

FILED
SUPREME COURT
STATE OF WASHINGTON
1/23/2020
BY SUSAN L. CARLSON
CLERK

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2020 JAN 16 PM 3:16

No. 79142-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Kenneth M. K. Momanyi

Petitioner,

and

Aimee M. Karani

Respondent.

MOTION FOR DISCRETIONARY REVIEW

Treated as a petition for review

Submitted By: Kenneth M. K. Momanyi

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I. INTRODUCTION

This motion for discretionary review seeks reversal of the Court of Appeals action dismissing Petitioner's appeal on a procedural technicality, without first considering the appeal on the merits. This request for discretionary review asks this Court to reverse the Court of Appeals' decision to deny Petitioner's Motion to Modify the Court Clerk's ruling of December 17 of 2019, which dismissed the appeal because the Appellant's Brief was not filed by the deadline of August 22 of 2019. The Appellant's Brief was filed on September 16 of 2019, followed by the Motion to Modify on October 9 of 2019, which the Court of Appeals denied. The Court of Appeals' decision to give form priority over substance and to prevent a decision on the merits conflicts with prior decisions of the Supreme Court and the Courts of Appeals as shown in **VI. ARGUMENT**.

The basis for Petitioner's Divorce Order appeal is set forth in the Appellant's Brief filed on September 16 of 2019. Because the brief was late, the Court Clerk dismissed Petitioner's appeal, refusing to consider the issue on the merits. Therefore, Petitioner filed a Motion to Modify the Clerk's ruling dismissing his appeal. The Motion to Modify was denied on December 17 of 2019. Therefore, Petitioner is seeking discretionary review by this Court so that the important issues presented on appeal of the Divorce Order will be decided on the merits, rather than on a technicality.

II. IDENTITY OF PETITIONER

Petitioner, Kenneth M. K. Momanyi, is the “Appellant” in the Court of Appeals and the “Respondent” in the Trial Court. Mr. Momanyi asks this Court to accept review of the decision designated in **III. DECISION** of this motion.

III. DECISION

Petitioner requests the Court of Appeals to review and reverse its decision in Kenneth M. K. Momanyi, Appellant v. Aimee M. Karani, Respondent, 79142-7-I Order Denying Motion to Modify Ruling (December 17 of 2019). A copy of said order is included in **VIII. APPENDIX**.

IV. ISSUES PRESENTED FOR REVIEW

- A. Decision of the Court of Appeals in Conflict with Decision of the Supreme Court.**
- B. Decision of the Court of Appeals in Conflict with Another Decision of the Court of Appeals.**
- C. Decision of the Court of Appeals to Prioritize Form Over Substance When Denying Petitioner the Motion to Modify Ruling to Dismiss Appeal.**

V. STATEMENT OF THE CASE

A. Petitioner Seeks Discretionary Review of the Court of Appeals' Decision to Dismiss His Appeal and Not Consider the Merits Because the Appellant's Brief Was Filed One Day Late.

This is a request for discretionary review of the Court of Appeals' decision to deny Petitioner's Motion to Modify the Court Clerk's Ruling which dismissed his appeal on December 17 of 2019 because the Appellant's Brief was not filed by the deadline of August 22 of 2019. Appellant's Brief was filed on September 16 of 2019 under the assumption that the submitted Motion to Extend was accepted, followed by the Motion to Modify the Court Clerk's Ruling on October 9 of 2019, at issue here. The Court of Appeals denied the Motion to Modify the Court Clerk's Ruling and, therefore, refuses to consider the Appellant's Brief or to decide Petitioner's appeal of the Trial Court's decision of the Divorce Order on the legal merits. The order denying Petitioner's Motion to Modify Ruling and the late-filed Appellant's Brief are included as part of **VIII. APPENDIX.**

B. Petitioner Acted in Good Faith to Meet the Court's Deadline, But Failed.

On August 9 of 2019, Petitioner received notice from the Court Clerk of the Court of Appeals that the due date for Appellant's Brief would be August 22 of 2019 and that "The case will be dismissed without further notice after that date." Petitioner failed to file the Appellant's Brief by the August 22 of 2019 deadline set forth in the notice of August 9 of 2019. The deadline set by the Court of Appeals in advance was taken very seriously. As of the deadline set by the Court of Appeals, the brief was well underway, and Petitioner was working very diligently to complete and file the brief. On September 10 of 2019 (Petitioner unaware due to misdirected post mail), the Court Clerk entered an order dismissing Petitioner's appeal, as the Appellant's Brief was close to completion. On October 9 of 2019, the Motion to Modify the Court Clerk's Ruling was filed. On December 17 of 2019, the Court of Appeals denied the Motion to Modify the Court Clerk's Ruling to dismiss the appeal. This Motion for Discretionary Review followed.

