

COURT OF APPEALS
DIVISION II

2013 JUN 28 PM 1:07

STATE OF WASHINGTON

BY SW
DEPUTY

NO. 43891 - 7 - II

IN THE COURT OF APPEALS, DIVISION II
IN AND FOR THE STATE OF WASHINGTON

JEFFREY McKEE, *Appellant*

v.

STATE OF WASHINGTON, et al, Respondents

BRIEF OF APPELLANT

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PM 6/27/13

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A. ASSIGNMENTS OF ERROR

Assignments of Error

- No. 1 The trial court erred in denying Mr. McKee a continuance for the summary judgment hearing.
- No. 2 The trial court erred in finding that no genuine issues of fact were present in the case so that the court granted the Motion by the State for dismissal by Summary Judgment.
- No. 3 The trial court erred in assuming that the State had accurately calculated the time period for tolling the period of limitations for McKee to file his Complaint

Issues Pertaining to Assignments of Error

- No. 1 Whether the court abused its discretion by denying Mr. McKee a reasonable opportunity to file affidavits in response to the State's motion for summary judgment before ruling on the motion and granting the motion even though Mr. McKee had shown the court at that hearing:
- a.) Medical Records confirming that he was suffering from a personal, emergent and significant medical infirmity (a hematoma) prevented him from

- b.) No prejudice to the State was claimed by the attorney for the State should if the court were to grant the requested two week continuance, and
- c.) The court did not enter a finding that Mr. McKee was acting in bad faith, and
- d.) The court initially ruled that the reason for denying a continuance was because the request was untimely, and
- e.) In reviewing the record after Mr. McKee filed a motion to reconsider, the court entered a new reason for denying the continuance, that Mr. McKee, at the hearing, had verbally abandoned and waived his request for a continuance, even though he did not clearly or specifically state such a thing on the record, and
- f.) The record produced by the State clearly supports the argument made by Mr. McKee orally at the hearing and in writing in his motion for reconsideration.

No.2 Whether the court abused its discretion when it granted the motion for summary judgment when the case presented by the State, for calculating the tolling of the statute of limitations, instead supports Mr. McKee's calculation and/or shows that a genuine issue of fact exists.

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B. STATEMENT of the CASE

Procedural History

Mr. McKee, acting *pro se*, filed his Complaint in the Kitsap County Superior Court on January 17, 2012. CP 1. (The complaint is an action in tort with a three year statute of limitations.) The Respondent, State of Washington, represented by the office of the Attorney General, Assistant Attorney General Patricia Todd, served Notice of Unavailability. The Answer to the Complaint was filed three and one months later on April 26. CP 2. Mr. McKee, *pro se*, did not object to the extended time period stated in the Notice.

On June 7, Ms. Todd filed and served the Respondent's Motion for Summary Judgment and two Declarations made by J. S. Blonheim, a defendant, and Ms. Todd, herself. CP 3, 4, 5. The hearing for Summary Judgment was scheduled for July 13. Mr. McKee received Notice of the hearing date. He began preparing his response. On July 9, Mr. 1.

McKee called the Office of the Attorney General. He explained that he needed a continuance of a couple of weeks. The reason was his medical condition. On July 10, Mr. McKee filed and served a request for accommodation through the court administrator. He requested that he be permitted to attend by telephone. The reason given by Mr. McKee was emergent medical reasons. CP 6. With his request he filed and served Medical documentation of his medical condition. CP 7. The documentation involved medical records of surgery, treatment and photographs of a large hematoma on Mr. McKee's leg. CP 7. An order was entered by Judge Haberly on the same date permitting the accommodation of telephonic appearance for him at the hearing on summary judgment subject to review of the court. CP 8. In the order is typed, " The Court acknowledges the requesting party's temporary disability and authorizes his telephonic appearance at 9:30 a.m. on Friday, July 13, 2012, to request and substantiate a continuance of the

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scheduled hearing on the record.”

