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NO. 97494-2

(NO. 36720-7, in the Court of Appeals, Division III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CHRISTOPHER DENNEY,

Appellant,

v.

CITY OF RICHLAND,

Appellee.

SUPPLEMENTAL BRIEF OF APPELLANT

Jesse Wing, WSBA #27751
Timothy K. Ford, WSBA #5986
MacDONALD HOAGUE & BAYLESS
705 2nd Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604
Attorneys for Appellant

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INTRODUCTION

The material facts of this case are straightforward and undisputed. The trial court below entered an “Order” granting a defense motion for summary judgment. The Order said “[a]ll claims and causes of action alleged by plaintiff in this matter” were dismissed with prejudice, and it instructed defense counsel to “present judgment accordingly”. MDR App. 4, 6.¹ Pursuant to that Order and CR 54(e), defense counsel prepared a “Final Judgment” which conformed to the requirements of CR 58 and RCW 4.64.030; and per CR 54(f)(2)(B) he obtained plaintiff’s counsel’s approval for its entry. When this Final Judgment was entered, the plaintiff promptly filed a Notice of Appeal.

The Court of Appeals dismissed the appeal as untimely, ruling that the time for appeal ran from the date of the Order granting summary judgment, rather than the date of the Final Judgment itself.

This was a misapplication of the Rules governing civil appeals. The appeal was timely because, according to the Rules, the filing deadline ran from the Final Judgment. Even if the appeal were deemed untimely, dismissal was a gross miscarriage of justice under RAP 18.8(b) because plaintiff’s counsel were excusably misled by the language of the trial court’s summary judgment Order and the procedures that followed it.

¹ “MDR App.” refers to documents in the Appendix to the Motion for Discretionary Review in this case.

ASSIGNMENTS OF ERROR

The Chief Judge of the Court of Appeals erred by issuing the July 17, 2019 Order which denied “Appellant’s motion to modify the commissioner’s ruling to the extent it dismissed the appeal of the [trial court’s] February 12, 2019 order as untimely filed...” MDR App. 1, 2-3.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

Whether a plaintiff’s notice of appeal must be filed within 30 days of entry of an Order granting summary judgment of dismissal of “[a]ll claims and causes of action alleged by plaintiff in this matter,” even though the Order requires the prevailing party to propose a separate “judgment” pursuant to CR 54(e) and CR 54(f)(2), defense counsel has done so, and the date for entry of the proposed Final Judgment is pending.

Whether dismissal of the plaintiff’s appeal in this case would be a gross miscarriage of justice under RAP 18.8(b), because his counsel were led to believe, by the court rules, the trial court’s Order, and defense counsel’s response to it, that the time for appeal would run from the date of entry of the “Final Judgment” that was noted for presentation and the parties had agreed to.

STATEMENT OF THE CASE

Appellant Chris Denney is a firefighter for the City of Richland. In October, 2017 he filed a complaint in Benton County Superior Court under the Washington Public Records Act, challenging the withholding by the City of two investigative reports regarding complaints he had made about on-the-job harassment and discrimination.

Following limited discovery, the case went before the Superior Court on cross motions for summary judgment. After a hearing, on February 12, 2019, the Superior Court issued a written Order Granting Defendant City of Richland's Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment. *See* MDR App. 4-7. The Order said "All claims and causes of action alleged by the plaintiff in this matter are DISMISSED WITH PREJUDICE," and "Defendant City of Richland is the prevailing party herein and may present judgment accordingly." *See* MDR App. at 6.

As required by CR 54(e), the City promptly filed a Notice of Presentation that announced its intention to "present the attached Final Judgment for Respondent to the Court for approval and signing" on March 8, 2019. *See* MDR App. at 8-9. The attached proposed "Final Judgment" said that, based on the trial court's "order dated February 12, 2019," "final judgment *is entered on all claims* arising out of this matter." MDR App.

