

Received
Washington State Supreme Court

JUN 26 2014
E
Ronald R. Carpenter
Crf
Clerk

SUPREME COURT NO. 90288-7
COURT OF APPEALS NO. 45435-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WILLIAM SCHEIDLER,

Plaintiff/Petitioner,

v.

SCOTT ELLERBY,

Defendant/Respondent.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

Jeffrey P. Downer, WSBA No. 12625
Of Attorneys for Respondent

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street, Suite 1800
Seattle, WA 98101-3929
(206) 624-7990

TABLE OF CONTENTS

	Page
I. IDENTITY OF RESPONDING PARTY	1
II. DECISION BELOW.....	1
III. ISSUE PRESENTED FOR REVIEW	1
IV. STATEMENT OF THE CASE.....	2
A. The Clerk of the Court of Appeals properly dismissed Mr. Scheidler’s appeal pursuant to RAP 18.9(a) and (b).....	2
B. The Court of Appeals properly denied Mr. Scheidler’s Motion to Modify the Ruling Dismissing Appeal.	7
V. ARGUMENT WHY REVIEW SHOULD BE DENIED.....	7
A. This Court grants petitions for review in only strict, limited circumstances that RAP 13.4(b) prescribes.	7
B. The Order Denying the Motion to Modify does not conflict with a Supreme Court decision.	9
C. The Order Denying the Motion to Modify raises no constitutional question.	11
D. Mr. Scheidler’s petition does not raise an issue of substantial public interest.....	12
E. Mr. Scheidler’s petition for review is frivolous, and attorney fees should be awarded to Ellerby.	14
VI. CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Batten v. Abrams</i> , 28 Wn. App. 737, 626 P.2d 984 (1981)	11
<i>City of Fircrest v. Jensen</i> , 158 Wn.2d 384, 143 P.2d 566 (2006).....	10
<i>Plummer v. Weil</i> , 15 Wash. 427, 46 P. 648, 649-50 (1896)	13
<i>Reid v. Dalton</i> , 124 Wn. App. 113, 100 P.3d 349 (2004).....	14
<i>Skamania County v. Woodall</i> , 104 Wn. App. 525, 16 P.3d 701 <i>rev.</i> <i>denied</i> 144 Wn.2d 1021, 34 P.3d 1232 (2001)	13
<i>State v. Fields</i> , 85 Wn.2d 126, 530 P.2d 284 (1975)	9
<i>State v. Fitzpatrick</i> , 5 Wn. App. 661, 491 P.2d 262 (1971).....	12
<i>State v. Johnson</i> , 119 Wn.2d 167, 829 P.2d 1082, 1084 (1992).....	12
<i>State v. Martintorres</i> , 93 Wn. App. 442, 969 P.2d 501 (1999).....	11
<i>State v. Schulze</i> , 116 Wn.2d 154, 804 P.2d 566 (1991).....	10
<i>Tiffany Family Trust Corp. v. City of Kent</i> , 155 Wn.2d 225, 119 P.3d 325 (2005).....	14
<i>Yurtis v. Phipps</i> , 143 Wn. App. 680, 183 P.3d 849 (2008)	14
Statutes	
RCW 2.04.190	9
RCW 2.06.040	12
Rules	
RAP 10.4(h)	13
RAP 13.4.....	7, 8, 15
RAP 13.4(b)	7, 8
RAP 13.4(b)(1)	9, 11
RAP 13.4(b)(1), (3).....	7
RAP 13.4(b)(3)	12
RAP 13.4(b)(4)	14
RAP 18.9.....	12, 14, 15
RAP 18.9(a)	10, 14
RAP 18.9(a), (b).....	9
Other Authority	
<i>Wash. Appellate Prac. Deskbook</i> § 27.11 (1998)	7, 8

I. IDENTITY OF RESPONDING PARTY

Defendant-respondent, Scott Ellerby, asks this Court to deny review of the decision designated in Part II.

II. DECISION BELOW

On May 1, 2014, the Court of Appeals, Division II, denied pro se Plaintiff-appellant William Motion to Modify based on Mr. Scheidler's failure to file an Amended Appellant's Brief in accordance with (1) the Rules of Appellate Procedure (RAPs) and (2) the Court of Appeals' Conditional Ruling of Dismissal. Mr. Scheidler requests that the Court review the Order Denying the Motion to Modify.

III. ISSUE PRESENTED FOR REVIEW

A. Whether this Court should deny discretionary review of Division II of the Court of Appeals' May 1, 2014 order denying Mr. Scheidler's Motion to Modify where:

1. Mr. Scheidler fails to establish any basis for review under RAP 13.4;
2. Mr. Scheidler fails to show that the Order Denying his Motion to Modify conflicts with any Supreme Court decision;
3. Mr. Scheidler fails to show that a significant question of law under the Constitution is involved; and
4. Mr. Scheidler's petition does not involve an issue of substantial

public interest that should be determined by the Supreme Court.

B. Whether this Court should award Mr. Ellerby his reasonable attorney fees and costs incurred in responding to Mr. Scheidler's frivolous petition for review?