VI. ARGUMENT

Modern rules of procedure are intended to allow Courts to reach merits, as opposed to disposition in technical niceties. See *Fox v. Sackman*, 22 Wash. App. 707, 591 P.2d 855 (Div. 3 1979). Petitioner bases this motion for discretionary review on the importance of the underlying issues to the public and on the weight of authority which provides that cases should be decided on the merits, rather than technicalities.

The Court has not generally expressed reasons for granting discretionary review. Typically, the opinion merely has recited that discretionary review was granted. See *Bitzan v. Parisi*, 88 Wash. 2d 116, 558 P.2d 775 (1977). Nor do the cases present any strong pattern that would fit the rule provisions. For example, *Bitzan v. Parisi*, above, is merely a case considering the sufficiency of the evidence supporting some challenged instructions.

Likewise, no reasons were given in *Elliott v. Peterson*, 92 Wash. 2d 906, 577 P.2d 1282 (1979) (effect on statute of limitations of an erroneous denial of voluntary dismissal); *Layman v. Ledgett*, 89 Wash. 2d 906, 577 P.2d 970 (1978) (issue of rights to timber); *Childers v. Childers*, 89 Wash. 2d 592, 575 P.2d 201 (1978) (child support education after age of majority); *Goodell v. ITT-Federal Support Services, Inc.*, 89 Wash. 2d 488, 573 P.2d 1292 (1978) (tort liability); *State v. Agee*, 89 Wash. 2d 416, 573 P.2d 355 (1977) (effect of dismissal of agent on defense persona to agent on liability of principal).

The Supreme Court has granted a petition for review when, although affirming decisions below, it disagreed with the reasoning below. See *State v. Johnson*, 96 Wash. 2d 926, 639 P.2d 1332 (1982) (overruled on other grounds by *State v. Calle*, 125 Wash. 2d 769, 888 P.2d 155 (1995)).

Though review by Supreme Court is normally limited to issues raised in petition for review and answer, the Court has authority to perform all acts necessary or appropriate to fair and orderly review and can waive Rules of Appellate Procedure when necessary to serve the ends of justice. Thus, Court could address substantive issue not raised by parties in order to curtail further appeals. See *Kruse v. Hemp*, 121 Wash. 2d 715, 853 P.2d 1373 (1993) (holding modified on other grounds by *Berg v. Ting*, 125 Wash. 2d 544, 886 P.2d 564 (1994)).

The Appellate Court's discretion to consider cases and issues on their merits, despite one or more technical flaws in an appellant's compliance with the Rules of Appellate Procedure, should normally be exercised unless there are compelling reasons not to do so. See *Wright v. Colville Tribal Enterprise Corp.*, 127 Wash. App. 644, 111 P.3d 1244, 95 Fair Empl. Prac. Cas. (BNA) 1747 (Div. 1 2005) (rev'd on other grounds, 159 Wash. 2d 108, 147 P.3d 1275 (2006)).

In a case where the nature of an appeal is clear, the relevant issues are argued in the body of the brief, and citations are supplied so that the Appellate Court is not greatly inconvenienced and the Respondent is not prejudiced, there is no compelling reason for the Appellate Court not to exercise its discretion to consider the merits of the case or issue, despite technical failures in an appellants compliance with the Rules of Appellate Procedure.

Technical violations of appellate rules will not ordinarily bar appellate review where justice is to be served by such review. See *Wolf v. Boeing Co.*, 61 Wash. App. 316, 810 P.2d 943 (Div. 1 1991) (abrogated on other grounds by *Hill v. Jawanda Transport Ltd.*, 96 Wash. App. 537, 983 P.2d 666 (Div. 1 1999)). See also *Dana v. Piper*, 173 Wash. App. 761, 295 P.3d 305 (Div. 2 2013) (review denied 178 Wash.2d 1006, 308 P.3d 642 (2013)), and *Eller v. East Sprague Motors & RVs, Inc.*, 159 Wash. App. 180, 2444 P.3d 447 (Div. 3 2010).

In *Clark County v. Western Washington Growth Management Hearings Review Board*, -- P.3d---, 2013 WL 1163889, Slip opinion, p. 6 (*Stephens, J., concurring*) (March 21, 2013), the Court, citing RAP 1.2(a), stated: "We ...liberally construe the rules on determining a party's compliance."

The Motion to Modify the Ruling dismissing the appeal should be granted to allow for consideration and decision on the merits. Appellant does not shirk responsibility or offer excuses for the late filing. There simply was insufficient time for Petitioner to prepare the brief without hiring an attorney (which was not possible due to lack of income) and file it by the deadline date of September 7, 2011. With that said, Petitioner worked very diligently and in good faith to meet the deadline once he set to work. Petitioner was by no means cavalier about the Clerk's notice regarding the deadline. Although Petitioner takes full responsibility for the failure to meet the deadline, the failure was not due to a lack of good faith or diligence.

The foregoing information is presented to the Court, not because it excuses Petitioner's failure to file the brief on time, but to explain that this brief is not late due to a lack of due diligence or good faith by Petitioner. Petitioner approached the deadline he was given by the Clerk with the earnest intention to meet it.

