No. 90753-6

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

KARLA MAIA-HANSON,

Petitioner,

v.

BRADLEY HANSON,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE CATHERINE SHAFFER

ANSWER TO UNTIMELY PETITION FOR REVIEW

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

THE LAW OFFICE OF
TERESA McNALLY, PLLC

By: Teresa McNally
WSBA No. 17566

1424 4th Avenue, Suite 1002
Seattle, WA 98101
(206) 374-8558

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATUTES

OTHER AUTHORITIES

A. RELIEF REQUESTED BY RESPONDENT

Bradley Hanson, respondent in this Court and the Court of Appeals, asks this Court to deny petitioner Karla Maia-Hanson's motion to "accept" her untimely Petition for Review, as no "extraordinary circumstances" warrant an extension of time under RAP 18.8(b). If this Court grants her motion, it should deny review of the Court of Appeals' unpublished decision dismissing her untimely appeal of orders that are now moot. This Court also should award respondent attorney fees under RCW 26.09.160, RAP 18.1(j), and RAP 18.9(a).

B. RESTATEMENT OF THE CASE

1. Petitioner did not appeal a June 2011 order requiring her to report any abuse allegations to a family case manager first because she had caused multiple baseless CPS investigations.

The parties have twin sons now age 14 (DOB 6/14/2000). (CP 1, 948) During the dissolution, Karla was involved in six reports that CPS either declined to investigate or investigated and determined to be unfounded. (CP 942-43, 949, 951-52, 954-55, 956, 958, 959-60, 1304-05, 1439) The agreed court-appointed parenting evaluator, Dr. Jennifer Wheeler, Ph.D., expressed concern that Karla was manufacturing situations in which the

children would make baseless "abuse" allegations to a mandatory reporter, and believed Karla was "likely to cause significant psychological harm to the boys if left unmitigated." (CP 949) King County Superior Court Judge Catherine Shaffer reached the same conclusion after a four-week trial, finding that Karla's influence and involvement of CPS was detrimental and that the parties' sons had been damaged as a result. (CP 896)

Judge Shaffer appointed a case manager "to assist the parties in addressing and resolving ongoing parenting issues of conflict, specifically a claim that could result in a referral to Children's Protective Services (CPS)." (CP 37) A June 24, 2011 order required that if Karla "should become aware of information related to new allegations of abuse by the father, she should immediately report this information to the Case Manager." (CP 37) The order prohibited Karla from making any "independent referrals to CPS or law enforcement, either directly or through mandated reporters, independent of the parenting coach and Case Manager." (CP 37)

By its terms, this order was to expire no later than two years after "implementation of the Final Parenting Plan," on June 24, 2013. (CP 37, 1083) Karla did not appeal this June 2011 order.

2. Petitioner did not appeal a November 2011 order finding her in contempt of the June 2011 order.

On June 8, 2011, Karla, without first reporting her abuse allegations to the case manager, caused yet another CPS report, which CPS investigated and once again determined to be unfounded. (CP 1109-10) On November 4, 2011, Judge Shaffer found Karla in contempt for intentionally violating its order requiring her to report any new allegations to the case manager before involving a mandatory reporter. (CP 117) To purge her contempt, Judge Shaffer ordered Karla to comply with the court's orders and to report any allegations to the case manager before taking a child to a mandatory reporter. (CP 119)

Judge Shaffer set a review hearing to determine Karla's compliance for May 10, 2012. (CP 119) Karla did not appeal this November 2011 order.

3. Petitioner appealed the March 2013 order finding she had purged her contempt, but challenged only the 2011 orders.

By the time of the review hearing on May 31, 2012, Karla had caused yet another CPS investigation. (CP 1442) Because of this new investigation, Judge Shaffer declined to find that Karla had purged her contempt. (CP 866) However, no written order from

the May 2012 hearing was entered until March 29, 2013, nearly a year later. (CP 862-69) By then, Karla had finally stopped making baseless abuse allegations, and Judge Shaffer found that she had purged the previous contempt. (CP 868)

Karla appealed the April 22, 2013 order denying her motion for reconsideration of the March 29, 2013 order. (CP 860, 870-71) Shortly after this appeal was commenced, in June 2013, the June 2011 order appointing the case manager by its terms expired. (CP 37, 1083) Karla nevertheless eventually perfected the appeal, filing a 49-page opening brief and 23-page reply brief substantively challenging the June and November 2011 orders. (App. Br. 2-3)

4. Petitioner missed the deadline to seek review in this Court of the unpublished decision dismissing her appeal as untimely and moot.

