time is of the essence in this case. Gates is in failing health, and he was granted certain pieces of real property in exchange for retirement money that was squandered or misappropriated by Brundage. He also faces a multitude of debts on which substantial regular payments need to be made.

Although Brundage's multiple attempts at a stay were denied, she has filed *lis pendens* actions as to all of the disputed properties, thereby blocking any potential sale and undercutting the very basis on which the trial court granted the properties to Gates in the first place — because Gates's assets were misappropriated by Brundage, and Gates, in failing health, has no means by which to live and pay debts.

⁶ Id.

⁷ Id.

The requested extension for additional time to file a petition for discretionary review is unwarranted, and will severely prejudice Gates. He has been desperately waiting for the finality of this appeal so he can lift the *five lis pendens* and proceed with the sale of the property he was awarded. Gates owes money to the IRS, on bank penalties, delinquent credit cards that he did not open, property taxes for land he can use due to Brundage's liens, and massive attorney's fees to three different lawyers to try and get some kind of justice in this case. Gates owes thousands of dollars to creditors and it is due now. The sale of these properties is not for his own savings, or recreation use — the proceeds are needed immediately to pay creditors that have been waiting since 2010 and 2011 to be paid. Gates does not want to sell the properties, but has to or be subjected to further fines, penalties, and garnishment. Gates needs help and justice now.

In the interim, Brundage has been found in contempt by the trial court for violation of court orders and failure to pay even the most basic financial obligations imposed by the trial court.⁸ Because time is so critical to Gates in this matter, he prepared a motion on the merits, and it

8

Motion To Dismiss and Motion On The Merits, Appendix, Exhibit E.

was granted. Thus, Brundage has been able to cause all of this debt and anguish to Gates based on what has now been ruled a meritless appeal.

Gates may not have much longer to live, and desperately wants to resolve this case and these debts so as not to leave a legal mess behind that his family has to deal with. Brundage should not be allowed to miss the deadline and then file a late petition to the Supreme Court. The court should deny the request for an extension on these facts.

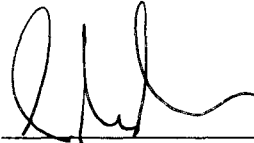
CONCLUSION

Over the last few years, Brundage engaged in a pattern of “financial devastation” of Gates. That devastation included gross mismanagement of Gates’s real property resulting in the loss of hundreds of thousands of dollars. Her obvious intransigence throughout the case, the fact that the properties were awarded as a *substitute* for a money judgment for lost retirement funds, the fact that the properties are necessary to pay substantial debt, and Gates’s failing health, all demonstrate that time is of the essence in this meritless appeal. The court should deny this request for an extension of time and not accept Brundage’s late-filed Petition For Discretionary Review.

EXHIBITS

A: Declaration By Sharlynn Gates Supporting Motion For Order Directing Cancellation of Lis Pendens, Awarding Attorneys Fees and Directing Clerk To Release Funds In Registry

Respectfully submitted this 3rd day of October, 2013.



S. Tye Menser/WSBA No. 37480
MORGAN HILL, P.C.
Attorneys for Respondent On Appeal

Exhibit A

**Superior Court of Washington State
County of Lewis**

Ronald L. Gates,

Petitioner,

and

Kyon C. Brundage,

Respondent.

No. 11-3-00226-0

**Declaration by Sharlynn Gates
Supporting Motion for Order
Directing Cancellation of Lis
Pendens, Awarding Attorney
Fees and Directing Clerk _to
Release Funds in Registry**

I, Sharlynn Gates, declare that:

I make this declaration of my own personal knowledge and am competent to testify as to the matters herein. I am the Respondent's daughter. Because my father has issues regarding his health and competency, I testified on his behalf at the dissolution trial about the marital assets.

My fathers divorce date was originally set for December 11 2011. Kyon Brundage (Brundage) delayed the trial until May 2012, through series of attempts including failure to comply with discovery, hiring and firing attorneys, and requesting multiple continuances all of which are documented. In May 2012 the court awarded a fair settlement of property to my father and to Brundage. Both parties received roughly equal property enough to sell and live comfortably. The court awarded real property to my father because Brundage dissipated all his assets through a series of deceitful acts.

After trial, on May 23, 2012, Brundage hired her fourth attorney, Clayton Dickinson. She moved for a stay of the enforcement of the divorce decree, which was granted on June 8, provided Brundage posted a \$500,000.00 supersedeas bond. She was also directed to maintain all taxes, insurance, upkeep on the properties within her control, and post all rental proceeds on the properties awarded to my father into the court registry. Further, she was required to report monthly on the property status to Ms. Bringolf, my father's attorney. Brundage did not comply fully with any of the orders of the Court.

On May 30, 2013, Brundage filed a notice of appeal that was the first of multiple attempts to reverse or modify rulings of the trial court. All of Brundage's appellate efforts have been unsuccessful. The Court of Appeals awarded a judgment for attorney fees against Brundage. Brundage never filed the \$500,000.00 bond.

