

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
CLERK

Supreme Court No. 100724-8
COA No. 82586-1-I

Supreme Court of the State of Washington

Tamara L. Fleischer and Jay P. Fleischer,
Defendantss/Appellants,
v.

Lisa S. Carter (Assignee: Margaret L. Curtis),
Plaintiff/Respondent.

Answer to Petition for Review

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Attorney for Margaret L. Curtis,
Assignee of Lisa S. Carter

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I. Identity of Respondent.

The trial court entered a money judgment against Tamara and Jay Fleischer in favor of Lisa S. Carter, who assigned her judgment to Margaret L. Curtis.

II. Relevant Facts.

The Court of Appeals dismissed the appeal of Tamara and Jay Fleischer for want of prosecution. The Fleischers did not file their opening brief after multiple extensions and warnings of dismissal over eight months.

The Fleischers filed their notice of appeal in the trial court on April 26, 2021. CP 135,137. Their opening brief was due by July 12, 2021. CP 145, RAP 10.2(a). They did not file their brief.

On August 20, 2021, the court of appeals ordered the Fleischers to "promptly" file their overdue opening brief. They did not file it.

On September 14, 2021, the court of appeals granted the Fleischers a 30-day extension, ruling:

The Fleischers fail to explain why they need a 60-day stay to seek relief in the trial court. Accordingly, a 30-day extension of time to file the opening brief is hereby granted. The Fleischers should not anticipate further extensions without a proper motion for extension of time.

With this extension, the Fleischers opening brief was due on October 14, 2021. But they did not file it.

On October 14, 2021, the Fleischers moved for an order extending their deadline to file their opening brief to November 22, 2021. The court of appeals granted the motion on October 14, 2021, ruling:

The motion for extension of time to file the opening brief is granted to November 22, 2021. No additional extensions will be granted without a showing of good cause.

And then on November 8, 2021 ruled:

Respondent Lisa Carter¹ has filed a second motion to dismiss, arguing that Appellants Tamara and Jay Fleischer are delaying this matter for improper purposes. The Fleischers have not responded. Accordingly, this matter will be dismissed without further notice if they do not file their opening brief or a written explanation showing good cause for any

¹ The motion was actually made by Margaret L. Curtis, to whom Lisa Carter assigned her judgment.

further delay by the currently scheduled due date, November 22, 2021.

The Fleischers did not file their opening brief by November 22, 2021.

On November 22, 2021, the Fleischers filed a motion to stay the appeal pending the outcome of their motion in the trial court to vacate the order confirming a sheriff's sale. On November 29, 2021, the court of appeals denied the motion, ruling:

In light of the significant delay, the motion to stay is denied. The Fleischers' counsel shall promptly file the brief. If the brief is not filed by December 13, 2021, this case will be dismissed without further notice of this Court.

December 13, 2021 came and went. For the fourth time, the Fleischers failed to file their opening brief by the court-imposed due date.

On December 13, 2021, the Fleischers moved to "reset the briefing schedule." On December 15, 2021, the court of appeals denied the Fleischers' motion and issued the following ruling:

This case will be dismissed without further notice of this Court if the Fleischers fail to file their opening brief by December 30, 2021.

But, for the fifth time, the Fleischers failed to file their opening brief by the court-imposed due date.

On December 30, 2021, the Fleischers moved for an extension of time to file their opening brief to January 10, 2022.

The court of appeals granted their motion, ruling:

Appellants' opening brief have been overdue since July 2021 despite multiple extensions. By ruling of December 16, 2021, I stated that the case would be dismissed without further notice of this Court if appellants failed to file the brief by December 30, 2021. Instead of filing the brief, appellants filed another motion for extension of the time to file the brief until January 10, 2022. An extension is granted one last time to January 10, 2022. But this is the final extension. If the brief is not filed by January 10, 2022, this case will be dismissed without further notice of this Court.

Margaret Curtis filed motions to dismiss the appeal for failure to file an opening brief on four occasions: September 13, 2021, October 19, 2021, November 28, 2021, and January 3, 2021.

On March 2, 2022, a three-judge panel of the Court of

Appeals dismissed the Fleischers' appeal for want of prosecution, explaining:

Because the appellants have not filed an opening brief after numerous extensions, and have been informed that their failure to do so may result in dismissal, we conclude that the appellants have abandoned this appeal.

The court relied on its authority under RAP 18.9(c)(1): “The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review.”

III. Reasons for Denying Review.

The criteria for supreme court review of a court of appeals' decision are set forth in RAP 13.4. This case meets none of them.

The Court of Appeals' decision in this case is not inconsistent with the decisions of either the Supreme Court or the Court of Appeals. RAP 13.4 (b)(1) & (2).

The petition for review raises no constitutional issue. RAP 13.4 (b)(3).

