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SUPREME COURT
OF THE STATE OF WASHINGTON

TORRE J. WOODS, individually,	No. 90934-2
Respondent,	TORRE WOODS'
v.	REPLY ON THE
HO SPORTS COMPANY, INC., a for-profit	MOTION TO STRIKE
Washington corporation,	MICHAEL WOODS'
Petitioner,	UNTIMELY
and	PETITION FOR REVIEW
MICHAEL E. WOODS, individually,	
Petitioner.	

In response to Torre Woods' motion to strike Michael Woods'¹ pleading originally denominated an Answer to Petition for Review,² Michael mischaracterizes the relief sought by Torre in his motion and offers broad generalizations that fail to come to grips with the fact that Michael's pleading is nothing more than a thinly-disguised petition for review that he failed to timely file within 30 days of the Court of Appeals' order denying HO Sports' motion for discretionary review. As Michael's pleading, however denominated, is untimely under RAP 13.4(a), and does not meet the exceptional circumstances standard of RAP 18.8(b), it should

¹ Both Torre Woods and the late Michael Woods will be referenced by their first names for clarity. No disrespect is intended.

² Michael has filed what he terms an "Errata," and seeks to "amend" the answer.

be stricken by the Court.

A. RESPONSE TO MICHAEL'S "FACTS"

Far from a discussion of facts, Michael's fact section of his response is nothing but argument, resp. at 2-4, and will be addressed as such in the Argument section of this reply.

However, buried in Michael's answer at 3 is blatant mischaracterization of Torre's motion to strike as relating simply to language regarding Michael's purported cross-petition. Resp. at 3. The title of the pleading makes no difference to Torre. The function of the pleading does. It is an untimely disguised petition for review.

B. ARGUMENT WHY MICHAEL'S PLEADING SHOULD BE STRICKEN

(a) Michael Failed to File a Timely Petition for Review

Michael nowhere disputes that he, like HO Sports, Inc. ("HO Sports") was a *respondent* in the Court of Appeals. Like HO Sports, he wants the parental immunity doctrine to immunize him from liability and so argued in that court. Aggrieved by the Court of Appeals decision, he seeks its *reversal* by this Court.

Notwithstanding Michael's bloviated discussion of petitions for review and answers to them under RAP 13.4 throughout his response, the simple fact is that RAP 13.4(a) contemplates that parties aggrieved by a

Court of Appeals decision must timely file petitions for review to obtain relief in this Court. (“A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review...”). Obviously, there can be more than a single petitioner. Because Michael was aggrieved by the Court of Appeals decision here, he was precisely the type of petitioner who must timely file a petition for review. It is *undisputed* by Michael that his pleading, in which he unambiguously seeks to reverse the Court of Appeals’ decision, was filed more than 30 days after the Court of Appeals’ order denying reconsideration.

RAP 13.4(a) and (d) contemplate that a party may *respond* to a petition for review filed by another party in the case. That answer ordinarily seeks to *uphold* the Court of Appeals decision at issue, something Michael decidedly is not seeking here.

RAP 13.4(d) contemplates that a respondent in this Court may seek additional relief beyond that afforded to the respondent by the Court of Appeals. (“If the party wants to seek review of any issue *that is not raised in the petition for review*, including any issues that were raised but not decided in the Court of Appeal, the party must raise those *new issues* in an answer.”) (emphasis added.) But Michael is not raising *new* issues or additional relief to that granted Torre by the Court of Appeals. Rather, he

is seeking *precisely the same relief HO Sports, the other petitioner here seeks – a reversal of the Court of Appeals and immunity for Michael.*

None of the cases cited by Michael support his extreme interpretation of RAP 13.4(a), (d) that is contrary to the express language of those provisions,³ and certainly his irrelevant argument of the rules pertaining to notices of appeal, resp. at 6-7, is unavailing to him. In fact, Michael's argument is untenable given the language of RAP 13.4 (a, d) relating to *new* issues. Moreover, it would lead to the unfair result of conferring more than 30 days upon the second and subsequent petitioners in which to file petitions despite the time deadlines in RAP 13.4(a).

Finally, Michael's "answer" is potentially prejudicial to Torre by permitting HO Sports to file a reply under RAP 13.4(d), a reply that will assuredly seek to address the issues in Torre's answer as well as Michael's.

