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SUPREME COURT NO. 92368-0

COURT OF APPEALS NO. 45504-8-II

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SUPREME COURT
OF THE STATE OF WASHINGTON

BESSIE WILLIAMS,

Appellant,

v.

FIRST TRANSIT, INC., *et al.*,

Respondents.

**RESPONDENT CENTRAL BIBLE EVANGELICAL CHURCH'S
RESPONSE TO APPELLANT'S MOTION TO FILE AMENDED
PETITION**

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I. IDENTITY OF RESPONDING PARTY

Respondent Central Bible Evangelical Church (“Central Bible”) hereby submits this Opposition to Appellant Bessie Williams’ “Motion to File Amended Petition” in accordance with this Court’s order calling for an answer to that motion.

II. STATEMENT OF RELIEF SOUGHT

Central Bible respectfully requests that this Court deny Appellant’s “Motion to File Amended Petition”.

III. FACTS RELEVANT TO RESPONSE

The instant motion represents another chapter in Ms. Williams’ repeated failure to comply with the applicable court rules at both the trial court and appellate court stages of this litigation. Ms. Williams’ non-compliance cannot be excused by her status as a *pro se* litigant, as all litigants, including those not represented by counsel, are assumed to know and expected to comply with the court rules. Further, Ms. Williams’ non-compliance also occurred while she was represented by counsel, eliminating any argument that this misconduct can simply be attributed to a *pro se* litigant. This record of non-compliance has wasted judicial time and resources and prejudiced the defendants by requiring them to repeatedly respond to these procedural violations and by delaying the administration of final justice in this case.

A. Williams' Complaint

On October 25, 2011, Ms. Williams, acting as a *pro se* plaintiff, filed a complaint for negligence against Central Bible for personal injuries she suffered after falling from her wheelchair onto a sidewalk adjacent to property owned by the church. Clerk's Papers (CP) at 1-4. Williams alleged that in 2008, an employee of First Transit drove her on a shuttle bus to property owned by Central Bible in Tacoma and that the employee assisted her in reaching the building on the property by pushing her in her wheelchair. CP at 2. Williams claimed that as the employee pushed her along the sidewalk, he began to run despite her requests that he stop. CP at 2. She alleged that as he pushed her, one of the wheels of her wheelchair hit a raised crack in the sidewalk, stopping the wheelchair abruptly and causing her to be thrust from the wheelchair, causing personal injuries. CP at 2. Williams claimed that Central Bible negligently failed to maintain the sidewalk in a safe condition. CP at 3.

B. Williams' Representation

On May 25, 2012, an attorney licensed in Washington, David Britton, moved for limited "pro hac vice" admission on behalf of Katrina Coleman, an attorney licensed in Michigan, under Admission to Practice Rule (APR) 8(b). CP at 53-58. The trial court granted the motion. CP at 56. Britton and Coleman then filed a joint notice of appearance on Ms.

Williams' behalf. On June 18, 2013, after the Court awarded discovery sanctions against Plaintiff, CP at 475-76, Britton withdrew. CP at 377-78.

On August 21, 2013, another attorney licensed in Washington, Michael Ewetuga, filed a notice of appearance on Ms. Williams' behalf. CP at 560-61. However, no motion for pro hac vice/APR 8(b) admission was filed to re-admit Ms. Coleman, Ms. Williams' Michigan counsel. Mr. Ewetuga subsequently withdrew from representation on October 8, 2013.

C. Central Bible's Summary Judgment Motion

On August 2, 2013, Central Bible moved for summary judgment, arguing that (1) it owed no duty to Williams as an adjacent property owner, (2) Williams failed to present any evidence of negligence because she could not identify the alleged crack in the sidewalk or where the accident occurred, and (3) Central Bible was not negligent as a matter of law because the crack was an open and obvious danger of which Central Bible had no prior knowledge. CP at 491-94.