The hearing was held on July 13, as scheduled. Present at the hearing was Ms. Todd and Mr. McKee, by telephone. The presiding judge was her honor, Judge Haberly, (now retired). VRP 1 – 2. The court reviewed the request for accommodation and permitted Mr. McKee to proceed by telephone. The court received the oral request of Mr. McKee to grant him a continuance to file a Response. Ms. Todd opposed the oral request. The court heard argument on the matter and denied Mr. McKee’s request. RP 6. The court then heard argument on the merits of the summary judgment. motion. The court ruled that no evidence was presented in response to the motion. RP 11 - 12. The court entered an order granting summary judgment. The court based its decision regarding a lack of evidence supporting Mr. McKee’s arguments on the court’s ruling, entered a few minutes earlier, denying a continuance of the hearing so that he could submit affidavits

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to the court. In other words, the oral and written decision of the court was based solely on the fact that Mr. McKee had not filed a response. The court did not make any substantive findings regarding the sufficiency of the facts in support of the motion for summary judgment. The judgment of the court dismissed with prejudice all matters raised in Mr. McKee's complaint. CP 9.

Mr. McKee timely filed and served a motion for reconsideration on July 23. CP 10. The court did not request further hearing on the matter and did not request supplemental briefing from Ms. Todd. The court entered an order on the motion. CP 11. The order sustained the judgment based on the existing record. The court did not directly respond to any of the materials filed with Mr. McKee's request for reconsideration. The court did not address the substantive merits of the motion and judgment. CP 11. Mr. McKee timely filed Notice of

Appeal on August 30, 2013. CP 12.

Mr. McKee, acting *pro se*, filed Designation of Clerk's Papers. (Neither the designation nor the county court index lists the papers in numerical order: 1, 2, etc. A supplemental copy of the designation is attached to the Appendix by which the original designation is provided in a handwritten CP numerical order for the documents.) Ex 1. The Statement of Arrangement was filed on October 1. The Report of Proceedings was filed on December 13, 2012. On April 17, 2013, Notice of Appearance was filed by Mr. Bougher, acting *pro bono*, as undersigned counsel for Mr. McKee. The filing date for Mr. Bougher to file the appellant's brief was set for June 10. On June 10, Mr. Bougher filed a request for a continuance of the due date. The reason for the continuance, not explicitly stated, was emergent and personal to his family. The new date, requested by Mr. Bougher, was June 24. The

brief did not get posted on June 24 and instead was filed and served on June 27. A motion and declaration to extend the filing deadline was filed the same day.

STATEMENT OF FACTS

Pertinent facts regarding the ruling denying Mr. McKee's request for a brief continuance:

At the hearing, Mr. McKee explained to the court that he needed a continuance to fully prepare his response. He explained that the reason he missed the deadline for filing the Response was a recent and emergent, very painful medical condition, a hematoma on his leg. Because of the hematoma he was unable to travel to and from his home and the county law library. He did not have any other access at home or elsewhere

nearby to his house to obtain the resource materials he felt he needed to prepare his response to the summary judgment motion. RP 1 – 3.

The summary judgment motion was filed and served on June 6. Mr. McKee understood that his response was due on July 2. Prior to becoming ill, Mr. McKee planned to complete his response prior to or July 2; however, three or four days before the due date his leg became infected. He began to suffer a great deal of pain. He needed surgical care a pain killers. He was unable to travel and complete the response. RP 2, CP 7. On July 9, Mr. McKee called the Office of the Attorney General. He explained his situation and asked of Ms. Todd that he be permitted to have the hearing continued a couple of weeks. Mr. McKee stated that Ms. Todd refused, and said to him that the State "...deserved..." this judgment. RP 5. At the hearing, Mr. McKee pointed out to the 7.

court that the court had possession of the court file on the bench. In the file, he reminded the court, was the documentation of the emergency room treatment and pictures of his leg. RP 5, CP 7. Ms. Todd, in response, did not challenge the authenticity or significance of the medical documentation. She did not challenge the admissibility of the medical documentation into evidence for purposes of the motion to continue. Instead, she called Mr. McKee's medical condition "... a ruse..." made up by Mr. McKee to obtain a continuance. RP 4, CP 7. Ms. Todd did not present the court with any facts alleging that the medical documentation was somehow a ruse. Ms. Todd went on to make three arguments for denying a continuance.

