

Thu 7/24/2014
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SUPREME COURT OF THE STATE OF WASHINGTON

44064-4-III

CITY OF TACOMA, Respondent,

v.

ALDOREN KAUZLARICH, Appellant

PETITION FOR REVIEW

Marilyn R. Gunther
WSBA #27797

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FILED

AUG - 7 2014

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRF

A. IDENTITY OF PETITIONER

Petitioner, Aldoren Kauzlarich, asks this court to accept review of the Court of Appeals Decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

On June 24, 2014, the Court of Appeals denied Petitioner's Motion to Modify Commissioner's Ruling in case number 44064-4-II that dismissed Petitioner's appeal.

C. ISSUES PRESENTED FOR REVIEW

Was dismissal of this case proper under the Rules of Appellate Procedure?

Should this court accept review, reverse, and remand the case to the Court of Appeals for further proceedings?

D. STATEMENT OF THE CASE

This case started when the City of Tacoma issued Tacoma Municipal Code (TMC) violations against the six contiguous lots owned by Aldoren Kauzlarich, basically for a complaint of "too many vehicles" parked/stored on those lots. At the time the TMC permitted six vehicles per lot, but the property was divided into only two tax parcels. The City Code Enforcement Officer, Mr. Reeves, determined that the TMC did not

mean what it said about six vehicles per lot, and that it must be no more than six vehicles per parcel.¹ The abatement notice also included other items, such as old or scrap wood, tires, vehicle parts. When abatement occurred, the City also took a "junk car" that was specifically not included in the notice of abatement, per the notice itself and testimony in the hearings.

Mr. Kauzlarich appealed and a hearing was held. The ruling was adverse to Mr. Kauzlarich and he filed a timely and proper Notice of Appeal. The City refused to process his appeal.

The City applied to the Superior Court for an abatement warrant, which was granted without specification of what items could be abated.

Mr. Kauzlarich had a discussion with the City of what they wanted done to satisfy the warrant and an agreement was reached. However, a few days later the City set up the abatement process as Mr. Kauzlarich was working on the property to comply with the agreement, but was not quite completed. Mr. Kauzlarich sought a stay of execution of the warrant until he had another day or so to complete his compliance work. The Stay was denied with the understanding by the Commissioner that property taken would remain available for return if further appeal resulted in reversal.

¹ Mr. Reeves also determined that the property was being used for a vehicles disassembly yard that was not licensed, and included in his abatement the car parts

The property was not so preserved but disposed of by the City the same day it was removed from the property.

The trial on the abatement was heard and denied.

Mr. Kauzlarich timely filed a notice of appeal to the Court of Appeals, Division Two.

Production of the record was ordered. However, one of the Court Reporters omitted both charging and transcribing one full day of the trial which caused a delay briefing. Counsel sought an extension of time for producing the brief.

Once the record was complete was complete and brief writing resumed, it became known that there were additional issues of constitutional magnitude to be researched and included in the brief. Another extension of time was requested.

The Court of Appeals issued a sanction letter and set a hearing as the opening brief being filed untimely although the brief was filed timely but without the tables. The tables were filed with the Court of Appeals the following day. All monetary sanctions were paid in full.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be granted herein because the Court of Appeals has committed an obvious error which would render further proceedings

useless; the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or the Court of Appeals has so far departed from to the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a trial court or administrative agency as to call for the exercise of revisory jurisdiction by the Supreme Court.

Dismissal of an appeal is an extremely harsh remedy and is usually reserved for jurisdictional violations. Late or other improper filing of the tables has never been held to be jurisdictional. The Commissioner's ruling of dismissal is in direct conflict with RAP 10.2(i) that specifically sets out the Sanctions for Late Filing and Service:

The appellate court will ordinarily impose sanctions under rule 18.9 for failure to file and serve a timely brief.

That is what the Commissioner did herein and the monetary sanctions were paid in full prior to filing the brief. The sanctions permitted by RAP 18.9(a) do not include dismissal as a sanction. The dismissal on motion of Commissioner or Clerk in RAP 18.9(b) sets out the specific documents that failure to timely file will trigger dismissal: "a notice of appeal, a notice of discretionary review, a motion for

discretionary review of a decision of the Court of Appeals, or a petition for review." RAP 13.5.

The Court of Appeals failed to implement the presumption that matters should be heard on the merits rather than procedural technicalities. See RAP 1.2(a) "These 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 181(b)."


In the case of *Bruce Johnson v. Chevron U.S.A., Inc., A Delaware Corporation, and Greg Miller, An Individual*, No. 63008-3-I (Wash.App.Div.1 12/20/2010), the appellate court analyzed a situation where tables were inserted in the appendices and contained argument. Respondent moved to strike the tables as violative of RAP 10.3. The appellate court denied the motion to strike, stating:

The appendices are arguably improper. However, the information and arguments are not new; they are merely abbreviated and organized in an effort to make it easier for the court to understand them. The tables are typical of summary materials distributed to the court at the beginning of oral argument. We deny the motion to strike.

Failure to timely file a brief or attach the tables thereto is not grounds to dismiss. Appellant respectfully requests that this court accept

review, that dismissal of this case be reversed and the case remanded for further proceedings.

DATED this 24th day of July, 2014.


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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CITY OF TACOMA,

Respondent,

v.

ALDOREN KAUZLARICH,

Appellant.

No. 44064-4-II

**RULING DISMISSING
APPEAL**

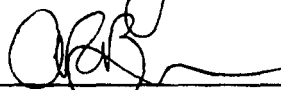
After the court granted appellant multiple extensions to file an opening brief originally due in August 2013, the chief judge of this court granted appellant an additional extension of time to February 4, 2014, to file an opening brief and pay \$400.00 in sanctions. The order informed appellant that "the motion to dismiss will be considered as scheduled on February 5, 2014," in the event he failed to comply with the February 4, 2014, deadline.

On February 5, 2014, one day late, this court received appellant's opening brief and payment of sanctions. This brief, however, does not comply with RAP 10.3(a).

In light of the multiple opportunities this court gave appellant to file a timely and correct brief and appellant's failure to do so, this matter is dismissed. See RAP 18.9. Accordingly, it is hereby

ORDERED that this appeal is dismissed.

DATED this 7th day of February, 2014.



Aurora R. Bearse
Court Commissioner

cc: Marilyn Gunther
Debra Casparian
Hon. Brian Tollefson

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

<p>CITY OF TACOMA,</p> <p>Respondent,</p> <p>v.</p> <p>ALDOREN KAUZLARICH,</p> <p>Appellant.</p>
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No. 44064-4-II

ORDER DENYING MOTION TO MODIFY

FILED
 COURT OF APPEALS
 DIVISION II
 2014 JUN 26 PM 3:13
 STATE OF WASHINGTON
 BY [Signature]

APPELLANT filed a motion to modify a Commissioner's ruling dated February 7, 2014, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 24th day of June, 2014.

PANEL: Jj. Johanson, Worswick, Lee

FOR THE COURT:

Johanson, C. J.
 CHIEF JUDGE

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From: Marilyn R. Gunther [mgunther@eskimo.com]
Sent: Thursday, July 24, 2014 5:01 PM
To: Coa2Filings
Subject: Petition for Review (COA-II # 44064-4-II)
Attachments: Tacoma v. Kauzlarich.pdf

Attached for filing is the PDF format of Peptition for Review in the above referenced case.

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