IV. STATEMENT OF THE CASE

A. The Clerk of the Court of Appeals properly dismissed Mr. Scheidler's appeal pursuant to RAP 18.9(a) and (b).

On October 4, 2013, Mr. Scheidler filed a Notice of Appeal to Supreme Court or Court of Appeals. App. 1, Declaration of Jeffrey P. Downer in Opposition to Appellant's Motion to Modify Ruling dated March 31, 2014, at Ex. 1.

On October 15, 2013, the Court of Appeals issued a notice to Mr. Scheidler and Mr. Ellerby providing due dates for compliance with the RAPs. *Id.* at Ex. 2. The notice provided that Mr. Scheidler's opening brief should be filed 45 days after filing the report of proceedings with the trial court clerk. The report of proceedings was filed on December 24, 2013. *Id.* at ¶ 7. Accordingly, Mr. Scheidler's opening brief was due February 7, 2014.

Mr. Scheidler filed an Opening Brief that did not conform to the content and form requirements set out in the Rules of Appellate Procedure. App. 2, Declaration of Jeffrey P. Downer in Support of Answer to Motion for Discretionary Review dated June 20, 2014, at Ex. 4. Mr. Scheidler's

Opening Brief Aside contained a wide range of procedural defects. It also had no substantive merit, because it was based on Mr. Scheidler's unsubstantiated and frivolous accusations against the Kitsap County Assessor; the Kitsap County Prosecutor's Office; Mr. Ellerby; Mr. Ellerby's counsel; WSBA Disciplinary Counsel; Kitsap County Superior Court Judges Russell Hartman and Kevin Hull; Court of Appeals Judges Penoyar, Alexander, and Johanson; David Ponzoha, Clerk of Division II of the Court of Appeals; and the Clerk of the Supreme Court. Mr. Scheidler alleged fraud and conspiracy. *Id.* Mr. Scheidler asserted, and continues to assert, that the lawyers, trial court judges, appellate court judges, and Clerks of the Court of Appeals and Supreme Court have conspired against him because he is not a lawyer. *Id.* Mr. Scheidler's own appeal brief shows that Mr. Scheidler is a serial litigant who continues to ignore the rulings of the trial and appellate courts and to clog the court system with frivolous and unsubstantiated claims at great expense to all involved. *Id.* He has also filed frivolous claims with the WSBA against Mr. Ellerby and Mr. Ellerby's counsel, and frivolous claims with the Commission on Judicial Conduct against Judge Penoyar and Judge Kevin Hull. *Id.* Mr. Scheidler's claims against Mr. Ellerby, Mr. Ellerby's counsel, Judge Penoyar, and Judge Hull were summarily dismissed. *Id.* Mr. Scheidler then filed an action against J. Rieko Callner, executive

director of the Commission on Judicial Conduct, based on the dismissal of Mr. Scheidler's frivolous claim against Judge Penoyar. *Id.*

On January 28, 2014, Mr. Scheidler and counsel for Mr. Ellerby received a letter from the Court Clerk for the Court of Appeals stating that Mr. Scheidler's opening brief did not conform to the content and form requirements set out in the Rules of Appellate Procedure. Downer Dec. at Ex. 3. This was the first time Mr. Ellerby learned that Mr. Scheidler had filed an opening brief at all, as Mr. Scheidler did not timely serve Mr. Ellerby with a copy of the opening brief. *Id.* at ¶ 5. The Court of Appeals Clerk informed Mr. Scheidler that he must re-submit the opening brief in accordance with the Rules of Appellate Procedure by February 7, 2014 and attached a sample Appellant's Brief for Mr. Scheidler's consideration. *Id.* at Ex. 3.

On January 29, 2014, Mr. Scheidler responded to the Court Clerk via email as follows:

Ms. Carlson, Mr. Penzoha and Ms. Moreno

To EACH and EVERY ONE of you, provide your address at which you can personally receive 'service of process'

I will not beg for the rights I am entitled. Nor am I going to be forced into long and arduous "motions" due to the whims of Mr. Penzoha. Either my "Opening Brief" is filed and addressed in a civilize [sic] manner, or it is well past time that public servants such as you are forever banished from public service and lawyers and judges are finally made accountable to the people of this state as our

constitution demands.

The Supreme Court makes it clear that “The government’s violation of a right protected by substantive due process is actionable at the moment the violation occurs.” *MISSION SPRINGS v. CITY OF SPOKANE* 134 Wn.2d 947, 949 954 P.2d 250

Bill Scheidler

Downer Dec. at Ex. 4. As shown, Mr. Scheidler refused to comply with the Rules of Appellate Procedure as instructed by the Clerk of the Division II of the Court of Appeals. Further, he threatened Mr. Ponzoha with legal action, requested an address by which Mr. Ponzoha could receive “service of process,” and now frivolously asserts that Mr. Ponzoha is included in a grand conspiracy to defraud him and deprive him of his perceived rights.