Pursuant to the Rules of Appellate Procedure, the Court should accept and consider Appellant's Brief on the merits.

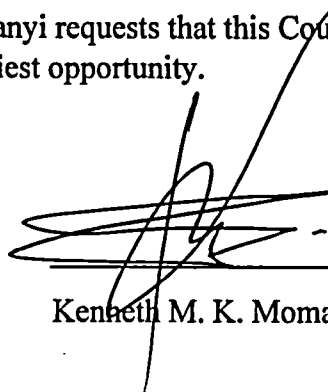
RAP 1.2(a) provides: "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b)."

The Appellate Court will construe the Rules of Appellate Procedure liberally to promote justice and facilitate the decision of cases on the merits. See *State v. Turner*, 156 Wash. App. 707, 235 P.3d 806 (Div. 1 2010).

VII. CONCLUSION

For the foregoing reasons, Petitioner Kenneth Momanyi requests that this Court grant discretionary review and schedule argument for the earliest opportunity.

Dated this 16th day of January of 2020.



Kenneth M. K. Momanyi (Petitioner)

VIII. APPENDIX

1. Appellant's Brief (Version 1), filed July 19 of 2019
2. Clerk Notation Ruling rejecting Appellant's Brief, entered August 7 of 2019
3. Motion to Extend, filed September 6 of 2019
4. Clerk Notation Ruling denying Motion to Extend, entered September 10 of 2019
5. Appellant's Brief (Version 2), filed September 16 of 2019
6. Motion to Modify Ruling, filed October 9 of 2019
7. Order denying Motion to Modify Clerk's Ruling, entered December 17 of 2019

SCANNED

COURT OF APPEAL DIVISION I OF THE STATE OF WASHINGTON

Kenneth M.K Momanyi

)

Appellant

) No. 791427

)

v

) Court of Appeals

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUL 19 PM 1:45

Aimee M. Karani

)

Respondent

)

BRIEF FOR THE APPELLANT.

JURISDICTIONAL STATEMENT.

The Appellant submits that this Honorable Court has the jurisdiction to hear and determine this Appeal, the Appellant having approached this Court in accordance with all the applicable procedural laws.

STATEMENT REGARDING ARGUMENTS.

The appellant respectfully requests an oral argument. This, in the Appellant's view will enable this Honorable Court to be able to appreciate the facts of the case, as well as the peculiar circumstances surrounding the case.

STATEMENT OF RELEVANT FACTS.

This case relates the order issued by the Superior Court of Washington, County of King, granting the Parties to this suit a divorce. The said suit was filed in court on the 09/28 day of ~~2019~~ 2019, and the hearing of the said matter took place on the 09/04 and 09/05 day of 2019. During the said hearing, the Parties appeared in person.

During the said hearing, the Appellant represented himself and tabled sufficient evidence. However, the Court failed to acknowledge the evidence and decided entirely on the Respondent's evidence and allegations.

The background of the suit is that the Parties had been married for a period of 10 years and the union had produced children. They came to Court seeking a divorce as they had come to irreconcilable events in the union. The Parties were given time by the trial Court to represent themselves, which they both did. However, the Respondent lied to the trial Court on factual issues surrounding the matter and this misled the court in arriving at its decision. The fact that the court was misguided and the subsequent decision is the background of this appeal.

ISSUES PRESENTED.

1. Whether the trial Court erred in failing to use the evidence the Appellant had produced in estimating the divorce settlement.
2. Whether the trial Court erred in using estimates instead of factual evidence in determining how much the Appellant should pay the Respondent for the divorce.
3. Whether the trial Court applied the wrong legal standard in finding that the Respondent should have the custody of the children.

STATEMENT OF THE CASE.

This Appeal by the Appellant is based entirely on the manner in which the trial case was handled by the trial Court and the subsequent decision.

The Parties in this case were a married couple with children and as such this is a sensitive issue. However, the Respondent used the very fact that this is a sensitive issue to play the trial Court's emotions in her favor. The Respondent, on several accounts, lied to the trial Court about the facts of the matter presented.

The trial Court was called upon to determine on issues such as the custody of the children, the debts, the parenting plans, income of the Appellant as well as the child support. The Appellant acknowledged, with evidence, that he was at the time unemployed and was attending job interviews. However, the trial Court failed to use this information to impute his income for purpose of computing his contribution in child support. The trial Court went on to use his resume to estimate his earning for the said purpose. It is clear that the trial Court's aim was to settle the matter speedily, despite the unfair way the process was on the Appellant.

Despite the fact that there was sufficient evidence showing that the student loan mention in the dispute was taken by the Respondent, the trial Court ignored this fact and ordered the Appellant


to clear the debt. It is so unfair that although the Respondent alleged that she had taken the said student loan for the Appellant, she had failed to produce any evidence to substantiate the same. The trial Court gave the Respondent the privilege in this matter that was owed to the Appellant who had the evidence indicating that the loan had been secured by the Respondent and not him as the Respondent was alleging.