On June 30, 2014, Division One in an unpublished decision dismissed Karla's challenge to the June and November 2011 orders because she had not appealed either order within 30 days, as required by RAP 5.2(a). (Opinion 9-10) The Court of Appeals dismissed Karla's challenge to the March 2013 review hearing order and April 2013 order on reconsideration as moot because the court could provide no effective relief after she had been found to no longer be in contempt. (Opinion 7-9)

Division One denied Karla's motion for reconsideration on August 4, 2014. On September 4, 2014 - 31 days later - Karla filed a petition for review. On September 16, 2014, this Court ruled that Karla's untimely petition would be "held without further action until October 16, 2014 to allow the Petitioner time to serve and file a motion for extension of time. Failure to serve and file a motion for extension of time may result in the dismissal of this matter." On October 13, 2014, Karla filed a motion to "accept" her untimely petition for review.

C. RESPONSE TO MOTION TO EXTEND TIME

As with her appeal, petitioner once again seeks review of a decision far beyond the date by which review could be had. Although petitioner never cites, much less addresses, the rule governing the relief she seeks, RAP 18.8(b) provides that only in "extraordinary circumstances and to prevent a gross miscarriage of justice" will the Court extend the time within which a party must file a petition for review. "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." RAP 18.8(b).

Nothing excuses the failure to timely file in this case, which was due not to the tragic death of the partner of a former associate

of petitioner's counsel's law firm, but to what is clearly an inadequate procedure for calendaring deadlines that relies solely upon the knowledge of a single random employee that August has 31 days. According to the motion to "accept" the petition, some (unidentified) individual mis-calendared the due date, "apparently by assuming 30 days from August 4 was September 4." (Motion 3) While petitioner's counsel claims he "personally re-check[s] all such deadlines by hand-count the weekend before the scheduled deadline" (whatever that means) (Miller Declaration 2), this is not a "system" to ensure timely filing of time-sensitive pleadings.[1]

"'It is incumbent upon any attorney to institute internal office procedures sufficient to assure that judgments are properly dealt with once they are delivered into the custody of office personnel subject to the control of counsel. The failure to take necessary steps, to that end, even during periods of unusual circumstances in an attorney's office, is not an acceptable excuse for any resulting failure to obtain personal knowledge of the entry of judgment on the part of counsel.'" *Beckman v. Dept. of Soc. &*

[1] Notably, counsel was emotionally capable of sending a draft of the petition to the client for review on the Saturday morning before it was due (Miller Declaration 5), even though he was too distraught to perform his "hand-count" "re-check" to ensure timely filing either before or after the long weekend.

Health Servs., 102 Wn. App. 687, 696, 11 P.3d 313 (2000) (denying extension of time to file notice of appeal when the A.G.'s office "lacked office management procedures that could have prevented what occurred here"), *quoting State v. One 1977 Blue Ford Pick-up Truck*, 447 A.2d 1226, 1231 (Me. 1982). Such a system must be in place because tragic events do, regrettably, occur. But "unusual" events affecting a law firm (or its employees, or former employees) are not "extraordinary circumstances" warranting acceptance of an untimely filing under RAP 18.8(b). *See Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 764, 764 P.2d 653 (1988).

Even if petitioner's counsel identified "extraordinary circumstances," consideration of this untimely petition is not necessary to "prevent a gross miscarriage of justice," as RAP 18.8(b) also requires. Instead, the consequence of this untimely filing has been to once again double *respondent's* work: requiring his counsel to respond both procedurally and on the "merits" to yet another untimely challenge to the trial court's discretionary and fact-driven

decisions.[2] As RAP 18.8(b) provides, "the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time." In this case, finality is especially important, because petitioner's challenge is to orders that are now more than three years old, and which by their terms have expired. This Court should deny petitioner's motion to "accept" her untimely petition for review.

D. GROUNDS FOR DENIAL OF REVIEW

1. The Court of Appeals properly dismissed review of orders entered nearly two years before petitioner filed her notice of appeal.

Petitioner's challenge, in this Court as in the Court of Appeals, to the June 2011 order appointing a case manager and the November 2011 order finding her in contempt of the June 2011 order comes too late. Petitioner failed to appeal either of these orders directly, and instead waited nearly two years to challenge them. "A party is allowed 30 days from the entry of judgment to file a notice of appeal. RAP 5.2(a)." (Opinion 9) The Court of Appeals properly dismissed her challenge to these orders as untimely.

---

[2] Petitioner's assurance that respondent will suffer "no genuine prejudice" because "the appellate rules provide for recovery of attorneys' fees for responding to a petition for review should it not be successful" (Motion 5) rings especially hollow. To date, petitioner has failed to pay the fee awards already entered against her.