11-12 (emphasis added). In a separate sentence, it also said “[t]he City is awarded judgment against Mr. Denney in the amount of taxable costs incurred in the sum of \$200.00, for a total judgment of \$200.00.” *Id.* at 12. It then set out the information RCW 4.64.030(2)(a) requires a “judgment” to contain (“Judgment Creditor ... Attorneys for Judgment Creditor ... Judgment Debtor ... Taxable Costs ... Interest Owed”) *Id.*

Since this document was proposed as the “Final Judgment,” defense counsel was required to give Mr. Denney’s counsel five days’ notice of its presentation or to obtain their approval of its entry. CR 54(f). Defense counsel did both, and pursuant to CR(f)(B)(2) Mr. Denney’s counsel stipulated to its form and entry.² The Superior Court then entered the Final Judgment on March 14, 2019. MDR App. 2.

Mr. Denney’s counsel promptly filed a Notice of Appeal, which was docketed on April 1, 2019.³ On April 11, 2019, Appellant’s counsel received a letter from the Commissioner’s Administrative Assistant setting

² The copy of the proposed Final Judgment attached to the Motion for Discretionary review doesn’t contain Mr. Denney’s counsel’s stipulation to entry (see MDR App. 13), but the filed and signed copy does. A copy of the signed Final Judgment is appended to this Brief; counsel’s signature is on page 3.

³Mr. Denney’s Notice of Appeal was originally submitted to the Superior Court Clerk on March 22, 2019, but was rejected because it bore a typewritten signature. Because such technical defects do not undermine appellate jurisdiction, see *City of Lakewood v. Cheng*, 169 Wash. App. 165, 171, 279 P.3d 914, 917 (2012) (citing *State v. Olson*, 74 Wash.App. 126, 128, 872 P.2d 64 (1994), *aff’d*, 126 Wn.2d 315, 893 P.2d 629 (1995)), that Notice was likely effective on that date. However, because both March 22 and April 1, 2019 were more than 30 days after the date of the summary judgment Order and less than 30 days after entry of the Final Judgment, the difference is immaterial to the issues presented here.

this matter on the Commissioner's docket on a court's *sua sponte* motion to dismiss for failure to timely file the notice of appeal. After Mr. Denney filed an opposition to the Commissioner's motion and the City of Richland filed a brief in support of it, the Commissioner ordered the appeal dismissed as untimely filed. MDR App. 2-3. The Commissioner's Order held that the February 12 summary judgment Order was a "final judgment" from which appeal lay, even though it included an instruction to defense counsel to prepare a "judgment" as required by CR 54(e), because the Order "clearly refer[ed] to entry of a judgment in favor of the City, as the prevailing party." MDR App. 3.

Mr. Denney then filed a Motion to Modify the Commissioner's Order which, after the City filed an Answer, the Chief Judge of the Court of Appeals granted in part and denied in part. MDR App. at 1. Without explanation, the Chief Judge's Order denied the Motion to Modify "to the extent [the Commissioner's ruling] dismissed the appeal of the February 12, 2019 order as untimely filed," but held "[t]he appeal of March 14, 2019 Final Judgment shall go forward on the limited scope of the [\$200] cost award reflected therein." MDR App. at 1.

That modification made the dismissal order interlocutory, although it effectively ended the appeal. Accordingly, Mr. Denney filed a Motion for Discretionary Review, which this Court granted on December 4, 2019.

ARGUMENT

As this Court's Order granting this Motion for Discretionary Review indicates, the Court of Appeals' effective dismissal of Mr. Denney's appeal was obvious or probable error. RAP 13.5(b)(1), (2). This Court's Rules and precedents make it clear that the "Final Judgment" that was proposed by the City, approved for entry by Mr. Denney's counsel, and entered by the trial court pursuant to CR 54(e) and (f), was the "final judgment" required to authorize an appeal under RAP 2.2(a)(1). If the "Final Judgment" was not what it purported to be, the procedures below were so misleading it would be a gross miscarriage of justice to dismiss Mr. Denney's appeal on that basis. RAP 18.8(b).

1. The Notice of Appeal was Timely.

"[W]hen a written trial court opinion or decision might be a final judgment,"

the better practice is to follow CR 54; the prevailing party should submit a proposed judgment, decree or order, with appropriate notice and service upon the opposing party. *All parties are then aware of the status of the proceeding* and can consider the applicability of postjudgment motions such as motions for reconsideration, CR 59(b), appeals under RAP 2.2, and other time-limited procedures hinging upon entry of judgment.

Dep't of Labor & Indus. v. City of Kennewick, 99 Wn.2d 225, 231, 661 P.2d 133, 136 (1983) (emphasis added).