Further the Appellant feels that the restrictions ordered by the trial Court on the parenting plan were unfair considering the very fact that the Respondent lied all through the entire hearing. Finally, the facts about past due child support is entirely wrong as the Appellant was for the mentioned period unemployed. The Appellant produced evidence to that effect during the hearing, which was entirely ignored and hence the decision that is now being appealed. It in the best interests of justice, based on the aforementioned issues, for the Court to consider the Appellant's appeal and allow the appeal to succeed, reversing the judgment of the trial Court.

CONCLUSION

Based on the foregoing analysis, the Appellant invites the Court to make a finding that the trial Court erred on the law and facts. The Appellant prays that this Court reverses and remands the said decision.

Respectfully submitted,



Kenneth M.K. Momanyi.

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

August 9, 2019

Aimee Karani
17725 Hall Rd Apt 108
Bothell, WA 98011

Kenneth Momanyi
3045 255th Avenue SE
Sammamish, WA 98075

CASE #: 79142-7-1

Kenneth M.K. Momanyi, Appellant v. Aimee M. Karani, Respondent

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on August 7, 2019:

The appellant has continued to fail to comply with appellate deadlines and the rulings of this court. After multiple rulings, the designation of clerks papers still has not been filed, even though the actual clerk's papers have been transmitted to the court. The brief filed on 7-19-2019 does not comply with the Rules of Appellate Procedure (see enclosed). The appellant will be given one more opportunity to file the designation of clerks papers and a brief in compliance with the rule by 8-22-2019. The case will be dismissed without further notice after that date.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

CHECKLIST FOR BRIEFS

Case No. 791427, Kenneth M.K. Momanyi, Appellant v. Aimee M. Karani, Respondent

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- _____ (1) Title Page. RAP 10.3(a)
- X (2) Tables. RAP 10.3(a)
1. of contents, with page references
 2. Cases arranged alphabetically and where cited
 3. Other sources, where cited
- X (3) Assignments of Error Required for appellant and for respondent only if also seeking review. RAP 10.3(a); RAP 10.4(c).
1. Separately stated
 2. Issue pertaining thereto
 3. If involving proposed or actual findings of fact or instruction
 - a. Separate assignment for each
 - b. Referenced by number
 - c. Text of instruction, finding of fact or the like
- _____ (4) Statement of Case (necessary for respondent only if dissatisfied with appellant's statement). RAP 10.3(a)
1. Facts & Procedure
 2. References to record. All references to the record should be to specific pages in the Clerk's Papers or the Report of Proceedings rather than to sub numbers or to the appendix
- X (5) Argument. RAP 10.3(a)
1. Record references
 2. Authorities cited
- _____ (6) Conclusion stating precise relief sought. If issue relating to statute, rule, regulation, instruction, or finding of fact, set out verbatim in text of appendix
- _____ (7) A brief of appellant, petitioner, or respondent, and a pro se brief in a criminal case should not exceed 50 pages. A reply brief should not exceed 25 pages. An amicus curiae brief should not exceed 20 pages.
- X (8) Failure to comply with the provisions of the Rules of Appellate Procedure related to font size, margins, or spacing. RAP 10.4 (a)

FORM 18. MOTION
[Rule 17.3(a)]

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

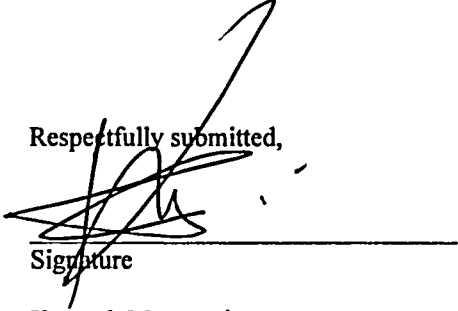
[Name of appellant],)	
Appellant)	No. 791427
)	
Kenneth M.K. Momanyi)	Motion to Extend
)	
v.)	Court of Appeals
[Name of respondent],)	
Respondent,)	
)	
Aimee M. Karani)	

1. Identity of Moving Party
I, Kenneth Momanyi, write to request an extension of time designated in Part 2.
2. Statement of Relief Sought
Extension of due date September 5, 2019 to September 16, 2019 for submission of *Appellant's Brief*.
3. Facts Relevant to Motion
Appellant's Brief will be amended according to Rules of Appellate Procedure and submitted to the Court Administrator/Clerk.
4. Grounds for Relief and Argument
The reason for this request is that the appellant was not able to afford/retain an attorney to file/amend the Appellant's Brief in compliance to the rule of appellant procedure. Appellant has found a free consultation scheduled for attorney that will provide with important advice on how to proceed with the Appellant's brief and the divorce decree.

Thank you for your kind consideration of my request.