On the same day, the Court of Appeals Clerk responded to Mr. Scheidler via email and reiterated that Mr. Scheidler’s opening brief had been rejected for failure to comply with the RAPs and that his appeal is subject to dismissal if he did not file a complying brief by February 7, 2014. *Id.* The Court of Appeals Clerk also provided Mr. Scheidler with an address where he could receive “service of process.” *Id.*

Mr. Scheidler did not re-file an opening brief that complied with the RAPs by February 7, 2014, as the Court of Appeals Clerk had instructed. Downer Dec. at Ex. 5. On February 11, 2014, the Court of Appeals Clerk extended the deadline for Mr. Scheidler to file an Amended

Appellant's Brief to February 26, 2014. *Id.* at Ex. 6. The Court of Appeals Clerk informed Mr. Scheidler that failure to file the Amended Appellant's brief by February 26, 2014 would result in a \$200 sanction due on that date and that this court would not accept further filings from Mr. Scheidler until payment of the sanction is made in full. *Id.* The Court of Appeals Clerk further informed Mr. Scheidler that a commissioner would consider a motion for dismissal due to Mr. Scheidler's failure to timely file the Amended Brief, if Mr. Scheidler failed to file the Amended Appellant's Brief by March 3, 2014. Again, Mr. Scheidler refused to file an Amended Appellant's Brief in compliance with the Court of Appeals Clerk's instruction. Downer Dec. at Ex. 5.

On March 7, 2014, the Court of Appeals Clerk issued a Conditional Ruling of Dismissal, which provided Mr. Scheidler yet another grace period of 10 days to file the Amended Appellant's Brief and levied the \$200 sanction for failure to file the Amended Appellant's Brief by February 26, 2014. Downer Dec. at Ex. 7. Again, Mr. Scheidler violated that instruction and failed to file an Amended Brief.

On March 19, 2014, the Clerk issued a Ruling Dismissing the Appeal based on Mr. Scheidler's failure to file an Amended Appellant's Brief as previously ordered in the Conditional Ruling of Dismissal. Downer Dec. at Ex. 8.

B. The Court of Appeals properly denied Mr. Scheidler's Motion to Modify the Ruling Dismissing Appeal.

On March 24, 2014, Mr. Scheidler filed a "Motion to Modify Ruling RAP 17.7," requesting that the Court of Appeals modify the Clerk's Ruling Dismissing Mr. Scheidler's Appeal. App. 2, Declaration of Jeffrey P. Downer in Support of Answer to Motion for Discretionary Review dated June 20, 2014, at Ex. 1. Without any documentation supporting his position, Mr. Scheidler baldly asserted that the Ruling Dismissing Appeal should be modified due to "misconduct" of the Court of Appeals Clerk. *Id.*

On March 31, 2014, Mr. Ellerby submitted an Opposition to Appellant's Motion to Modify Ruling. Mr. Ellerby provided the Court of Appeals with the procedural history detailing Mr. Scheidler's repeated and willful violations of the RAPs and the direction of the Court of Appeals Clerk that led to the Ruling Dismissing Appeal. App. 2 at Ex. 2.

On May 1, 2014, the Court of Appeals denied Mr. Scheidler's Motion to Modify the ruling dismissing the appeal. App. 2 at Ex. 3.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. This Court grants petitions for review in only strict, limited circumstances that RAP 13.4(b) prescribes.

Mr. Scheidler seeks review pursuant to RAP 13.4(b)(1),(3), and (4). Pursuant to RAP 13.4, a petition for review will be accepted by the

Supreme Court only:

- (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or...
- (3) if a significant question of law under the Constitution of the State of Washington or 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.

RAP 13.4.

Mr. Scheidler's petition for review should be denied because it fails to satisfy any basis for Supreme Court review.

Furthermore, nothing in RAP 13.4 or in Washington law entitles Mr. Scheidler to review by this Court simply because he disagrees with the Court of Appeals' decision:

[I]t is a mistake for a party seeking review to make the perceived injustice the focus of attention in the petition for review. RAP 13.4(b) says nothing in its criteria about correcting isolated instances of injustice. This is because the Supreme Court, in passing upon petitions for review, is not operating as a court of error. Rather, it is functioning as the highest policy-making judicial body of the state. ...

The Supreme Court's view in evaluating petitions is global in nature. Consequently, the primary focus of a petition for review should be on why there is a compelling need to have the issue or issues presented decided *generally*. The significance of the issues must be shown to transcend the particular application of the law in question. Each of the four alternative criteria of RAP 13.4(b) supports this view. The court accepts review sparingly, only approximately 10 percent of the time. Failure to show the court the "big picture" will likely diminish the already statistically slim prospects of review.

Wash. Appellate Prac. Deskbook § 27.11 (1998) (italics in original).

