

FILED
SUPREME COURT
STATE OF WASHINGTON
1/3/2019 3:37 PM
BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

JESSICA LEE BODGE,
Appellant,

v.

BRIAN EUGENE BODGE,
Respondent.

No. 96682-6
Marriage of Jessica Bodge
and Brian Bodge Court of
Appeals No. 76954-5-I

ANSWER TO
MOTHER'S MOTION
TO ACCEPT LATE-
FILED PETITION FOR
DISCRETIONARY
REVIEW

(Snohomish County
Superior Court No. 12-3-
02727-9)

I. Identity of the Moving Party

Brian Bodge, Respondent, (Father) by and through his attorney of record, Mary Joyce ("MJ") McCallum, submits this answer to Mother's Motion to Accept Late-Filed Petition for Discretionary Review.

II. Statement of the Issue

1. Should the Court accept Mother's late-filed petition for discretionary review and amended motion for discretionary review where no extraordinary circumstances exist?

III. Authority and Argument

Appellant Mother relies on the sole fact that the power went out the day her petition for discretionary review was due. This reliance fails, as mistakes of counsel, together with an absence of prejudice to the other party, does not constitute "extraordinary circumstances" required by RAP 18.8(b) to extend the time for filing a notice necessary to obtain review. *Reichelt v. Raymark Industries, Inc.*, 52 Wn.App. 763, 764 P.2d 653 (1988).

First, Mother stresses how "diligent" she was in drafting her petition. However, this major storm was predicted, heavily publicized on the local news, including warnings of high winds and power outages days before the storm took place. Preparing a petition to be reviewed by the highest court in Washington State during a high wind storm in the eleventh hour is not exercising due diligence. Party's failure to identify any extraordinary circumstances when seeking extension of time within which to file motion for discretionary review, as is required under RAP

18.8(b), requires that motion be denied. *City of Mount Vernon v. Weston*, 68 Wn.App. 411, 844 P.2d 438, review denied 121 Wa.2d 1024, 854 P.2d 1085 (1992).

Second, Mother does not provide any evidence that the power went out at 4:25 p.m. nor affected her ability to timely provide a petition to this Court pursuant to RAP 13.4(d). Moreover, Mother fails to provide any evidence of any extraordinary circumstance that warrants a late-filing of a petition for discretionary review.

Third, RAP 13.4(d) states that “If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish.” Mother filed her petition late going against the Rules of Appellate Procedure in an attempt to allow more time to prepare her petition. This is evidenced by the filing of an amended petition at 9:05 p.m., giving her an additional four hours to edit her petition. Moreover, RAP 13.4(d) also states “The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed.” Mother even failed to provide the required filing fee that is to accompany the petition. (*See Exhibit A—Letter from Supreme Court*). Absence of (1) sufficient excuse for party's failure to timely file notice of appeal or (2) sound reasons to

abandon preference for finality of decisions, RAP 18.8(b) mandates dismissal of appeal that is not timely perfected. *Schaefco, Inc. v. Columbia River Gorge Com'n*, 121 Wn.2d 366, 849 P.2d 1225, reconsideration denied (1993).

Finally, Mother's petition does not meet a single requirement for consideration governing acceptance of discretionary review. RAP 13.4(b)(1)(2)(3)(4) requires that "A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." Mother's petition does not contain any conflicts with decisions or published decisions of the Supreme Court, does not contain a significant question of law under any Constitution, nor does it contain any substantial public interest. Mother's petition and motion are baseless, and evidence her continued abusive use of conflict.

Respondent requests this Court deny Petitioner's motion to accept her late-filed petition for review and amended petition for review. Furthermore, Respondent requests reasonable attorney's fees for having to

respond to this Motion. Intransigence is a basis for awarding attorney's fees on appeal. *Chapman v. Perera*, 41 Wn. App. 444, 445-56, 704 P.2d 1224, review denied 104 Wn.2d 1020 (1985). The court may consider the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional services. Here, Mr. Bodge incurred additional attorney's fees for having to respond to this Motion.

Moreover, as the prevailing party, Respondent is entitled to attorney's fees on appeal pursuant to RAP 18.1. Respondent having to respond to a baseless motion and petition is sufficient to allow this Court to award fees to him as the prevailing party. RAP 18.1(j) states "if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review." Respondent request for attorney's fees from Petitioner in the amount of \$1,000.00 is reasonable.