September 6, 2019

Respectfully submitted,



Signature

Kenneth Momanyi

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
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Seattle, WA
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September 11, 2019

Aimee Karani
17725 Hall Rd Apt 108
Bothell, WA 98011

Kenneth Momanyi
12345 Lake City Way NE #2078
Seattle, WA 98125

CASE #: 79142-7-1
Kenneth M.K. Momanyi, Appellant v. Aimee M. Karani, Respondent

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on September 10, 2019, regarding appellant's motion to extend:

Perfection of this appeal has been significantly delayed. As the conditions of the 8-23-2019 ruling have not been met, the appeal is accordingly dismissed.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

jh

Mohani do modify

No. 791427

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Marriage of

Kenneth M. K. Momanyi

Appellant,

and

Aimee M. Karani

Appellee.

BRIEF OF APPELLANT

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12345 Lake City Way NE #2078
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E-Mail: kenkarani@gmail.com

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	2. Whether the Trial Court erred when it assigned the Wife's ECSI debt of \$3,306.38, the Wife's Nel Net Loans debt of \$19,321.24, and the Wife's student loan repayments debt of \$3,238.50 to the Husband when the Wife didn't discuss getting this loan with the Husband nor did he ever ask her to get a loan for him or his business. (Assignment of Error 2)	3
	3. Whether the Trial Court erred when it awarded \$10,000 to the Wife for the Husband's intransigence when it failed to make any written findings of intransigence. (Assignment of Error 1)	3
	4. Whether the Trial Court erred when it imputed \$9,875.00 in income to the Husband rather than relying on his most recent paystub, using estimates instead of factual evidence in determining how much the Husband should pay the Wife for Child Support. (Assignment of Error 3)	3

5.	Whether the Trial Court erred when it assigned \$14,989.00 of past due child support as of August 7 of 2018 and \$1,452.15 of past due child support for the month of September of 2018 to the Husband, which was based on the average of two salaries the Husband has earned previously for a short term, not his current salary. (Assignment of Error 3-4)	3
6.	Whether the Trial Court erred when it assigned \$877.80 of past due daycare to the Husband when it was stated in court that the Wife insisted on placing the kids into a more expensive daycare without consideration of the Husband's income status at the time. (Assignment of Error 4)	3
7.	Whether the Trial Court erred when it placed parenting limitations on the Husband due to a Domestic Violence charge which was removed in September of 2017. (Assignment of Error 5)	4
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2.	The Trial Court erred when it assigned the Wife's ECSI debt of \$3,306.38, the Wife's Nel Net Loans debt of \$19,321.24, and the Wife's student loan repayments debt of \$3,238.50 to the Husband when the Wife didn't discuss getting this loan with	

the Husband nor did he ever ask her to get a loan for him or his business.7

3. The Trial Court erred when it awarded \$10,000 to the Wife for the Husband’s intransigence when it failed to make any written findings of intransigence.7

4. The Trial Court erred when it imputed \$9,875.00 in income to the Husband rather than relying on his most recent paystub, using estimates instead of factual evidence in determining how much the Husband should pay the Wife for child support.8

5. The Trial Court erred when it assigned \$14,989.00 of past due child support as of August 7 of 2018 and \$1,452.15 of past due child support for the month of September of 2018 to the Husband, which was based on the average of two salaries the Husband has earned previously for a short term, not his current salary.8

6. The Trial Court erred when it assigned \$877.80 of past due daycare to the Husband when it was stated in court that the Wife insisted on placing the kids into a more expensive daycare without consideration of the Husband’s income status at the time.9

7. The Trial Court erred when it placed parenting limitations on the Husband due to a Domestic Violence charge which was removed in September of 2017.9

VI. CONCLUSION10

I. INTRODUCTION

This case relates the order issued by the Superior Court of Washington, County of King, granting the Parties to this suit a divorce. The hearing of the said matter took place on September 4 and 5 of 2018. During the said hearing, the Parties appeared in person.

During the said trial, the Appellant represented himself. However, the Court failed to acknowledge the evidence and decided entirely on the Respondent's evidence and allegations.

The background of the suit is that the Parties had been married for a period of 9 years and the union had produced children. They came to Court seeking a divorce as they had come to irreconcilable events in the union. The Parties were given time by the trial Court to represent themselves, which they both did. However, the Respondent had produced false evidence to the trial Court on factual issues surrounding the matter and this misled the court in arriving at its decision. The fact that the court was misguided and the subsequent decision is the background of this appeal.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred when it awarded \$10,000 to the Wife for the Husband's intransigence when it failed to make any written findings of intransigence. *Final Divorce Order 1*
2. The Trial Court erred when it established a judgement in favor of the Wife for \$64,968.12. *Final Divorce Order 11*
3. The Trial Court erred when it imputed almost \$10,000 (\$9,875.00) in income to the Husband. *Child Support Order 5*
4. The Trial Court erred when it calculated the past due child support to Aug. 7, 2018 for \$17,319.38. *Child Support Order 22*
5. The Trial Court erred when it placed limitations on the Husband. *Parenting Plan 3-8*

