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STATE OF WASHINGTON
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No. 91663-2

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DEBORAH SMITH,

Petitioner,

vs.

DANIEL RAMSAY,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR DISCRETIONARY
REVIEW AND ANSWER TO MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

ERNEST D. GRECO
WSBA No. 3898
Bohrnsen Stocker Smith Luciani PLLC
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(509) 327-2500
Attorneys for Respondent



ORIGINAL

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1. Identity of Petitioner and Respondent.

The Petitioner is Deborah Smith; the Respondent is Daniel Ramsay. This is Respondent Daniel Ramsay's Answer to the Petition for Review and his Answer to the Motion to Proceed in Forma Pauperis.

2. Introduction.

This Petition for Review and Motion to Proceed In Forma Pauperis arises from an action in which Deborah Smith chose to act as a pro se plaintiff after her attorney withdrew, which was dismissed in July of 2014 by the Spokane County Superior Court. The Petitioner filed a Notice of Appeal in August of 2014, but failed to pay the filing fee, and her request for an expenditure of public funds to proceed with the appeal was denied by the Supreme Court last January. The matter was subsequently dismissed by the Court of Appeals in April of 2015, after multiple warnings to Ms. Smith. She has now petitioned for review to the Supreme Court, but it is somewhat unclear what rulings she seeks to have reversed; her petition references the order denying public funds to pay the Court of Appeals filing fee, and she has also moved to proceed In Forma Pauperis. Basically, Ms. Smith appears to seek the right to proceed with her underlying appeal without paying the required Court of Appeals filing fee or the Supreme Court filing fee.

Irrespective of which of the orders or rulings that Petitioner seeks review, this Court has already denied the motion for the expenditure of public funds, and Petitioner did not timely file to review that decision; similarly, review of the dismissal is untimely because the petition was filed over 30 days after the dismissal. And, substantively, no basis exists to review the Division III Court of Appeals dismissal for failing to pay filing fees, or the denial of public funds. As a result of the lack of basis to proceed with the Petition, no basis exists to grant a motion to proceed In Forma Pauperis, which was essentially denied in January 2015, and would be useless at this juncture.

3. Issues Presented for Review.

3.1 Is the Petition for Review of an Order denying the expenditure of public funds untimely when the Supreme Court denied the motion over five months ago?

3.2 Is the Petition for Review of the Court of Appeals decision dismissing an appeal for failure to pay the required filing fee untimely when the dismissal occurred 35 days before the Petition was filed?

3.3 Was the decision of the Court of Appeals to dismiss Petitioner's action for failure to pay the filing fee in conflict with a decision of the Supreme Court or any other decision of the Court of

Appeals, does it constitute a significant question of law under the Constitution, or does it involve an issue of substantial public interest?

3.4 Should the Supreme Court grant a motion to proceed In Forma Pauperis waiving the Supreme Court filing fee when the Supreme Court has denied the motion for expenditure of public funds for the filing fee at the Court of Appeals, and no basis exists to review the underlying decisions?

4. Statement of the Case.

Petitioner Deborah Smith's action against the Respondent Daniel Ramsay was dismissed by Spokane County Superior Court Judge Michael Price on July 21, 2014. Ms. Smith filed a Notice of Appeal of that dismissal on August 20, 2014, but failed to include the required filing fee under RAP 5.1(b). On September 30, 2014, Division III Clerk of the Court sent Ms. Smith a letter indicating that her appeal would be considered for dismissal on October 22, 2014, unless she paid the required filing fee, or unless the Supreme Court agreed to expend public funds pursuant to RAP 15.2(c)(2). (App. 1) On January 7, 2015, the Supreme Court denied Ms. Smith's motion for the expenditure of public funds. (App. 2) No immediate review was sought of that order.

