

FILED
SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 1038496

Court of Appeal No. 388778
Consolidated with No. 390641

SUPREME COURT
OF THE STATE OF WASHINGTON

PAULA S. NEIS, Trustee of the Daniel L. NEIS Revocable
Trust, and Paula S. NEIS and GLORIA RAE FRASER,
Respondents

vs.

HOWARD WOOLLETT and PETRIA WOOLLETT,
Petitioners

**PETITIONERS' MOTION TO SEPARATE THE
CONSOLIDATED APPEALS AND ISSUE A MANDATE
ON THE NEIS APPEAL**

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I. IDENTITY OF MOVING PARTY

Petitioners Howard and Petria Woollett, the Defendants/Third Party Plaintiff in the underlying action, are the moving parties.

II. RELIEF SOUGHT

Petitioners request the consolidated appeals be separated to allow a final mandate as to the Neis Appeal. Respondent Neis has exhausted her legal remedies and it is appropriate to issue a mandate as to Respondent Neis under Court of Appeals cause no. 388778.

III. ARGUMENT

Paula Neis is the appellant in the underlying cause no. 388778. Gloria Fraser is the appellant in the underlying cause no. 390641. The appellants moved to consolidate the two appeals. The matter was fully briefed and a hearing was held in which the Appellate Court granted consolidation.

Respondent Neis has exhausted her legal remedies on appeal while the Fraser appeal remains subject to the current

Petition for Review. In the Court of Appeals Division III April 2, 2024 Unpublished Opinion, the Court found that the Trial Court did not err in its findings or abuse its discretion, and that Neis was not the prevailing party. A Motion for Reconsideration was filed on April 22, 2024 and the Court denied Neis' reconsideration. See July 18, 2024 Order. Pursuant RAP 13.3 and 13.4 Neis had thirty (30) days to seek discretionary review by the Supreme court. Neis did not file a Petition for Review by August 17, 2024 as required by RAP 13.3, 13.4 and 18.5. To date Neis has not filed a Petition for Review.

Attached as Appendix A is the Commissioner's Ruling on Woollett's Motion for Mandate filed in the Court of Appeals.

IV. CONCLUSION

Petitioners request the Court separate the cases and issue a mandate as it pertains to Respondent Neis in the underlying cause no. 388778.

*This document contains 288 number of words, excluding
the parts of the document exempted from the word count by
RAP 18.17.*

DATED this 14th day of February 2025.

/s/ Kevin Roberts

Kevin W. Roberts, WSBA# 29473
Attorney for Petitioners Woollett

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February 2025, I caused to be served via the Court of Appeals filing system, a true and correct copy of the foregoing document to the following:

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APPENDIX A

The Court of Appeals
of the
State of Washington
Division III

PAULA S. NEIS, et al.,

Appellants,

v.

HOWARD WOOLLETT, et al.,

Respondents.

No. 38877-8-III
(consol. w/no. 39064-1-III)

COMMISSIONER'S RULING

Respondents Howard and Petria Woollett move to separate these consolidated appeals and ask the court to issue a mandate on the "Neis Appeal," i.e., case no. 38877-8-III.

Paula Neis is the appellant in case no. 38877-8-III. Gloria Frasier is the appellant in case no. 39064-1-III. The court consolidated the two cases on the appellants' motions and issued an unpublished opinion in this consolidated appeal on April 2, 2024. The opinion affirmed the decision appealed by Neis, remanded Frasier's matter for further proceedings in the superior court, and awarded Frasier attorney fees on appeal. Neis unsuccessfully moved for reconsideration and did not petition for review to the Supreme Court. The Woollett Respondents unsuccessfully moved for reconsideration and have filed a petition for review that asks the Supreme Court to review this court's opinion to the extent it awards attorney fees to Frasier. This court has held the Woolletts' Petition for Review pending a ruling on the Woolletts' motion to separate the consolidated cases.

No. 38877-8-III
(consol. w/no. 39064-1-III)

Appellants Neis and Frasier oppose the Respondents' motion. Citing RAP 3.3(b), they argue that a consolidated appeal must remain consolidated pending a Supreme Court order and that Respondents' motion is therefore premature and filed in the wrong court. They further contend that Neis has not exhausted her remedies because she could still seek relief under CR 60(b). Finally, they assert that a mandate might enable the Woolletts to enforce their judgment against Neis's supersedeas bond before the trial court can resolve the remanded issues in Frasier's case. Respondents Woollett argue in reply that RAP 3.3(b) expressly allows the "appellate court" to separate cases for the purpose of review. Respondents explain that a supersedeas bond is currently in place and accruing interest so long as no mandate issues on Neis's appeal. With the issuance of a mandate, Respondents indicate they can enforce the final and affirmed judgment.

RAP 3.3(b) permits this court to separate consolidated cases "for the purposes of review" but states that consolidated cases "remain" consolidated for review in the Supreme Court unless the Supreme Court orders the cases separated:

The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review. A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases. If two or more cases have been consolidated for review in the Court of Appeals, the cases remain consolidated for review in the Supreme Court unless the Supreme Court otherwise directs.

RAP 3.3(b). Because this matter is presently consolidated and the Woolletts have petitioned for review by the Supreme Court, RAP 3.3(b) contemplates that the cases will remain consolidated unless the Supreme Court directs otherwise. Thus,

No. 38877-8-III
(consol. w/no. 39064-1-III)

Respondents' motion to separate the cases is denied without prejudice. They may renew their motion to separate in the Supreme Court.

Accordingly, IT IS ORDERED, the motion to separate is denied.



Hailey L. Landrus
COMMISSIONER

ROBERTS FREEBOURN

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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,849-6
Appellate Court Case Title: Paula S. Neis, et al. v. Howard Woollett, et al.
Superior Court Case Number: 19-2-01262-0

The following documents have been uploaded:

- 1038496_Motion_20250214144025SC168075_9050.pdf
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