At the direction of the trial court below, the parties here did what this Court in *Kennewick* said should be done to avoid unfair confusion or surprise: they followed CR 54. The City, as “prevailing party” (CR 54(e)), submitted a proposed “Final Judgment,” and forwarded it, along with notice of its presentation, to Mr. Denney’s counsel. *See* MDR App. 8. The proposed Final Judgment said “final judgment is entered on all claims arising out of this matter” (MDR App. 12) and was in the form, and contained the information, required by RCW 4.64.030. Following CR 54(f)(2)(B), Mr. Denney’s counsel waived presence and stipulated to entry of the Final Judgment. They then waited until it was presented and entered before filing a Notice of Appeal.

According to the Court of Appeals’ Commissioner, they were wrong to do so because the summary judgment Order was a “final judgment” under RAP 2.2(a)(1)—even though it expressly called for presentation of the separate “judgment” required by CR 54(e)—because it referred to the City as the “prevailing party.” MDR App. 3. This was a misreading of this Court’s precedents and the Civil Rules.

- a. The “Final Judgment” entered by the trial court fit the definition of that term in this Court’s cases; the Summary Judgment Order did not.**

“The term ‘final judgment’ is not defined in the RAP.” *State v. Taylor*, 150 Wn.2d 599, 602, 80 P.3d 605 (2003). The Court has therefore adopted the dictionary definitions of the phrase:

A court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment.

Id. (quoting BLACK'S LAW DICTIONARY 847 (7th ed.1999)); *accord*, *AllianceOne Receivables Mgmt., Inc. v. Lewis*, 180 Wn.2d 389, 404, 325 P.3d 904, 912 (2014) (dissenting opinion of Justice C. Johnson) (interpreting RCW 4.80.330); *Wachovia SBA Lending Inc. v. Kraft*, 165 Wn.2d 481, 200 P.3d 683 (2009) (same).

Webster's Third New International Dictionary gives many definitions of "final," but the one most apposite to a final legal judgment is: "being a judgment ... that *eliminates the litigation between the parties* on the merits and *leaves nothing for the inferior court to do* in case of an affirmance except to execute the judgment." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 851 (2002). Black's Law Dictionary gives a similar definition for "final": "(Of a judgment at law) *not requiring any further judicial action by the court* that rendered judgment to determine the matter litigated; concluded," and for "final judgment": "A court's *last action* that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment." BLACK'S LAW DICTIONARY 662, 859 (8th ed. 2004).

In re Skylstad, 160 Wn.2d 944, 949, 162 P.3d 413, 415–16 (2007) (interpreting RCW 10.73.090) (emphasis added).

The Summary Judgment Order below did not fit these definitions. It was not, and did not purport to be, the trial "court's last action." It did not "eliminate the litigation between the parties" or "leave nothing for the

inferior court to do.” To the contrary, it invited defense counsel to “present judgment” (MDR App. 6), as CR 54(e) mandated and defense counsel did. It thus “require[ed] ... further judicial action by the court.”

Although it turned out that the summary judgment Order “dispose[d] of all issues in controversy, except for the award of costs,” it did not purport to do so. It was captioned an “Order,” not “judgment”—and, as noted, it called for a separate “judgment” to be presented at a later date. Although it said that the “claims and causes of action alleged by plaintiff in this matter” were dismissed, it did not “specify clearly the amount to be recovered, the relief granted, or other determination of the action” as required by RCW 4.64.030(1) and (3). The Order said nothing about whether there were counterclaims, or whether plaintiff could cure any defects by amending his complaint. And again, even if it had addressed all those things, it would not have fit even the broadest of dictionary definitions, because that definition says that a final judgment *not only* must “dispose[] of all issues in controversy, except ... costs” *but also* must be the trial court’s “last action,” *Taylor*, 150 Wn.2d at 602—and the Order specifically said it was not to be that.

In contrast, the “Final Judgment” which the trial court ultimately signed—the presentation of which was pending at the time the Court of Appeals says Mr. Denney should have appealed—fit all the definitions of that term. It was, and was intended to be, the trial court’s “last action.”