The petitioner's argument that this Court should grant review because the Court of Appeals' unpublished decision is inconsistent with *Marriage of Suggs*, 152 Wn.2d 74, 93 P.3d 161 (2004), and *Marriage of Meredith*, 148 Wn. App. 887, 201 P.3d 1056, *rev. denied*, 167 Wn.2d 1002 (2009), ignores one very important distinction – both cases arose out of timely appeals. If petitioner believed the order requiring her to report any abuse allegation directly to the case manager was improper, she was required to appeal the order within 30 days. RAP 5.2(a).

Even timely review of the November 2011 order finding her in contempt of that order could not have brought the June 2011 order up for review. "'[A] contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid.'" *Matter of J.R.H.*, 83 Wn. App. 613, 616, 922 P.2d 206 (1996) (declining to review validity of order underlying contempt order because it was not timely appealed). "The collateral bar rule prohibits a party from challenging the validity of a court order in a proceeding for violation of that order." *City of Seattle v. May*, 171 Wn.2d 847, 852, ¶ 6, 256 P.3d 1161 (2011); *Griffin v. Draper*, 32 Wn. App. 611, 614, 649 P.2d 123 (appeal of contempt order did "not bring forward the original judgment for review because the appeal

is more than 30 days from the judgment"), *rev. denied*, 98 Wn.2d 1004 (1982); *see also Holiday v. City of Moses Lake*, 157 Wn. App. 347, 353, ¶ 15, 236 P.3d 981 (2010) (City could not challenge writ of prohibition by appealing show cause order entered 18 months later), *rev. denied*, 170 Wn.2d 1023 (2011). In short, petitioner could not violate an order, be found in contempt, be found to have purged her contempt, and appeal *that* determination to revive a challenge to the original order entered two years earlier.

2. The Court of Appeals' unpublished decision dismissing review of the 2011 orders is not inconsistent with either *Suggs* or *Meredith*.

Trial courts have broad discretion to fashion parenting plans imposing restraints on a parent to protect the other parent's authority and ability to parent when in the children's best interests. *Marriage of Adler*, 131 Wn. App. 717, 727-28, ¶¶ 22-26, 129 P.3d 293 (2006) (rejecting argument that order prohibiting mother's communication with children's medical and education professionals in a manner "unnecessarily derogatory" to the father was an unconstitutional prior restraint), *rev. denied*, 158 Wn.2d 1026 (2007); *Dickson v. Dickson*, 12 Wn. App. 183, 188, 529 P.2d 476 (1974), ("interference with Mrs. Dickson's privacy and the children's well-being outweighs Mr. Dickson's absolute exercise of

his First Amendment rights"); *rev. denied*, 85 Wn.2d 1003, *cert. denied*, 423 U.S. 832 (1975). Couching her challenge in First Amendment terms does not give petitioner *carte blanche* to raise an untimely challenge to the June 2011 order, which is unlike those at issue in *Suggs* or *Meredith*.

In *Suggs* this Court reversed as a prior restraint a broadly drafted anti-harassment order that prohibited the former wife from "knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties" about her former husband. 152 Wn.2d at 78-79. Petitioner here was only prevented from making an allegation of abuse to any mandatory reporter except the case manager. (CP 37) Further, unlike in *Suggs*, the order here had the narrow purpose of protecting the children from what the trial court found was damaging and psychologically harmful interviews with third parties and law enforcement officers based on false allegations against their father. (CP 896)

The order is also unlike that in *Meredith*, in which Division Two vacated a provision in a protection order that restrained the former husband from "contacting any agency regarding [the wife]'s immigration status." 148 Wn. App. at 895, ¶ 11 (emphasis in original). In *Meredith*, the concern was that the trial court had not

first made a determination that the husband had "abused his right to speak" before entering this restraint. 148 Wn. App. at 897, ¶ 17. But here, the trial court *did* find petitioner had abused her "right to speak," by repeatedly making false allegations that resulted in CPS investigations that were "detrimental" to the sons and had "damaged" them. (CP 896)

3. The Court of Appeals' unpublished decision, narrowly focused on petitioner's untimely challenge under the facts of this case, does not raise any issues of substantial public interest.

