

The Court of Appeals

of the
State of Washington
Division III

FILED
Jun 20, 2018
Court of Appeals
Division III
State of Washington

JON JASON KING,

Appellant,

v.

BENTON COUNTY
SHERIFF'S OFFICE, et al.,

Respondent.

No. 35745-7-III

COMMISSIONER'S RULING

On December 11, 2017, Jon Jason King filed a notice of appeal from the Benton County Superior Court's July 26, 2017 Order on Motion for Reconsideration which held that no basis existed for it to reconsider its dismissal of his action against the Benton County Sheriff's Office, et al., as filed beyond the three year statute of limitations for torts. Mr. King had sued the County for damages for injuries he suffered when the County allegedly failed to protect him from harm by another prisoner.

This Court set Mr. King's notice of appeal on its motion docket for dismissal because he had failed to pay the \$290 filing fee. Mr. King obtained an order of indigency

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from the Benton County Superior Court, but the Washington State Supreme Court denied his motion for expenditure of public funds to pay for an appeal of his civil action for damages. Subsequently, the \$290 filing fee was paid to this Court, which then set the appeal on its motion docket once again, this time for dismissal for untimely filing.

The question is whether this Court should waive the untimely filing of Mr. King's notice of appeal under RAP 18.8(b), which provides the Court may do so only in extraordinary circumstances and to prevent a gross miscarriage of justice. Mr. King contends extraordinary circumstances exist here. In his motion to extend the time for filing, he argues that fraudulent conduct on the part of Benton County and the court system resulted in his *filing his complaint* outside of the statute of limitation period. But whatever the cause of his late filing of his action in superior court, that cause does not support an argument that extraordinary circumstances exist to excuse his *late notice of appeal in this Court*.

Under RAP 5.2(a), a party who wants to appeal a superior court decision must file his notice of appeal within 30 days of entry of the superior court decision. Here, Mr. King filed his notice of appeal four months after the superior court entered the decision that dismissed his action. The notice was not timely, and Mr. King has not shown any extraordinary circumstances that support this Court extending the time to file. Therefore, the Court denies Mr. King's motion for extension and dismisses the appeal as untimely.

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filed.

Because the Clerk of Court has already accepted a filing fee in this matter, this Court directs the Clerk to now refund that amount to the person/entity that paid that fee.

IT IS SO ORDERED. The appeal is dismissed, and the Clerk is directed to refund the \$290 filing fee.



Monica Wasson
Commissioner

FILED
SUPREME COURT
STATE OF WASHINGTON
6/5/2019
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

JON JASON KING,

Petitioner,

v.

BENTON COUNTY SHERIFF'S
DEPARTMENT, et al.,

Respondents.

No. 96414-9

ORDER

Court of Appeals
No. 35745-7-III

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered this matter at its June 4, 2019, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling and motion to amend the motion to modify are both denied.

DATED at Olympia, Washington, this 5th day of June, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

**Additional material
from this filing is
available in the
Clerk's Office.**