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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 34160-3-II

**COURT OF APPEALS, DIVISION II OF
THE STATE OF WASHINGTON**

Lori Maze and Debra Tsugawa,

Appellants,

v.

Country Mutual Insurance Company,

Respondent

APPELLANT'S REPLY BRIEF

Lori Maze & Debra Tsugawa Pro Se
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pm 5/25/06

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Appellant's Motion to Reinstate the Case filed on June 30, 2005. (CP 20 and CP 22)
2. The trial court erred in denying Appellant's Motion for Relief From Order Denying to Reinstate the Case filed on July 29, 2005. (CP 35)

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. CR 41(b)(2)(B) provides that a "party who does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal". Would three days be considered a "reasonable time"?
2. CR 60(b)(1) allows the court to vacate an order for "mistakes, inadvertence, surprise, or excusable neglect." Does believing the clerk would use the most current document in the file for a current address, constitute a "mistake, inadvertence, surprise, or excusable neglect"?

C. ARGUMENT

1. Appellants have been active with this case. We filed interrogatories and answered interrogatories from Country Company's counsel, (CP 45) approximately nine months before the clerk sent the notice of the Motion to Dismiss, Appellants had returned the notarized copies of our deposition corrections to the Respondent's attorney, and just weeks before discovering the dismissal, we had finally located one of the key witnesses for Country Companies. (CP 36 and CP 37)

If, we had received the CR 41(b)(2)(A) dismissal, we would have filed a status report and prevented the dismissal. We did not receive the Notice of Dismissal. Three days after discovering the July, 2004 dismissal, we filed a Motion to Reinstate the Case. The critical period in the determination of whether a motion to vacate is brought within a reasonable time is the period between when the moving party became aware of the judgment and the filing of the motion. See Suburban Janitorial Service v. Clark American, 72 Wn.App. 302, 308, P2d 1377 (1993). A dismissal on the clerk's motion, pursuant to CR 41(b)(2), although mandatory in its terms, is not exempt

from the provisions of the vacation of judgment rule. Vaughn v. Chung, 119 Wn.2d 273, 830 P.2d 668 (1992).

As required by CR 41(b)(2)(B), the Motion for Reinstatement was filed within a reasonable time after learning of the dismissal.

2. We mistakenly believed the court would use the address that was on the most recent document in the file. Our current address was on Country Company's Proof of Service, that was filed with their Answer. All correspondence with Country Company's counsel has been with that address. (CP 45)

Our civil rules favor disposition of cases on their merits, rather than on procedural technicalities. Allowing trial courts to vacate subsequently those dismissals caused by mistake, inadvertence, excusable neglect, or other good reasons is not inconsistent with a mandatory procedure for dismissing cases. Vaughn v. Chung, 119 Wash 2d 273, 830 P2d 668 (1992)

Three days after Appellant's discovered the court's July 30, 2004 Order of Dismissal, we filed a Motion to Vacate the Order (CP 20), pursuant to CR 41(b)(2)(B). About a month

after that motion was filed, on July 29, 2005, we filed the Motion for Relief from Order Denying Motion to Reinstate Case (CP 35), pursuant to CR 60(b)(1).

A motion brought under CR 60(b)(1) is timely only if it is filed within a reasonable time and not more than one year from the date of the judgment, order, or proceeding from which relief is sought. Luckett v. Boeing Co., 98 Wn. App. 307, 989 P2d 1144 (1999)

IV. CONCLUSION

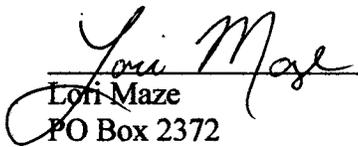
We did not receive the Notice of the Order of Dismissal. We discovered the July 30, 2004 Dismissal on June 26, 2005. We filed a motion to reinstate the case on June 29, 2005 three days later, pursuant to CR 41(b)(2)(B). The court mailed the Notice to the address that was on the Summons, rather than the address on the Respondent's Proof of Service. The court abused its discretion by not reinstating the case pursuant to CR 41(b)(2)(B)'s requirement that, "a party who does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal."

We mistakenly believed that the court would use the most current document in the file for a current address of either party, as CR 4 requires Proof of Service be made to the party's most current known address and CR 10 requires a party to include their current address in the bottom notation of each document filed with the court. Pursuant to CR 60 (b)(1), the case should be reinstated.

Both CR 41 and 60 require the motions to be brought within a reasonable time after discovering the dismissal. We have met that requirement by filing the motion only three days after discovering the Order of Dismissal. CR 60 also required the motion be no later than one year. The Order of Dismissal was filed on July 30, 2004. The Motion for Relief from the Order Denying the Motion to Vacate the Dismissal was filed on July 29, 2005.

The Court of Appeals should vacate the dismissal and reinstate this case as a pending action on the Court's docket.

Dated this 20, 2006,



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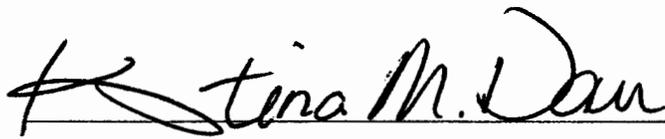
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Dated this 22nd day of May, 2006.



Renee Mize

SUBSCRIBED and SWORN to before me this 22nd day of May, 2006.



Kristina M. Darr

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My Commission Expires: Sept. 14, ~~07~~⁰⁹