Id. It “dispose[d] of all issues in controversy”—not just costs and fees. *See* MDR App. 12 (“final judgment is entered on all claims arising out of this matter”). It did not “require[e] any further judicial action” and “le[ft] nothing for the inferior court to do.” It contained all the information required by RCW 4.64.030(1) and, as further discussed below, it was submitted in the manner prescribed by CR 54. And, of course, it was plainly captioned “Final Judgment.”

The Court of Appeals Commissioner held that none of this mattered because the Summary Judgment Order had previously “refer[red] to entry of a judgment in favor of the City, as the ‘prevailing party,’” and the Commissioner assumed that meant “the requested judgment [was] for a judgment that awards specific amounts as costs to the City” MDR App. 3. That assumption overlooked the fact that the phrase “prevailing party” appears not only in the rules governing court costs and fees, but also in CR 54(e)—the Rule that governs the very procedure the trial court was telling defense counsel to follow. That was a fundamental interpretive error. *Cf. Nissen v. Pierce County*, 183 Wn.2d 863, 875, 357 P.3d 45 (2015) (“We cannot interpret statutory terms oblivious to the context in which they are used.”).

Even if the Commissioner had been correct in this interpretation of the trial court’s words, its decision turned RAP 2.2(a)(1) on its head. It illogically assumed that an order which “reserves for future determination

an award of attorney fees or costs” is, by virtue of that very reservation, a “final judgment.” But RAP 2.2(a)(1) plainly says that the decision whether a document constitutes a final judgment must be made “*regardless of whether*” it contains such a reservation. (Emphasis added.)

For all these reasons, by definition, the trial court’s summary judgment Order was not a “final judgment” that started the time running for Mr. Denney’s appeal.

b. The “Final Judgment” the trial court signed was entered in the manner required by CR 54(e) and (f); the Summary Judgment Order was not.

CR 54(e) mandates how judgments in civil cases are to be entered: “The attorney of record for the prevailing party *shall* prepare and present a proposed form of order or judgment not later than 15 days after the entry of [a] ... verdict or decision.” (Emphasis added.) CR 54(f) similarly requires a prevailing party to give “5 days’ notice of presentation and serve[] [opposing counsel] with a copy of the proposed ... judgment.”

In effect, these Rules create something much like the “separate document requirement” of Federal Rule of Civil Procedure (“FRCP”) 58, and they do so for the same reason:

The separate-document requirement was ... intended to avoid the inequities that were inherent when a party appealed from a document or docket entry that appeared to be a final judgment of the district court only to have the appellate court announce later that an earlier document or entry had been the judgment and dismiss the appeal as untimely. The 1963 amendment to Rule 58

made clear that a party need not file a notice of appeal until a separate judgment has been filed and entered. *See United States v. Indrelunas*, 411 U.S. 216, 220–222, 93 S.Ct. 1562, 36 L.Ed.2d 202 (1973).

Bankers Trust Co. v. Mallis, 435 U.S. 381, 385, 98 S.Ct. 1117, 55 L.Ed.2d 357 (1978). Unlike FRCP 58, CR 58 does not set out a “separate document” requirement; but unlike FRCP 54, CR 54 contains mandatory language that effectively imposes one. RCW 4.64.030 and CR 58 underscore this requirement by prescribing the form and content of “judgments” and the way they must be treated on the court docket.

As noted above, none of these rules was followed with respect to the Order granting the defense summary judgment in this case; but all of them were followed with respect to the Final Judgment from which Mr. Denney timely appealed. Even if the rules did not effectively create a “separate document” requirement, this is strong evidence that the summary judgment Order was not intended or understood by anyone at the trial court level to be a final, appealable judgment.

On a similar record, in a decision issued before the federal rules incorporated a separate document requirement, the Supreme Court of the United States found that a trial court order could not be construed as a final judgment subject to appeal.

The actions of all concerned—of the judge in not stating in his opinion the amount, or means for determining the amount, of the judgment; of the clerk in not stating the amount of the judgment in his notation on the civil

docket; of counsel for the Government in not appealing from the ‘opinion’; of counsel for respondent in preparing and presenting to the judge a formal ‘judgment’ ... and, finally, of the judge himself in signing and filing the formal ‘judgment’ on the latter date—clearly show that none of them understood the opinion to be the judge's final act or to constitute his final judgment in the case. Therefore ... we must take the court's formal judgment ... and the clerk's entry thereof ... as in fact and in law the pronouncement and entry of the judgment and as fixing the date from which the time for appeal ran.

