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STATE OF WASHINGTON
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NO. 98595-2

SUPREME COURT OF THE STATE OF WASHINGTON

CHRISTY R. DIEMOND,

Petitioner,

v.

KING COUNTY

Respondent.

**RESPONDENT KING COUNTY'S ANSWER
TO PETITION FOR REVIEW**

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I. IDENTITY OF RESPONDENTS

King County is the respondent in this case.

II. COURT OF APPEALS DECISION

In this unpublished Court of Appeals decision, *Christy Diamond v. King County*, No. 78474-9-I, 2020 WL 2026716 (Wn.App. 4/27/2020) the Court ruled that the trial court did not abuse its discretion in denying Diamond’s untimely, second motion for reconsideration to alter or amend the judgment.

III. COUNTERSTATEMENT OF ISSUE

Trial courts lack authority to rule on untimely motions for reconsideration. In this case, Diamond filed an untimely motion to “alter or amend” a judgment under CR 59(h) and the trial court concluded that Diamond’s motion did not present sufficient grounds for amendment of the judgment. On appeal, the Court of Appeals found no abuse of discretion and affirmed, but based its ruling on other grounds – apparently, the fact that the trial court did not have authority to rule on Diamond’s untimely motion in the first place. Does the Court of Appeals’ ruling present any grounds for discretionary review by this Court under RAP 13.4(b)?

IV. STATEMENT OF THE CASE

The underlying facts and procedural sequence in this case are not disputed. The trial court entered summary judgment on November 27, 2017. CP 193-196. Diemond filed a timely motion for reconsideration, and the trial court denied it on January 3, 2018. CP 152. Diemond filed a CR 60 motion to vacate on January 8, 2018 (CP 60), which the trial court denied on February 22, 2018. CP 24-25. Diemond then filed a second motion for reconsideration (CR 59(h) motion to alter or amend the judgment) on March 1, 2018. CP 20-23. The trial court determined that Diemond's CR 59(h) motion failed to present grounds for amendment of the judgment, and denied her motion on May 25, 2018. CP 10-11.

Diemond filed a notice of appeal with the Court of Appeals, Division One, on May 29, 2018. CP 1-9. A Court Commissioner determined that Diemond's notice of appeal was untimely as to the trial court's November 27, 2017 judgment and its January 3, 2018 denial of Diemond's first motion to reconsider that judgment. *See* Commissioner's letter ruling dated 8/16/18. The Commissioner further ruled that Diemond's appeal was not timely as to the trial court's February 22, 2018 order denying her CR 60 motion to vacate. *Id.*

The Commissioner found that Diemond's appeal was timely only as to the May 25, 2018 order denying her second motion for reconsideration. *Id.* Although the Court gave Diemond the opportunity to establish that the appeal period should be enlarged, she declined to take advantage of it. *See* Commissioner's Ruling letter ruling dated 9/7/18.

The appeal proceeded to the merits, and the Court of Appeals affirmed in an unpublished decision dated April 27, 2020. The Court ruled that Diemond's second motion for reconsideration (i.e. March 1, 2018 CR 59(h) motion to alter or amend) was not timely. The Court determined that the trial court did not abuse its discretion in denying this motion, but appeared to base its ruling on other grounds: that the trial court lacked authority to rule on Diemond's untimely second motion for reconsideration. *See Christy Diemond v. King County*, No. 78474-9-I, 2020 WL 2026716 *3 (Wn.App. 4/27/2020) Diemond filed a Petition for Discretionary review with this Court on May 27, 2020.

V. ARGUMENT

RAP 13.4(b) lists four considerations this Court examines when determining whether to grant discretionary review of a Court of Appeals decision:

- (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 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.

Diomond contends that the Court of Appeals ruling in this case satisfies all of the above criteria. *See* Petition, at 7. She provides no analysis supporting this claim, and for the reasons set forth below, she is mistaken.