Brundage was unable to post a \$500,000.00 bond or get relief from that requirement from the Court of Appeals. She recorded lis pendens on all five properties awarded to my father in the dissolution. This was effectively an end run around the bond ruling, and prevented my father from having the ability to sell the properties to pay debt, as contemplated by the trial court at the time of the awards. My father had pending sales contracts in place for the properties at the time which has lost.

There are many good reasons for the Court to cancel the lis pendens recorded by Brundage. Brundage has not been acting in good faith throughout her marriage to my father and while this case has been pending. The current appeal been denied repeatedly, has no merit and little probability of a favorable outcome for Brundage.

Brundage used her power of attorney from my father for her own financial gain, while destroying my father's credit, losing his homes, losing his family and personal items, opening email accounts in her name, hiding or failing to forward my father's mail, transferring and attempting to transfer his vehicles in her name only, transferring his

funds into her accounts for her use, transferring her debts to his credit cards and taking her names off the cards, using his funds to improve her property, while not using his funds to pay his bill and letting them default to creditors who made judgments against him. She took out the majority of his retirement and purchased a home in Arizona in her name only using his funds.

After my father's stroke and subsequent heart attack, Brundage failed to see that he was adequately taken care of. She did not follow doctor directives to not leave him unattended. She left him unsupervised and vulnerable placing him in a trailer while she slept in the residence. He fell and incurred serious injuries. There were two separate adult protective investigations of her treatment of him. My disabled father experienced a heart attack in Arizona while Brundage left him unattended and was in Washington State.

At the inception of the case, Brundage caused a two-month delay by intentionally avoiding service of process. She refused to give my father's lawyer, Kelli Bringolf, her whereabouts. On July 20, 2011, my father had to bring a motion to permit service by mail. Service was finally obtained on August 3, 2011. The subsequent attempts at delay by Brundage prior to trial included failure to comply with discovery, hiring and firing attorneys, and requesting multiple trial continuances all of which are documented in the appeal.

Brundage throughout the trial, interrupted the judge, and was disrespectful. She refused to sign the divorce decree and only signed the quit claim deeds under threat of jail by the court. Brundage has still failed to return personal items to my father as directed to do in the divorce decree.

The Court has found Brundage in contempt for wilfully failing to comply with its orders including payment of attorney fees and safeguarding rent payments on property awarded to my father by depositing payments with the Clerk of Lewis County. Brundage was placed in the Lewis County jail. She claimed that she had no funds, however upon spending one day in jail she came up with the needed \$2,500.00 for her release.

A restraining order had to be issued against Brundage to protect my father. After the contempt hearing, while waiting in the back of the courtroom she made a verbal threat stating, "You will pay for this". She then began showing up at my father's residence, which is a gated community that clearly posts admittance to residence and guests only. Brundage came to my father's residence during the day and also at night after the gates were locked. She would knock on the door and try to get my father to come to the door. He felt unsafe and we felt unsafe having her do this to him. The Centralia police were called to investigate. My father sought and was given a temporary restraining order against her.

One of the pieces of property awarded to my father is a home in Avondale, Arizona. Brundage was occupying the home. This property was purchased primarily with the funds Brundage withdrew from my father's retirement account as his POA to benefit herself only. My father had to file eviction proceedings in Arizona to get Brundage out of the Avondale home. Brundage told the professionals handling the eviction that she would cooperate to move out. Brundage and the professionals set a date for papers to be signed. My father paid the professionals to draft the documents and wait for Brundage at the meeting time. She did not show up at the agreed upon time. Brundage bought more time and my father had to pay further fees to proceed in court. At the end of the day, Brundage's delay and intransigence resulted in her living for four months rent-free, at my father's expense, in addition costing him further thousands in fees. Further, she left the property damaged, took all keys, the refrigerator, broke the gate, and did not pay association dues or land taxes.

Another piece of property awarded to my father in the dissolution is a home at Fords Prairie in Centralia, Washington. My father had sought to evict the renters in that home, again so he could prepare to sell the property and pay debts. On August 2, 2012, Brundage produced a sales contract with the renters — never before seen, never recorded, and never mentioned at trial — claiming she sold the home in 2010 to the renters Wild

Mywildersyde and Richard Cennicola. Brundage stated under oath in answers to interrogatories that it was her property, claimed it as her own on taxes, wrote off improvements and never brought it up at any point in the dissolution case. I also spoke to the renters immediately after the divorce, explaining the circumstances and my father's intent to sell the property. I point blank asked them if they had interest in purchasing the property. They said no they could not afford it. There were many contradictions in the contract. We assume this contract was falsified, and was generated to delay the eviction of the renters and prevent my father from exercising his right to sell the property. This suspicion is confirmed by the fact that the claims of a sales contract by Brundage surfaced only in August 2012, after she was unable to post the required bond and unable to convince the appeals court to grant a separate stay. In her motions to stay in June and July, she continued to claim that the Fords Prairie property was hers, and thus she would be prejudiced if my father was allowed to sell it before the ruling on her trial appeal. This again cost my father thousands in attorney costs to pursue.