United States v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 235–36, 78 S. Ct. 674, 2 L. Ed. 2d 721 (1958).

The same is true here. “The actions of all concerned” in this case reveal an understanding that the summary judgment Order was not the final order triggering appeal. Defense counsel proposed a “Final Judgment” that was not limited to costs but stated “final judgment is entered on all claims arising out of this matter” (MDR App. 12); the trial court called for and later signed such a “judgment”; the court clerk didn’t enter the Order as a judgment pursuant to CR 58; Mr. Denney’s counsel waited for the proposed Final Judgment to be signed before filing an appeal; and when they did, defense counsel did not object or move to dismiss the appeal as untimely.

Even without a separate document requirement or similarly formal rule, many courts have held that on such a procedural record a summary judgment order or similar ruling cannot fairly be construed as a “final

judgment.” *See, e.g., Associated Press v. Taft-Ingalls Corp.*, 323 F.2d 114, 114 (6th Cir. 1963) (following *Schaefer*); *Danzig v. Virgin Isle Hotel, Inc.*, 278 F.2d 580, 582 (3d Cir. 1960) (“The trial court obviously did not consider the entry ... as a judgment since a formal judgment was signed and entered much later”); *Cedar Creek Oil & Gas Co. v. Fid. Gas Co.*, 238 F.2d 298, 300–01 (9th Cir. 1956) (“the docket entries ... slant forward: ‘Ordered to be entered’ ... It should not be presumed or assumed [the court or clerk] ... had an intent to do a useless act.”); *Stoermer v. Edgar*, 104 Ill.2d 287, 472 N.E.2d 400, 402 (1984) (“where a court grants summary judgment and also requires submission of a formal order, there is no judgment that can be ... appealed from ... until that formal order is entered.”).

The procedural requirements of CR 54(e) and (f) would make little sense if it were otherwise. Plaintiffs would in many cases be required to file notices of appeal from summary judgment orders before proposed Final Judgments can even be entered, thereby divesting the trial court of jurisdiction to enter them. *See* RAP 7.2(e). Effectively, that is what would have happened in this case.⁴

⁴The summary judgment order below was entered on February 12; the Final Judgment was signed on March 14, exactly 30 days later. If Mr. Denney’s counsel had appealed before the latter date, they would have deprived the trial court of jurisdiction to enter the Final Judgment which they had approved for entry. The trial court still could have separately ruled on a claim for attorney’s fees and costs, RAP 7.2(i)—but as noted above, the Final Judgment was not limited to the cost issue, MDR App. 12.

None of the cases that the City cited in its memo to the Court of Appeals held to the contrary. The summary judgment order that *Carrara, LLC v. Ron & E Enterprises, Inc.*, 137 Wn. App. 822, 155 P.3d 161 (2007) held to be appealable said nothing about a judgment to be entered later, and none was. *See id.* at 826. The judgment in *Seattle-First National Bank v. Marshall*, 16 Wn. App. 503, 557 P.2d 352 (1976) was final because it was entered “in accordance with CR 54” but was not appealed from until months later, after several subsequent implementing orders had been entered, *see id.* at 16 Wn. App. 507.

The Commissioner’s Order forgot that court rules are designed “to promote justice and facilitate the decision of cases on the merits” (RAP 1.2(a)), not to require meaningless acts or create pitfalls for litigants who attempt to comply with them.

“It is a well-accepted premise that ‘[l]itigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights.’” *Stikes Woods Neighborhood Ass'n v. City of Lacey*, 124 Wash.2d 459, 463, 880 P.2d 25 (1994) (alteration in original) (quoting *McMillon v. Budget Plan of Va.*, 510 F. Supp. 17, 19 (E.D.Va.1980)).

Christensen v. Ellsworth, 162 Wn.2d 365, 372, 173 P.3d 228 (2007). CR 54 exemplifies this principle, by mandating a process that insures that, after a potentially dispositive order is entered by a trial court in a civil case, “[a]ll parties [will be] ... aware of the status of the proceeding and

can consider the applicability of postjudgment motions such as motions for reconsideration ... appeals ... and other time-limited procedures hinging upon entry of judgment.” *Dep’t of Labor v. Kennewick*, 99 Wn.2d at 231.⁵ Parties should be entitled to rely on what such rules tell them.