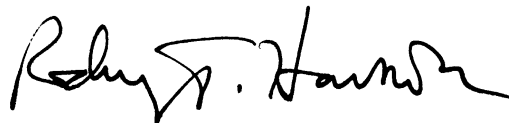
And the petition does not raise an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4 (b)(4). An appeal cannot move forward unless the appellant files its opening brief. An appellant who fails to timely file the opening brief deserves to have its appeal dismissed. Otherwise, the court and respondent are held captive to whatever case schedule the dilatory appellant deigns to impose. Is it of “substantial public interest” that the court of appeals dismissed an appeal for want of prosecution after repeated warnings of potential dismissal for failure to file the opening brief? No, it is not.

VI. Conclusion.

The Court is requested to deny the petition for review.

Respectfully submitted this 25th day of March, 2022

Certified word count: 990



Rodney T. Harmon, WSBA #11059
Attorney for Margaret L. Curtis,
assignee of Lisa S. Carter

Appendix

LEA ENNIS
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*The Court of Appeals
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DIVISION I
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September 15, 2021

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Case #: 82586-1

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court No. 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on September 14, 2021, regarding appellant's motion for stay:

"Appellants Tamara Fleischer and Jay Fleischer request a 60-day stay to allow time for additional proceedings in the trial court. They detail difficulties in preparing the record on appeal and their attorney's health challenges. Respondent Lisa Carter asks this Court to dismiss the appeal or enforce any additional failure to meet a deadline for filing the opening brief with dismissal. Carter wishes to avoid "an indefinite twilight zone" - such as a stay - but acknowledges that a sheriff's deed will issue if the property is not redeemed by April 2, 2022.

The Fleischers fail to explain why they need a 60-day stay to seek relief in the trial court. Accordingly, a 30-day extension of time to file the opening brief is hereby granted. The Fleischers should not anticipate further extensions without a proper motion for extension of time."

Sincerely,



Lea Ennis
Court Administrator/Clerk

ssd

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
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October 19, 2021

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Case #: 82586-1

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court No. 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on October 14, 2021 regarding motion for extension of time to file appellant's brief:

"The motion for extension of time to file the opening brief is granted to November 22, 2021. No additional extensions will be granted without a showing of good cause."

Sincerely,



Lea Ennis
Court Administrator/Clerk

ssd

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
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November 9, 2021

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Case #: 82586-1

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court No. 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on November 8, 2021:

“Respondent Lisa Carter has filed a second motion to dismiss, arguing that Appellants Tamara and Jay Fleischer are delaying this matter for improper purposes. The Fleischers have not responded. Accordingly, this matter will be dismissed without further notice if they do not file their opening brief or a written explanation showing good cause for any further delay by the currently scheduled due date, November 22, 2021.”

Sincerely,



Lea Ennis
Court Administrator/Clerk

ssd

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
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DIVISION I
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November 30, 2021

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Case #: 82586-1

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court No. 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on November 29, 2021 regarding appellant's motion to stay and respondent's motion for dismissal:

"Appellants Tamara and Jay Fleischer appeal from a March 30, 2021 trial court order that denied their motions to vacate a judgment entered more than 10 years ago on March 12, 2010. The Fleischers' counsel has yet to file appellants' opening brief originally due in July 2021, despite multiple extensions granted. By ruling of November 8, 2021, Commissioner Jennifer Koh of this Court warned the Fleischers: "This matter will be dismissed without further notice if they do not file their opening brief or a written explanation showing good cause for any further delay by the currently scheduled due date, November 22, 2021."

Instead of filing the brief, the Fleischers' counsel filed a motion to stay appeal pending the trial court's ruling on their motion to vacate order confirming the sheriff's sale. Counsel states that if the trial court denies the motion, the Fleischers will appeal the denial and that even if the court grants the motion, the Fleischers might still appeal the grant of the order. Respondent Margaret Curtis filed a response opposing a stay and asking this Court to dismiss the appeal.

In light of the significant delay, the motion to stay is denied. The Fleischers' counsel shall promptly file the brief. If the brief is not filed by December 13, 2021, this case will be dismissed without further notice of this Court."

Page 2 of 2
November 30, 2021
Case #: 825861

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis". The signature is fluid and cursive, with the first name "Lea" and last name "Ennis" clearly distinguishable.