Because petitioner failed to timely appeal the June and November 2011 orders, the Court of Appeals did not reach the merits of whether a trial court order prohibiting a party from reporting allegations of abuse to CPS and law enforcement without first contacting the case manager could be an unconstitutional prior restraint. (Opinion 9, n. 50) But even if it had, the trial court's findings that the mother had abused her right to petition CPS, by false allegations against the father that not only took up time for CPS to investigate but harmed the children CPS is charged with protecting, would have caused Division One to affirm. *See e.g.*, *Marriage of Giordano*, 57 Wn. App. 74, 76, 787 P.2d 51 (1990)

(upholding moratorium on motions after wife abused her right of access to the courts).

Our courts regularly uphold restraints on a parent's speech to protect the children. In *Dickson*, for instance, Division Two upheld an order restraining the father from making defamatory statements about the mother because First Amendment rights are not absolute, and interference with the mother's right to privacy and the children's well-being outweighed the father's exercise of his rights of free speech and free exercise of religion. 12 Wn. App. at 186. *See also Marriage of Olson*, 69 Wn. App. 621, 630, 850 P.2d 527 (1993) (affirming injunction restraining father from making disparaging remarks about the mother to the children; "[c]ounterbalancing Mr. Olson's loss of First Amendment rights is the State's and Mrs. Olson's interest in preserving and fostering healthy relationships between parents and their children"); *Marriage of Farr*, 87 Wn. App. 177, 185, 940 P.2d 679 (1997) (affirming finding of contempt when father violated provision of parenting plan restraining him from disparaging the mother to the children), *rev. denied*, 134 Wn.2d 1014 (1998).

The challenged June 2011 order, placing reasonable limits on any right the mother has to petition CPS, was wholly appropriate.

Petitioner was not denied any "right to speak;" her access to CPS and its mandated investigations was reasonably limited by requiring her to pursue any abuse claim through the case manager, who could make the report on the mother's behalf. (CP 37) Even if the appellate court's decision left it within the potential scope of review, the trial court's orders were well within its discretion to protect the children from harm.

4. This Court should award respondent his fees.

The Court of Appeals properly awarded respondent his fees on appeal under RCW 26.09.160(1), RCW 7.21.030(3), and RAP 18.1. (Opinion 10-11) A party successfully defending an appeal of a contempt order is entitled to fees. *Marriage of Rideout*, 150 Wn.2d 337, 359, 77 P.3d 1174 (2003). As petitioner concedes (Motion 5), respondent is entitled to his fees and costs under RAP 18.1(j), which provides for an award in this Court when fees were awarded below. Respondent is also entitled to fees under RAP 18.9(a) for having to respond to this untimely appeal. *Holiday*, 157 Wn. App. at 357, ¶ 28.

E. CONCLUSION

This Court should deny RAP 18.8(b) relief, dismiss the petition, and award respondent his fees in the Court.

Dated this 14th day of November, 2014.

SMITH GOODFRIEND, P.S.

By: _____
Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

THE LAW OFFICE OF
TERESA McNALLY, PLLC

By: _____
Teresa McNally
WSBA No. 17566

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 14, 2014, I arranged for service of the foregoing Answer to Untimely Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Teresa McNally The Law Office of Teresa C. McNally PLLC 1424 4th Avenue, Suite 1002 Seattle, WA 98101-4604	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Gregory M. Miller Carney Badley Spellman PS 701 5th Ave Ste 3600 Seattle, WA 98104-7010	___ Facsimile ___ Messenger X U.S. Mail X E-Mail
Alexandra Moore-Wulsin Strata Law Group 600 University Street, Ste. 1020 Seattle, WA 98101-4107	___ Facsimile ___ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 14th day of November, 2014.

V. Vigoren

Victoria K. Vigoren

OFFICE RECEPTIONIST, CLERK

To: Victoria Vigoren
Cc: Catherine Smith; Valerie Villacin; teresa@mcnallylegal.com; Angela Liljegren; miller@carneylaw.com; Norgaard@carneylaw.com; amoore-wulsin@stratalawgroup.com
Subject: RE: Marriage of Hanson, Cause No. 90753-6

Received 11-14-2014

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: Victoria Vigoren [mailto:victoria@washingtonappeals.com]
Sent: Friday, November 14, 2014 2:28 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Catherine Smith; Valerie Villacin; teresa@mcnallylegal.com; Angela Liljegren; miller@carneylaw.com; Norgaard@carneylaw.com; amoore-wulsin@stratalawgroup.com
Subject: Marriage of Hanson, Cause No. 90753-6

Attached for filing in pdf format is the Answer to Untimely Petition for Review, in the *Marriage of Hanson*, Cause No. 90753-6. The attorney filing this document is Catherine W. Smith, WSBA No. 9542, email address: cate@washingtonappeals.com.

Victoria Vigoren
Paralegal
Smith Goodfriend, P.S.
1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974