

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NICOLLE SHEAVES,

Petitioner,

v.

CHRISTOPHER DEEGE,

Respondent.

No. 1 0 5 1 7 7 - 8

Court of Appeals No. 60905-3-II

RULING DENYING REVIEW

Petitioner Nicolle Sheaves seeks discretionary review of a decision by Division Two of the Court of Appeals granting respondent Christopher Deege an extension of time to file a notice of appeal of an adverse Clark County Superior Court decision. The motion for discretionary review is denied for reasons explained below.

On April 21, 2025, the superior court entered an amended order granting Sheaves's motion for terms against Deege's counsel. On May 16, 2025, Deege, assisted by said counsel, filed a notice for discretionary review, designating the order imposing terms on counsel. The Court of Appeals determined that the designated order was appealable of right and therefore treated the notice as a notice of appeal. RAP 5.1(c). Deege thereafter did not comply with the Court of Appeals scheduling order and related court rules with respect to perfecting the record. Meanwhile, the superior court entered final judgment against Deege on July 14, 2025; an amended judgment on July 15, 2025;

an order denying motion for reconsideration on July 29, 2025; and an order denying a post-trial motion on September 2, 2025.

On October 21, 2025, Deege, assisted by new counsel, moved to amend the notice of appeal to designate the final and amended judgment and other orders, as well as the previously designated orders. On November 4, 2025, Commissioner Karl Triebel issued a ruling accepting the amended notice of appeal for filing but set the case on the dismissal docket for untimeliness, directing Deege to move for an extension of time to file an appeal pursuant to RAP 18.8(b), warning the case would be dismissed otherwise.

Deege moved to have the amended notice of appeal be accepted as timely or alternatively for an extension of time to file the notice. With respect to the request for an extension, Deege represented that he relied on his original attorney's representation that the appeal had been properly perfected. Sheaves opposed the motion, arguing Deege had not shown extraordinary circumstances, as required by RAP 18.8(b). In reply, Deege represented among other things that original appellate counsel was beset with ethical and legal difficulties, including an unrelated criminal matter, that prevented timely compliance with filing of the amended notice of appeal.

Commissioner Triebel granted the motion for extension of time, reasoning Deege alleged enough facts to show the existence of extraordinary circumstances, adding that Sheaves acknowledged that Deege's original appellate counsel was no longer practicing law. A panel of judges denied Sheaves's motion to modify the commissioner's ruling. RAP 17.7. Sheaves now seeks discretionary review in this court. RAP 13.3(a), (c), (e); RAP 13.5(a).

Sheaves contends discretionary review in this court is justified because the Court of Appeals committed obvious error that renders further proceedings useless.

RAP 13.5(b)(1).¹ The court rules set forth “‘specific and stringent’ criteria that reflect the appellate system’s ‘plain and intentional bias against interlocutory review.’” *In re Dependency of N.G.*, 199 Wn.2d 588, 595, 510 P.3d 335 (2022) (quoting Geoffrey Crooks, *Discretionary Review of Trial Court Decisions Under the Washington Rules of Appellate Procedure*, 61 Wash. L. Rev. 1541, 1545, 1547 (1986)). Consistent with this policy disfavoring interlocutory review, the Court of Appeals commits “obvious error” within the meaning of RAP 13.5(b)(1) only if its decision is clearly contrary to statutory or decisional authority with no discretion involved. *See* I WASHINGTON APPELLATE PRACTICE DESKBOOK, § 4.4(2)(a) at 4-34—4-35 (4th ed. 2016) (interpreting analogous obvious error rule under RAP 2.3(b)(1)). Stated another way, the error is obvious because it is plain or manifest. The obvious error also must render further proceedings “useless.” *See id.* at 4-36. Or stated more simply, the court “made a plain error of law that markedly affects the course of the proceedings.” II WASHINGTON APPELLATE PRACTICE DESKBOOK, § 18.3 at 18-14 (4th ed. 2016) (discussing obvious error rule under RAP 13.5(b)(1)).

At issue here is an order denying modification of a commissioner’s ruling granting a motion to enlarge the time for filing a notice of appeal. The governing rule states that an appellate court will grant such an extension “only in extraordinary circumstances and to prevent a gross miscarriage of justice.” RAP 18.8(b). The Court of Appeals has interpreted “extraordinary circumstances” to include cases where “the filing despite reasonable diligence was defective due to excusable error or circumstances beyond the party’s control.” *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988). This is a fact-centered determination. *See Scannell*

¹ There are no assertions that the Court of Appeals committed probable error that substantially altered the status quo or that substantially limits petitioner’s freedom to act under RAP 13.5(b)(2), or that the court departed so far from the accepted and usual course of judicial proceedings as to justify this court’s intervention under RAP 13.5(b)(3).

v. State, 128 Wn.2d 829, 834-35, 912 P.2d 489 (1996) (extension of time justified where pro se litigant’s misinterpretation of amended court rule was “clearly an innocent mistake.”).

In this instance, Commissioner Triebel recognized that Deege’s original appellate counsel, beset with ethical and criminal legal issues, had effectively abandoned Deege after filing the initial notice. Deege had no control over counsel’s apparent desertion, and Deege’s apparent confusion as to proceeding with the appeal before retaining new counsel is understandable. One could tenably argue this unique factual situation constituted an extraordinary circumstance, and Deege’s unintended loss of his opportunity to appeal would work a gross miscarriage of justice. *See Scannell*, 128 Wn.2d at 834 (petitioner’s loss of filing fee and opportunity to appeal amounted to miscarriage of justice). It is therefore not particularly surprising that the panel of judges, after conducting a de novo review of the commissioner’s ruling, declined to modify it. *See State v. Rolax*, 104 Wn.2d 129, 135, 702 P.2d 1185 (1985) (appellate court performs de novo review of commissioner’s ruling challenged by way of motion to modify). Whether an extension of time was warranted in this case is debatable certainly, but the Court of Appeals decision to allow the extension was not an obvious error within the meaning of RAP 13.5(b)(1). It is not necessary to discuss whether further proceedings would be useless under that rule.

The motion for discretionary review is denied.


COMMISSIONER

May 26, 2026