B. The Order Denying the Motion to Modify does not conflict with a Supreme Court decision.

Mr. Scheidler asserts that the Supreme Court should accept his petition for review because the May 1, 2014 order conflicts with a decision in the Supreme Court. RAP 13.4(b)(1). Specifically, Mr. Scheidler asserts that the Clerk of the Court of Appeals acted “unilaterally, unlawfully, under his self-proclaimed power under his own interpretation of court rules. All being in conflict with the holdings of and rules established by the Supreme Court.” Petition for Review at 7. As demonstrated, nothing in this record substantiates Mr. Scheidler’s inflammatory attacks on the Clerk. Those attacks have no colorable merit whatsoever. But more importantly, Mr. Scheidler fails to cite any Supreme Court decision in conflict with the Court of Appeals’ May 1, 2014 order that would warrant review under RAP 13.4(b)(1).

Courts are vested with “the inherent power to govern court procedures.” *State v. Fields*, 85 Wn.2d 126, 129, 530 P.2d 284 (1975). Further, the legislature has authorized the Supreme Court to adopt rules of procedure. *Id.* at 128; RCW 2.04.190. The RAPs that this Court adopted authorize the Court of Appeals Clerk to dismiss a review proceeding as a sanction for a party’s violation of a ruling. RAP 18.9(a), (b).

In this case, the Clerk’s dismissal of Mr. Scheidler’s appeal is in

accordance with RAP 18.9(a) and (b), and is justified by Mr. Scheidler's repeated and willful violations of the RAPs and the direction of the Clerk. Mr. Scheidler failed to file an opening brief in compliance with the Rules of Appellate Procedure. App. 1 at Ex. 3. The Clerk informed Mr. Scheidler of his failure to file a complying brief and provided an example of a complying Appellant's Brief for Mr. Scheidler's consideration. *Id.* Mr. Scheidler responded to the Clerk with accusations, and he stated that he would not "beg" for his perceived rights. *Id.* at Ex. 4. Mr. Scheidler openly violated the Court of Appeals' repeated notices to him that a timely appellant's brief must be filed in compliance with the RAPs. He repeatedly flouted the Clerk's notices that he would be subject to sanctions and his appeal would be subject to dismissal. He refused to pay the sanctions imposed upon him for failure to file a complying opening brief.

The May 1, 2014 Order Denying the Motion to Modify is consistent with the RAPs and does not conflict with any Supreme Court decision. The only Supreme Court authorities Mr. Scheidler cites are two out-of-context quotes from *State v. Schulze*, 116 Wn.2d 154, 161, 804 P.2d 566 (1991) and *City of Fircrest v. Jensen*, 158 Wn.2d 384, 419143 P.3d 776 (2006). Neither case conflicts with the Court of Appeals' authority to dismiss an appeal for a party's repeated, willful failures to

comply with the RAPs and the rulings of the Court of Appeals. Mr. Scheidler thus fails to establish grounds for review under RAP 13.4(b)(1).

C. The Order Denying the Motion to Modify raises no constitutional question.

Mr. Scheidler claims the Supreme Court should accept his petition for review because the May 1, 2014 order presents a significant question of law under the Constitution of the State of Washington. Specifically, Mr. Scheidler asserts that “the unlawful actions by the clerk to terminate review under fallacious claims and vague allegations that Mr. Scheidler’s opening brief didn’t meet ‘formatting’ requirements,” Petition for Review at 10, obstructed his opportunity to be heard and therefore denied him due process. He asserts that the Clerk, as an officer of the court, had a duty to remedy Mr. Scheidler’s noncompliant opening brief because he is a pro se litigant. *Id.* at 8. However, pro se litigants are held to the same standard as attorneys and must comply with all procedural rules on appeal. *Batten v. Abrams*, 28 Wn. App. 737, 739 n. 1, 626 P.2d 984 (1981) (nonlawyer who undertakes role of lawyer “assumes the duties and responsibilities [of a lawyer] and is accountable to the same standards of ethics and legal knowledge”). A pro se litigant’s violations of the RAPs may preclude review. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999).

The correspondence between the Court of Appeals Clerk and the

parties documents (1) that the Clerk provided Mr. Scheidler multiple opportunities to submit an Amended Appellant's Brief in compliance with the RAPs; (2) that the Clerk properly acted within his authority when he imposed sanctions on Mr. Scheidler for repeatedly violating the RAPs; and (3) that the Clerk complied with the notice requirements provided in RAP 18.9 prior to dismissal of the appeal. App. 1 at Exs. 3-8. There is no evidence that Mr. Scheidler's procedural and substantive due process rights were denied. Mr. Scheidler's disagreement with the appellate court's order is insufficient to raise an issue of constitutional magnitude. "Parties raising constitutional issues must present considered arguments." *State v. Johnson*, 119 Wn. 2d 167, 171, 829 P.2d 1082, 1084 (1992). Mr. Scheidler fails to establish grounds for review under RAP 13.4(b)(3).