On January 14, 2015, the Division III Clerk of the Court again sent Ms. Smith a letter indicating that the motion to dismiss for nonpayment

would be heard February 4, 2015, unless the required filing fee was paid. (The clerk's letter also noted that Ms. Smith never did provide the Court with proof of service of the Notice of Appeal upon the opposing party.) (App. 3) On February 10, 2015, Division III Commissioner Wasson dismissed the action for failure to pay the required filing fee. (App. 4) In the letter sent to Ms. Smith with the ruling, the court clerk informed her that a motion to modify the Commissioner's ruling must be filed by March 12, 2015. (App. 5) Ms. Smith filed the motion to modify the Commissioner's dismissal on March 11, 2015; on April 7, 2015, the Court of Appeals Division III entered an order denying Ms. Smith's motion to modify, affirming the dismissal of her appeal. (App. 6)

This Petition for Review to the Supreme Court followed on May 12, 2015, more than thirty days after the Division III order denying the motion to modify. The Petition for Review is somewhat unclear, but apparently seeks to review the "denial of public funds for filing fee." On June 11, 2015, Ms. Smith filed a motion to proceed In Forma Pauperis. The Supreme Court Clerk issued a letter on June 12, 2015, informing the Respondent that the Answer to the Petition for Review and any Answer to the motion to waive the filing fee were due on July 13, 2015, and the matter would be set for hearing without oral argument on September 1, 2015, presumably both as to the petition, and as to the motion to proceed

In Forma Pauperis. Respondent here combines his Answer to the Petition and the motion herein.

5. Argument.

No procedural or substantive basis exists for review of any of the decisions and orders rendered in this matter.

5.1 Review of the Supreme Court's denial of the expenditure of public funds is untimely.

Review of an order denying an order of indigency must be sought by discretionary review. RAP 15.2(h). A party seeking discretionary review of an interlocutory decision must file a motion for discretionary review within 30 days after the decision. RAP 13.5(a). Ms. Smith did not seek review of the Supreme Court order denying the expenditure of public funds issued on January 7, 2015, within 30 days, and this Petition should thus be denied.

5.2 Similarly, any review of the dismissal by the Court of Appeals is untimely.

To the extent Ms. Smith's Petition seeks to have this Court review the Court of Appeals decision dismissing her appeal, it is similarly untimely. The dismissal was entered by the Court of Appeals on April 7, 2015, but the Petition for Review was not filed until May 12, 2015, more than 30 days later; it is thus untimely under RAP 13.5(a).

5.3 Moreover, neither the Supreme Court's denial of public funds nor Court of Appeals dismissal presents any basis for discretionary review by this Court.

This Court considers acceptance of a Petition for Review only:

1. If the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or
2. If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
3. If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
4. If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4.

At this juncture, the Court of Appeals simply dismissed the matter for failure to submit a filing fee pursuant to RAP 5.1(b), which presents none of the considerations necessary for review. Similarly, the Supreme Court's denial of the expenditure of public funds does not implicate any of the necessary considerations for review.

Dismissal for failure to pay a filing fee is not in controversy or in conflict with other courts or the Supreme Court. Dismissals for failure to pay the necessary costs of appeal are routine. See e.g., Edwards v. Edwards, 2004 WL 2386707 (Wash. App. 2004). The necessity of filing fees to proceed with an appeal is a standard method for courts to operate and creates no significant question of law or substantial public interest.

The Supreme Court has already had an opportunity to determine whether Ms. Smith was entitled to public funds in order to proceed with her appeal, and found that she was not. And nothing about the dismissal for failure to pay a filing fee raises any constitutional or private rights of interest sufficient to accept review here.

The same is true of the Supreme Court's decision not to expend public funds. A party seeking appellate review that seeks the expenditure of public funds "must demonstrate that the issues the party wants reviewed have probable merit, as well as demonstrating that the party has a constitutional right to review partially or wholly at public expense." See, 3 Wash. Prac., Rules Practice RAP 15.2 (7th ed.), fn. 3. The Supreme Court has already found that this matter (an automobile accident case) does not present issues of public import sufficient to create a right to review nor is there a miscarriage of justice of the level required. This case does not concern an issue of personal freedom, housing rights, or other fundamental interests, and courts have long recognized that "there is no constitutional right to appeal in a civil case." Hous. Auth. of King County v. Saylor, 87 Wn. 2d 732, 741, 557 P.2d 321 (1976). The King County Court recognized that not everyone will be able to afford an appeal, but this does not alone create grounds for expending public funds:

The appellate courts of the state provide a service for dispute settlement. Like other states services, when they are utilized by private individuals it is not unreasonable to require that some of the cost be borne by those receiving such special benefits. Because of the costs of preparing records, legal services, and briefs-costs which are not imposed by the state or by the court but rather are charges made by other private citizens pursuing their own means of livelihood-the appellate process is expensive. We can safely surmise that many litigants who are not to be classified as indigent are still not affluent enough to afford the luxury of an appeal.