First, Ms. Todd stated that Mr. McKee was a *pro se* litigant who should be held to the same standards as every other attorney representative. Second, she accused him of

using the law as a dilatory tactic. Third, she stated that the case was a straightforward issue of *law* (emphasis added) regarding the State's allegation that Mr. McKee simply had filed on a date beyond the date of limitations. RP 3. The court record and the verbatim report of proceedings does not indicate whether or not the court considered Ms. Todd's statements or the medical records in making the ruling denying a continuance.

The court denied Mr. McKee's motion to continue on the grounds that it was "...untimely, given that the matter was filed on June 6." RP 6. The court then proceeded to grant summary judgment because Mr. McKee had no evidence to support his case. (The facts for *de novo* review on the merits of the motion are provided in the record. See Floyd v. Dept., *infra.* at 11.)

In the ruling on reconsideration the court observed for the first time that Mr. McKee had waived his argument for a continuance. In its ruling at court, waiver was not included as a reason for the court's ruling in denying a continuance. Was Mr.
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McKee freely electing to proceed to fact finding against a motion against which obviously he knew he could not raise a defense because he had just been denied a continuance to file a response. CP 11.

In the Memorandum Opinion and Order Denying Reconsideration the court states that "... [a] review of the transcript indicates that Mr. McKee abandoned his request for a continuance and proceeded to argument on the merits of the motion." The statement to which the court refers is not specified in the memorandum decision. Probably the statement to which the court refers is found at RP 6:

I did everything that I could to alert the court that I am in trouble here this week.

As far as no time, no filing, nothing is going to change, I was hoping that we would continue this and then we could litigate the statute of limitations, but since the attorney general has decided she is going to lay that out, let's go with that.

Obviously Mr. McKee's statement concedes defeat to the

“attorney general” on his motion to continue the hearing. His statement does not state clearly that he waives his request for a continuance. At the hearing the judge entered the ruling denying a continuance immediately following his statement. Her ruling was based solely on the basis that the motion to continue was untimely, not that it had been waived. RP 6.

Pertinent facts regarding the substantive merits of the summary judgment motion.

(A statement of facts is not necessary in the review of a summary judgment if the appellant has provided a transcript, certified by the clerk, containing all of the documents referred to by the trial judge in the order granting the judgment; and if any such documents are not included in the transcript, the remedy of the respondent is to have the transcript corrected as prescribed in the Rules of Appellant Procedure. Floyd v. Dept. of Labor and Indus., 68 Wn.2d 938, 416 P.2d 355 (1966).)

The substantive issue in the summary judgment motion is that Mr. McKee missed the deadline for filing his Complaint. In the Motion for Summary Judgment the State

explains the calculation by which, with reference to a calendar, it purportedly can be shown that the filing date of January 17, 2012 was too late by two days. However, the deadline date fell on a Sunday and the next day was Martin Luther King's day, a holiday we celebrate in the judicial system by closing our courts for the day. Appellant respectfully submits that when the court reviews the timing and the dates on a de novo basis, the court may find that the mathematical calculation, employed by the State in support of the motion, is subject to a genuine question of fact.

C. SUMMARY OF ARGUMENT

The standard for reviewing a denial of a continuance is abuse of discretion. Butler v. Joy, *infra*. Mr. McKee respectfully submits that the court abused its discretion by denying his request for a continuance. Without a continuance

he could not have any materials at the hearing, supported by affidavit, that were timely filed and served for responding to the Motion for Summary Judgment. In other words, the denial of his request for a brief continuance (he only requested a couple of weeks) eliminated any possibility of the court reviewing the *genuine merits*, if any, of the motion. The reason is that the court would be hearing only one side of the story.