D. Mr. Scheidler's petition does not raise an issue of substantial public interest.

Mr. Scheidler asserts that this Court should accept his petition for review because the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Mr. Scheidler does not explain why any matter expressed in his petition has any ramifications beyond the particular parties and particular facts at issue in this case. The Court of Appeals' decision is an unpublished order and has no precedential value. RCW 2.06.040; *State v. Fitzpatrick*, 5 Wn. App. 661, 668, 491 P.2d 262 (1971) ("unpublished opinions of the Court of Appeals

will not be considered in the Court of Appeals and should not be considered in the trial courts. They do not become a part of the common law of the state of Washington”). “Unpublished opinions ... should not be cited or relied upon in any manner.” *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, *rev. denied* 144 Wn.2d 1021, 34 P.3d 1232 (2001) (citing RAP 10.4(h) (emphasis added)). Therefore, there is no possibility that the Court of Appeals’ dismissal of Mr. Scheidler’s appeal will affect the public interest by creating supposedly bad precedent, because it is not precedent at all.

Instead, Mr. Scheidler asserts that the legal system needs an immediate overhaul to address the unethical conduct that permeates the legal system. Petition for Review at 12-13. Mr. Scheidler makes unfounded allegations of conspiracy among lawyers who supposedly breach their oaths, judges who supposedly disregard common law precedent to protect the lawyers who breach their oaths, and appellate courts who supposedly “perjure” [sic] pleadings and fabricate facts to protect the “legal establishment.” *Id.* at 12. Personal comments regarding a party, opposing counsel, or judge are improper, reflect the lack of merit in the arguments being advanced by the party making them, and insult the court asked to consider them. *Plummer v. Weil*, 15 Wash. 427, 431, 46 P. 648, 649-50 (1896). Mr. Scheidler fails to support any of these

inflammatory and impertinent allegations, and this Court should ignore them. As such, Mr. Scheidler fails to establish grounds for review pursuant to RAP 13.4(b)(4).

E. Mr. Scheidler's petition for review is frivolous, and attorney fees should be awarded to Ellerby.

RAP 18.9(a) provides that the appellate court on its own initiative may order a party or counsel that uses these rules for the purpose of delay to pay terms of compensatory damages to any other party who has been harmed by the delay. RAP 18(9) permits an appellate court to award a party its attorney's fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action. *Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and the appeal is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005); *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 183 P.3d 849 (2008) (pro se litigant's multiple, frivolous appeals and motions to modify warranted imposition of attorney's fees and costs).

Mr. Ellerby should be awarded his attorney's fees and costs under RAP 18.9. Mr. Scheidler's petition for review is devoid of merit and based on arguments that have been rejected on multiple occasions.


Mr. Scheidler's petition for review appears to be intended to delay Mr. Ellerby's efforts to obtain the amount of attorney's fees awarded on remand by the Kitsap County Superior Court. This is precisely the abuse of the appellate process that RAP 18.9 is intended to deter. Mr. Ellerby should be awarded his reasonable attorney fees and costs opposing Mr. Scheidler's petition for review.

VI. CONCLUSION

RAP 13.4 enumerates the four narrow grounds for review by the Supreme Court. This case presents no such issue for review; Mr. Scheidler fails to meet the strict standards of RAP 13.4 in any regard. This Court should deny review and award Mr. Ellerby his reasonable attorney's fees and costs incurred in responding to the petition for review.

Respectfully submitted this 25th day of June, 2014.

LEE SMART, P.S., INC.

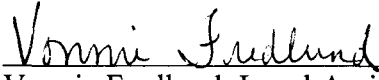
By: 
Jeffrey P. Downer, WSBA No. 12625
Of Attorneys for Defendant/Respondent
Scott Ellerby

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the date shown below I sent a copy of the foregoing by overnight delivery to:

Mr. William Scheidler
1515 Lidstrom Place E.
Port Orchard, WA 98366

DATED this 25th day of June, 2014.



Vonnice Fredlund, Legal Assistant

Appendix 1

NO. 45435-1-II

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

WILLIAM SCHEIDLER,

Appellant.

v.

SCOTT ELLERBY,

Respondent.

DECLARATION OF JEFFREY P. DOWNER IN
OPPOSITION TO APPELLANT'S MOTION TO MODIFY RULING

Jeffrey P. Downer, WSBA No. 12625
Of Attorneys for Respondent

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

FILE

Jeffrey P. Downer declares as follows:

1. I am attorney of record for Respondent in the above-captioned action, and I make this declaration based on personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of Mr. Scheidler's Notice of Appeal.

3. Attached as **Exhibit 2** is a true and correct copy of the Court of Appeals' letter dated October 15, 2013 providing applicable due dates for Mr. Scheidler's appeal.

4. Attached as **Exhibit 3** is a true and correct copy of the January 28, 2014 letter from the Clerk of this court providing notice that Mr. Scheidler's opening brief did not conform to the Rules of Appellate Procedure.

5. The Clerk's letter dated January 28, 2014 was the first notice to counsel for Mr. Ellerby that Mr. Scheidler had filed an opening brief, as Mr. Scheidler failed to timely serve Mr. Ellerby with a copy of the opening brief.

6. Attached as **Exhibit 4** is a true and correct copy of the January 29, 2014 email correspondence received from the Clerk responding to an email from Mr. Scheidler.

7. Mr. Scheidler did not re-file an opening brief that complied with the RAP's by February 7, 2014, as the Clerk had instructed. Attached as **Exhibit 5** is a true and correct copy of the docket for Appeal No. 45435-1-II.