The hearing on Central Bible's summary judgment motion was set for August 30, 2013. CP at 488. Ms. Williams failed to file an opposition to the motion by that date. When Central Bible appeared to argue the unopposed motion, Mr. Ewetuga, Williams' Washington attorney who had filed a notice of appearance the previous week, orally moved for a continuance to give him time to review Williams' file. Report of

Proceedings (RP) at 3-4; CP at 602. Central Bible opposed the motion to continue, noting that the case already had been delayed significantly at multiple intervals. RP at 4-5. The trial court granted the continuance and gave Ms. Williams' new counsel three additional weeks to prepare, noting the new hearing date for September 20. RP at 8-9. The trial court ordered that Ms. Williams' response to the summary judgment motion was due by September 9, consistent with Civil Rule (CR) 56(c)'s requirement that materials in opposition to summary judgment motions be submitted no later than 11 days before the hearing. RP at 8-9. In the alternative, new counsel was to notify the parties in writing that he did not intend to oppose the pending motions for summary judgment. RP at 9.

Central Bible did not receive a response to its summary judgment motion by September 9 or notice that its motion would be unopposed. Consequently, Central Bible asked the trial court to grant its unopposed motion and to award fees for having to appear on August 30. CP at 627-28. On September 11, Central Bible received an untimely response to its motion and four supporting declarations. CP at 612-14, 617, 620, 623, 628. However, the response was not submitted by Mr. Ewetuga, Ms. Williams' new local counsel, but rather by Katrina Coleman, Williams' formerly-admitted pro hac vice counsel in Michigan. CP at 614. Central Bible asked that the trial court refuse to consider the untimely opposition brief and

corresponding declarations and additionally urged the trial court to reject the brief because it was signed by Ms. Coleman, who was no longer authorized to participate in the case because Britton, the attorney with whom she had associated under APR 8(b), withdrew months before. RP at 13-14; CP at 628. At the hearing, the trial court denied a vague request to postpone the hearing a second time to allow Ms. Coleman to travel to Pierce County to participate in the summary judgment hearing or to participate telephonically. RP at 19.

The trial court acknowledged the untimeliness of Ms. Williams' opposition and noted that it failed to comply with the court rules. RP at 17. The court further concluded that Britton's withdrawal from the case "canceled" Coleman's admission to practice in Washington. RP at 17.

Because the trial court was left "in a position with basically unopposed Summary Judgment motions," it granted Central Bible's motion. RP at 18. The trial court also granted Central Bible's request for attorney fees. RP at 18.

Plaintiff subsequently filed a Motion for Reconsideration. CP at 697-715. The motion was filed on October 1, 2013, more than ten days after the Court entered the order granting summary judgment. In addition, plaintiff failed to properly serve the motion on the defendants. The motion for reconsideration was denied.

D. Appellate Court Practice

On October 21, 2013, Ms. Williams filed a pro se notice of appeal with the Court of Appeals. Since filing her appeal, Ms. Williams has been dilatory in perfecting her appeal and submitting briefs, necessitating repeated action by the Court of Appeals Clerk. In addition, she engaged in unnecessary motion practice that further delayed the resolution of this appeal. On August 11, 2015, the Court of Appeals affirmed the trial court's dismissal of Ms. Williams' claims against Central Bible and First Transit.

On September 10, 2015, Ms. Williams filed a Petition for Review with the Washington State Supreme Court. The Petition for Review was not properly served on Respondents, who only learned of the Petition from correspondence from the Court Clerk dated October 16, 2015. By scheduling order issued by the Court Clerk, the Respondents were required to submit a response to the Petition not later than January 4, 2016.

At 4:28 p.m. on December 31, 2015 (the evening before a holiday weekend), Central Bible received an email from Elizabeth Young attaching an "Amended Petition for Review by the Washington State Supreme Court." Central Bible had no prior knowledge of Ms. Young or whether she had any connection to Bessie Williams. By order dated January 4, 2016, the Court Clerk rejected the amended petition for filing as Ms. Williams did not request or receive permission from the Court to file an amended petition.