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- 1. Whether the Trial Court erred when it assigned the Wife's Chase credit card debt of \$291.20 to the Husband, which he allegedly stole, even though the card was not reported stolen and credits kept posting to the account from the Wife. Furthermore, the Husband's name was not on the account.
(Assignment of Error 2)**

- 2. Whether the Trial Court erred when it assigned the Wife's ECSI debt of \$3,306.38, the Wife's Nel Net Loans debt of \$19,321.24, and the Wife's student loan repayments debt of \$3,238.50 to the Husband when the Wife didn't discuss getting this loan with the Husband nor did he ever ask her to get a loan for him or his business.
(Assignment of Error 2)**

- 3. Whether the Trial Court erred when it awarded \$10,000 to the Wife for the Husband's intransigence when it failed to make any written findings of intransigence.
(Assignment of Error 1)**

- 4. Whether the Trial Court erred when it imputed \$9,875.00 in income to the Husband rather than relying on his most recent paystub, using estimates instead of factual evidence in determining how much the Husband should pay the Wife for Child Support.
(Assignments of Error 3)**

- 5. Whether the Trial Court erred when it assigned \$14,989.00 of past due child support as of August 7 of 2018 and \$1,452.15 of past due child support for the month of September of 2018 to the Husband, which was based on the average of two salaries the Husband has earned previously for a short term, not his current salary.
(Assignments of Error 3-4)**

- 6. Whether the Trial Court erred when it assigned \$877.80 of past due daycare to the Husband when it was stated in court that the Wife insisted on placing the kids into a more expensive daycare without consideration of the Husband's income status at the time.**

(Assignments of Error 4)

7. **Whether the Trial Court erred when it placed parenting limitations on the Husband due to a Domestic Violence charge which was removed in September of 2017.**

(Assignments of Error 5)

IV. STATEMENT OF FACTS AND PROCEDURE

1. The Husband was not generating new income in the months of January 2017 – July 2017, September 2017 – December 2017, March 2018 – April 2018, and onward from July 2018.
2. The unemployment benefit from September 16 of 2017 to April 18 of 2018 shows the amount deducted for child support that went to the Wife. The Husband provided proof of payments going to the Wife. *Ex. 52 Financial Declaration/Documents*
3. The Husband presented his student loans of \$38,471.32 which were not considered. *Ex. 52 Financial Declaration/Documents*
4. The Husband showed current credit cards in the amount of \$1,026.19. *Ex. 52 Financial Declaration/Documents*
5. The Husband has produced tax returns for 2016 and 2017. *Ex. 53 Taxes*
6. The Husband provided all of his bank statements. *Ex. 54 Bank Statements*
7. The Husband provided pay stubs. *Ex. 55 Earning Records*
8. The child support order is temporary. Default order was entered on July 1 of 2017 for \$1,044.66 because the Husband's attorney didn't respond or appear to the hearing.
9. The Husband was paying child support based on what he was earning. From September 16 of 2017 to April 18 of 2018, he paid child support in the months he worked as a Consultant. *Ex. 56 Child Support Order (DCS Debt Calculation)*
10. The Domestic Violence charge was removed in September of 2017.
11. The Husband's first company, Celifonia, was launched in January of 2017.
12. The Chase credit card account only had the Wife's name on it, not the Husband's.

13. The Husband provided a List of Interrogation regarding all of his businesses. *Ex. 63 Discovery*

14. The Husband provided his company's profit/loss margins for 2017-2018. *Ex. 63 Discovery*

15. Intransigence order for \$10,000.00 lacks documentation or explanation.

16. The Husband's most recent pay stub is for \$3,991.82 for the period of 5/26/2018-6/8/2018. *Ex. 55 Earning Records*

V. ARGUMENT

1. **The Trial Court erred when it assigned the Wife's Chase credit card debt of \$291.20 to the Husband, which he allegedly stole, even though the card was not reported stolen and credits kept posting to the account from the Wife. Furthermore, the Husband's name was not on the account.**

The court accepted all of the Wife's evidence as presented without any analysis of the undisputed facts. The card was not reported stolen by the Wife, and the bank statement contained the Wife's name only. The Husband did not deny in trial that the couple had shared accounts, but stated that credits to those accounts also came from the two combined incomes of the Husband and Wife.

2. **The Trial Court erred when it assigned the Wife's ECSI debt of \$3,306.38, the Wife's Nel Net Loans debt of \$19,321.24, and the Wife's student loan repayments debt of \$3,238.50 to the Husband when the Wife didn't discuss getting these loans with the Husband nor did he ever ask her to get a loan for him or his business.**

All three of these loans were in the Wife's name only and the Husband was not made aware of any loan taken out to compensate for his breaks in income. Although the Wife alleged that she had taken the said student loan for the Husband's DUI and business expenses, she had failed to produce any evidence to substantiate the same. The trial Court gave the Wife the privilege in this matter that was owed to the Husband who had the evidence indicating that the loan had been secured by the Wife and not him as she was alleging.