8. Attached as **Exhibit 6** is a true and correct copy of the February 11, 2014 letter from the Clerk extending Mr. Scheidler's deadline to file an opening brief, and providing notice that failure to timely file a complying opening brief would result in sanctions, and possible motion to dismiss the appeal.

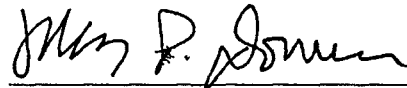
9. Despite receiving the February 11, 2014 notice from the Clerk, Mr. Scheidler refused to file an Amended Appellant's Brief in compliance with the court's instruction.

10. Attached as **Exhibit 7** is a true and correct copy of the March 7, 2014 Conditional Ruling of Dismissal.

11. Attached as **Exhibit 8** is a true and correct copy of the March 19, 2014 Ruling Dismissing the Appeal.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 31st day of March, 2014, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Jeffrey P. Downer". The signature is written in a cursive style with a horizontal line underneath it.

Jeffrey P. Downer, WSBA No. 12625

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on March 31, 2014, I caused service of the foregoing pleading on each and every attorney of record herein:

VIA U.S. MAIL

Mr. William Scheidler
1515 Lidstrom Place E.
Port Orchard, WA 98366

DATED this 31st day of March, 2014 at Seattle, Washington.



Linda Bender
Linda Bender, Legal Assistant

Exhibit 1

RECEIVED
LEE.SMART

13 OCT -4 AM 10:49

RECEIVED FOR FILING
KITSAP COUNTY CLERK

OCT - 2 2013

DAVID W. PETERSON

Superior Court of Washington for Kitsap COUNTY

William Scheidler,)	
Plaintiff,)	No. 09-2-00660-3
)	Notice of Appeal to
v.)	Supreme Court or Court of Appeals
)	
Scott Ellerby, Esq.,)	
Defendant.)	

1. Identity of Moving Party

William Scheidler, plaintiff/appellant pro se, seeks review by the designated appellate court of the lower court's orders identified below.

2. Orders of the Superior Court being appealed

William Scheidler, plaintiff/appellant pro per, seeks review of the lower court's orders:

- entered September 13, 2013, [Opinion and order on plaintiff's motion for reconsideration and motion for a new trial]
- entered July 8, 2013, [Findings of fact, conclusions of law, order and judgment on attorney fees and costs.]
- entered April 26, 2013, [Memorandum Opinion: Mr. Scheidler's motions are DENIED].

3. Copies of the memorandum, opinions, orders are attached to this notice.

Am Scheidler 10-2-13

William Scheidler Plaintiff/Appellant
 1515 Lidstrom Place E.
 Port Orchard, WA 98366
 360-769-8531
billscheidler@wavecable.com

Scott Ellerby, Defendant
 C/o Mr. Jeffrey Downer, Attorney for Defendant
 1800 One Convention Place
 701 Pike Street
 Seattle, WA 98101-3929
 206-624-7990

COPY

Exhibit 2



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4.**

October 15, 2013

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

Re: **Court of Appeals No. 45435-1-II.**
(USE THIS NUMBER ON ALL FILINGS)
Kitsap County No. 09-2-00660-3
William Scheidler, Appellant v. Scott Ellerby, Respondent
Case Manager: Cheryl

THIS WILL BE THE ONLY NOTICE THAT YOU WILL RECEIVE CONCERNING DUE DATES. A DOCUMENT FILED PRIOR TO OR AFTER ITS DUE DATE MAY AFFECT ALL SUBSEQUENT DUE DATES. THE PARTIES ARE RESPONSIBLE FOR DETERMINING ADJUSTED DUE DATES BY REVIEWING THE APPROPRIATE RULES OF APPELLATE PROCEDURE.

Counsel:

We have received a Notice of Appeal filed **October 2, 2013**. The time periods for compliance with the Rules of Appellate Procedure are as follows:

1. The designation of clerks papers should be filed with the trial court by **November 1, 2013**. A copy of the designation should be served and must be filed with the appellate court. RAP 9.6(a).
2. The statement of arrangements should be filed in this court by **November 1, 2013** and a copy served on all parties and all named court reporters. **The statement should include the name of each court reporter, the hearing dates, and the trial court judge. Revised RAP 9.2(a).** If counsel does not intend to file a verbatim report of proceedings, counsel should so notify this court, in writing, by that date. RAP 9.2(a).

Appeal No. 45435-1-II

3. The verbatim report of proceedings must be filed with the trial court clerk within 60 days after the statement of arrangements is filed. Revised RAP 9.5(a). **Note: Pierce County appeals must comply with General Order 2013-2. Found at:**

http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2013-2&div=II

4. Appellant's opening brief, accompanied by proof of service, should be filed in this court 45 days after the filing of the report of proceedings with the trial court clerk. RAP 10.2(a) & (h). Pursuant to RAP 10.2(a), if the record on review does not include a report of proceedings, the brief of appellant should be filed within 45 days after the party seeking review has filed the designation of clerks papers and exhibits at the trial court.

