

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/8/2021 1:07 PM  
BY ERIN L. LENNON  
CLERK

NO. 100114-2

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IN THE SUPREME COURT OF WASHINGTON

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BRUCE BORJESSON

Appellants/Petitioner,

v.

WILMINGTON SAVINGS FUND SOCIETY, FSB AS TRUSTEE OF  
STANWICH MORTGAGE LOAN TRUST A

Respondent.

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RESPONSE TO MOTION TO EXTEND TIME AND ANSWER TO  
PETITION FOR REVIEW

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Loan Trust A

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## I. IDENTITY OF RESPONDENT

The respondent is U.S. Bank Trust National Association as Trustee of American Homeowner Preservation Trust Series AHP Servicing the successor in interest to Wilmington Savings Fund Society, FSB as trustee of Stanwich Mortgage Loan Trust A, represented by Synova M. L. Edwards of the firm Wright, Finlay & Zak, LLP.

## II. RESPONSE TO MOTION TO EXTEND TIME

A party seeking discretionary review by the Supreme Court must serve on all other parties and file a petition for review within 30 days after the decision is filed. RAP 13.4(a). Here the petitioner filed his Request for Discretionary Review (“Request”) on August 19, 2021. This was 31 days after the Court of Appeals rendered its decision on his appeal. Under RAP 18.8(b), only in extraordinary circumstances, and to prevent a gross miscarriage of justice, will the appellate court extend the time to file a motion for discretionary review of a decision of the Court of Appeals or a petition for review. In the

rare cases where extraordinary circumstances have been found, and extension has been granted, it is typically based on a procedural difficulty such as the appeal was filed timely but in the wrong court, it was filed timely but rejected due to the lack of filing fee, or it was filed timely but the petitioners calculation was based off of the incorrect document. *See Weeks v. Chief of Wash. State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982); *State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978); *Structurals Northwest, Ltd. v. Fifth & Park Place, Inc.*, 33 Wn. App. 710, 714, 658 P.2d 679 (1983).

None of these exceptional circumstances apply to the case here. Here, the fault is entirely that of Petitioner, who claims he did not realize that the 31<sup>st</sup> day of July should also be counted. Motion to Extend Time ¶7. This is not extraordinary. July having 31 days is not new. Unlike February, the number of days in July never varies. By way of analogy, Washington case law does not recognize calendaring errors as excusable neglect for purposes of a motion under CR 60. *See*

*Puget Sound Medical Supply v. Department of Social & Health Services*, 156 Wn. App. 364, 374-75, 234 P.3d 246 (2010); *Bear Creek v. Petco*, 140 Wn. App. 191, 212-13, 165 P.3d 1271 (2007). There is no reason or authority granting greater leniency under RAP 18.8(b), *See, e.g. Beckman v. DSHS*, 102 Wn. App. 687, 695-96, 11 P.3d 313 (2000), holding that relief under RAP 18.8(b) was not warranted where failure to timely file was due to the absence of a proper calendaring system.

### III. STATEMENT OF THE CASE

On or about August 2, 2007, Bruce Borjesson (“Borjesson”) executed a promissory note (“Note”) in the amount of \$476,000.00 in favor of EquiFirst Corporation. Clerk’s Papers (“CP”) 13-19. On the same date and in order to secure repayment of the Note, Borjesson executed a deed of trust (“DOT”) encumbering the real property located at 9519 4<sup>th</sup> Avenue Northwest, Seattle, Washington 98117 (the “Property”). CP 21-40. The DOT and Note will hereafter be referred to collectively as the “Loan.”

In October of 2008, Borjesson defaulted on the Loan. CP 4 lines 7-8. After an attempt at a non-judicial foreclosure, in September 2014, SABR Mortgage Loan 2008-1 REO Subsidiary-1 LLC (“SABR”), who was then the holder of the Note and the successor in interest to the DOT pursuant to an assignment recorded on August 15, 2012 [CP 42] filed an action for judicial foreclosure against Borjesson based on the default of the Loan. CP 4, lines 15-20. *SABR v. Borjesson et. al* was filed in King County Superior Court on September 29, 2014 as case number 14-2-26804-1 SEA(“Judicial Foreclosure Action”). CP 1.

On October 2, 2015, following oral argument the Superior Court in the Judicial Foreclosure Action entered an order granting SABR’s motion for summary judgment which provided for the entry of a Judgment and Decree of Foreclosure. CP 253-54. On October 13, 2015, Borjesson promptly filed for protection under Chapter 7 of the United States Bankruptcy Code in the Western District of Washington,



as Case No. 15-16110-CMA, thereby automatically staying entry of judgment in the Judicial Foreclosure Action. CP 268-80. While Borjesson was in bankruptcy, the loan transferred from SABR to Respondent Wilmington Savings Fund Society, FSB as trustee of Stanwich Mortgage Loan Trust A (“Wilmington”).