A. There is No Conflict Between the De Novo Standard of Review applied to Appeals from Summary Judgment Orders and the Abuse of Discretion Standard of Review applied to appeals from Orders on Motions for Reconsideration.

Diomond first suggests there is “standard of review confusion” because the “dueling standards of review” create a situation “where the CR 60 or CR 59 decisions refusing to modify or reconsider a summary judgment order are allowed to stand, and the appellate court refuses to review the summary judgment order or any of its findings and conclusions that should be reviewed de novo.” Petition, at 7, 9. The solution to Diomond’s dilemma is provided in RAP 2.4(c), which states that an order

deciding a *timely* CR 59 motion brings up for review the final judgment. Thus, had Diamond timely appealed the Court's January 3, 2018 order denying her first motion for reconsideration, the Court of Appeals would have also reviewed *de novo* the trial court's November 27, 2017 summary judgment order.

B. The Court of Appeals Correctly Ruled that the Trial Court did not Abuse its Discretion in Denying Diamond's Second, Untimely Motion for Reconsideration.

The Court of Appeals' determined that (1) Diamond's second motion for reconsideration was not timely, and (2) that the trial court did not abuse its discretion in denying it. *See Diamond*, 2020 WL 2026716 *3. The Court of Appeals agreed with the trial court that Diamond "did not present grounds for the judgment to be amended[,]" but apparently affirmed on the alternate ground that Diamond's motion was not timely. *See id.*, note 5. This "alternate ground" follows established law. *See Schaefco, Inc., v. Columbia River Gorge Com'n*, 121 Wn.2d 366, 367-68, 849 P.2d 1225 (1993) (trial court may not extend time period for filing a motion for reconsideration).

Diamond argues at length that the Court of Appeals erred because courts do not lose jurisdiction and "power to rule" because a party fails to comply with court rules. *See* Petition, at 10 (citing *Hamer v. Neighborhood*

Housing Services of Chicago, 138 S.Ct. 13 (2017)). But nowhere in the Court of Appeals’ three-page, unpublished ruling is this proposition stated. Indeed, the Court does not even use the word “jurisdiction” in its opinion. The Court of Appeals found no abuse of discretion and affirmed based on established law that a trial court cannot extend the time period for filing a motion for reconsideration. Diamond makes no credible showing how this ruling satisfies any of the criteria under RAP 13.4(b).

Lastly, Diamond argues that the trial court abused its discretion by deciding – on the merits – that she failed to present grounds for the judgment to be amended. Petition, at 17. She argues that the trial court failed to comply with “binding PRA precedents, . . .” requiring that a requestor’s alleged economic harm must be taken into account in calculating a PRA penalty. *Id.* But it is the Court of Appeals’ ruling – not the trial court’s ruling – that must satisfy one or more criteria of RAP 13.4(b). Because Diamond makes no credible argument as to how any of the RAP 13.4(b) criteria are satisfied by the Court of Appeals’ decision, the Court should deny her petition for review.

VI. CONCLUSION

Diamond’s petition provides no legitimate argument that the Court of Appeals’ unpublished, three-page decision satisfies any of the criteria for

discretionary review under RAP 13.4(b). Respondent King County
therefore asks this Court to deny it.

DATED this 26th day of June, 2020.

DANIEL T. SATTERBERG
Prosecuting Attorney

By: /s/ John R. Zeldenrust
JOHN R. ZELDENRUST, WSBA #19797
Attorneys for Respondent King County

CERTIFICATE OF FILING & SERVICE

I hereby certify that on the 26th day of June, 2020, I caused a copy of the foregoing document to be filed with the Supreme Court of the State of Washington using the Washington State Appellate Court's Electronic Filing Portal and further certify that I served a copy of the same via email to the following:

Michele Earl-Hubbard, WSBA #26454
Attorney for Appellant / Petitioner
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26th day of June, 2020.



HELEN FUNG
Civil Litigation - Legal Secretary
King County Prosecuting Attorney's Office

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

June 26, 2020 - 1:53 PM

Transmittal Information

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