The renters in the Fords Prairie home claimed that rent was current and that they paid all rent to Brundage. If these claims are true, as of October one there is \$9,848.41 in rent payments that Brundage failed to deposit with the Lewis County Clerk.

In September 2013, the renters vacated the Fords Prairie home. They left unpaid utilities, which my father will be responsible for. The City of Centralia has condemned the home. My father is now left with repairs; insurance, unpaid taxes the cost of the unpaid utilities. All responsibilities placed upon Brundage by the Court while she pursued her appeal.

Brundage is not making good faith efforts to pay my father's attorney fees. These fees are a direct result of Brundage's pursuit of these frivolous suits and intent to delay justice. In May 2013, Brundage was in the process of selling her SE 6th street house. The sale was prepared to go through and closing date set. Upon hearing of this transaction, my father's lawyer filed a writ of attachment to the sale for the attorney fees that Brundage was obligated to pay for proceeding with this frivolous case. The writ was awarded and attached. Brundage threatened to sue my father's lawyer over the writ. After the attachment of the writ, Brundage terminated the sale to prevent her funds to pay for attorney fees she is obligated to pay.

Brundage through her actions has clearly not acted in good faith. Her behavior is egregious and done with intent to harm to my father. She is not acting in good faith with the lis pendens. Kyon Brundage used this appeal to file a lis pendens lien against every piece of property awarded to my father in the dissolution to drag this case on until he dies. Brundage still has four pieces of property valued at more over \$400,000.00 that she is free and clear to sell. The five lis pendens have prevented my father's ability to sell of any properties and left him completely destitute unable to pay debts, unable to get home health care that he desperately needs and even cover basic living expenses. He has just received a bill from the IRS for over \$18,000.00 for the money Brundage withdrew from his retirement account without paying taxes for her own personal use. He is paying on four credit cards left from the marriage. He has a \$111,000 bill from the bank for the money still owed on the Port Angles home which Kyon defaulted on paying and was sold in foreclosure. He has four judgments of nearly \$40,000 that he is currently negotiating, which incurred when he was disabled while Brundage was his POA .

Brundage's motions for the appeal have been reviewed and rejected every time over the past 17 months. From the start of this appeal process in May 30th 2012 until today every motion to stay, discretionary review and motion to modify has resulted in favorable decisions to my father.

Brundage will drag this appeal on as long as she can. Brundage will continue to petition the court even without merit or hope of prevailing in hopes my father will die. My father now occurred over \$50,000.000 in attorney fees from the appellate lawyers and almost \$30,000.00 for his dissolution. The total cost of the divorce, appeal and rental property issues, court costs, service of papers, requests for records and transcripts is now

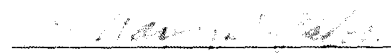
approaching \$90,000.00 for my father.

My father is elderly and seriously ill. My father suffers from heart ailments, including a heart attack in Arizona in 2011; a stroke (hemorrhage) in December 2009 that affected his walking, balance, and cognitive functioning; and prostate cancer, which has metastasized to his bones and is in an advanced stage. His overall health is extremely in poor and continuing to deteriorate. He has been given limited time to live.

My father separated from Brundage in 2011. For more than two and a half years he has had been forced to live without a home of his own, forced to live with family or live in a meager living conditions, barely living pay check to paycheck without of the funds and property he worked his whole life to accumulate. Brundage is denying my father the ability to enjoy the last part of his life and get his affairs in order to prepare for the end of his life by the delay of frivolous appeal.

I ask the court to use its discretion cancel of record the Lis pendens on the five pieces of property awarded to my father, King County Tax Parcel No. 400840-0340 (Lake Desire), Lewis County Tax Parcel No 009701003002 (3309 Fords Prairie), Lewis County Tax parcel No 023618007002 (1213 W. Roanoke), Lewis Co Tax Parcel No 0236118007001 (Clearview Heights), Maricopa County Tax Parcel No 102-86-215 (Avondale Az). I ask the court to award my father the funds placed in the court registry for rents on the Fords Prairie home. Finally, I ask the court to award my father a judgment against Brundage for attorney fees in connection with this motion. I declare under penalty of perjury under the laws of the state of Washington that the following statement is true and correct.

Signed at Lakewood, Washington, on October 10, 2013.



Sharlynn Gates

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS**

In re:

RONALD GATES,

Petitioner,

and

KYON C. BRUNDAGE,

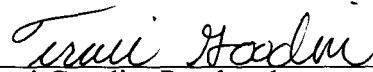
Respondent.

NO. 11-3-00226-0

DECLARATION RE: ELECTRONIC
SIGNATURE

I declare under penalty of perjury under the laws of the State of Washington that the electronic signature on the Declaration by Sharlynn Gates Supporting Motion for Order Directing Cancellation of Lis Pendens, Awarding Attorney Fees and Directing Clerk to Release Funds in Registry, consisting of 5 pages, including this declaration page, is complete and legible and that I have examined it personally and it was received by me.

DATED this 3rd day of October 2013, at Olympia, Washington.



Traci Goodin, Paralegal to
S. Tye Menser, Attorney at Law

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