On March 17, 2020, the Bankruptcy Court issued an order abandoning all assets back to the debtor, thereby allowing Wilmington, as successor in interest to SABR under the Loan, to resume the Judicial Foreclosure Action and move for entry of the Judgment and Decree of Foreclosure. CP 362-63, 376-82. Again, over Borjesson’s opposition, on July 14, 2020 the court entered the Judgment and Decree of Foreclosure. CP 460-65.

Borjesson’s appeal followed<sup>1</sup>, resulting in the Court of Appeals affirming the decision of the lower court on July 19, 2021. *SABR Mortg. Loan 2008-1 Reo Subsidiary-1 LLC v.*

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<sup>1</sup> After the appeal was filed, the Loan was assigned from Wilmington to U.S. Bank Trust National Association as Trustee of American Homeowner Preservation Trust Series AHP Servicing (“U.S. Bank”).

*Borjesson*, 2021 Wash. App. LEXIS 1743, 2021 WL 3030161.

On August 19, 2021, Borjesson filed the instant petition.

#### IV. ISSUES PRESENTED FOR REVIEW

- A. Is the decision of the Court of Appeals in conflict with a decision of the Supreme Court?
- B. Is the decision of the Court of Appeals in conflict with a published decision of another Court of Appeals?
- C. Does the decision of the Court of Appeals involve a significant question of law under the Constitution of the State of Washington or of the United States?
- D. Does the petition involve an issue of substantial public interest that should be determined by the Supreme Court?

#### V. ARGUMENT WHY REVIEW SHOULD BE DENIED

After the Court of Appeals has entered its opinion, acceptance of review in this Court is discretionary. RAP 13.3(a). RAP 13.4(b) sets forth the standard by which this Court considers whether to accept review. Under RAP 13.4(b), review will only be accepted if: (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 of 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.

***A. The Decision of the Court of Appeals is not in Conflict with a Decision of the Supreme Court.***

Petitioner does not argue how the Court of Appeals decision is in conflict with a Supreme Court decision. Several of the cases cited by the Petitioner are not explained, and do not comport with the briefing. *See citations in* Voluntary Review Petition (“VRP”) at 2, 4, and 7. While the Petitioner cites to several Supreme Court cases under the pretext of “the existence of genuine issues of material fact precluded the grant of summary Judgment” (VRP at 3), he provides no explanation or analysis that actually applies any of the cases cited to the situation presented by *this* case. Most importantly, the decision

from the Court of Appeals at issue here is *not* contrary to any of those decisions. The Court of Appeals confirmed the lower court's finding that there was no genuine issue of material fact: "Borjesson does not meet his burden demonstrating an issue of material fact requiring reversal." Op. at 4. Petitioner further cites to several cases related to standards relating to non-judicial foreclosures such as *Udall v. T.D. Escrow Services, Inc.* and *Cox v. Helenius*, however, as this was a judicial foreclosure, these cases are inapplicable. VRP at 9.

***B. The Decision of the Court of Appeals is not in conflict with another decision of the Court of Appeals.***

Petitioner does not establish any conflict with any other decision of the Court of Appeals. While petitioner cites to a few other Court of Appeals opinions, he does not explain how *this* Court of Appeals' decision is in conflict with those to which he has cited. Petitioner identifies *Rinehold v. Renne* as a Supreme Court case, but the citation he provides, and the

subsequent quotation, is actually from the Court of Appeals case. *Rinehold v. Renne*, 2020 Wash. App. LEXIS 588, 2020 WL 1158088. Moreover, *Rinehold* addresses a boundary line issue, however, the alleged boundary line issue Petitioner seeks to raise in this case is not properly before this Court as it was never raised in the lower court, and the Court of Appeals properly declined to review it. “On April 14, 2021, Borjesson filed a motion for the submission of additional documents, in which Borjesson asks the court to consider exhibits A, B, C, and D attached to the motion. Under RAP 9.12, when reviewing an order granting or denying a motion for summary judgment we will consider only the evidence called to attention by the trial court. Therefore, we deny Borjesson’s motion for the submission of additional documents.” Op. at 4, fn. 2. Borjesson also cites to *Peoples Nat’l Bank of Wash. V. Ostrander*, for the premise that “an unlawful subdivision of single family residences necessarily raises an issue [of] substantial public interest”, however his reliance is misplaced because *Peoples*

relates to the limited jurisdiction of an unlawful detainer action. *Peoples Nat'l Bank v. Ostrander*, 6 Wn. App. 28, 491 P.2d 1058, (1971).

***C. The Decision of the Court of Appeals does not involve a Significant Question of Law under either the U.S. or Washington Constitution.***

Petitioner seems to argue that he was denied due process in contravention of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and the Washington State Constitution. Petitioner contends that there is some defect in the manner in which the trial court conducted the summary judgment proceedings below. Specifically, he argues that the Court of Appeals should have accepted his assertions that he did not receive timely notice of the Motion for Summary Judgment and that he was unaware of a pretrial order. VRP at 6. However, these claims were not raised by Petitioner before the trial court.