Central Bible subsequently filed an answer to the original petition for review. On January 15, 2016, Ms. Williams filed the instant motion to file an amended petition.

IV. RESPONSE

Over three months after filing her six-page Petition for Review, Ms. Williams now requests leave to file a 27-page Amended Petition for Review. Not only is this request untimely, but it fails to satisfy the threshold issue for leave to file an amended petition.

A Petition for Review to the Washington Supreme Court must be filed within 30 days of the decision of the Court of Appeals. RAP 13.4(a). The Court may enlarge or shorten the time in which to file a petition for review, “only in extraordinary circumstances and to prevent a miscarriage of justice.” RAP 18.8.

“Extraordinary circumstances” include instances in which “the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control.” *Reichelt v. Raymark Indus., Inc.*, 52 Wn.App. 763, 765, 764 P.2d 653 (1988); *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998). Negligence, or lack of “reasonable diligence,” does not amount to “extraordinary circumstances.” *Beckman v. Dep't of Soc. & Health Servs.*, 102 Wn.App. 687, 695, 11 P.3d 313 (2000). Application of this rule does not turn on prejudice to the opposing party,

since if it did the court would rarely deny a motion for extension of time. *Reichelt*, 52 Wn.App. at 766.

Ignoring the fact that Ms. Williams did not properly serve the Respondents with her Petition for Review as required under the RAP 13.4(a) and 18.5, her Petition for Review was timely filed under RAP 13.4(a). The Court of Appeals decision was issued on August 11, 2015 and the Petition for Review was filed on September 10, 2015, less than 30 days later.

In her Motion to File Amended Petition, Ms. Williams argues that she should be granted leave to file an amended petition for two reasons. First, she claims that it is necessary for her to address the Supreme Court decision in *Keck v. Collins*, 184 Wash.2d 358, 357 P.3d 1080 (2015), which was issued after her original petition was filed. Second, Ms. Williams asserts that her original petition was a rough draft instead of the final version. Neither of these asserted grounds justifies the filing of an amended petition in this case.

A. Subsequent case authority does not constitute an “extraordinary circumstance.”

Ms. Williams argues that she should be permitted to submit an amended petition to address the holding in *Keck v. Collins*, *supra*, which was issued after she filed her original petition for review. In *Keck*, this

Court addressed the standard for excluding materials submitted in conjunction with a motion for summary judgment.

Ms. Williams does not identify any authority that stands for the proposition that subsequent case authority constitutes “extraordinary circumstances” as that term is used in RAP 18.8. The absence of such authority is not surprising, as the law is not static. Rather, decisional authority is being issued by Washington appellate courts on a weekly basis. This authority may supplement existing law or it may change the law altogether. In any event, there is never a guarantee that the law will not change between the time a petition for review is filed and the case is decided by the Court. As such, there is nothing “extraordinary” about this situation.

The Rules of Appellate Procedure grant parties leave to file a statement of additional authorities. RAP 10.8. Under this rule, Ms. Williams could submit a statement that identifies the issue for which *Keck v. Collins* is offered. However, the statement should not include additional argument. This procedure allows an appellant the opportunity to bring new authority to the attention of the Court before it issues a substantive ruling.

Instead of following the procedure outlined in RAP 10.8, Ms. Williams is seeking leave to present a completely new petition for review that not only addresses *Keck v. Collins* but contains twenty pages of new argument. Regardless of the outcome of this motion, *Keck v. Collins* is now

before the Court and will likely be considered as the Court evaluates the original petition for review. New case authority does not constitute “extraordinary circumstances” that justifies a new petition for review.

B. The discovery of an improper filing does not constitute “extraordinary circumstances”.

Ms. Williams also argues that she should be granted leave to file an amended petition because her original petition was a rough draft. In other words, she is now claiming that her misfiled petition constitutes excusable neglect. However, the record does not support any claim that Ms. Williams exercised due diligence to discover and correct her mistake.

