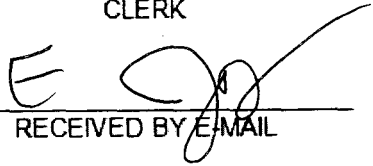


RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Mar 18, 2016, 12:39 pm
BY RONALD R. CARPENTER
CLERK


RECEIVED BY EMAIL

NO. 92368-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BESSIE WILLIAMS,
Plaintiff/Appellant,

v.

JOHN DOE, FIRST TRANSIT, INC.; CITY OF TACOMA; CENTRAL
BIBLE EVANGELICAL CHURCH,
Defendants/Respondents.

**RESPONDENT FIRST TRANSIT'S
RESPONSE TO APPELLANT'S MOTION
TO MODIFY MOTION FOR REVIEW**

Laura E. Kruse, WSBA #32947
Attorneys for Defendants/Respondents First
Transit, Inc.
Betts Patterson & Mines
One Convention Place, Suite 1400
701 Pike Street
Seattle WA 98101-3927
Telephone: (206) 292-9988

 ORIGINAL

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIESiv

I. INTRODUCTION AND FACTS 1

 A. Background Facts..... 1

 B. Procedural Posture 1

 C. Decision of Court of Appeals Division II 4

 D. Motion to File Amended Petition Should be Denied..... 6

II. RESPONSE..... 7

 A. Ms. Williams’ Motion is an Untimely Motion for
 Reconsideration..... 7

 B. Plaintiff Will Not Suffer Prejudice if Motion to File
 Amended Petition and Petition for Review are
 Heard on the Same Date 8

III. CONCLUSION..... 9

TABLE OF AUTHORITIES

Page

OTHER JURISDICTION RULES AND REGULATIONS

APR 8(b)	5, 6
CR 56(f)	5
CR 6(b).....	5

I. INTRODUCTION AND FACTS

A. Background Facts

Ms. Williams filed her Complaint on October 25, 2011 against First Transit and Central Bible Church. (Clerk's Papers ("CP") at 1 – 4). With respect to First Transit, Ms. Williams alleges that she was driven to the Central Bible Church in a shuttle bus on or about October 26, 2008. (*Id.* at 2, ¶ 9). Ms. Williams alleges that the shuttle driver, Mr. Halsten, was running while pushing her wheelchair on the sidewalk and that she was injured when the wheel of the wheelchair hit a raised crack in the sidewalk, causing the wheelchair to stop abruptly and her to fall forward out of the wheelchair. (*Id.*). Ms. Williams alleges that her injuries were caused by First Transit's breach of their duties. (*Id.* at ¶ 12 – 13).

B. Procedural Posture

The procedural history of this litigation has been tortuous. On June 18, 2013, local counsel for Ms. Williams (David Britton), who was the attorney that submitted a *pro hac vice* application for Ms. Williams' Michigan counsel, Ms. Coleman, filed a notice of intent to withdraw. This notice indicated that Mr. Britton no longer was going to represent Ms. Williams or associate with Ms. Coleman. (CP at 377 – 378). Despite the lack of counsel of record for Ms. Williams, First Transit timely served Ms. Coleman and Ms. Williams with a copy of their Motion for Summary

Judgment on August 2, 2013. (CP at 517 – 529, 633 – 650). No response was filed to First Transit’s motion by the original deadline of August 19, 2013. (CP at 586 – 599, 602 – 608).

Ms. Williams’ new local counsel, Michael Ewetuga, filed a Notice of Appearance on August 21, 2013. (CP at 560, 561). This Notice was not served on First Transit. (CP at 653, ¶ 11). Mr. Ewetuga contacted First Transit’s counsel on August 22, 2013 to request an extension of time to respond to its Motion for Summary Judgment. (*Id.*). First Transit refused, noting that counsel needed to formally move the court for an extension. However, Ms. Williams failed to file any such request with the trial court prior to the August 30, 2013 summary judgment hearing date. (*Id.*). Instead, Mr. Ewetuga presented himself at the hearing and argued that he had insufficient time to move for an extension because he had other motions on his calendar and had not been feeling well. (Verbatim Transcript of Proceedings (“TP”) at 4). Mr. Ewetuga also stated at the hearing that he was new to the matter and additional time should be granted for him to evaluate the claim and assess whether an opposition should be filed. (TP at 8).

The trial court granted Mr. Ewetuga’s oral request to extend the deadline by which to respond to First Transit’s and Central Bible’s respective motions for summary judgment. (TP at 8 – 9). At that time, the

trial court directed Mr. Ewetuga to file and serve a response, or to provide a letter to counsel and the trial court stating that no response would be filed, no later than close of business on September 9, 2013. (*Id.*). As First Transit's Second Reply reflects, no response was received by the end of the day on September 9, 2013. (CP at 586 – 587). Ms. Williams did not file her response and supporting declarations until September 11, 2013 – two days after the deadline set by the trial court. (*Id.*; CP at 654, ¶ 13). Moreover, notwithstanding Mr. Ewetuga's request to the trial court and argument that he needed additional time to evaluate the claim, Ms. Williams' opposition to First Transit's Motion for Summary Judgment was filed by Ms. Coleman. (CP at 653 – 654, ¶ 12).

