

FILED
SUPREME COURT
STATE OF WASHINGTON
12/19/2018 11:57 AM
BY SUSAN L. CARLSON
CLERK

NO. 96598-6

From Court of Appeals Division I 77016-1-I

SUPREME COURT
OF THE STATE OF WASHINGTON

HEADSPACE INTERNATIONAL, LLC,

Appellant,

v.

PODWORKS CORP., and THOMAS WERTH,

Respondent

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR
DISCRETIONARY REVIEW

Mark P. Walters, WSBA No. 30819
Attorney for Respondent
LOWE GRAHAM JONES PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
T: 206-381-3300

I. IDENTITY OF MOVING PARTY

The moving party is Podworks Corp. and Thomas Werth (“Podworks”), the Respondents in the above-captioned matter.

II. STATEMENT OF RELIEF SOUGHT

Podworks hereby requests that the deadline for submitting the petition for discretionary review in this case provided by RAP13.4(a) be extended by one day to accommodate the late filing of Podworks’ petition for discretionary review.

III. FACTS RELEVANT TO MOTION

The Court of Appeals case from which Podworks seeks review was terminated on a decision filed October 29, 2018. RAP 13.4(a) requires that a petition for review is due within 30 days after the decision is filed. Based on the filing date of the decision filed by the Court of Appeals on October 29, 2018, pursuant to RAP 13.4(a), Podworks petition for discretionary review was due on November 28, 2018.

Upon receipt of the decision from the Court of Appeals, counsel for Podworks reviewed RAP 13.4(a) and instructed his staff to docket the deadline to file the petition for discretionary review. *See* Declaration of

Mark P. Walters (“Walters Decl.”) ¶ 2. Counsel’s litigation deadlines are kept on two dockets, one that is maintained by a centralized, firm-wide docketing department and another that is kept by counsel’s paralegal on counsel’s professional calendar. *Id.* The intent behind this system is redundancy, so that if the deadlines on each docket do not match, docketing errors can be identified and prevented. *Id.*

In this particular case, the deadline for filing Podworks’ petition for discretionary review was correctly docketed on the centralized, firm-wide docket for November 28, 2018 but it was incorrectly docketed for November 29, 2018 on the docket that is maintained and kept by counsel’s paralegal on counsel’s professional calendar. *Id.* at ¶ 3. Additionally, this discrepancy was not noticed by counsel or any other staff. *Id.*

This is counsel’s first missed litigation deadline in over 18 years of practice. *Id.* at ¶ 4. Counsel has used this double-docket system for most of his 18 years in practice. *Id.* It is believed that the missed deadline in this case was caused by a miscounting of days upon receipt of the Court of Appeals decision and then a failure to cross-check the dockets due to heavy workload following the intervening Thanksgiving holiday. *Id.* at ¶ 5.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 1.2(a) generally compels a liberal interpretation of the rules on appeal to the end that each cause and issue be decided on its merits. This rule of liberality however, is “subject to the restrictions in rule 18.8(b).” Pursuant to RAP 18.8(b) extensions are permitted “only in extraordinary circumstances and to prevent a gross miscarriage of justice.” Extensions of time to file pursuant to RAP 18.8(b) have been granted in cases of excusable neglect, such as for example, where a petition for discretionary review was filed in the wrong court, *see Weeks v. Chief of Wash. State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982), where the notice was filed without the required filing fee, *see State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978), and where an untimely notice of appeal was treated as timely because it was filed within 30 days of a stipulation for amended judgment as opposed to the within 30 days of an order deciding a motion to amend the judgment pursuant to CR 59, *see Structural Northwest v. Fifth & Park Place*, 33 Wn. App. 710, 714, 658 P.2d 679 (1983). “The rules of court are designed to ‘allow some flexibility in order to avoid harsh results’; substance is preferred over form.” *Id.* (citing *Weeks*, 96 Wn.2d at 895-96).

The facts of this particular case show reasonable diligence on the part of counsel because counsel maintained two dockets, with the purpose of catching docketing errors. *See* Walters Decl. ¶ 2. The facts also show a bona fide attempt by counsel to timely file this petition. Counsel reviewed the rule and intended to docket the due date correctly. *Id.* This system has been used by counsel for most of his 18 years in practice and this is the first time a litigation deadline has been missed. *Id.* at ¶ 4. The error is a human error in the counting of days on one of the two dockets and then another error in a failure to cross-check due dates. *Id.* ¶ 5.

The error in this case is like the errors identified above in cases like *Weeks*, 96 Wn. 2d at 895-96, where the notice was filed without the required filing fee. In this case, like *Weeks*, the petition was untimely due to a human error despite counsel's reasonably diligent efforts. And in this case like *Weeks*, counsel diligently sought to file the petition in a timely manner, and it was only because of a human error that the petition was filed late. *See* Walters Decl. ¶ 5. Also, there was a good-faith attempt to make a timely filing by counsel in this case, just like in *Weeks*. *Id.*

Overall, the delay in this case was just one day. A delay of one day, where counsel has demonstrated diligence and a bona fide attempt to make


a timely filing, is not the sort of delay in conflict with sound policy under RAP 18.8(b) for finality in the decisions of the appeals courts. As previous courts have recognized, there are cases like this one where despite reasonable diligence and a good faith attempt to timely file, human error can result in a late petition. *Weeks*, 96 Wn.2d at 895-96; *Ashbaugh*, 90 Wn.2d at 438; *Structurals Northwest*, 33 Wn. App. at 714.

