

96682-6

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON, DIVISION I

In re the Marriage of:

JESSICA LEE BODGE,
Appellant,

v.

BRIAN EUGENE BODGE,

Respondent.

NO. 76954-5-I

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

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

I. Identity of Moving Party

Appellant Jessica Bodge ("Mother") requests the relief in Part II.

II. Relief Requested.

Mother respectfully requests this Court accept Mother's Petition for Discretionary Review and Amended Motion for Discretionary Review

III. Facts Relevant to Motion

This Court entered its Opinion after reconsideration was granted on November 26, 2018. The deadline for a Petition for Discretionary Review was, therefore, due by 5:00 p.m. on December 26, 2018. The Petition for Discretionary Review as being finalized when there was a power

interruption at approximately 4:25 p.m. on December 26, 2018. The power interruption caused all revisions and changes to the Petition for Review to be lost and a complete inability to send the Petition for Review to the Court of Appeals for timely filing. When the power was restored, a document was recovered entitled Petition for Review, but it was last saved several hours before the power interruption and was incomplete. Despite the problem, in an effort to timely file a Petition with the Court of Appeals, the incomplete brief was submitted. The incomplete brief was filed at 5:03 p.m. (3 minutes late). After the incomplete brief was filed, a complete First Amended Brief was filed at approximately 9:05 p.m.

IV. Authority and Argument

RAP 18.8(b) restricts motions to enlarge time for notices of discretionary review to the most extraordinary circumstances. Extraordinary circumstances are, “circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control.” *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653, 654 (1988). “The rules of court are designed to ‘allow some flexibility in order to avoid harsh results;’ substance is preferred over form.” *Structurals Nw., Ltd. v. Fifth & Park Place, Inc.*, 33 Wn. App. 710, 714, 658 P.2d 679, 681 (1983).

Here, Mother’s counsel was diligent in drafting the Petition for Review. The reason it could not be timely filed was computer and power

related and out of Mother's counsel's control. As we become more dependent on technology issues involving connectivity will be encountered. They were encountered here.

The circumstances here are similar to the extraordinary circumstances described in *Moore v. Burdman*, 84 Wn.2d 408, 526 P.2d 893 (1974). There, the Supreme Court accepted an untimely notice of appeal that was received one-day late due to the postal delivery taking longer than it normally should. Here, instead of relying on the USPS, Mother's counsel relied on a continuous current from PSE to keep a document in current form and for ability to efile the document with the Court of Appeals. Unfortunately, the current was not continuous, changes to the documents were lost and delivery was delayed. The situation was resolved within hours. The Petition for Discretionary Review was initially received three minutes late and the fully-restored version was received 3 hours late.

This is the first time Mother's counsel, in any case, has ever requested an extension of time to file a notice of appeal or a petition for discretionary review. This request is made in good faith and is never expected to happen again.

Conclusion

For the reasons stated above, Mother's counsel asks this Court to accept its late-filed Petition for Review and Amended Petition for Review.

DATED this 26th day of December 2018.

WESTERN WASHINGTON LAW
GROUP, PLLC

/s/ Dennis J. McGlothin

Dennis J. McGlothin, WSBA No. 28177
Robert J. Cadranell, WSBA No. 41773
7500 212th Street SW, Suite 207
Edmonds, WA 98026
Telephone: (425) 728-7296
Attorneys for Appellant

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 APPELLANT’S MOTION TO ACCEPT LATE-FILED PETITION FOR DISCRETIONARY REVIEW

to the following:

Office of the Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Electronic Upload
Karen C. Skantze Mary Joyce McCallum 1721 Hewitt Avenue, Suite 600 Everett, WA 98201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Eservice or Email <input checked="" type="checkbox"/> Electronic Upload

DATED this 27th day of December, 2018 at Edmonds, Washington.

/s/ Lindsey Matter

Lindsey Matter
Paralegal

WESTERN WASHINGTON LAW GROUP, PLLC

December 27, 2018 - 9:45 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 76954-5
Appellate Court Case Title: Jessica Lee Bodge, Appellant v. Brian Eugene Bodge, Respondent
Superior Court Case Number: 12-3-02727-9

The following documents have been uploaded:

- 769545_Motion_20181227094319D1295180_6934.pdf
This File Contains:
Motion 1 - Other
The Original File Name was PLDG.2018.12.27.Mothers Motion for to Allow Late Filing.pdf

A copy of the uploaded files will be sent to:

- jessicabodge@msn.com
- mj@jaycareylaw.com
- robert@westwalaw.com

Comments:

Motion to Allow Late Filing

Sender Name: Lindsey Matter - Email: lindsey@westwalaw.com

Filing on Behalf of: Dennis John Mcglothin - Email: docs@westwalaw.com (Alternate Email: dennis@westwalaw.com)

Address:
7500 212th Street SW
Suite 207
Edmonds, WA, 98026
Phone: (425) 728-7296 EXT 1

Note: The Filing Id is 20181227094319D1295180