

SUPREME COURT
OF THE STATE OF WASHINGTON

CHARLES HAUSE, an individual,

Petitioner,

v.

SPOKANE COUNTY, a
Washington Municipal Corporation,

Respondent.

No. 1034075

RESPONDENT
SPOKANE
COUNTY'S
ANSWER TO
MOTION FOR
EXTENSION

I. IDENTITY OF RESPONDING PARTY

Spokane County (“the County”) is the Respondent opposing Petitioner Charles Hause’s motion to extend the deadline for filing a petition for review. The County respectfully requests that Mr. Hause’s motion be denied and that his petition be dismissed as untimely. This motion is supported by the subjoined Declaration of John R. Nicholson

II. ISSUE

Should the Court deny Mr. Hause’s motion to excuse the late filing of his petition for review and dismiss this appeal where

Mr. Hause has not shown “extraordinary circumstances” or that that granting the motion is necessary to “prevent a gross miscarriage of justice,” as required to satisfy RAP 18.8(b)?

III. FACTS

Mr. Hause brought an action in Superior Court asserting various tort claims against the County based on its termination of his employment. Ultimately, the Superior Court entered summary judgment in favor of the County on all Mr. Hause’s claims, dismissing his suit. On July 25, 2024, Division III of the Court of Appeals filed an unpublished opinion affirming summary judgment in favor of the County. Therefore, under RAP 13.4(a) and RAP 18.6(a), any Petition for Review was required to be filed in the Court of Appeals by no later than August 26, 2024.

Mr. Hause filed a petition for review with the Court of Appeals on August 26, 2024, but not until 6:55 p.m. Nicholson Decl., Exh. 1. Mr. Hause’s attorney sent an email to the County’s attorney that evening at 6:44 p.m. attaching the petition for

review and stating he had “spent the last 2.5 hours fighting with the table of contents and table of authorities” and had “completely forgotten how difficult it was to figure out.” Nicholson Decl., Exh. 2. Because the Petition was filed after 5 p.m. and outside the clerk’s business hours, the Petition is considered to have been filed “at the beginning of the next business day,” which was August 27, 2024. GR 30(c)(1).¹ Later that day, Mr. Hause also filed the instant motion seeking an extension of time to file his petition for review to excuse its untimeliness.

IV. ARGUMENT & AUTHORITIES

It is undisputed that Mr. Hause’s petition for review is untimely. A request for an extension of time to excuse the late

¹ The “General Information” section on the Court of Appeals’ website specifically informs litigants as follows: “For purposes of electronic filing or FAX filings, the clerk’s business hours end at 5:00 p.m. Documents received by 5:00 p.m. will be considered filed that day. Documents filed after 5:00 p.m. will be considered filed the next judicial day. GR 30 (c)(1), GR 17(b)(3).” Nicholson Decl., Exh. 3. The Washington Courts website further reflects that, “The Supreme Court Clerk’s Office is open from 8:00 a.m. to 5:00 p.m. Monday – Friday, except for Holidays.” *Id.*, Exh. 4.

filing of a petition for review is governed by the following provision within the Rules of Appellate Procedure:

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

RAP 18.8(b) (emphasis added). The rule “expresses a public policy preference for the finality of judicial decisions over the competing policy of reaching the merits in every case.” *Pybas v. Paolina*, 73 Wn. App. 393, 401, 869 P.2d 427 (1994). Mr. Hause’s motion must be denied, because he has not established that the late filing of the petition was due to “extraordinary circumstances” nor that “a gross miscarriage of justice” will result if the motion is not granted.

Washington courts have previously observed that the “rigorous test” of RAP 18.8(b) “has rarely been satisfied in reported caselaw since the effective date of the Rules of Appellate Procedure on July 1, 1976.” *Reichelt v. Raymark Industries, Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988); *see also Shumway v. Payne*, 136 Wn.2d 383, 964 P.2d 349 (1998) (“The standard set forth in the rule is rarely satisfied.”). In *Reichelt*, the Court determined that “extraordinary circumstances” meant “circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control. In such a case, the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant’s reasonably diligent conduct.” *Reichelt*, 52 Wn. App. at 765-66.

Mr. Hause’s attorney offers the excuse that he was having trouble completing the table of contents and table of authorities while finishing the petition on August 26, which resulted in its filing after the close of business. Thus, Mr. Hause’s attorney

waited until the last possible day to complete the petition, leading to its untimeliness when he encountered technical difficulties² at the last minute. While preparing a table of contents and authorities in a petition for review may be tedious and cumbersome, this is a regular part of the process of pursuing an appeal to the Washington Supreme Court. Nothing about this ordinary time management issue can be labeled “extraordinary.”