IV. Conclusion

Appellant has failed to raise any arguments that warrant allowance of a late-filed petition for discretionary review. Respondent respectfully requests that the Court deny her Motion to Accept Late-Filed Petition for Discretionary Review. Petitioner's petition does not even contain an issue that would be heard by The Supreme Court of Washington State. Finally,

Respondent requests that the Court award him his reasonable attorney's fees as the prevailing party.

DATED this 3rd day of January 2019.

JAY CAREY LAW OFFICES

/s/ Mary Joyce McCallum

Mary Joyce McCallum, WSBA No. 47926
420 North McLeod Ave/POX 190
Arlington, WA 98223
Telephone: (360) 435-5707
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of this Answer of Respondent to the following:

Supreme Court Clerk Temple of Justice P.O. BOX 40929 415 12th Ave SW Olympia, WA 98504	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Electronic Upload
Dennis J. McGlothin Robert J. Cadranel Western Washington Law Group, PLLC 7500 – 212 th Street SW, Ste 207 Edmonds, WA 98026	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email/EService/Electronic Upload

DATED this 3rd day of January 2019, at Arlington, Washington.

/s/ Derek Ralph
Derek Ralph,
Paralegal

EXHIBIT A

*Law Offices of Jay Carey
420 North McLeod
PO Box 190
Arlington, WA 98223*

THE SUPREME COURT
STATE OF WASHINGTON

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

December 28, 2018

LETTER SENT BY E-MAIL ONLY

Dennis John McGlothin
Robert Joseph Cadranell, II
Western Washington Law Group, PLLC
7500 212th Street S.W., Suite 207
Edmonds, WA 98026-7617

Hon. Richard Johnson, Clerk
Division I, Court of Appeals
One Union Square
600 University Street
Seattle, WA 98101

Mary Joyce McCallum
Jay Carey Law Offices
P.O. Box 190
Arlington, WA 98223-0190

Re: Supreme Court No. 96682-6 - Marriage of Jessica Bodge and Brian Bodge
Court of Appeals No. 76954-5-I

Clerk and Counsel:

The Court of Appeals forwarded to this Court the "PETITION FOR REVIEW", "FIRST AMENDED PETITION FOR REVIEW", "APPELLANT'S MOTION TO ACCEPT LATE-FILED PEITION FOR DISCRETIONARY REVIEW" [sic] and the related Court of Appeals file in the referenced matter. The matter has been assigned the Supreme Court cause number indicated above.

The motion is set for consideration on the Supreme Court Deputy Clerk's January 10, 2019, Motion Calendar. Any answer to the motion should be served and filed by January 3, 2019. Any reply to any answer should be served and received for filing by January 9, 2019.

The parties are advised that once the motion for extension of time issue is resolved, a due date will be established for the filing of any answer to the petition for review.

In addition, the \$200 filing fee did not accompany the petition. The petition will be held until January 11, 2019, to allow the Petitioner time to pay the filing fee to this Court. If the filing fee is not received by January 11, 2019, it is likely that this matter will be dismissed.

Counsel are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account

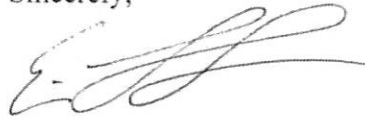


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numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. For attorneys, this office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin L. Lennon", with a long horizontal flourish extending to the right.

Erin L. Lennon
Supreme Court Deputy Clerk

ELL:sk

JAY CAREY LAW OFFICES

January 03, 2019 - 3:37 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96682-6
Appellate Court Case Title: Marriage of Jessica Bodge and Brian Bodge
Superior Court Case Number: 12-3-02727-9

The following documents have been uploaded:

- 966826_Answer_Reply_20190103153442SC416430_7832.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was answer to motion to accept late filing.pdf

A copy of the uploaded files will be sent to:

- dennis@westwalaw.com
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Sender Name: Hortensia Castillo - Email: hortensia@jaycareylaw.com

Filing on Behalf of: Mary Joyce Mccallum - Email: mj@jaycareylaw.com (Alternate Email: MJ@JayCareyLaw.com)

Address:
420 N MACLEOD AVE
ARLINGTON, WA, 98223-1271
Phone: 360-435-5707

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