Lea Ennis
Court Administrator/Clerk

ssd

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
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DIVISION I
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December 16, 2021

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Case #: 825861

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court No. 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on December 15, 2021, regarding Appellant's Motion for Consolidation and Reset Opening Brief Due Date:

Appellants Tamara and Jay Fleischer appeal from a March 30, 2021 trial court order that denied their motions to vacate a judgment entered more than 10 years ago on March 12, 2010. The Fleischers' counsel has yet to file appellants' opening brief originally due in July 2021, despite multiple extensions granted. By ruling of November 8, 2021, Commissioner Jennifer Koh warned the Fleischers: "This matter will be dismissed without further notice if they do not file their opening brief or a written explanation showing good cause for any further delay by the currently scheduled due date, November 22, 2021." But the Fleischers did not file their opening brief. Instead, their counsel filed a motion to stay appeal pending the trial court's ruling on their motion to vacate order confirming the sheriff's sale. By ruling of November 29, 2021, I denied the motion in light of the significant delay. The November 29 ruling warned the Fleischers that if the brief was not filed by December 13, 2021, this case would be dismissed without further notice of this Court.

The Fleischers again did not file their opening brief. Instead, on December 14, 2021, their counsel filed a "motion to consolidate two appeals and reset brief." Counsel states the Fleischers filed a second appeal on December 12, 2021. It appears that they filed a second appeal from a December 3, 2021 trial court order that denied their motion to vacate an order confirming the sheriff's sale and to release \$125,000 to them. In the December 3 order, the trial court noted that the Fleischers' motions do not appear "directly relate to any issue on appeal." Respondent Margaret Curtis filed a response opposing the motion.

Page 2 of 2
December 16, 2021
Case #: 825861

The motion to consolidate is denied. This case will be dismissed without further notice of this Court if the Fleischers fail to file their opening brief by December 30, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis". The signature is written in a cursive style with a prominent loop at the end.

Lea Ennis
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

LEA ENNIS
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December 30, 2021

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Case #: 825861

Tamara L. Fleischer & Jay P. Fleischer, App's v. Lisa Carter, Respondent
Snohomish County Superior Court 09-2-05356-0

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on December 30, 2021, regarding Appellant's Motion for Extension of Time to File Appellant's Brief until January 10, 2022:

Appellants' opening brief have been overdue since July 2021 despite multiple extensions. By ruling of December 16, 2021, I stated that the case would be dismissed without further notice of this Court if appellants failed to file the brief by December 30, 2021. Instead of filing the brief, appellants filed another motion for extension of the time to file the brief until January 10, 2022. An extension is granted one last time to January 10, 2022. But this is the final extension. If the brief is not filed by January 10, 2022, this case will be dismissed without further notice of this Court.

Sincerely,



Lea Ennis
Court Administrator/Clerk

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

LISA S. CARTER,
Plaintiff,

MARGARET L. CURTIS,
as assignee of Lisa S. Carter,

Respondent,

v.

TAMARA L. FLEISCHER, and
JAY P. FLEISCHER,

Appellants.

No. 82586-1-I

ORDER DENYING
MOTION TO ENFORCE
MOTION TO MODIFY AND
DISMISSING APPEAL

Respondent Margaret Curtis has filed a motion to enforce the Commissioner's December 15, 2021 warning of a possible dismissal of this appeal and a motion to modify the Commissioner's December 30, 2021 ruling granting an extension of time. Appellants Tamara and Jay Fleischer have not filed a response. We have considered the motions under RAP 17.7 and have determined that they should be denied.

RAP 18.9(c)(1) provides this court with discretion to dismiss review of a case "for want of prosecution if the party seeking review has abandoned the review." Because the appellants have not filed an opening brief after numerous extensions, and have been informed that their failure to do so may result in dismissal, we conclude that the appellants have abandoned this appeal. Therefore, we dismiss this appeal.

Now, therefore, it is hereby

ORDERED that the motion to enforce is denied; it is further

ORDERED that the motion to modify is denied; and it is further

ORDERED that this appeal is dismissed.

FOR THE COURT:

Burnham, J.

Chen, J.

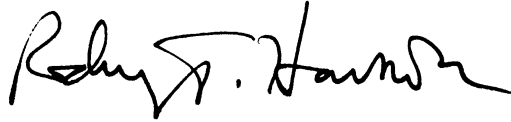
Andrus, A.C.J.

Certificate of Service

I certify that on this day I mailed by U.S. Mail, postage prepaid, a copy of the document to which this certificate is attached to counsel for Tamara and Jay Fleischer addressed to:

James Sturdevant
Attorney At Law
119 N. Commercial St. Ste. 235
Bellingham, WA 98225

Dated this 25th day of March, 2022

A handwritten signature in black ink, appearing to read "Rodney T. Harmon". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Rodney T. Harmon, WSBA #11059
Attorney for Margaret L. Curtis

March 25, 2022 - 11:38 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,724-8
Appellate Court Case Title: Tamara L. Fleischer and Jay P. Fleischer v. Lisa S. Carter
Superior Court Case Number: 09-2-05356-0

The following documents have been uploaded:

- 1007248_Answer_Reply_20220325113746SC201810_4858.pdf
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