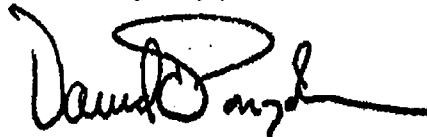
5. Respondent's opening brief, accompanied by proof of service, should be filed in this court 30 days after service of the appellant's brief to all parties. RAP 10.2(b) or (c).

In the Court of Appeals, Division Two, a party may file a Motion on the Merits in lieu of the respondent's brief. The motion is due, however, the same date as the respondent's brief. If the motion is denied, respondent's brief is due 30 days after the date of the order. See RAP 18.14 for motion procedure.

6. A reply brief, if any, is due 30 days after service of respondent's brief. RAP 10.2(d). Failure to timely file the brief will result in the brief being placed in the case file without action. The court will give it whatever consideration it wishes.

Counsel's failure to timely comply with the rules of Appellate Procedure may result in the imposition of sanctions pursuant to RAP 18.9. any request for an extension of time must be made by way of written motion and affidavit showing good cause accompanied by proof of service. The request for additional time should specify a definite date. The granting of an extension request will change all subsequent due dates.

Very truly yours,



David C. Ponzoha,
Court Clerk

DCP:c

cc: Kitsap County Clerk

Exhibit 3



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

January 28, 2014

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

CASE #: 45435-1-II/William Scheidler, Appellant v. Scott Ellerby, Respondent
Case Manager: Cheryl

Dear Mr. Scheidler:

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not include assignments of error together with issues pertaining to assignments of error. RAP 10.3(a)(4).

Brief does not cite to the record. RAP 10.3(a)(5).

Brief is overlength. RAP 10.4(b).

Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

An original and one copy must be filed with the court. RAP 10.4(a)(1).

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **February 7, 2014**. For your reference, I am attaching a sample Appellant's Brief.

If you have any questions, please contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha", with a large, stylized flourish at the end.

David C. Ponzoha
Court Clerk

DCP:c

Exhibit 4

To: 'BILL SCHEIDLER'
Cc: OFFICE RECEPTIONIST, CLERK; Jeffrey P. Downer
Subject: RE: D2 454351--Scheidler v. Ellerby--Letter

Mr. Scheidler and Counsel:

I send this email to summarize the events that have transpired over the past couple of days. It is unclear whether Mr. Scheidler has served opposing counsel with a copy his correspondence with the court.

By letter dated 01/28/14 we rejected for filing Mr. Scheidler's opening brief on several grounds listed in the letter. RAP 10.7. That same day, Mr. Scheidler called this office demanding that we accept the brief for filing. I attempted to discuss each of the reasons with him but, as expressed below, he was not interested in an explanation nor did he intend to comply with the court rules. Mr. Scheidler also insisted that Cheryl and I were lying to him.

To reiterate, we have rejected the brief Mr. Scheidler submitted for filing and, if he does not file a complying brief by the date set forth in the letter, the appeal may be dismissed. RAP 18.9(b). Further, any pleadings and correspondence should be directed to this office via USPS or the Coa2Filings email address, comply with the Rules of Appellate Review and show proof of service on counsel or it will be placed in the case file without action.

Finally, you may serve me at the court of appeals address during business hours.

Thank you for your attention to this matter. dp

-----Original Message-----

From: BILL SCHEIDLER [<mailto:billscheidler@wavecable.com>]
Sent: Wednesday, January 29, 2014 8:38 AM
To: Coa2Filings
Cc: OFFICE RECEPTIONIST, CLERK
Subject: Fwd: D2 454351--Scheidler v. Ellerby--Letter

Ms. Carlson, Mr. Penzoha and Ms. Moreno

To EACH and EVERY ONE of you, provide your address at which you can personally receive 'service of process'.

I will not beg for the rights I am entitled. Nor am I going to be forced into long and arduous "motions" due to the whims of Mr. Penzoha. Either my "Opening Brief" is filed and addressed in a civilized manner, or it is well past time that public servants such as you are forever banished from public service and lawyers and judges are finally made accountable to the people of this state as our constitution demands.

The Supreme Court makes it clear that "The government's violation of a right protected by substantive due process is actionable at the moment the violation occurs." MISSION SPRINGS v. CITY OF SPOKANE 134 Wn.2d 947, 949 954 P.2d 250