Mr. Hause’s motion also argues the criteria of RAP 18.8(b) are satisfied, because the delayed filing of the petition was the fault of Mr. Hause’s attorney and “not related in any way to the acts or omissions of Mr. Hause” himself. *Motion* at 3. A review of prior case law makes clear this argument is without merit.

² Mr. Hause’s attorney’s declaration submitted in support of the motion for extension simply avers that he encountered unspecified “technical issues that [he] had difficulty resolving” when completing the Petition for Review. Archer Decl., ¶4. He does not contend that there were any specific computer or software malfunctions that prohibited him from completing it. Rather, in his email to the County’s attorney, he attributed the difficulties he was experiencing to the infrequency of completing a table of contents and table of authorities, which he had not done in over a year. Nicholson Decl., Exh. 2.

For example, *Reichelt* involved an untimely notice of appeal that was the fault of the appellant's attorneys. *Reichelt*, 52 Wn. App. at 764. Affidavits submitted by the appellant indicated that one of its "two trial attorneys left the firm during the 30 days following entry of the judgment and that the firm's appellate attorney had an unusually heavy workload at that time." *Id.* Like Mr. Hause's counsel here, the appellant's counsel in *Reichelt* admitted they had made a mistake, and there is nothing in the opinion indicating that the appellant itself was in any way responsible for the late filing. *Id.* at 766. Nevertheless, the Court in *Reichelt* determined that RAP 18.8(b) was not satisfied, denied the appellant's request for an extension of time, and dismissed the appeal. *Id.*

Likewise, *Beckman v. State*, 102 Wn. App. 687, 11 P.3d 313 (2000), involved negligent conduct by a party's attorneys which resulted in the dismissal of an untimely appeal. In *Beckman*, the State of Washington filed an untimely notice of appeal in a civil case in which the Department of Social and

Health Services (“DSHS”) was found liable for a verdict in excess of \$17 million. *Id.* at 690-91. An Assistant Attorney General representing DSHS had not been reasonably diligent in ensuring that documents, such as the notice for presentation of the judgment, were timely routed to the appropriate persons. *Id.* at 695-96. Additionally, the Attorney General’s Office lacked needed procedures for calendaring hearings. *Id.* The Court of Appeals concluded that DSHS’ attorney’s negligence or lack of reasonable diligence did not constitute “extraordinary circumstances” under RAP 18.8(b). *Id.* at 695. Accordingly, the State’s motion to extend time for filing its notice of appeal was denied and its untimely appeal was dismissed. *Id.* at 696 (citing *State v. One 1977 Blue Ford Pick-up Truck and One 1980 Chevrolet Truck*, 477 A.2d 1226 (Maine 1982)).

This Court has also held that incorrect advice from an attorney will not establish “extraordinary circumstances” to satisfy RAP 18.8(b). In *Shumway v. Payne*, 136 Wn.2d 383, 964 P.2d 349 (1998), the Court answered questions certified by the

federal District Court for the Western District of Washington, which was resolving the petitioner's *habeas corpus* action. The petitioner argued that she should be granted an extension of time in which to file an untimely motion for discretionary review of the Court of Appeals' dismissal of her personal restraint petition, "because the attorney who represented her on direct appeal and who informally consulted with her in the preparation of her personal restraint petition may have told her that it was not necessary to ask [the Washington Supreme Court] for review in order to pursue a habeas action in federal court." *Id.* at 396. Again, the Court rejected this argument under RAP 18.8(b), finding the petitioner had no right to seek discretionary review. *Id.* at 397.

In sum, the Court has previously rejected arguments that RAP 18.8(b) is satisfied in a multitude of situations where evidence showed the appellant's attorney was negligent or responsible for an untimely filing. This matter is not materially different from these prior cases.

Importantly, Washington Courts have recognized that a lack of prejudice to the opposing party is irrelevant to a request for extension under RAP 18.8(b). *Reichelt*, 52 Wn. App. at 766 (“RAP 18.8(b), however, does not turn on prejudice to the responding party. If it did, there would rarely be a denial of a motion to extend time.”); *State v. Fox*, 192 Wn. App. 512, 523, 371 P.3d 537 (“The application of RAP 18.8(b) does not turn on prejudice to the opposing party.”) “Rather, the prejudice of granting such motions would be to the appellate system and to litigants generally, who are entitled to an end to their day in court.” *Reichelt*, 52 Wn. App. at 766, fn. 2.

