

No. 43530-6-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

DAWN BAUER,

Respondent,

vs.

NYLES BAUER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF THURSTON COUNTY
Cause No. 09-3-00087-6

REPLY BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

STATE CASES

None

FEDERAL CASES

None

I. STATEMENT OF THE CASE

The Appellant adopts the statement of the case as set forth in his opening brief.

II. ARGUMENT

Respondent's argument that Mr. Bauer was put on notice of the trial date is without merit. First, she attaches emails that are not part of the record to demonstrate that he was given notice of the trial date and served copies of her counsel's trial brief. Respondent's brief at 4. However, a review of the emails sent by her then attorney demonstrate that the notice was not, as represented, sent to his email address, which was nyles314@hotmail.com. Instead, it was sent to the email address bauerx1@msn.com, apparently one day prior to trial. There is no indication that he received it or had given any approval for his former attorney to appear. Thus, the court should grant his motion.

Additionally, a reasonable time longer than one year in which to file for relief is available under a situation where the judgment is void or entered while the party was prevented from prosecuting or defending this case. Here, as stated in his affidavits, Mr. Bauer was incarcerated and then sent to a psychiatric unit. Under this scenario he could not prosecute his motion. Thus, the time should be extended.

III. CONCLUSION

The Appellant respectfully requests that the court reverse the trial court and remand for further proceedings.

DATED this 23 day of April, 2013.

HESTER LAW GROUP, INC. P.S.
Attorneys for Appellant

By:  _____
WAYNE C. FRICKE
WSB #16550

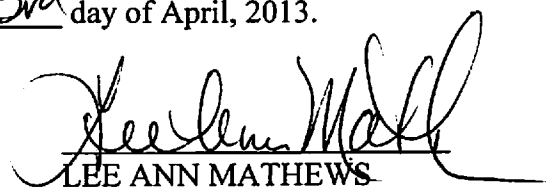
CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of the reply brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

Dawn Bauer
PMB 5360
P. O. Box 257
Olympia, WA 98507-0257

Nyles Bauer
1242-B Willow Street NE
Lacey, WA 98503

Signed at Tacoma, Washington, this 23rd day of April, 2013.


LEE ANN MATHEWS

HESTER LAW OFFICES

April 23, 2013 - 3:14 PM

Transmittal Letter

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Case Name: Dawn Bauer v. Nyles Bauer

Court of Appeals Case Number: 43530-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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Comments:

No Comments were entered.

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