Bill Scheidler

--- the forwarded message follows ---

Exhibit 5



Courts Home | Search Case Records



Search | Site Map | eService Center

Home | Summary Data & Reports | Resources & Links | Get Help

Appellate Court Case Summary

Case Number: 454351
Filing Date: 10-02-2013
Coa, Division II

Event Date	Event Description	Action
10-02-13	Filing fee	Filed
10-02-13	Notice of Appeal	Filed
10-04-13	Affidavit of Service	Filed
10-07-13	Case Received and Pending	Status Changed
10-15-13	Perfection Letter	Sent by Court
10-28-13	Designation of Clerks Papers	Filed
10-28-13	Statement of Arrangements	Filed
10-29-13	Report of Proceedings	Filed
10-29-13	Filing of VRP by Crt Reporter	Filed
11-12-13	Report of Proceedings	Filed
11-12-13	Clerk's Papers	Filed
11-12-13	Filing of VRP by Crt Reporter	Filed
11-15-13	Report of Proceedings	Received by Court
12-03-13	Report of Proceedings	Received by Court
12-24-13	Record Ready	Status Changed
12-24-13	Report of Proceedings	Filed
01-03-14	Report of Proceedings	Received by Court
01-28-14	Appellants brief	Not filed
01-28-14	Letter	Sent by Court
02-11-14	Letter of Sanctions	Sent by Court
02-11-14	Court's Mot to Dismiss for Fail to file	Filed
03-07-14	Ruling on Motions	Filed
03-17-14	Appellants brief	Not filed
03-19-14	Ruling terminating Review	Filed
03-19-14	Decision Filed	Status Changed
03-24-14	Letter	Sent by Court
03-24-14	Motion to Modify motion on the Merits	Filed
04-03-14	Response	Due

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Coa, Division II
 950 Broadway
 Ste 300, MS TB-06
 Tacoma, WA 98402-4454
Map & Directions
 253-593-2970[General Information]
 253-593-2806[Fax]
[Office Email]

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

How can I obtain the complete court record?

You can contact the court in

Exhibit 6



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

February 11, 2014

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

CASE #: 45435-1-II
William Scheidler, Appellant v. Scott Ellerby, Respondent
Case Manager: Cheryl

William Scheidler:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the **Amended Appellant's Brief**, due February 7, 2014.

Accordingly, we will impose a **sanction of \$200** against you unless you filed the Amended Appellant's Brief with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a motion for dismissal and/or further sanctions because of your failure to timely file the Amended Appellant's Brief. A commissioner will consider this motion, without oral argument, if you do not file the Amended Appellant's Brief, by March 3, 2014. We will strike the clerk's motion for further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion for dismissal, you will not be released from paying the sanction imposed on **February 26, 2014**, unless you file your response before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

Exhibit 7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER,

Appellant,

v.

SCOTT ELLERBY,

Respondent.

No. 45435-1-II

CONDITIONAL RULING OF DISMISSAL

THIS MATTER comes before the undersigned upon a motion by the clerk of this court to dismiss the above-entitled appeal for failure to file the Amended Appellant's Brief, due since February 26, 2014. It appears that dismissal is warranted, but that a brief grace period is also warranted. Accordingly, it is

ORDERED that the above-entitled appeal will be dismissed without further notice unless the Amended Appellant's Brief and \$200 sanctions are on file with the Clerk before the close of business on March 17, 2014.

DATED this 7th day of March, 2014.

David J. Downer
COURT CLERK

FILED
COURT OF APPEALS
DIVISION II
2014 MAR -7 AM 8:45
STATE OF WASHINGTON
BY *[Signature]* DEPUTY

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

Exhibit 8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER,
Appellant,
v.
SCOTT ELLERBY,
Respondent.

No. 45435-1-II

RULING DISMISSING APPEAL

THIS MATTER comes before the undersigned to dismiss the above-entitled appeal as it appears to have been abandoned. A review of the file indicates that the Amended Appellant's Brief has not been filed as previously ordered in the Conditional Ruling of Dismissal and that dismissal is warranted. Accordingly, it is

ORDERED that the above-entitled appeal is dismissed.

DATED this 19th day of March, 2014.

David B. [Signature]
COURT CLERK

2014 MAR 19 AM 8:39
STATE OF WASHINGTON
BY DEPUTY

FILED
COURT OF APPEALS
DIVISION II

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

Appendix 2

NO. 45435-1-II

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

WILLIAM SCHEIDLER,

Appellant.

v.

SCOTT ELLERBY,

Respondent.

DECLARATION OF JEFFREY P. DOWNER IN
SUPPORT OF ANSWER TO MOTION FOR DISCRETIONARY
REVIEW

Jeffrey P. Downer, WSBA No. 12625
Of Attorneys for Respondent

LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
(206) 624-7990

Jeffrey P. Downer declares as follows:

1. I am attorney of record for Respondent in the above-captioned action, and I make this declaration based on personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of Scheidler's Motion to Modify Ruling RAP 17.7.

3. Attached as Exhibit 2 is a true and correct copy of Respondent Scott Ellerby's Opposition to Appellant's Motion to Modify.

4. Attached as Exhibit 3 is a true and correct copy of the Court of Appeals Division II's Order Denying Scheidler's Motion to Modify.

5. Attached as Exhibit 4 is a true and correct copy of Appellant's Opening Brief.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this ____ day of June, 2014, at Seattle, Washington.

Jeffrey P. Downer, WSBA No. 12625

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on _____, I caused service of the foregoing pleading on each and every attorney of record herein:

VIA U.S. MAIL

Mr. William Scheidler
1515 Lidstrom Place E.
Port Orchard, WA 98366

DATED this ____ day of June, 2014 at Seattle, Washington.

Linda Bender, Legal Assistant