Id. at 741.

Here, Ms. Smith's appeal and request for discretionary review relate to her claim of civil injury in an automobile accident, which was dismissed based on her failure to comply with numerous court ordered deadlines for moving the case to resolution on the merits. Her subsequent appeal and this petition suffers from the same problems, but does not present a circumstance in which the courts of appeal should interject to insure her the basis to continue to seek civil redress at no expense.

5.4 The motion to proceed In Forma Pauperis for the filing fee to the Supreme Court is irrelevant, because the underlying Court of Appeals dismissal should not be reviewed.

As noted above, Ms. Smith has already requested this Court to allow her to proceed in the Court of Appeals by a filing fee via the expenditure of public funds, which was denied over five months ago. No different basis exists here to have this Court allow her to proceed

In Forma Pauperis, particularly when the issue is not one that review is likely to be accepted. As this Court previously noted:

In determining whether the court should exercise its inherent power and waive its fees in order to facilitate an appeal in a given case, we must always keep in mind that there is no constitutional right to appeal a civil case, that it is presumed that the court below proceeded according to law and reached a correct decision, and that the burden is upon the appellant to show error.

King County, 87 Wn.2d at 742.

The Court of Appeals reached a correct decision below, and since this matter was not timely filed, and presents no basis for acceptance of review, this Court should not waive the filing fee or other necessary costs now.

6. Conclusion.

For the foregoing reasons, Respondent requests that the court decline review of this matter.

DATED this 29 day of June, 2015.


ERNEST D. GRECO, WSBA No. 3898
BOHRNSEN STOCKER SMITH LUCIANI PLLC
Attorneys for Respondent

APPENDIX 1

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*

500 N Cedar ST
Spokane, WA 99201-1905

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September 30, 2014

Deborah Smith
P. O. Box 1271
Post Falls, ID 83877

CASE # 327469
Deborah Smith v. Daniel Ramsay, et al
SPOKANE COUNTY SUPERIOR COURT No. 132014810

Ms. Smith

We have received your notice of appeal and have opened a file under No. **327469**. This file has been forwarded to the Commissioners' office for setting on their docket. RAP 15.2(c)(2). Also, please provide proof of service of the notice upon the opposing party by **October 22, 2014**. See RAP 5.4(b).

Since you have not paid a filing fee of \$290 nor obtained an order for **expenditure of public funds** pursuant to Rules of Appellate Procedure 15.2(c)(2), we have set this matter on a court's motion to dismiss for failure to pay the filing fee. This matter will be considered on **October 22, 2014**, at **9 a.m.** without oral argument. If your motion for findings of indigency is granted by the trial court and the matter is referred to the Supreme Court for a determination regarding the expenditure of public funds, our hearing will be stricken until the Supreme Court makes it's determination.

Sincerely,
Renee S. Townsley
Clerk/Administrator

Bridget-Anne Lochelt
Commissioners' Administrative Assistant

RST:bal
Enclosures
C: J. Scott Miller/Ernest Greco

APPENDIX 2

APPENDIX 3

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
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Division III*



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January 14, 2015

Deborah Smith
P. O. Box 1271
Post Falls, ID 83877

CASE # 327469
Deborah Smith v. Daniel Ramsay, et al
SPOKANE COUNTY SUPERIOR COURT No. 132014810

Ms. Smith:

We have received a copy of the Supreme Court Order Denying Motion for Expenditure of Public Funds in the above case. It is also noted that you never did provide the Court with proof of service of the notice of appeal upon the opposing party. Please do so by February 4, 2015. RAP 5.4(b).

Since you have not paid a filing fee of \$290 pursuant to the Rules of Appellate Procedure 5.1(b), we have set the matter on a commissioner's docket of February 4, 2015, at 9 a.m. on a Court's motion to dismiss for abandonment. The matter will be considered without oral argument. If the \$290 filing fee is paid prior to that date the matter will be stricken from the Commissioner's docket.