The Wife started receiving financial aid from Nel Net Loans in (or before) 2009 before marrying the Husband in 2010.

The Husband presented his student loans of \$38,471.32 which were not considered by the court.

Despite the fact that there was sufficient evidence showing that the student loan mention in the dispute was taken by the Wife, the trial Court ignored this fact and ordered the Husband to pay the debt.

3. **The Trial Court erred when it awarded \$10,000 to the Wife for the Husband's intransigence when it failed to make any written findings of intransigence.**

There are no written findings of intransigence. It is unclear how the court came up with \$10,000.

- 4. The Trial Court erred when it imputed \$9,875.00 in income to the Husband rather than relying on his most recent paystub, using estimates instead of factual evidence in determining how much the Husband should pay the Wife for child support.**

The court imputed a monthly income of almost \$10,000 to the Husband for being voluntarily unemployed.

First, the Husband testified under oath that he was, at the time, unemployed and attending interviews. He had worked as a Consultant with short-term contracts, where some months he had a contract and some months he didn't.

Second, the Husband is not a college graduate. Most of the jobs in this market require a Bachelor's or Master's degree, which has been a struggle to gain employment with his level of education.

Third, the Husband has submitted financial information such as tax returns, pay stubs, and unemployment checks to the court. And instead of using the most recent pay stub, the court has come to this calculation based on one pay stub multiplied over 12 months to produce a yearly salary, which is inaccurate for this line of work.

- 5. The Trial Court erred when it assigned \$14,989.00 of past due child support as of August 7 of 2018 and \$1,452.15 of past due child support for the month of September of 2018 to the Husband, which was based on the average of two salaries the Husband has earned previously for a short term, not his current salary.**

The Husband was making inconsistent child support payments due to the nature of the earnings in his line of work. It was agreed-upon to settle the matter of child support payments outside of court. The Wife was supposed to resolve the child support order with the Husband's attorney, Megan Dawson, but the Wife went to court instead without notified the Husband or the Husband's attorney of her change of mind.

Finally, the sums regarding past due child support were calculated erroneously as the Husband was for the mentioned period unemployed. The Husband produced evidence to that effect during the hearing, which was entirely ignored and hence the decision that is now being appealed.

6. **The Trial Court erred when it assigned \$877.80 of past due daycare to the Husband when it was stated in court that the Wife insisted on placing the kids into a more expensive daycare without consideration of the Husband's income status at the time.**

Due to the Husband's income status, he cannot afford the daycare of the Wife's choice. The Husband asked the Wife to temporarily stay with her mother with the kids to save money on bills and daycare, but she refused and insisted on paying on her own.

7. **The Trial Court erred when it placed parenting limitations on the Husband due to a Domestic Violence charge which was removed in September of 2017.**

The court placed parenting limitations on the Husband due to a Domestic Violence charge which wasn't credible since being dropped in September of 2017. The Domestic Violence charge was falsely brought up in trial after being dropped for one whole year.

Furthermore, the Wife engineered evidence such as a Restraining Order against the Husband and used coercion to persuade the court and the FCS to sympathize with her side.

VI. CONCLUSION

This Appeal is based entirely on the manner in which the trial case was handled by the trial Court and the subsequent decision. A trial Court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence.

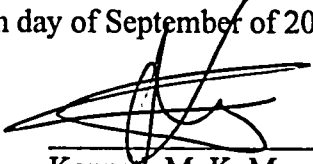
The Parties in this case were a married couple with children and as such this is a sensitive issue. However, the Respondent used the very fact that this is a sensitive issue to play the trial Court's emotions in her favor. The Respondent, on several accounts, lied to the trial Court about the facts of the matter presented.

The trial Court was called upon to determine on issues such as the custody of the children, the debts, the parenting plans, income of the Appellant as well as the child support. However, the trial Court failed to use this information to impute the Appellant's income for purpose of computing his contribution in child support. The trial Court went on to use his resume to estimate his earning for the said purpose. It is clear that the trial Court's aim was to settle the matter speedily.

It is in the best interests of justice, based on the aforementioned issues, for the Court to consider the Appellant's appeal and allow the appeal to succeed, reversing the judgment of the trial Court.

For the foregoing reasons, the Appellant respectfully invites the Court to make a finding that the trial Court erred on the law and facts. The Appellant prays that this Court reverses and remands the said decision and humbly requests for an oral argument.

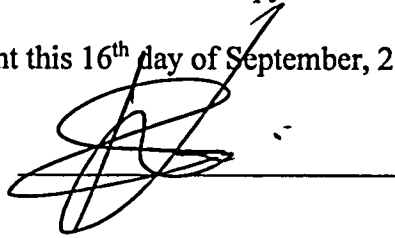
Respectfully submitted this 16th day of September of 2019.



Kenneth M. K. Momanyi
(Appellant)

CERTIFICATE OF SERVICE

I, Kenneth M. K. Momanyi, certify that I caused a copy of the foregoing Appellant's Brief be served on counsel for the Respondent this 16th day of September, 2019.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned above a solid horizontal line.