. In response to his request, Ms. Todd , opposing counsel, did not state any prejudice to the State's case that would follow a brief continuance. She did not object to Mr. McKee's reference to the medical records that showed he had been suffering a medical emergency. The record shows that the trial judge had seen the filed medical records---the judge had entered an order of accommodation for telephonic appearance for Mr. McKee four days earlier based on the same medical records. The trial court has a duty to give a party a reasonable opportunity to complete the record before ruling on a case.

Coggle v. Snow, *infra*.

Regarding the substantive merits of the motion for summary judgment, Ms. Todd argued that the statute of limitations was missed thereby rendering Mr. McKee's case moot and subject to dismissal. The calculation of dates and days is referenced in her brief in a footnote at page. Mr. McKee respectfully submits that the calculation is in error. The regular limitations deadline in his case would have been on November 8, 2011. However, he was in jail at the time, imprisoned on a criminal charge prior to sentencing, and did not file with Risk Management until November 10, 2011.

At the hearing, Mr. McKee informed the judge that, pursuant to RCW 4.16.190(1), since he was in jail the time between November 8 and 10, the running of the limitations period was tolled. In the State's memorandum footnote, the State concedes that RCW 4.92.100 provides for a tolling of an

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additional sixty-five days once the Office of Risk Management is served. Civil Rule 6(a) provides that in computing time under the rules, the final date for filing an action in the Superior Court does not include a Saturday and/or Sunday/and or holiday if the final date falls on one of those days. Instead, the final date would be on the following date. The State, in its motion, indicates that Mr. McKee filed on January 17, 2012, a Tuesday. Martin Luther King Day was on January 16. Mr. McKee agrees with the state: he filed on January 17, 2012, which by his calculation was the final date for timely filing.

D. ARGUMENT

The trial court erred in denying Mr. McKee's request for a continuance.

The reasons are several. First, the court reviewed the fact that Mr. McKee had a hematoma on his leg requiring that an accommodation be made so that he could appear telephonically. Ms. Todd for the State previously had been advised of the requested accommodation and did not object to it. RP 2. The court granted the accommodation; however, the court without explanation on the record denied Mr. McKee's request for a continuance even though the need for a continuance was based on the same medical circumstances.

Regarding the requested continuance, Mr. McKee explained to the court that he needed a continuance to fully prepare his Response. The reason he missed the filing deadline for his Response was that he had suffered an emergent, painful medical condition, a hematoma on his leg. Because of the

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hematoma he was unable to travel to and from his home and the county law library. He did not have any other access to the resource materials he needed to prepare his answer to the Motion for Summary Judgment.

The State had filed the Motion for Summary Judgment on June 6. Mr. McKee's understood that his Response was due on July 2. Mr. McKee planned to complete, serve and file his Response by July 2; however, three or four days before the due date his leg became infected and he began to suffer a great deal of pain. He was unable to travel and complete the work. RP 2. Mr. McKee called the Office of the Attorney General and asked Ms. Todd to permit him to have the hearing continued a couple of weeks. Mr. McKee stated that Ms. Todd refused, and replied that she said the State "...deserved..." this judgment. RP 5 – 6.

Mr. McKee pointed out to the court that the court had the file from the [Court Administrator's] office. In the file, he asserted, was documentation of emergency room treatment and
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pictures of his leg. RP 5. In response, Ms. Todd did not challenge the said documentation. Instead, she called the medical condition "... a ruse...". RP 4. Ms. Todd made three arguments to deny a continuance. First, Ms. Todd stated that Mr. McKee was a *pro se* litigant who should be held to the same standards as every other attorney representative. Second, she accused him of using the law as a dilatory tactic. Third, she stated that the case was a straightforward issue of *law* (emphasis added) regarding her allegation that he missed the statute of limitations. RP 3. She did not base her statements on affidavits. The court record and the verbatim report of proceedings does not indicate whether or not the court considered Ms. Todd's statements or the medical records in making the ruling denying a continuance. An order granting summary judgment which did not identify the precise matters considered by the trial court is insufficient for appellate review. LeBeuf v. Adkins, 93 Wn.2d 34, 604 P.2d 1287 (1980), *review denied*, 95 Wn.2d 1012 (1981).