Nor does the asserted importance of the underlying issues in the case affect the Court’s analysis under RAP 18.8(b). In *Schaeferco Inc. v. Columbia River Gorge Com’n*, 121 Wn.2d 366, 849 P.2d 1225 (1993), a property developer failed to timely perfect its appeal. *Id.* at 366-37. This Court acknowledged that dismissal of the appeal was required, even though the appeal involved important questions for it to resolve:

We recognize that Schaefco raises many important issues, including an equal protection claim arising from the Gorge Act's failure to designate Washougal, Washington as an urban area. However, it would be improper to consider these questions given the procedural failures of this case.

Id. at 368 (citing RAP 18.8(b); RAP 18.9 (b); *State v. Ashbaugh*, 90 Wn.2d 432, 438, 583 P.2d 1206 (1978)); *see also Fox*, 192 Wn. App. at 525-26 (dismissing untimely appeal under RAP 18.8(b) even though appellant raised important questions about the juvenile court's jurisdiction). By the same token, Mr. Hause's insistence here that his petition raises important issues of public concern is not a basis for the Court to overlook the petition's untimely filing.

CONCLUSION


Mr. Hause had his day in Court. He was able to pursue his case in the Superior Court, which rejected it as a matter of law on the merits, and then have that decision reviewed by a three-member panel of judges on the Court of Appeals, who unanimously affirmed. Further review in this Court is a privilege

rather than a right, and to secure it the Court's rules limiting the time for filing a petition for review must be strictly followed except in "extraordinary circumstances and to prevent a gross miscarriage of justice." RAP 18.8(b). "The Court Rules of Appellate Procedure restrict extensions of time in these circumstances for sound policy reasons." *Reichelt*, 52 Wn. App. at 766. Mr. Hause's motion for extension should therefore be denied, and his petition for review should be dismissed as untimely.

I hereby certify this Response to Petitioner's Motion for Extension contains 2,015 words pursuant to RAP 18.17(b).

DATED this 26th day of September, 2024.

JACKSON & NICHOLSON, P.S.


JOHN R. NICHOLSON, WSBA #30499
Attorneys for Respondent
Spokane County

DECLARATION OF JOHN R. NICHOLSON

I, John R. Nicholson, hereby declare as follows:

1. I am over the age of eighteen, have personal knowledge of the matters stated herein, and am competent to testify.

2. I am the attorney of record for Respondent Spokane County in this matter.

3. Attached to this declaration as **Exhibit 1** is a true and accurate copy of a transmittal confirmation from Division III of the Court of Appeals showing Petitioner Charles Hause's petition for review was filed there on August 26, 2024 at 6:55 p.m.

4. Attached to this declaration as **Exhibit 2** is a true and accurate copy of an email my office received from Mr. Hause's attorney on August 26, 2024 at 6:44 p.m., which attached the petition for review.

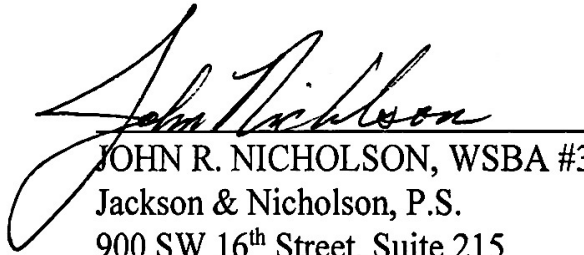
5. Attached to this declaration as **Exhibit 3** is a true and accurate copy of a print-out of the General Information page

for Division III of the Court of appeals on the Washington Courts website.

6. Attached to this declaration as **Exhibit 4** is a true and accurate copy of a print-out from the Washington Courts website reflecting the hours for the Clerk's Office at the Washington Supreme Court.

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

DATED this 26th day of September, 2024 at Tacoma, Washington.


JOHN R. NICHOLSON, WSBA #30499
Jackson & Nicholson, P.S.
900 SW 16th Street, Suite 215
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(206) 582-6001
Fax: (206) 466-6085
John@jnseattle.com
Attorneys for Respondent
Spokane County

DECLARATION OF SERVICE

On said date below I served a copy of Respondent's Answer to Motion for Extension in Cause No. 1034075 to the following parties by the method indicated below:

Heather C. Barden
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PO Box 8663
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heather@bardenandbarden.net
madeleine@bardenandbarden.net

☒ Via Washington State
Appellate Courts' Portal
☐ ABC/Legal
Messenger
☒ Email

Max K. Archer
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☒ Via Washington State
Appellate Courts' Portal
☐ ABC/Legal
Messenger
☒ Email

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

DATED this 26th day of September, 2024, at Olympia,

Washington.



JENNY SINGLETON, Paralegal
JACKSON & NICHOLSON, P.S.