2. If the Appeal Was Untimely, the Circumstances Here Warrant Extension of the Appeal Deadline.

Even if Mr. Denney’s counsel were mistaken in the reasonable belief that the judgment the trial court had ordered and the City had submitted would be the “final judgment” contemplated by CR 54(e) and RAP 2.2(a)(1), the circumstances here are sufficiently “extraordinary” that failure to extend the appeal deadline would be a gross miscarriage of justice. RAP 18.8(b). Such an extension may be warranted where the appellant shows “reasonable diligence, confusion about the method of seeking review, [or] excusable error in interpreting the rules,” *Shumway v. Payne*, 136 Wn.2d 383, 396, 964 P.2d 349 (1998)—which, at worst, is what is apparent here. *See also Scannell v. State*, 128 Wn.2d 829, 834, 912 P.2d 489 (1996) (failure to comply with a deadline was the result of an “understandable misinterpretation” of a new rule); *In re Ramos*, 181 Wn. App. 743, 748, 326 P.3d 826 (2014) (extension warranted because trial court did not inform the Appellant of his appeal rights).

⁵ Statutes and court rules governing finality in other types of cases similarly require entry of a separate document clearly ending the litigation, to insure clarity. *See, e.g.*, RCW 10.73.090(3)(b) (defining a finality in a criminal case to as “the date that an appellate court issues its mandate”)

Mr. Denney's counsel were led to believe, by the terms of the summary judgment order, that the case was not final because a "judgment" remained to be entered. That belief was reinforced when they received notice that a proposed "Final Judgment" was to be presented by the defense, a "Final Judgment" that said it disposed of "all claims arising out of this matter." *See* MDR App. 12. Rather than filing an immediate appeal that would have cut off the Superior Court's authority to enter that Final Judgment, they waived appearance and waited for its presentation and entry to appeal. They did so believing that the Summary Judgment Order was interlocutory and the proposed Final Judgment was what it purported to be. As previously noted, the trial judge, defense counsel, and court clerk all apparently had the same belief. *See* page 13, above.

Nothing in the court rules or caselaw told Mr. Denney's counsel that, with a date for presentation of an asked-for Final Judgment scheduled and pending, they should have aborted those proceedings by filing an immediate notice of appeal. At the least, if they were wrong not to know that, their error was excusable under RAP 18.8(b). The Court of Appeals Commissioner's statement that the circumstances here "do[] not constitute an extraordinary circumstance on which to base ... enlarging the time for filing the appeal under RAP 18.8(b)" was based expressly on a clearly erroneous premise: that counsel should have known the judgment called for in the summary judgment Order was to address only "the specific

amounts as costs to the City,” because the Order used the phrase “prevailing party.” MDR App. 3. As explained above (at page 10), that premise forgot about CR 54(e), which uses the same phrase as the cost shifting statutes (“prevailing party”) *to describe the very action the trial court was ordering* (submitting a “judgment”). It also ignored the fact that, before its newly-alleged appeal deadline had run, Mr. Denney’s counsel was served with, and the parties stipulated to entry of, a proposed Final Judgment *that was not limited to issue of costs*. See MDR App. 13.

If the Commissioner’s reading of the rules is correct—and we respectfully maintain it is not—the proceedings below were truly a “trap for the unwary” (or even the wary), and were sufficiently unfair to warrant extension of the appeal deadline in this case under RAP 18.8(b).

CONCLUSION

This Court should reverse the Court of Appeals’ orders insofar as they limited Mr. Denney’s appeal to the issue of costs, and should remand the case with instructions to hear the entire appeal on its merits.

RESPECTFULLY SUBMITTED this 3rd day of January, 2020.