At the second summary judgment hearing on September 20, 2013, Mr. Ewetuga appeared with an e-mail from Ms. Coleman, sent the night before, telling him that she would not be attending the hearing. (TP at 16). The trial court noted that it had not received working copies of the documents filed by Ms. Coleman and that although Ms. Coleman filed the documents, "her admission as *pro hac vice* has not been reaffirmed because Mr. Britton had withdrawn from the case." (TP at 12 – 13).

The trial court held that Ms. Williams' opposition materials were untimely, not in compliance with Pierce County Local Rules as no working copies were provided, and that the trial court could not consider

the filed documents because Ms. Coleman was not licensed in Washington. (TP at 17). The trial court considered the summary judgment motions unopposed and granted both Central Bible's and First Transit's motions for summary judgment. (TP at 18). The trial court also denied Ms. Coleman's e-mail request for a second postponement as moot. (TP at 19). Ms. Williams filed a Motion for Reconsideration on October 1, 2013. (CP at 697 – 715). This motion was untimely as it was filed more than ten days after the trial court entered its Orders on summary judgment, in violation of the Civil Rules. Ms. Williams also failed to serve her Motion for Reconsideration on First Transit or Central Bible. Her motion was denied.

C. Decision of Court of Appeals Division II

Clerk's Papers were prepared on December 5, 2013 pursuant to Ms. Williams' request for review to the Court of Appeals, Division II. (CP at 716 – 719). Ms. Williams failed to timely file her Opening Brief and instead requested an extension of 45 days. Although the appellate court noted that the reasons provided did not support granting an extension, an extension was given until June 9, 2014 in the interest of justice. In her Brief, Ms. Williams alleged that the trial court erred in (1) granting First Transit's Motion for Summary Judgment; (2) granting Central Bible's Motion for Summary Judgment; (3) not granting a short continuance

pursuant to CR 56(f) and CR 6(b); (4) striking the affidavits of Carol Williams and Alkenneth Gurley; and (5) not allowing Ms. Coleman to appear pursuant to APR 8(b).

The Court of Appeals filed its Opinion on August 11, 2015. The court held that: (1) the superior court did not abuse its discretion in striking untimely opposition documents and denying a second continuance because Ms. Williams failed to demonstrate a good reason for delay or delineate evidence that would be established through another continuance that would raise a genuine issue of material fact; (2) under a de novo standard of review, Ms. Williams' *pro hac vice* counsel automatically lost her association with local counsel and her ability to appear in Washington when local counsel withdrew and, therefore, the superior court properly struck opposition materials signed and filed by her; (3) under a de novo standard of review, and considering all evidence available to the superior court including the stricken opposition materials, summary judgment in favor of First Transit was proper because Ms. Williams failed to offer any evidence creating a genuine issue of material fact; and (4) under a de novo standard of review, and considering all evidence available to the superior court including the stricken opposition materials, summary judgment in favor of Central Bible was proper because Ms. Williams failed to raise a genuine issue of material fact related to duty, breach and causation.

D. Motion to File Amended Petition Should be Denied

Ms. Williams filed a Petition for Review by the Washington State Supreme Court on September 10, 2015.¹ Therein, she alleged the Court of Appeals erred when it did not review de novo whether First Transit and Central Bible met their initial burden of proof on summary judgment, erred when it incorrectly interpreted APR 8(b) and cancelled her counsel's *pro hac vice* status, and erred when it applied an abuse of discretion standard to the superior court's rejection of untimely opposition materials.

By letter dated December 4, 2015, the Supreme Court ordered First Transit and Central Bible to serve any responses to such Petition by January 4, 2016. On December 31, 2015 at 4:27 p.m., **on a holiday weekend and not even one business day before responses were due**, an individual from the e-mail account "youngelizabeth4019@yahoo.com," whom we assume was operating on behalf of Ms. Williams, improperly served an "Amended Petition for Review by the Washington State Supreme Court."

By letter dated January 4, 2016, the Supreme Court rejected Ms. Williams's Amended Petition for Review as she failed to seek permission from the Court to file the same. On January 15, 2016, Ms. Williams filed

¹ Ms. Williams improperly served an "Amended Petition for Review by the Washington State Supreme Court on December 31, 2015. For the reasons stated below, this "Amended Petition" should be stricken.

a Motion to File Amended Petition. By letter dated January 19, 2016, the Supreme Court Ordered all responses to be filed by February 16, 2016. The Court also stated that Ms. Williams' Motion to File Amended Petition "is referred to a Department of the Court for determination at the same time as the Department considers the petition for review" (April 26, 2016).

II. RESPONSE

For the reasons set forth below, Ms. Williams' Motion to Modify Motion for Review should be denied:

A. Ms. Williams' Motion is an Untimely Motion for Reconsideration

Pursuant to CR 12.4(b), a "party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court."