V. CONCLUSION

For the foregoing reasons, Podworks respectfully requests an extension of time of one day so that its petition for discretionary review may be considered by the Court.

RESPECTFULLY SUBMITTED this 19th day of December, 2018.

LOWE GRAHAM JONES PLLC

By: 

Mark P. Walters, WSBA No. 30819

Walters@LoweGrahamJones.com

701 Fifth Avenue, Suite 4800

Seattle, Washington 98104

T: 206.381.3300

Attorney for Respondent

CERTIFICATE OF SERVICE

I, Rischel Voigt, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Lowe Graham Jones PLLC, 701 Fifth Avenue, Suite 4800, Seattle, Washington 98104.

2) By the end of business day on Wednesday, December 19, 2018, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **Motion for Extension of time to file Petition for Discretionary Review;**
- **Declaration of Mark P. Walters in Support of Motion for Extension of Time to file Petition for Discretionary Review; and,**
- **Certificate of Service.**

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<i>Attorneys for Headspace International LLC</i> Eric J. Harrison, WSBA No. 46129 ATTORNEY WEST SEATTLE 5400 California Ave. SW, Suite E Seattle, WA 98136 Email: eric@attorneywestseattle.com	<input type="checkbox"/> Via Hand-Delivery <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Supreme Court Efiling Site <input type="checkbox"/> Via E-mail

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

DATED at Seattle, Washington this 19th day of December, 2018.



Rischel Voigt

LOWE GRAHAM JONES PLLC

December 19, 2018 - 11:57 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96598-6
Appellate Court Case Title: Headspace International, LLC v. Podworks Corp., et al.
Superior Court Case Number: 17-2-01751-5

The following documents have been uploaded:

- 965986_Affidavit_Declaration_20181219115518SC357447_4458.pdf
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Affidavit/Declaration - Other
The Original File Name was PODS-6-1001 Dec. ISO Motion for Extension of Time.pdf
- 965986_Motion_20181219115518SC357447_9389.pdf
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Motion 1 - Extend Time to File
The Original File Name was PODS-6-1001 Motion for Extension of Time.pdf

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Comments:

Sender Name: Mark Walters - Email: walters@lowegrahamjones.com
Address:
701 5TH AVE STE 4800
SEATTLE, WA, 98104-7009
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DECLARATION OF MARK P. WALTERS IN SUPPORT OF MOTION
FOR EXTENSION OF TIME TO FILE PETITION FOR
DISCRETIONARY REVIEW

Mark P. Walters, WSBA No. 30819
Attorney for Respondent
LOWE GRAHAM JONES PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
T: 206-381-3300

I, Mark P. Walters, hereby state and declare as follows:

1. I am an attorney at the law firm of Lowe Graham Jones PLLC located in Seattle, WA. I am licensed to practice law in the state of Washington (WSBA No. 30819). I have personal knowledge of the facts stated in this declaration.

2. Upon receipt of the decision from the Court of Appeals, counsel reviewed RAP 13.4(a) and instructed staff to docket the deadline to file the petition for discretionary review. My litigation deadlines are kept on two dockets, one that is maintained by a centralized, firm-wide docketing department and another that is kept by my paralegal on my professional calendar. The intent behind this system is redundancy, so that if the deadlines on each docket do not match, docketing errors can be identified and prevented.

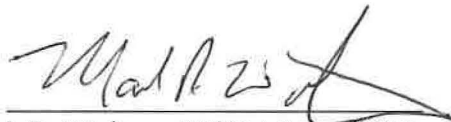
3. In this particular case, the deadline for filing Podworks' petition for discretionary review was correctly docketed on the centralized, firm-wide docket for November 28, 2018 but it was incorrectly docketed for November 29, 2018 on the docket that is maintained and kept by my paralegal on my professional calendar. Additionally, this discrepancy was not noticed by me or other staff.

4. To the best of my knowledge, this is my first missed litigation deadline in over 18 years of practice. I have used this double-docket system for most of my 18 years in practice.

5. It is believed that the missed deadline in this case was caused by a miscounting of days upon receipt of the Court of Appeals decision and then a failure to cross-check the dockets due to heavy workload following the intervening Thanksgiving holiday.

6. I hereby declare under penalty of perjury under the laws of the State of Washington that all statements made herein are believed to be true and correct to the best of my recollection.

Dated this 19th day of December, 2018.

By: 
Mark P. Walters, WSBA No. 30819
Walters@LoweGrahamJones.com
Lowe Graham Jones PLLC
701 Fifth Avenue, Suite 4800
Seattle, Washington 98104

LOWE GRAHAM JONES PLLC

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