Should you have any questions, please do not hesitate to contact Bridget-Anne Lochelt, Commissioners' administrative assistant, at 456-3095.

Sincerely,

Renee S. Townsley
Clerk/Administrator

A handwritten signature in black ink, appearing to read "Bridget-Anne Lochelt".

Bridget-Anne Lochelt
Commissioners' Administrative Assistant

RST:bal
C: Ernest Greco

APPENDIX 4

The Court of Appeals
of the
State of Washington
Division III

FILED

FEB 10 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

DEBORAH SMITH,)	No. 32746-9-III
)	
)	
Appellant,)	
)	
v.)	COMMISSIONER'S RULING
)	
)	
DANIEL RAMSAY, et al.,)	
)	
Respondents.)	
_____)	

Deborah Smith filed a notice of appeal of the Spokane County Superior Court's July 21, 2014 "Order of Dismissal with Prejudice." By letter dated September 30, 2014, this Court notified Ms. Smith that she had not paid the \$290 filing fee or obtained an order for expenditure of public funds. The letter further advised that the Court had set her matter for dismissal for these failings on its docket of October 2, 2014. Ms. Smith has not yet paid the filing fee or obtained an order of expenditure of public funds.

No. 32746-9-III

At that point, Ms. Smith obtained from the superior court “Findings of Indigency and Order to Transmit Findings of Indigency” to the Supreme Court. On January 7, 2015, the Supreme Court denied her motion for expenditure of public funds. On January 14, 2015, this Court notified Ms. Smith by letter that the \$290 filing fee remained due. The letter also notified her that if she did not pay the filing fee, that the matter had been set on the Court’s February 4, 2015 docket for dismissal. Ms. Smith has not paid the filing fee. Accordingly,

IT IS ORDERED, the Court’s motion to dismiss for failure to pay the filing fee is granted, and Ms. Smith’s cause is dismissed.

February 10, 2015



Monica Wasson
Commissioner

APPENDIX 5

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
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Division III*



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February 10, 2015

Deborah Smith
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egreco@jscottmiller.com

CASE # 327469
Deborah Smith v. Daniel Ramsay, et al
SPOKANE COUNTY SUPERIOR COURT No. 132014810

Dear Ms. Smith and Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling (March 12, 2015). Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

If a motion to modify is not timely filed, appellate review is terminated.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

c: Honorable Michael P. Price, Superior Court Judge
E-Mail

APPENDIX 6

Ⓢ

FILED
APRIL 7, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

DEBORAH SMITH,)	No. 32746-9-III
)	
Appellant,)	
)	
v.)	ORDER DENYING
)	MOTION TO MODIFY
DANIEL RAMSAY, et al.,)	
)	
Respondents.)	

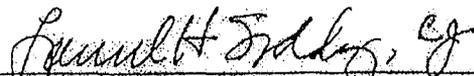
THE COURT has considered appellant's motion to modify and amended motion to modify the Commissioner's Ruling of February 10, 2015, the response and the record and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

DATED: April 7, 2015

PANEL: Judges Siddoway, Korsmo, Lawrence-Berrey

FOR THE COURT:



 LAUREL H. SIDDOWNAY, Chief Judge

OFFICE RECEPTIONIST, CLERK

To: Abbie Evans
Subject: RE: Smith v. Ramsay, No. 91663-2

Received 6-29-15

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: Abbie Evans [mailto:AEvans@bssslawfirm.com]
Sent: Monday, June 29, 2015 3:39 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Smith v. Ramsay, No. 91663-2

Good afternoon, Clerk,

Please find attached for filing Respondent Daniel Ramsay's *Answer to Petition for Discretionary Review and Answer to Motion for Leave to Proceed in Forma Pauperis* in the Deborah Smith v. Daniel Ramsay matter, Case No. 91663-2. Also attached for filing is Respondent's *Certificate of Service*.

This document is being filed by Respondent Daniel Ramsay by and through his attorney Ernest D. Greco (WSBA #3898) of Bohrnson Stocker Smith Luciani PLLC, Phone (509) 327-2500, egreco@bssslawfirm.com.

Thank you. Should you have any questions, please don't hesitate to contact Mr. Greco or me.

Abbie

Abigail Evans
Paralegal
BOHRNSEN STOCKER SMITH LUCIANI PLLC
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