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SUPREME COURT
STATE OF WASHINGTON
Dec 23, 2014, 2:20 pm
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Court of Appeals # 71495-3-1

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Sup. Ct. No.: 91189-4

SUPREME COURT
STATE OF WASHINGTON

In re the Marriage of

Peter Lawson, Appellant

and

Karin Treadwell, Respondent

MOTION FOR DISCRETIONARY REVIEW

Peter C. Lawson, Appellant
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Woodinville WA 98072
425-427 5303
email: peter@pclattorney.com

 ORIGINAL

A. IDENTITY OF MOVING PARTY

Peter C. Lawson is the moving party herein.

B. DECISION

The Division One Clerk referred tardiness/noncompliance with case schedule to a Division One Commissioner for dismissal. The Division One Commissioner extended the time for compliance several times and eventually dismissed the appeal. A timely Motion to Modify the ruling was filed & served. The Motion to Modify was denied.

C. ISSUES PRESENTED FOR REVIEW

The single issue presented for consideration by this Court is:

Pursuant to RAP 18.9, can the Court of Appeals on its own motion dismiss an appeal solely for failing to adhere to the dates listed in the timeline scheduling letter for perfection of the appeal, where the tardiness had no negative effect upon the other party?

If the answer is yes, what are the standards governing dismissal for timeline tardiness and were those standards met in this situation thus justifying dismissal of the appeal?

D. STATEMENT OF THE CASE

The merits of the appeal have not been reviewed. The facts relevant to this motion are contained in the record on review in the Division One pouch.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED [RAP 13.5(b)]

The standards of RAP 13.5(b) are:

Considerations Governing Acceptance of Review. Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:
(1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or
(2) If 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
(3) If the Court of Appeals has so far departed from 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.

Subsection (1) appears to be the most applicable standard for this situation, with subsection (3) a close second.

The denial of the Motion to Modify condones a departure by the appellate commissioner so far from the accepted and usual course of proceedings as to call for revisory jurisdiction of the Supreme Court.

A. Argument re statutory construction

At the outset, the undersigned points out that argument on this point was not explicitly made to Division One.

Statutory construction begins with the language used in the statute at issue.¹ In this case, a letter dated 2/24 from Division One clerk imposed a 10 day period to file designation of clerks papers and statement of arrangements.² The letter further warned that failure to do so would result in a motion for sanctions and/or dismissal. The language of the letter, while not explicitly stated, was that the motion was on the docket at the time of the letter.

The letter dated 8/28 is the one dismissing the appeal as abandoned. The letter clearly states that the failure to file the brief caused the dismissal. At no point was there any alternate sanction discussed or imposed. From the start, dismissal was the only penalty.

RAP 18.9 states, in pertinent part:

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or

¹ Court rules are analyzed in the same manner as statutes. *Jones v Stebbins*, 122 Wn.2d 471 (1993).

² Designation of clerks papers is a document filed in the trial court and directed to the trial court clerk. Apparently the letter actually meant providing proof of service to Division One of the filing & service of the designation of clerks papers with the trial court.

compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file 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.

Subsection (b) establishes the authority of the commissioner/clerk to dismiss an appeal and limits that authority at the same time. It contains one path to dismissal for other than the reasons listed in the subsection itself: referral to subsection (a). The referral to standards in **RAP 18.8(b)** by its terms does not apply to this situation.

A cardinal rule of statutory construction is:

If the language of the rule is clear on its face, we give effect to its plain meaning and assume the rule means exactly what is intended. [cites omitted].

City of Bellevue v. Hellenthal, 144 Wn.2d 425, 431, 28 P.3d 744 (2001).

RAP 18.9(b) is clear and unambiguous. Therefore, it is not subject to interpretation. The terms of (b) direct that a dismissal by the commissioner/clerk is controlled by subsection

(a) which does not authorize dismissal under any circumstances. It does not even contain the words “dismiss” or “dismissal.” Therefore subsection (a) cannot justify or authorize the dismissal of this appeal.

If a *party* makes a motion to dismiss, subsection (c)(1) provides for dismissal for “want of prosecution” if the appellant has abandoned the appeal. No standards are specified that define “abandoned.” Presumably abandonment would be characterized by zero efforts to comply or zero efforts to acknowledge the authority of the court. Neither of those two conditions is present here, where the undersigned made numerous attempts to estimate when he could satisfy the requirements to perfect the appeal.

As previously stated in the Motion to Modify, the undersigned is not disputing his tardiness. He strongly disagrees with the use of hard deadlines to dismiss if he cannot properly estimate the time he would need to produce the result.³

Not only is the dismissal not based upon a motion by a party, but the other party in the appeal is not affected in any way. The judgments on appeal are not stayed or restricted in any way. So there cannot be any issue of damages or prejudice to the other party which could affect the analysis.

B. Argument re appropriateness of dismissal

Proper statutory construction of the rule precludes the commissioner from having the authority to dismiss the appeal under the facts presented here. However, the letter from the Division One clerk specifically described the reason for dismissal as abandonment.

