

ORIGINAL

FILED

11/20/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 19-0376

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 19-0376

FILED

NOV 19 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN RE THE MARRIAGE OF:

JASON L. RORABAUGH,

Petitioner and Appellee,

v.

NIKKI L. ZELENKA f/k/a RORABAUGH,

Respondent and Appellant.

ORDER

Representing herself, Nikki L. Zelenka, formerly known as Nikki L. Rorabaugh, petitions this Court for a rehearing of an October 15, 2019 decision to dismiss her appeal with prejudice. Through counsel, Jason L. Roarabaugh has filed a response. Nikki has also filed contemporaneously a petition for an out-of-time appeal that will be addressed in a separate order.

This Court will only consider a petition for rehearing if one of the following reasons were presented: “[t]hat it overlooked some fact material to the decision; [] [t]hat it overlooked some question presented by counsel that would have proven decisive to the case; or [] [t]hat its decision conflicts with a statute or controlling decision not addressed by the supreme court.” M. R. App. P. 20(1)(a)(i)-(iii).

Nikki asserts that her appeal should proceed. She asks this Court “not to dismiss this matter on appeal, based on the fact that [her] psychological disability . . . directly contributed to the paperwork being one day late.” She further requests that this Court “take the fact of [her] disability into account,” and “that extensions for every pending issue in this case be granted[.]” Nikki states that her due process rights will be denied because of Jason’s financial misrepresentations. Nikki also raises for the first time that the claim that she was told the document for filing had to be post-marked by June 27.

Jason responds that this Court has already dismissed with prejudice Nikki's second appeal of this divorce matter from the Gallatin County District Court. Jason points out that her petition raises the same arguments as before. Jason points to this Court's rule where "[u]nless otherwise order, the supreme court's dismissal of an appeal or cross-appeal is with prejudice and constitutes the final judgment of the supreme court[.]" M. R. App. P. 19(2). Jason also asks for costs, attorney's fees, and any other penalty pursuant to M. R. App. P. 19(5).


Nikki has not presented any ground for rehearing under M. R. App. P. 20(1)(a). Nikki asks this Court to make an exception for her and the noncompliance with this Court's rules. We decline to do so. We stated last month: "We decline to change the date Nikki's appeal should be deemed filed." While we may have incorrectly noted that her motion in her underlying proceeding was fax-filed instead of filed, this mistake does not warrant a change in this Court's calculus that her appeal is her second appeal, is not properly before this Court, or has been dismissed. Therefore,

IT IS ORDERED that Nikki's Petition for Rehearing is DENIED.

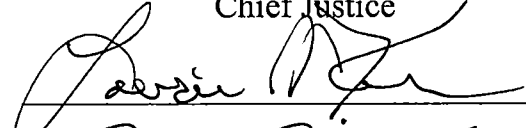
IT IS FURTHER ORDERED that Jason's Request for Sanctions is DENIED.

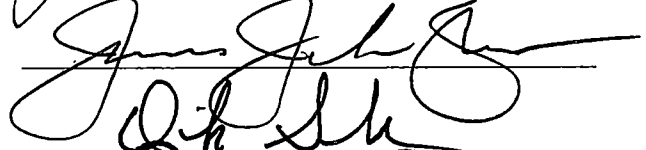
The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Nikki L. Zelenka personally.

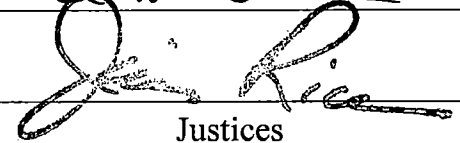
Dated this ^{4th} 19 day of November, 2019.



Chief Justice







Justices