



### **FACTS RELEVANT TO MOTION**

On September 10, 2010 Petitioner, by and through his attorney Thomas J. Foley, filed suit against Respondents seeking an ex parte injunction, quiet title, and ejectment order. (CP at 1-9.)

The parties went to trial on April 30, 2015, and the Honorable Brian Altman gave an oral ruling quieting Petitioner's title to the 20-foot easement, granting Petitioner an injunction prohibiting Respondents from interfering in any way with the Petitioner's easements, among other things, and granting Petitioner reasonable attorneys' fees, costs, and some damages for loss of use of the easement. (RP at 244-245.)

Respondents appealed the decision of Judge Altman on February 11, 2016.

The Court of Appeals, Division II, filed its unpublished decision on December 20, 2016. (*Hannigan v. Novak*, No. 48501-0-II (Wash.App. Div. II Dec. 20, 2016) [hereinafter "Appellate Decision"].) The Court of Appeals affirmed every portion of the trial court's decision, except for the award of attorneys' fees to Petitioner on the grounds that there was an insufficient record for the award. (Appellate Decision, at 23.)

On January 4, 2017, Petitioner timely filed a motion for reconsideration, by e-mail, asking the Court of Appeals to reconsider the reversal of the award of attorneys' fees, and to instead remand the issue to the trial court for the purpose of developing an adequate record on the issue of attorneys' fees for the Court of Appeals to review. The Court of Appeals denied Petitioner's motion for reconsideration on February 13, 2017.

On March 14, 2017, Petitioner mailed the Petition to the Court of Appeals and Respondent. On March 16, 2017, the Court of Appeals received the Petition. On March 21, 2017, Petitioner received a letter from the Supreme Court stating the Petition needed to be received by the Court by March 15, 2017 in order to be timely. Petitioner now seeks a one day extension of time so that the Petition may be heard.

#### **GROUND FOR RELIEF AND ARGUMENT**

Pursuant to RAP 18.8(a) the Court may extend Petitioner's time to file a petition in order to serve the ends of justice. In this case, such an extension for the receipt of the Petition from March 15, 2017 to March 16, 2017 would serve the ends of justice. Petitioner was late in getting the Petition to the Court of Appeals by

one day, and Petitioner had mailed and served the Petition prior to the Court's deadline.

A strict application of RAP 18.6(c), requiring that the Petition be received by the Court of Appeals within 30 days, would be unjust in this case. Petitioner's attorney misread the rule, believing that the petition only had to be mailed by the 15<sup>th</sup>. All of Petitioner's filings by mail to this date have had their timeliness determined by the date of mailing, and not receipt, pursuant to RAP 18.6(c). It is hoped that the attorney's mistake will not result in a sanction to Petitioner, by causing the Petition to not be considered. Furthermore, Respondent has not in any way been prejudiced by this single day of lateness and was timely served under RAP 18.6(b).

A denial of this motion for an extension of time would constitute a gross miscarriage of justice. Petitioner maintains the Court of Appeals was in error when it reversed the trial court's award of attorneys' fees to Petitioner. The Court of Appeals failed to follow the Supreme Court precedent cited in the Petition on the issue, and did not provide a rationale in its denial of Petitioner's motion for reconsideration. Petitioner deserves to have his valid arguments heard on their merits, particularly when they are

supported by Supreme Court precedent, the Petition left the hands of the Petitioner a day before the deadline, the reason the Petition was late was due to a misreading of a procedural rule on the part of Petitioner's attorney, and Respondent was not in any way prejudiced by the lateness of the Petition and was served in a timely manner.

Respectfully submitted this 29<sup>th</sup> day of March, 2017.



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