As the Court of Appeals reasoned, “Borjesson argues about lack of notice, due process violations, discovery

violations, various fraud claims, lack of standing, statute of limitations, and raises a laches and unclean hands defense, all which are not properly before this court. Generally, we will not consider issues raised for the first time on appeal. RAP 2.5(a). Op. at 3, fn. 1. Petitioner also seems to expect special solicitude given his pro se status, but “the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws.” *In re Marriage of Olsen*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). However, he was granted additional time to file his opening brief, the opportunity to amend his opening brief, and the Court of Appeals allowed him to file additional documents related to the property lines, which were not before the lower court. They still did not suffice to warrant relief.

The charge by petitioner is that the trial court erred in granting summary judgment because he did not receive proper notice, but, first, he failed to raise this issue in the trial court,

and, second, he *did* receive proper notice as required by Washington Court Rule 5 and Washington Court Rule 56, which is notice by mail, postage prepaid, at least 28 days before the hearing. CP 118-119. Petitioner is just seeking to circumvent the rules, by relying on notice requirements under other, inapplicable statutes such as RCW 7.90 – Sexual Assault Protection Order Act, RCW 26.50 – Domestic Violence Prevention, and RCW 9A – the Washington Criminal Code, none of which apply here. As a result, Petitioner cannot establish that he was denied property without due process. In fact, belying his allegation that he did not get notice of the motion for summary judgment, shortly after the motion for summary judgment was filed, he filed his own Motion for Denial of Plaintiff’s Motion for Summary Judgment. CP 173-190. Petitioner has thus had ample due process, and the petition for discretionary review on this basis should be denied.



**D. The decision of the Court of Appeals does not involve an issue of Substantial Public Interest that should be determined by the Court.**

Petitioner argues that the issue he raised for the first time on appeal with related to the boundary lines of the property is a matter of substantial public interest that should be determined by the court. However, “[i]n determining whether a case presents an issue of continuing and substantial public interest, we consider (1) the public or private nature of the issue, (2) whether guidance for public officers on the issue is desirable, and (3) the likelihood that the issue will recur.” *State v. Ingram*, 9 Wn. App. 2d 482, 490, 447 P.3d 192, 197, (2019). While this test is primarily applied to matters that become moot while on appeal, it can be applied here as well. This case does not present a public issue, rather it is an ordinary title issue related just to this specific property. Because the matter was not raised in the trial court, the Court of Appeals decision not to review the issue was appropriate under RAP 2.5(a), and there is an insufficient

record for the Supreme Court to review to make any determination on the matter.

The petitioner alleges that “Commissioner Masako Kanazawa of the Appeals Court ruled in favor of the Defendant Mr. Borjesson with regards to the actual Certified Survey of the Parcel A...” VRP 7. However, upon review, this is simply a letter ruling allowing the Petitioner to file additional documents, it makes no ruling on, nor mention of, the validity of the documents proffered. At best, this issue relates to the neighboring property owners, not the public at large. It is of no moment to public officials, and while it is entirely possible that this issue would arise again, it is so factually specific that a determination from the Supreme Court would not aid anyone other than the petitioner. Accordingly, the petition for discretionary review on this basis should be denied.

#### VI. REQUEST FOR ATTORNEY’S FEES AND COSTS

The Loan documents subject to this dispute contain attorney’s fees provisions. CP 13-19, 21-40. Pursuant to RCW

4.84.330 in any action on a contract that provides for attorneys' fees and costs for the enforcement the provisions of the contract, the prevailing party is entitled to an award.

Even though the foreclosure sale has already been completed, Wilmington is still entitled to an award of fees and costs under the deed of trust. *Podbielancik v. LPP Mortg. Ltd.*, 191 Wash. App. 662, 673, 362 P.3d 1287, 1293 (2015). In the event of an affirmance, Wilmington is entitled to an award of attorney fees on appeal under those provisions.

## VII. CONCLUSION

In light of the foregoing, Borjesson has not established any extraordinary circumstances that would warrant the Court granting him additional time for filing his petition. He also has not provided any viable reason as to why the petition for discretionary review should be accepted.

Accordingly, this Court should deny review in this matter, and should award Wilmington its attorney's fees and costs on this petition against Borjesson.

I hereby certify that this Answer to Petition for Review is  
2,562 words in accordance with the requirements set forth in  
RAP 18.17.

Dated this 8<sup>th</sup> day of October, 2021.

s/Synova M. L. Edwards  
Synova M. L. Edwards,  
WSBA#43063  
Wright, Finlay & Zak, LLP  
Attorneys for Respondent  
Wilmington Savings Fund  
Society, FSB as trustee of  
Stanwich Mortgage Loan Trust A

## DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that, on the date provided below, I caused service of the foregoing document on the following attorneys of record herein via the Court's electronic filing system and email.

Bruce Borjesson  
9519 4<sup>th</sup> Avenue NW  
Seattle, WA 98117  
Appellant

Dated: October 8, 2021

s/Caleb Eary  
Caleb Eary  
Declarant  
Wright, Finlay & Zak,  
LLP

**WRIGHT FINLAY & ZAK, LLP**

**October 08, 2021 - 1:07 PM**

**Transmittal Information**

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