Supreme Court Case No. 1034261
Court of Appeals Case No. 871846 – Division I

THE SUPREME COURT OF WASHINGTON

GREGORY MICHAEL KRSAK,

Petitioner,

vs.

CHRISTELL CHARITY KRSAK,

Respondent.

RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR REVIEW

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A. IDENTITY OF RESPONDING PARTY

Respondent Christell Krsak, Mr. Krsak's former spouse and the current primary residential parent of their daughter, files this response to Mr. Krsak's *Motion for Extension of Time to File a Petition for Review* (the "Motion").

B. RELIEF REQUESTED

Ms. Krsak asks this court to deny Mr. Krsak's Motion because he has not shown a "gross miscarriage of justice" would occur if his Motion were denied. Demonstrating a "gross miscarriage of justice" is the threshold standard required by the Rules of Appellate Procedure. *See* RAP 18.8(b)[1] Because Mr. Krsak fails to satisfy the exceedingly strict demands of RAP 18.8, his Motion must be denied.

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[1] RAP 18.8 was recently amended, inserting a new provision and moving the former RAP 18.8(b) to RAP 18.8(c). The new RAP 18.8(c) and the former RAP 18.8(b) are the same, verbatim, the only difference being the enumerated subsection. Ms. Krsak will cite to RAP 18.8(b) as that was the statue in effect when Mr. Krsak filed his untimely *Petition for Review*.

C. LEGAL ANALYSIS AND ARGUMENT

1. Mr. Krsak Has Not Demonstrated a Gross Miscarriage of Justice Would Occur if His Motion Were Denied

As a general rule, the Rules of Appellate procedure are to be "liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2. In a similar vein, appellate courts are given the broad discretion to "enlarge or shorten the time within which an act must be done … in order to serve the ends of justice." RAP 18.8(a).

There are, however, explicit exceptions to this general rule of liberality, RAP 18.8(b), being one of those exceptions. RAP 18.8(b) unambiguously states an "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 petition for review." RAP 18.8(b) (emphasis added). This rule departs so starkly from the general rule of liberal construction, it is expressly referenced in RAP 1.2. *See*, RAP 1.2(a)

If the plain language and express reference of this rule is not sufficient to drive home the strictness of the rule, RAP 18.8(b) goes on to say an "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." *Id.* (emphasis added). Thus, the expected outcome from of a motion to enlarge time is a denial of the motion.

The plain language of RAP 18.8(b) demonstrates that in weighing the competing interests of adjudicating cases on the merits and finality of decisions, and appellate courts required to favor finality. *See Pybas v. Paolino*, 73 Wash. App. 393, 401, 869 P.2d 427, 432 (1994) ("RAP 18.8(b) … expresses a public policy preference for the finality of judicial decisions over the competing policy of reaching the merits in every case"); *Reichelt v. Raymark Indus.*, 52 Wash. App. 763, 765, 764 P.2d 653, 654 (1988) ("RAP 18.8(b) … clearly favors the policy of finality of judicial decisions over the competing policy of reaching the merits in every case").

Here, Mr. Krsak articulates no "gross miscarriage of justice" that would occur if his Motion were denied. As he has since before this case went to trial several years ago, Mr. Krsak cherry picks portions of statutes he finds beneficial—in this case the language from RAP 18.8(a) discussing serving the ends of justice—and completely ignores portions of statutes that do not benefit him—in this case the language from 18.8(b) establishing his burden of demonstrating a gross miscarriage of justice.

Mr. Krsak's unwillingness to address what gross miscarriage of justice he would face if his Motion were denied is explained by even a brief glance at the procedural history of his case. In January 2021, Ms. Krsak sought, and obtained, a domestic violence protection order against Mr. Krsak. In March 2021, Ms. Krsak sought, and obtain, a temporary parenting plan limiting Mr. Krsak's time with his daughter to four hours of supervised visits each week. At a return hearing in June 2021, Mr. Krsak argued he had been the primary care taker of the parties' child and should have the vast majority of the residential

time. Mr. Krsak's arguments failed, but was given an extra two hours of supervised visitation with his daughter each week, bringing his total to six hours each week. This arrangement lasted until trial.