The court denied Mr. McKee's motion to continue on the grounds that it was "...untimely, given that the matter was filed on June 6." RP 6. The court then proceeded to the substantive issues involving the applicable statute of limitation.

On appeal, regarding continuances, Mr. McKee understands that the denial of a summary judgment continuance motion is reviewed for abuse of discretion. Butler v. Joy, 116 Wn. App. 291, 65 P.3rd 671, *review denied*, 150 Wn.2d 1017, 79 P.3rd 446 (2003). He respectfully submits that the denial of a continuance was an abuse of discretion. The courts have held that the primary consideration in a trial court's decision on a motion for a continuance should be justice. Id. Mr. McKee had shown a good reason---an uncontroverted and significant medical reason---explaining the delay in producing his Response. Ms. Todd did not object to Mr. McKee's reliance on the medical materials in the court file. Her failure to move to

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strike the medical evidence, because it was not supported by affidavit, waives any objection by her to it on appeal. Turner v. Kohler, 54 Wn. App. 688, 775 P.2d 474 (1989). (In Turner, at issue was the admission into the record of a letter not supported by affidavit.) The court had a *duty* to give Mr. McKee a reasonable opportunity to complete the record before ruling on the case. Coggle v. Snow, 56 Wn. App. 499, 784 P.2d 554 (1990). Lewis v. Bell, 45 Wn. App. 192, 724 P.2d 425 (1986).

The reason the court has a duty to obtain a complete record before making a ruling on summary justice seems obvious in this case: By denying Mr. McKee's request for a continuance, the trial court's ruling made impossible any review of the merits of the facts in either party's case. The quest for justice cannot be said to have been served in this harsh manner.

In another matter the trial court erred in denying Mr. McKee's request for a continuance. The issue is found in the Memorandum Opinion and Order Denying Reconsideration.

There the court states that "... [a] review of the transcript indicates that Mr. McKee abandoned his request for a continuance and proceeded to argument on the merits of the motion." The statement to which the court refers is not specified in the memorandum decision. Probably the statement to which the court refers is found at RP 6:

I did everything that I could to alert the court that I am in trouble her this week.

As far as no time, no filing, nothing is going to change, I was hoping that we would continue this and then we could litigate the statute of limitations, but since the attorney general has decided she is going to lay that out, let's go with that.

Mr. McKee's statement concedes defeat to Ms. Todd's argument. His statement does not waive his request for a continuance. Moreover, the trial judge apparently did not think that he had waived his request. The judge entered the ruling denying a continuance immediately following his statement. Her ruling was based solely on the basis that the motion to

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continue was untimely, not that the motion to continue had been waived.

The court erred in finding that no genuine issues of fact were present in the case so that the court granted the Motion by the State for dismissal by summary judgment

In the case of McLeod v. Northwest Alloys, Inc., 90 Wn.App. 30 969 P.2d 1066, *review denied*, 136 Wn.2d 1010, 966 P.2d 903 (1998), the court held that where a motion for summary judgment is based on the application of a statute of limitations, the motion should be granted only if the record demonstrates that there are no genuine issues as to the commencement of the statutory period. In the present case, neither in the oral ruling and order on summary judgment, nor in the memorandum of the court on reconsideration, does the court do more than observe that Mr. McKee's factual allegations were not admissible.

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Ironically, however, the court based its ruling on the record presented by the State---for therein are the admissible facts necessary for showing that Mr. McKee's arguments clearly allege a genuine issue of fact.

The State's Memorandum (CP 8), presented and argued to the court at the hearing, cites to legal authority and facts, and alleges that the State is presenting a true and correct mathematical calculation of time, can be as determined in this case. In the Memorandum, page 4, the State argued :

In this case there are no genuine issues of material fact in dispute upon the application of the statute of limitations. Plaintiff's arrest occurred on November 8, 2008, which was when the statute of limitations began to run. Plaintiff had three years to commence suit by November 8, 2011. Plaintiff filed his lawsuit with Kitsa County Superior Court on January 17, 2012.