Appellant

FORM 20. MOTION TO MODIFY RULING
[Rule 17.7]

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

[Name of appellant], Appellant)	
)	No. 791427
Kenneth M.K. Momanyi)	
)	Motion to Modify Ruling
v.)	
[Name of respondent],)	Court of Appeals
Respondent,)	
)	
Aimee M. Karani)	

1. IDENTITY OF MOVING PARTY

I, Kenneth Momanyi (Appellant), ask for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Reverse the ruling by Richard D. Johnson, Court Administrator / Clerk of the Court filed on September 10, 2019. The ruling denied the Motion to Extend. This court should reverse the ruling and allow me to complete the appeal process by submitting the Appellant's Brief.

3. FACTS RELEVANT TO MOTION

All the appeal documents requested by this court have been submitted within the accepted time. The Appellant's Brief was filed without action because the Judge denied the prior Motion to Extend.

DOCUMENT	SUBMITTED
Designation of Clerk's Papers	Yes
Statement of Arrangements	Yes
Verbatim Report of Proceedings	Yes
Appellant's Brief	Yes (filed without action)

4. GROUNDS FOR RELIEF AND ARGUMENT

After my divorce was finalized in October of 2018, I was devastated to find out that the rulings prevented me from seeing my kids every day due to me not being able to gain employment. I immediately made plans to appeal to the Court of Appeals as I believed the case was judged unfairly.

I've been struggling to find employment due to reportedly becoming overqualified for positions for which I've been applying and denied for positions requiring a college degree, which I do not have. I have been diligent in applying to different companies, even for much lower pay than I've earned before, but to no avail. Nonetheless, I have not been sitting on my thumbs. I have been building my company, TextWik, which failed before it could profit. I'm launching another company so I can start paying back child support, become financially independent, and take care of my kids, who are my number one priority and motivation. I'm still applying for jobs to alleviate the Respondent, Aimee Karani, of the financial burden as soon as possible.

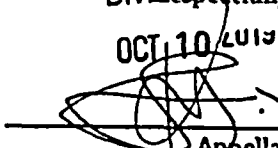
I also went back home to Kenya to stay with family after the divorce and starting the appeal process as I didn't have money to stay in the US and needed the emotional support as I did not have anyone to confide in in the US, which required a Motion to Extend as court correspondence from a different country was difficult.

Finally, getting all of the appeal paperwork together has been burdensome and costly without having a job and a means of transportation. I had to borrow money and scrounge to pay court fees. As such, Motions to Extend have been submitted to allow me more time to get pro bono legal advice and draft the papers in compliance to the rule of appellant procedure.

10/9/2019

RECEIVED
COURT OF APPEALS
DIVISION ONE
electronically submitted,

OCT 10 2019


Appellant signature

Kenneth M. K. Momanyi
12345 Lake City Way NE #2078
Seattle, WA 98125
Tel: (206) 239-8920
E-Mail: Kenkarani@gmail.com

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

December 17, 2019

Aimee Karani
17725 Hall Rd Apt 108
Bothell, WA 98011

Kenneth Momanyi
12345 Lake City Way NE #2078
Seattle, WA 98125

CASE #: 79142-7-1

Kenneth M.K. Momanyi, Appellant v. Aimee M. Karani, Respondent

Counsel:

Please find enclosed a copy of the Order Denying Motion to Modify the Clerk/Court Administrator's ruling entered in the above case today.

The order will become final unless a motion for discretionary review within thirty days from the date of this order. RAP 13.5(a).

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

enclosure

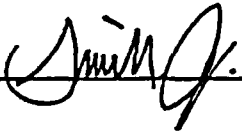
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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

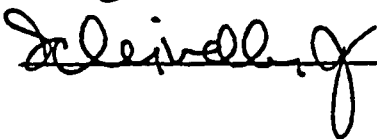
In the Matter of the Marriage of)	No. 79142-7-1
AIMEE KARANI,)	
)	
Respondent,)	
)	ORDER DENYING
and)	MOTION TO MODIFY
)	
KENNETH MOMANYI,)	
)	
Appellant.)	

Appellant Kenneth Momanyi has filed a motion to modify the clerk/court administrator's September 24, 2019 ruling placing his brief in the file without action. Respondent Aimee Karani has not filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is denied.



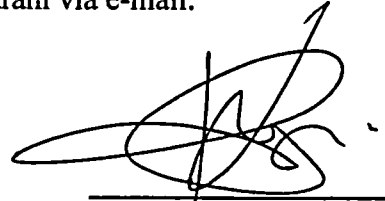




DECLARATION OF SERVICE

I certify that on this 16th day of January of 2020, I caused a true and correct copy of this document to be served on Respondent, Aimee M. Karani via e-mail.

Dated this 16th day of January of 2020.



Kenneth M. K. Momanyi (Petitioner)