Exhibit 1

RIVERSIDE NW LAW GROUP, PLLC

August 26, 2024 - 6:55 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 39659-2
Appellate Court Case Title: Charles Hause v. Spokane County
Superior Court Case Number: 21-2-03239-8

The following documents have been uploaded:

- 396592_Petition_for_Review_20240826185417D3206400_0394.pdf
This File Contains:
Petition for Review
The Original File Name was CONFORMED COPY - Petition for Review.pdf

A copy of the uploaded files will be sent to:

- John@jnseattle.com
- heather@bardenandbarden.net

Comments:

Sender Name: Maximillian Archer - Email: mka@rnwlg.com
Address:
905 W RIVERSIDE AVE STE 208
SPOKANE, WA, 99201-1099
Phone: 509-504-8714

Note: The Filing Id is 20240826185417D3206400

Exhibit 2

John Nicholson

From: Max Archer <mka@rnwlg.com>
Sent: Monday, August 26, 2024 6:44 PM
To: John Nicholson; Jenny Singleton
Subject: Petition for Review - Hause
Attachments: FINAL - Petition for Discretionary Review - Hause.pdf

John,

I hope you're doing well. Attached is Mr. Hause's Petition for Review. I apologize for getting this to you after 5 PST. I spent the last 2.5 hours fighting with the table of contents and table of authorities. It'd been over a year since I last did a TOC / TOA, I'd completely forgotten how difficult it was to figure out. Again, I apologize.

Can you please confirm receipt? Additionally, do you have any opposition to me filing a very, very brief motion asking SCOWA to extend the deadline for filing to a few moments ago, i.e., when the brief was filed? I just want SCOWA to have on file a motion from me explaining the formatting issues I encountered and apologizing for the hour tardiness. If so, I'd really appreciate it.

Thanks, John. Again, hope you're well.

Best,

Max Archer
Attorney at Law
Riverside NW Law Group, PLLC
905 W. Riverside Ave., Ste. 208
Spokane, WA 99201
509-504-8714

Exhibit 3

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Court of Appeals : Division III - General Information

Tristen Worthen, Clerk/Administrator

Court Location: 500 N. Cedar St.
Spokane, WA 99201

Days and Hours of Operation: Telephone Reception Hours:
8:00 a.m. - Noon
and 1:00 - 4:00 p.m. M-F

Public Lobby Hours:
8:00 a.m. - Noon
and 1:00 p.m. - 4:00 p.m. M-F

Except for Holidays

Mailing Address: 500 N Cedar St
Spokane, WA 99201

Phone Number: 509-456-3082

Fax Number: 509-456-4288
(fax filings accepted pursuant to General Order)

Virtual proceedings will be livestreamed with the assistance of TVW.

Access to the oral arguments can be found at the following link: Video Hearings

Filing Information: For purposes of electronic filing or FAX filings, the clerk's business hours end at 5:00 p.m. Documents received by 5:00 p.m. will be considered filed that day. Documents filed after 5:00 p.m. will be considered filed the next judicial day. GR 30(c)

Number of Copies to File in Division III



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TRANSLATIONS

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한국어서람/Korean
Русский/Russian
Español/Spanish
Tiếng Việt/Vietnamese

Exhibit 4

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Court Hours

Supreme Court

The Supreme Court Clerk's Office is open from 8:00 a.m. to 5:00 p.m. Monday - Friday, except for Holidays.

Court of Appeals

Hours vary for the Divisions of the Court of Appeals. Please review the General Information page for each Division hours.

- > [Division I](#)
- > [Division II](#)
- > [Division III](#)

Trial Courts (Superior Courts, District and Municipal Courts)

Hours vary for courts throughout the State of Washington. To determine the exact hours for a court, please conta

Contact information for the courts can be found in the [Court Directory](#).

Emergency Court Closure

Court Rule 21(a) provides "a court may be closed if weather, technological failure or other hazardous or emergen become such that the safety and welfare of the employees are threatened or the court is unable to operate or de protect the court, its employees or property."

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JACKSON & NICHOLSON, P.S.

September 26, 2024 - 10:03 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,407-5
Appellate Court Case Title: Charles Hause v. Spokane County
Superior Court Case Number: 21-2-03239-8

The following documents have been uploaded:

- 1034075_Answer_Reply_20240926100205SC426199_3384.pdf
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Answer/Reply - Answer to Motion
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Comments:

Sender Name: Kimberly Weathers - Email: kimberly@jnseattle.com

Filing on Behalf of: John Robert Nicholson - Email: John@jnseattle.com (Alternate Email: John@jnseattle.com)

Address:
900 SW 16th Street, Suite 215
Renton, WA, 98057
Phone: (206) 582-6001

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