In a footnote at page four the State argued :

Actions by the State are also governed by RCW 4.92.100 which requires sixty calendar days to elapse between the presenting of the claim to risk management and filing the complaint with the court. The statute also provides the benefit of sixty-five days of tolling the statute during this

time. Unfortunately, he did not file his tort claim with risk management until November 10, 2011. At that point, the statute of limitations had expired.

Not included in the above-given calculations, is reference to RCW 4.16.190. That statute indicates, in pertinent part, [that when Mr. McKee was arrested and put in jail] he was “...imprisoned on a criminal charge prior to sentencing, the time of such disability [not to be included] as a part of the time limited to the commencement of the action.” Ex 2. Mr. McKee cited to that authority explicitly to the court in his Motion for Reconsideration. CP10. Moreover, in calculating the number of days between November 10, 2011 and January 17, 2012, when the complaint was filed, sixty five days are permitted by statute, supra., for timely filing. That calculation includes November (31 days) and December (31 days) and gave Mr. McKee until January 14, 2012 to file his case. In 2012 that date, January 15, fell on a Sunday. The next day was Martin Luther King’s day, a holiday, the courts were closed. Application of Civil Rule 9(a) provides that the next day, the

Application of Civil Rule 9(a) provides that the next day, the 17th of January, was the last date for filing. Ex. 3. The State concurs in its Memorandum that the 17th was the deadline.

Thus, Mr. McKee respectfully submits that the filing of the Complaint is timely and that the record proving that fact was provided to the court at the hearing and thereafter in the reconsideration of the ruling.

A motion for summary judgment may be granted only if there is no genuine issue of fact. Island Air, Inc. v. LaBar, 18 Wn.App. 129, 566 P.2d 972 (1977). He submits that he argued a genuine issue of fact to the court based on the admissible record. Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 937 P.2d 1082, (1997).

The court erred by ruling for the State on the issue of timing for filing the complaint. The court on its own motion at that point in the hearing or in reconsideration should have reversed its findings and rulings and remanded the matter for
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further briefing and argument. There was no prejudice claimed by the State should the court do otherwise other than the State deserved to win. There was no bad faith found by the court in the actions of Mr. McKee. The State did not secure a win by “default”. The State did not meet its burden of proof to prevail.

The court ruled that Mr. McKee did not submit evidence in support of his motion. However, on the other hand, did the moving party, the State, meet its own burden of satisfying the substantive requirements inherent in its defense?

The judgment and ruling on reconsideration may make sense if reviewed as a sort of default. However, the court did not find at any juncture in the case that Mr. McKee was acting in bad faith. The court observed only that his affidavit(s) were not filed and served on time. Nevertheless, the evidence/materials relied upon by the court, namely the facts presented in the State’s pleadings, show that a genuine question

of fact exists. Sedwick v. Gwinn, 73 Wash. App. 879,873 P.2d 528 (Div. 1, 1994).

In his motion for reconsideration Mr. Mckee brought to the attention of the trial judge further argument regarding the calculation of time in and the application of RCW 4. 16.190 to his case. He reported that

Actual uninterrupted incarceration, as opposed to arraignment, is [the] touchstone for determining disability by incarceration, within the meaning of this section tolling the statute of limitations when a person is “imprisoned on a criminal charge”; therefore, an inmate pursuing a federal civil rights action is entitled to tolling for the entire period that he was in pprison prior to his conviction and sentence. Bianchi v. Bellingham Police Dept. C.A. 9 (Wash.) 1990, 909 F. 2D 1316. There is no bright line minimum time that a person must be incapacitated to toll the statute of limitations for medical –malpractice actions.Rivas v. Overlake Hosp. Medical Center, 164 Wn.2d 261, 189 P.3rd 753.

CP 10.