First, since Ms. Williams’ petition for review was due prior to the issuance of *Keck v. Collins, supra*, it necessarily follows that her petition for review could not address the holding in that case. Regardless of whether Ms. Williams filed a rough draft or final version of her petition of review on September 15, 2015, it would not contain any arguments relating to *Keck*. However, Ms. Williams has not offered the final version of her September 15, 2015 petition for review. Instead, she now plans to file a completely new petition for review with significantly different arguments than were found in her original six-page petition.

Second, there is no explanation offered for the delay in remedying this alleged misfiling. Ms. Williams took over three months before filing

her amended petition without leave from the Court. While accidental filings can happen, there is no justification for not discovering the oversight in a timely manner. Even if the Court were to accept that mistakenly filing constitutes excusable neglect, which is not conceded by Central Bible, the three-month delay in discovering the issue is inexcusable.¹

C. Respondents will suffer prejudice should Ms. Williams be permitted to file an amended petition.

Ms. Williams asserts that an amended petition will not prejudice the Respondents. This argument ignores the controlling authority that the decision to permit amendment does not turn on the potential prejudice to the responding party. *Reichelt*, 52 Wn.App. at 766. Rather, the analysis turns on whether there are “extraordinary circumstances” that justify deviation from the standard rules regarding petitions for review.

Regardless of the applicable standard, the Respondents have and will suffer prejudice by Ms. Williams’ ongoing pattern and practice of noncompliance with the court rules. Respondents have already responded to the original Petition for Review. In the event Ms. Williams’ motion is granted, Respondents would presumably be granted leave to file a substantive response to the new arguments contained in the amended

¹ It is also inexplicable why Ms. Williams took over three months to address the holding in *Keck v. Collins*, since that opinion was issued approximately two weeks after Ms. Williams filed her original Petition for Review.

petition. In what has been a recurring theme in this case, Respondents will be required to engage in extra briefing because the appellant cannot follow the rules. This pattern and practice has wasted judicial time and resources, increased the costs of defending the claim and delayed final adjudication of the lawsuit. In other words, the Respondents will be prejudiced by an amended petition.

V. CONCLUSION

In her two-page motion, Ms. Williams fails to acknowledge the applicable standard for leave to file an amended petition for review or offer any explanation why her situation meets that standard. The record amply demonstrates that there is no justification, after a three-month delay, for Ms. Williams to receive yet another reprieve from the court rules. The Motion to File Amended Petition should be denied and the pending appeal to this Court should be evaluated on the grounds set forth in the original petition for review and the responses contained in the Respondents' respective answers currently on file with the Court.

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DATED this 16th day of February, 2016.

ANDREWS ▪ SKINNER, P.S.

By *s/Stephen G. Skinner*

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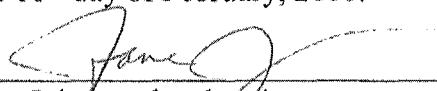
DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on February 16, 2016, I arranged for service of the foregoing Respondent Central Bible Evangelical Church's Answer to Petition for Review, to the court and to the parties to this action as follows:

Supreme Court of the State of Washington	Via email for filing
Bessie Williams 13023 Greenwood Ave. N. Seattle, WA 98133 hyprnike@comcast.net	Via Email and US Mail
Laura E. Kruse Betts Patterson & Mines, PS 701 Pike Street, Suite 1400 Seattle, WA 98101-3927 lkruse@bpmlaw.com	Via Email and US Mail

Dated at Seattle, Washington this 16th day of February, 2016.



Jane Johnson, legal assistant

OFFICE RECEPTIONIST, CLERK

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Subject: RE: Bessie Williams v. First Transit, et al.; Supreme Court No. 92368-0

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Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Subject: Bessie Williams v. First Transit, et al.; Supreme Court No. 92368-0

Re: Bessie Williams v. First Transit, et al.; Supreme Court No. 92368-0

Attached please find **Respondent Central Bible Evangelical Church's Response to Appellant's Motion to File Amended Petition** to be filed in the above matter.

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