MacDONALD HOAGUE & BAYLESS

By /s/ Timothy K. Ford
Timothy K. Ford, WSBA #5986
Jesse Wing, WSBA #27751
705 Second Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604
Attorneys for Appellant

DECLARATION OF SERVICE

I hereby declare that on January 3, 2020, I electronically filed the foregoing **SUPPLEMENTAL BRIEF OF APPELLANT** with the Supreme Court of the State of Washington, and arranged for service of a copy of the same on the parties to this action as follows:

Court of Appeals-Div. III:

Office of Clerk
Court of Appeals-III
500 N Cedar St
Spokane, WA 99201

- Via WA State Courts' Portal
- Via First Class Mail
- Via Email
- Via Messenger
- Via Overnight Delivery

Attorneys for Respondent:

Ken Harper, WSBA #25578
Quinn Plant, WSBA #31339
MENKE JACKSON BEYER, LLP
807 North 39th Avenue
Yakima, WA 98902
Telephone: (509) 575-0313
Fax: (509) 575-0351
kharper@mjbe.com
julie@mjbe.com

- Via WA State Courts' Portal
- Via Facsimile
- Via First Class Mail
- Via Email
- Via Messenger
- Via Overnight Delivery

DATED this 3rd day of January, 2020, at Seattle, Washington.

/s/Linda Thiel
Linda Thiel, Legal Assistant

APPENDIX

MAR 14 2019

FILED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

CHRISTOPHER DENNEY, an individual, Plaintiff, v. CITY OF RICHLAND, Defendant.	NO. 17-2-02888-3 FINAL JUDGMENT FOR DEFENDANT THE CITY OF RICHLAND
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ORDER

This matter came before the Court on February 8, 2019, on cross motions of the parties. Defendant City of Richland was represented by and through its associated counsel of record, Kenneth W. Harper and Menke Jackson Beyer, LLP, and Joel R. Comfort and Miller Mertens & Comfort, PLLC. Plaintiff Christopher Denney was represented by and through his associated counsel of record, Jesse Wing, Sam Kramer, and MacDonald Hoague & Bayless.

The Court issued an order dated February 12, 2019, which granted dismissal to the City, denied Mr. Denney's motion for summary judgment, and designated the City the prevailing party herein.

FINAL JUDGMENT
FOR DEFENDANT - 1

MENKE JACKSON BEYER, LLP
807 North 39th Avenue
Yakima, WA 98902
Telephone (509)575-0313
Fax (509)575-0351

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NOW, THEREFORE, final judgment is entered on all claims arising out of this matter. The City is awarded judgment against Mr. Denney in the amount of taxable costs incurred in the sum of \$200.00, for a total judgment of \$200.00.

SUMMARY OF JUDGMENT

Judgment creditor: City of Richland, Washington
Attorneys for judgment creditor: Kenneth W. Harper
Menke Jackson Beyer, LLP
807 N. 39th Avenue
Yakima, WA 98902
Phone: (509) 575-0313
Judgment debtor: Christopher Denney
Taxable costs (statutory attorneys' fees): \$200.00
Interest owed to date of judgment: None
Total of judgment and taxable costs: \$200.00

DATED THIS 14 day of March, 2019.

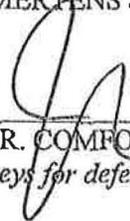
ALEXANDER C. EKSTROM
HON. ALEX EKSTROM
SUPERIOR COURT JUDGE

Presented by:
MENKE JACKSON BEYER, LLP
By: 
KENNETH W. HARPER, WSBA #25578
Attorneys for defendant City of Richland

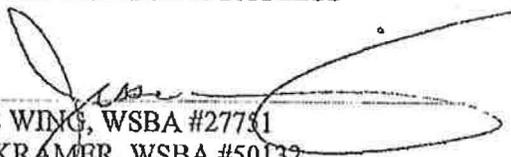
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Approved as to form and content; notice of presentation waived:

MILLER MERTENS & COMFORT, PLLC

By: 
JOEL R. COMFORT, WSBA #31477
Attorneys for defendant City of Richland

MACDONALD HOAGUE & BAYLESS

By: 
JESSE WING, WSBA #27731
SAM KRAMER, WSBA #50132
Attorneys for plaintiff Christopher Denney

MACDONALD HOAGUE & BAYLESS

January 03, 2020 - 3:08 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97494-2
Appellate Court Case Title: Christopher Denney v. City of Richland
Superior Court Case Number: 17-2-02888-3

The following documents have been uploaded:

- 974942_Briefs_20200103150455SC199927_9237.pdf
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