E. CONCLUSION

The trial court erred in denying Mr. McKee his request for a continuance for the summary judgment hearing. A couple of weeks of continuance is all that he requested. His reason for making the request was so that he could comply with court rules regarding timely filing of responses to motions on summary judgment. His reason for not meeting the deadline was his personal, significant, medical personal distress, proof for which he provided to the court in the form of medical records. No prejudice to the opposing party was claimed. The court did not find that he was acting in bad faith. Prior to the hearing he asked opposing counsel, of the office of the Attorney General of the State of Washington, for an agreed continuance of a couple of weeks. His request was refused. Prior to the hearing the (same) trial judge granted Mr. McKee an accommodation so that he could appear by phone because of his

medical condition. Yet at the hearing the court ruled that his motion for continuance was untimely. The court had a duty pursuant to cited case authority to provide a reasonable opportunity to Mr. McKee for him to prepare and present his case. Respectfully, it is submitted herein that the trial court did not do its duty in this matter and thereby abused its discretion authority by its rulings. The case should be reinstated and remanded for further proceedings consistent with the decision of the appellate court.

The trial court erred in not finding that the State was mistaken in calculating the limitations period for the Complaint filed by Mr. McKee. The facts and law necessary for making that determination was available to the trial judge both at the hearing and on reconsideration. The evidence and authorities is found explicitly in the memorandum filed by the State in support of its motion for summary judgment. A genuine issue of fact exists in regards to the State's motion for

summary judgment. Respectfully, it is submitted that the rulings, on the substantive matter of time calculation, should be reversed upon de novo review or the matter altogether should be should be remanded and reinstated for further hearing on the State's motion for summary judgment.

Respectfully submitted this 27th day of June, 2013.


J. Scott Bougher, wsba # 16893

APPENDIX

FILED
KITSAP COUNTY CLERK

2012 OCT -1 PM 2:29

THE STATE OF WASHINGTON
SUPERIOR COURT FOR KITSAP COUNTY

DAVID W. PETERSON

JEFFERY RANDALL MCKEE
Appellant

v.

STATE OF WASHINGTON, et al
Respondent

)
) DESIGNATION OF
) CLERK'S PAPERS

) Case number 43891-7-II
) Kitsap County 12-2-00123-7
)
)
)

TO THE CLERK OF THE COURT:

Please prepare and transmit to the Court of Appeals, Division II, the following clerk's papers:

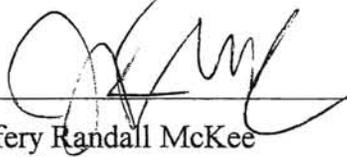
	<u>DOCUMENT</u>	<u>DATE</u>
JRB CP-1	#2 Complaint	01/17/2012
CP-2	#6 Answer	04/26/2012
CP-3	#8 Motion for Summary Judgment	06/07/2012
CP-4	#9 Declaration of J. S. Blonien	06/07/2012
CP-5	#10 Declaration of P. Todd	06/07/2012
CP-6	#12 Request for GR33 Accomodation	07/10/2012
CP-7	#13 Sealed Medical/Health Info	07/10/2012
CP-8	#15 Order Re: GR33 Accomodation	07/10/2012
CP-9	#16 Order Granting Summary Judgment	07/13/2012
CP-10	#20 Motion for Reconsideration	07/23/2012
CP-11	#23 Order on Motion for Reconsideration w/ Memorandum	07/31/2012
JRB CP-12	#24 Notice of Appeal	08/30/2012

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FILED

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Dated this 27th day of September, 2012.

A handwritten signature in black ink, appearing to read 'JRM', is written over a horizontal line.

Jeffery Randall McKee
Appellant, pro se

Jeffery Randall McKee
PO Box 435
Bremerton, WA 98337
(360)286-7523

ANNED

FILED
COURT OF APPEALS
DIVISION II

RETURN OF SERVICE

2013 JUN 28 PM 1:07

I, DUSTIN MANGINI, caused to be served the following documents by placing the documents in the U.S Mail with first class postage affixed on October 1, 2012. BY _____
STATE OF WASHINGTON
DEPUTY

Kitsap County Superior Court cause # 12-2-00123-7
Court of Appeals, Division II cause # 43891-7-II

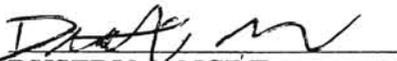
Statement of Arrangements

upon: Kathryn M. Todd
Official Court Reporter
at: 614 Division Street
Port Orchard, WA 98366

DECLARATION OF SERVER

The undersigned process server, declares under the penalty of perjury, under the laws of the State of Washington, that I am over the age of eighteen, competent to be a witness and not a party to the above action. I declare that the foregoing return of service is true and correct.