This Court should properly treat Michael's pleading as a petition for review, as contemplated by the Rules of Appellate Procedure, and strike it because it was untimely. RAP 13.4(a).

(b) Michael Is Not Entitled to an Extension of Time under RAP 18.8(b) to File His Petition

³ For example, Michael cites to *Blaney v. Int'l Assn of Machinists and Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 87 P.3d 757 (2004), but the issue there was whether the respondent could argue that a jury instruction was proper where the petitioner argued that it was erroneous. That case had nothing to do with a party aggrieved by the Court of Appeals decision failing to timely file a petition for review.

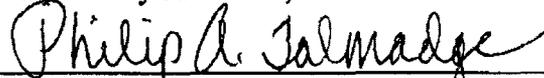
Notwithstanding Michael's mention of RAP 18.8(b), resp. at 7-9, he fails to offer any argument as to why his untimely petition for review should be considered by this Court. He simply cannot demonstrate that his negligent or tactical decision not to file a timely petition for review was justified by "extraordinary circumstances" and would avoid a "miscarriage of justice."⁴

C. CONCLUSION

This Court should strike Michael's untimely petition for review.

DATED this 24th day of November, 2014.

Respectfully submitted,



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⁴ Of course, Michael's invocation of RAP 1.2(a), resp. at 4, must be tempered by the fact that its liberal interpretation imperative is inapplicable to RAP 18.8(b) situations. Further, that rule must be considered in conjunction with RAP 1.2(b) that specifically notes where words of command are found in the rules. RAP 13.4(a) mandated that any petition for review *must* serve and file the petition within 30 days.

DECLARATION OF SERVICE

On said day below, I emailed a true and accurate copy of Torre Woods' Reply on the Motion to Strike Michael Woods' Untimely Petition for Review in Supreme Court Cause No. 90934-2 to the following parties:

<p>John R. Connelly, Jr. Nathan P. Roberts Connelly Law Offices 2301 N. 30th Street Tacoma, WA 98403-3322 Email addresses: jconnelly@connelly-law.com nroberts@connelly-law.com pwells@connelly-law.com</p>	<p>Thomas R. Merrick David S. Cottnair Nicholas Thomas Merrick Hofstedt & Lindsey PS 3101 Western Avenue, Suite 200 Seattle, WA 98121-3017 Email addresses: tmerrick@mhlseattle.com dcottnair@mhlseattle.com nthomas@mhlseattle.com mbrandt@mhlseattle.com jballard@mhlseattle.com</p>
<p><u>Sent by U.S. mail only</u></p> <p>Michael Woods 4008 N. 38th Street Tacoma, WA 98407</p>	<p><u>Sent by U.S. mail and email</u></p> <p>Howard M. Goodfriend Smith Goodfriend, P.S. 1619 8th Ave N Seattle, WA 98109-3007 Email address: howard@washingtonappeals.com</p>
<p><u>Sent by U.S. mail and email</u></p> <p>Paul A. Lindemuth Benjamin Franklin Barcus Ben F. Barcus & Associates PLLC 4303 Ruston Way Tacoma, WA 98402-5313 Email addresses: paul@benbarcus.com ben@benbarcus.com</p>	

Original E-filed with:
Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504-0929

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: November 12, 2014, at Seattle, Washington.

A handwritten signature in black ink, appearing to read 'Roya Kolahi', written over a horizontal line.

Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Roya Kolahi
Cc: jconnelly@connelly-law.com; Nathan Roberts; pwells@connelly-law.com; tmerrick@mhlseattle.com; nthomas@mhlseattle.com; dcottnair@mhlseattle.com; mbrandt@mhlseattle.com; jballard@mhlseattle.com; Howard Goodfriend; Paul Lindenmuth; ben@benbarcus.com
Subject: RE: Torre J. Woods v. HO Sports Co. Inc. Cause No. 90934-2

Received 11-12-14

From: Roya Kolahi [mailto:Roya@tal-fitzlaw.com]
Sent: Wednesday, November 12, 2014 1:31 PM
To: OFFICE RECEPTIONIST, CLERK
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Subject: Torre J. Woods v. HO Sports Co. Inc. Cause No. 90934-2

Good Afternoon:

Attached please find Torre Woods' Reply on the Motion to Strike Michael Woods' Untimely Petition for Review for today's filing. Thank you.

Sincerely,

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