Here, Ms. Williams' present motion largely reiterates her disagreement with this Court's rejection of her Amended Petition on January 4, 2016 (which was filed less than one business day before responses were due and filed without obtaining permission from the Court to file an amended pleading). To the extent her current motion is a motion to reconsider the rejection of her Amended Petition, it is untimely and should not be considered. The Court's decision was made on January 4, 2016 and Plaintiff's present motion was not filed until February 18, 2016 – well beyond the 20-day deadline. Defendant First Transit previously

addressed the substantive aspects of Ms. Williams' filing of an Amended Petition without Court approval (and her Motion to File Amended Petition) in its Response to Appellant's Petition for Review by the Washington State Supreme Court and its Response to Appellant's Motion to File Amended Petition, which it incorporates herein by reference.

Ms. Williams also takes issue with the fact that the Court's January 19, 2016 correspondence set the hearing date for her Motion to Amend Petition for April 26, 2016, the same day the Court is set to hear Plaintiff's Petition for Review. Through her present motion, Ms. Williams seeks to "modify the clerk's decisions from the January 19, 2016 letter." Again, to the extent her present motion is a motion for reconsideration of any substantive decisions in the Court's January 19, 2016 letter, it is untimely filed and should not be considered.

B. Plaintiff Will Not Suffer Prejudice if Motion to File Amended Petition and Petition for Review are Heard on the Same Date

Ms. Williams will not suffer any prejudice if her Motion to File Amended Petition and her Petition for Review are both heard on April 26, 2016. For example, the Court can first consider her Motion to File Amended Petition. Depending on its ruling thereon, it can go on to review either her original Petition for Review or her Amended Petition for Review, which already has been filed with the Court (on December 31, 2015).

Ms. Williams cites no authority suggesting prejudice in this situation or supporting any argument of prejudice. In fact, she provides no argument or reasons why prejudice will result to her at all if her motion and petition are heard on the same day. At most, she merely states that she is “concerned” that she *might* be “prejudiced by not having a decision regarding the amended petition prior to it being review[ed] by the court.” As outlined above, Ms. Williams will in fact not suffer any prejudice by having her Motion to File Amended Petition and her Petition for Review heard on the same date. In reality, if the Court proceeds as Defendant outlines above, a decision regarding her Motion to File Amended Petition will be made before her Petition for Review is heard or reviewed by the Court.

III. CONCLUSION

Based on the foregoing, First Transit respectfully requests that this Court deny Ms. Williams’ Motion to Modify Motion for Review.

///

///

///

///

RESPECTFULLY SUBMITTED this 16th day of March, 2016.

BETTS, PATTERSON & MINES, P.S.

By s/ *Laura E. Kruse*
Laura E. Kruse, WSBA #32947
Attorneys for Respondent First Transit, Inc.

CERTIFICATE OF SERVICE

I, Susan Ferrell, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on March 18, 2016, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document:

- **Respondent First Transit's Response to Appellant's Motion to Modify Motion for Review**

*Counsel for Defendant Central Bible
Evangelical Church*
Stephen G. Skinner
Andrews Skinner, PS
645 Elliott Ave W Ste 350
Seattle, WA 98119

By E-mail

Plaintiff Pro Se
Bessie Williams
13023 Greenwood Ave. N
Seattle, WA 98133

By E-mail
(hyprnike@comcast.net)
and U.S. Mail

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

///

DATED this 18th day of March, 2016.

s/ Susan Ferrell

Susan Ferrell

OFFICE RECEPTIONIST, CLERK

To: Susan Ferrell
Cc: Laura Kruse; Crystal Ellis
Subject: RE: Supreme Court No. 92368-0; Bessie Williams v. First Transit, et al.

Received on 03-18-2016

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.

From: Susan Ferrell [mailto:sferrell@bpmlaw.com]
Sent: Friday, March 18, 2016 12:37 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Laura Kruse <lkruse@bpmlaw.com>; Crystal Ellis <cellis@bpmlaw.com>
Subject: Supreme Court No. 92368-0; Bessie Williams v. First Transit, et al.

Good Afternoon,

Attached for filing with the Washington State Supreme Court is Respondent First Transit's Response to Appellant's Motion to Modify Motion for Review.

If I may be of further assistance, please give me a call at my direct number highlighted below.

Thank you for your kind assistance.

Susan M. Ferrell

Legal Assistant

Betts, Patterson & Mines, P.S.

One Convention Place

701 Pike Street, Suite 1400

Seattle, WA 98101-3927

D 206.268.8766 | F 206.343.7053

www.bpmlaw.com



Confidentiality Notice: This email and any attachments may contain confidential or attorney-client protected information that may not be further distributed by any means without permission of the sender. If you are not the intended recipient, you are hereby notified that you are not permitted to read its content and that any disclosure, copying, printing, distribution or use of any of the information is prohibited. If you have received this email in error, please immediately notify the sender by return e-mail and delete the message and its attachments without saving in any manner.