Dated this 01 day of OCTOBER, 2012.



DUSTIN MANGINI
4100 Petersville Rd. NE
Bremerton, WA 98310

FILED

4.92.100 Tortious conduct of state or its agents—Claims—Presentment and filing—Contents. All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct shall be presented to and filed with the risk management division. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim or if the claimant is a minor, or is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [2006 c 82 § 1; 2002 c 332 § 12; 1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

Intent—Effective date—2002 c 332: See notes following RCW 43.41.280.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Puget Sound ferry and toll bridge system, claims against: RCW 47.60.250.

4.16.190 Statute tolled by personal disability. (1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW 4.16.350. [2006 c 8 § 303; 1993 c 232 § 1; 1977 ex.s. c 80 § 2; 1971 ex.s. c 292 § 74; Code 1881 § 37; 1877 p 9 § 38; 1869 p 10 § 38; 1861 p 61 § 1; 1854 p 364 § 11; RRS § 169.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Purpose—Intent—1977 ex.s. c 80: "It is the purpose of the legislature in enacting this 1977 amendatory act to provide for a comprehensive revision of out-dated and offensive language, procedures and assumptions that have previously been used to identify and categorize mentally, physically, and sensory handicapped citizens. It is legislative intent that language references such as idiots, imbeciles, feeble-minded or defective persons be deleted and replaced with more appropriate references to reflect current statute law more recently enacted by the federal government and this legislature. It is legislative belief that use of the undefined term "insanity" be avoided in preference to the use of a process for defining incompetency or disability as fully set forth in chapter 11.88 RCW; that language that has allowed or implied a presumption of incompetency or disability on the basis of an apparent condition or appearance be deleted in favor of a reference to necessary due process allowing a judicial determination of the existence or lack of existence of such incompetency or disability." [1977 ex.s. c 80 § 1.]

Severability—1977 ex.s. c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the

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DIVISION II

2013 JUN 28 PM 1:11

STATE OF WASHINGTON

BY _____
DEPUTY

**IN THE WASHINGTON STATE COURT OF APPEALS,
DIVISION TWO**

JEFFREY RANDALL McKEE,
Appellant,

vs.

STATE OF WASHINGTON,
Wash. State Patrol,
Dept. of Licensing, and
Mitchell and Jane Doe Bauer,
Respondent.

**Court of Appeals
No. 43891 - 7 - II**

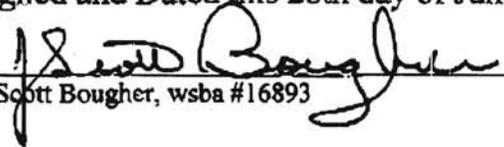
**Kitsap County Superior Court
Case No. 12-2-00123-7**

**DECLARATION OF SERVICE
BY PRIORITY MAIL OF THE
APPELLANT'S BRIEF.**

To: The clerk of court, fax (253) 593-2806, and
To: Patricia Todd of the Office of the Attorney General for the State of
Washington, fax (360) 586-6655:

Comes now undersigned counsel and hereby declares subject to the penalty of perjury under the laws of the State of Washington that: On June 27, 2013, I mailed by priority mail a copy of the Appellant's brief to the Court of Appeals and a copy to the Office of the Attorney General. The briefs should be received today, June 28, 2013, before the close of the day.

Signed and Dated this 28th day of June, 2013 in Port Orchard, Washington.



J. Scott Bougher, wsba #16893

The Law Office of J. Scott Bougher,
Mailing Address: P.O. Box 8211, Port Orchard, WA 98366
Street Address: 569 Division St., Suite E, Port Orchard, WA 98366
Telephone: 360-509-8930
E-Mail: jscottbougher@gmail.com