At trial in July 2022, the trial Court entered a permanent parenting plan similar to the temporary parenting plan, limiting Mr. Krsak's time with his daughter. The trial court's decision came after three lay witnesses and a Guardian ad Litem testified about Mr. Krsak's history of abusing his wife, abusing the woman he was having an affair with during his marriage to Ms. Krsak, and his complete lack of remorse for his history of abuse towards his romantic partners.

Mr. Krsak did not agree with the final parenting plan, so he filed a motion for reconsideration with the trial judge, which was summarily denied. Approximately one year later, Mr. Krsak filed a motion under CR 60(b) seeking, once again, to challenge the final parenting plan and establish himself as the primary care taker of the parties' child. His efforts failed.

After Mr. Krsak's CR 60(b) motion was denied, he filed this appeal, once again seeking to challenge the final parenting plan. After hearing Mr. Krsak's arguments on the merits, the appellate court denied Mr. Krsak's petition. Mr. Krsak then filed a motion for reconsideration with the appellate court, which was also denied.

Now, after six different decisions from judicial officers, ranging from court commissioners to appellate court judges, have made, essentially, the same findings, Mr. Krsak is asking this Court to come to a different conclusion.

Mr. Krsak can articulate no gross miscarriage of justice in this matter, because there is none. When most litigants are content with having their day in court, Mr. Krsak is demanding a month. Mr. Krsak's Motion should be denied, and Ms. Krsak should finally, after years of futile litigation, get to rest from Mr. Krsak's persistent, misguided efforts at vindication. Mr. Krsak has had the merits of his case heard repeatedly, and there is no credible reason he should have a seventh chance now.

2. Mr. Krsak's Arguments Regarding Prejudice to Ms. Krsak are Irrelevant

One of Mr. Krsak's arguments is, essentially, that his Motion should be granted because Ms. Krsak would not be prejudiced if his Motion were granted. This argument, even if it were true, is irrelevant.

Previous cases have made it clear RAP 18.8(b) "does not turn on prejudice to the responding party." *Reichelt*, 52 Wash. App. at 766, 764 P.2d at 654. The rationale for this is simple, if the deciding factor were whether a responding party would be prejudiced, "there would rarely be a denial of a motion to extend time." *Id.* In a footnote, the *Reichelt* Court explained further that "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 Wash. App. at 766 n.2, 764 P.2d at 654.

As the *Reichelt* court astutely observed, the prejudice of allowing motions to enlarge is to the appellate system itself and

to litigants more generally. The prejudice to Ms. Krsak should not be measured by a delayed briefing schedule, but in the time, effort, and money she must continually re-direct from the parties' daughter into fighting against Mr. Krsak's Don-Quixote-like quest at vindication. Rather than allowing Mr. Krsak to endlessly tilt at windmills, this matter needs to end.

3. Mr. Krsak, as a *Pro Se* Litigant Must be Held to the Same Standard as Experienced Legal Counsel

One argument Mr. Krsak has utilized many times since he fired his two attorneys—accusing them both of a litany of serious ethical violations—is that he should be afforded special treatment. Mr. Krsak's request is inconsistent with Washington law and should be disregarded.

Pro se litigants on appeal are held to the same standards as attorneys and are bound by the same rules of procedure and substantive law. *See*, *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993); *see also*, *In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983) ("the law does not

distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel -- both are subject to the same procedural and substantive laws." As such, Mr. Krsak should be treated the same as experienced legal counsel.

D. REQUEST FOR ATTORNEYS' FEES

The trial court hearing Mr. Krsak's CR 60(b) motion that began this appeal, ordered Mr. Krsak to pay Ms. Krsak's attorneys' fees because his motion was completely baseless. Ms. Krsak is asking the Court to award her attorneys' fees for responding to Mr. Krsak's Motion, which has been fatally flawed from the outset. Mr. Krsak cannot litigate with abandon. There should be consequences for the resources Ms. Krsak has had to needlessly expend to defend herself.

E. CONCLUSION

RAP 18.8(b) requires the Court to deny Mr. Krsak's Motion. Motions to extend time should ordinarily be denied and should only be granted in extraordinary circumstances and to

prevent a gross miscarriage of justice. Neither of those factors are found here. Instead, Mr. Krsak's Motion should be denied, and Ms. Krsak should be allowed to rest after nearly 4 years of futile litigation on Mr. Krsak's part.

This document contains 1,587 words, excluding parts of the document exempted from the word county by RAP 18.17.

Submitted this 14th day of October, 2024

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