In the only case which the undersigned could locate on the subject of abandonment, the Supreme Court held as follows:

The appellate rules provide no specific guidance as to when an appellant has abandoned his appeal. However, under our old rules, we held that a motion to dismiss for want of prosecution rests within the sound discretion of the court hearing the motion. [cites omitted].

³ It should be noticed that the original tardy filing letter concerned the Statement of Arrangements and Designation of Clerks Papers. By the time the commissioner dismissed the appeal, the issue was tardiness in filing the opening brief. This shows that some efforts to accomplish the various necessary tasks were successful, which contradicts the characterization of abandonment.

It must be remembered, however, that the right to appeal is a constitutional right. Consequently, any waiver of that right via the alleged abandonment of an appeal must be knowing, intelligent and voluntary.

State v. Ashbaugh, 90 Wn.2d 432, 439, 583 P.2d 1206 (1978).

The undersigned is fairly certain that the basis for the statement “right to appeal is a constitutional right,” quoted above, is because that appeal was in a criminal case. However, even if it does not apply here, civil litigants still have a right to appeal:

In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; . . .

Streater v. White, 26 Wn. App. 430, 434, 613 P.2d 187 (1980).

As stated in Ashbaugh, the meaning of abandon is not in the rules. Therefore, the appropriate judicial doctrine is to apply the common language meaning of the word:

abandon -v.- 1. To withdraw one’s support or help from, esp. in spite of a duty, allegiance, or responsibility; desert: *abandon a friend in trouble*. 2. To give up by leaving or ceasing to operate or inhabit, esp. as a result of danger or other impending threat: *abandon ship*. 3. To surrender one’s claim or right to; give up. 4. To desist from; cease trying to continue. 5. To yield (one-self) completely, as to emotion. [the omitted remainder of definition is for use as a noun].

American Heritage Dictionary, 2nd Ed., Houghton Mifflin Co. (1982).

None of the conditions described in the definition above fit the facts of this situation. To be sure, even the clerk’s letter dismissing the appeal states a history of actions that contradicts abandonment. The only rational conclusion is that the undersigned did not abandon his appeal. At the worst, he has been incompetent at managing to comply with obligatory timelines. The sanction for this, if any, should not be dismissal of the appeal.

F. CONCLUSION & RELIEF REQUESTED

The undersigned requests that this Court enlarge the time for him to file his opening brief, determine that he did not abandon his appeal, determine that the other party is unaffected in any significant manner by his tardiness, and defer imposition of any monetary sanctions/terms should this Court determine that any are appropriate.

Respectfully submitted by:

/S/

12/23/2014

Peter C. Lawson, Appellant

Date

Court of Appeals No. 71495-3-I

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Sup. Ct. #: _____

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

Peter Lawson)	
Appellant)	DECLARATION
vs)	OF SERVICE
)	
Karin Treadwell)	
Respondent)	

Peter C. Lawson declares as follows:

On the date shown below, I served a true copy of the following:

MOTION FOR DISCRETIONARY REVIEW

upon the Respondent by **e-mail** to her appellate attorney at:

Valerie A Villacin
Smith Goodfriend PS
1619 8th Ave N
Seattle WA 98109-3007
valerie@washingtonappeals.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated 12/23/2014 at Bellevue WA /S/
Peter Lawson, declarant

OFFICE RECEPTIONIST, CLERK

To: LH
Cc: valerie@washingtonappeals.com
Subject: RE: Motion for Discretionary Review for filing

Received 12-23-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: LH [mailto:pgroup@avvanta.com]
Sent: Tuesday, December 23, 2014 2:20 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: valerie@washingtonappeals.com
Subject: Motion for Discretionary Review for filing

Dear Clerk,

Please file the attached documents on behalf of Peter C. Lawson for consideration on the Court's motion calendar.

If there is any problem with this transmission, please contact Mr. Lawson at 206-473-5303.

Thank you.

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

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August 28, 2014

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CASE #: 71495-3-1

In re the Marriage of: Peter Lawson, Appellant v. Karin Treadwell, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on August 28, 2014, regarding Court's Motion to Dismiss/Impose Sanctions:

This is a marriage dissolution case. Appellant Peter Lawson is an attorney representing himself. By ruling of August 8, 2014, this Court granted a fourth extension for Lawson to file his opening brief until August 25, 2014. At the August 8, 2014 hearing on the Court's motion to dismiss, Lawson appeared and indicated he could file the brief by the following Friday (August 15, 2014). When I required a definite commitment, Lawson requested an extension until August 25, 2014. I granted his request but stated that this case would be dismissed if he does not file the brief by August 25, 2014. Lawson stated okay and that was "fair." The August 8, 2014 ruling stated with emphasis in bold: **"If Lawson fails to file his brief and the status report by August 25, 2014, this case will be dismissed without further notice from this Court."** Lawson did not file his brief or status report by August 25, 2014. As of this ruling (August 28, 2014), nothing has been filed by Lawson since the August 8 ruling. This case should be dismissed as abandoned.

Therefore, it is

ORDERED that this case is dismissed. It is further

ORDERED that the hearing on August 29, 2014 is stricken.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

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