

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA-21-0638

WJG, LLC, a Montana Limited Liability Company,
Plaintiff and Appellee,

v.

BOBBIE HURLEY & JOHN AND JANE DOES 1-10,
Defendant and Appellant.

On Appeal from the Montana Fourth Judicial District Court
Missoula County, Cause No. DV-2021-904
Before Hon. Shane A. Vannatta

**MOTION TO DISMISS FOR FAILURE TO TIMELY FILE OPENING
BRIEF**

Appearances:

Bobbie Hurley
PO Box 1005
Seeley Lake, MT 59868
hurley.bobbie@yahoo.com
Pro Se Appellant

Thomas C. Orr
Orr M^cDonnell Law, PLLC
627 Woody St.
Missoula, MT 59802
Fax: 406-552-05690
tom@omlmt.com
Attorneys for WJG, LLC

COMES NOW Plaintiff and Appellee WJG, LLC, by and through its attorney of record, and respectfully moves this Court to dismiss Defendant and Appellant Bobbie Hurley's appeal on the basis that Ms. Hurley has failed to file her opening brief within the time allotted by the Court, pursuant to both its May 27, 2022 Order and the Montana Rules of Appellate Procedure.

FACTS

The Court received notice of Ms. Hurley's appeal on December 14, 2022. On January 24, 2022, the Court received the District Court Record, thus initiating the briefing schedule pursuant to the Montana Rules of Appellate Procedure. Ms. Hurley's first deadline to file her opening brief was thus scheduled for February 23, 2022. On February 23, 2022, Ms. Hurley filed an Application for Extension of Time to File Brief, which was granted by the Court and Ms. Hurley was given until March 25, 2022 file her opening brief.

On March 24, 2022, Ms. Hurley filed a second Application for Extension of Time to File Brief. On the form application she states that "opposing counsel has been contacted and has no objection" p. 2, App. for Ext. of Time, Mar. 24, 2022. This statement is not true, as Ms. Hurley did not speak with your undersigned regarding this Application. Moreover, Ms. Hurley did not provide a copy of this Application to your undersigned, via U.S. Mail, email, or any other method even though she indicates the contrary on the application. See, p. 1, App. for Ext. of Time. In fact, your undersigned did not learn of Ms. Hurley's second Application for Extension of Time until March 25, 2022, when this Court issued an order granting Ms. Hurley's request, giving her until April 25, 2022.

Again, on April 26, 2022, Ms. Hurley filed an Application for Extension of Time to File Brief. In her third application, she again falsely claimed that she had

contacted your undersigned and that the extension was unopposed. Again, she falsely claimed to have mailed a copy of the Application to your undersigned. And again, your undersigned did not learn of Ms. Hurley's Application for Extension of Time until the Court issued an order granting her request on April 27, 2022. The April 27, 2022 Order provided that Ms. Hurley file her opening brief on May 25, 2022.

Surprisingly, Ms. Hurley did not file her opening brief by the deadline set by the Court and on May 27, 2022, the Court issued an Order instructing Ms. Hurley to file her opening brief no later than June 27, 2022. The order specifically stated that "failure to file the brief within that time will result in the dismissal of this appeal with prejudice without further notice." Ord., June 27, 2022.

On June 1, 2022, Ms. Hurley filed her fourth Application for Extension of Time to File Brief. In this application, she notes that "the other party is unwilling to stipulate to an extension," which is true, however, Ms. Hurley never contacted your undersigned regarding this application. p. 1, App. for Ext. of Time, June 1, 2022. Similar to her previous applications, Ms. Hurley indicates that she served her application upon opposing counsel, this time by personal service, however, this again is not true as Ms. Hurley did not make personal service on May 25, 2022 as indicated. p. 3, App. for Ext. of Time, June 1, 2022. Your undersigned did not learn of Ms. Hurley's fourth Application for Extension of Time until June 2, 2022, when the Court issued an Order granting Ms. Hurley's extension and instructing her to file her opening brief on July 25, 2022.

On July 26, 2022, Ms. Hurley filed her fifth Application for Extension for Time. Your undersigned was not contacted regarding this extension and was not properly served as the address Ms. Hurley lists in her Certificate of Service is

incomplete. Your undersigned did not learn of Ms. Hurley's fifth Application until July 26, 2022, when the Court issued an order granting Ms. Hurley an extension and instructing her to file her opening brief on August 24, 2022.

On August 22, Ms. Hurley filed her sixth Application for Extension of Time. Your undersigned was not contacted regarding this extension and was not properly served as the address Ms. Hurley lists in her Certificate of Service is incomplete. Your undersigned did not learn of Ms. Hurley's sixth Application until August 22, 2022, when the Court issued an order granting Ms. Hurley an extension and instructing her to file her opening brief on September 23, 2022.

I. Ms. Hurley has failed to comply with the Rules of Appellate Procedure.

Rule 13(3) of the Rules of Appellate Procedure states that "if an appellant fails to file a brief within the time provided by this rule, or within any extended time, an appellee may move for dismissal of the appeal." Rule 26(2) of the Rules of Appellate Procedure sets forth the requirements for a party to request an extension of time. Part (f) specifically requires that the requesting party indicate "whether any other party objects to the request."

Here, Ms. Hurley has failed to comply with any of the deadlines provided by the Court. She has also failed to comply with the Court's May 27, 2022 Order, which required her to file her opening brief no later than June 27, 2022. Failure to do so would result in the dismissal of her appeal with prejudice without further notice.

Ms. Hurley has also failed to contact opposing counsel for any one of her six applications for extensions of time. In the applications in which she indicates no-

objection or otherwise she is patently lying to the Court as no such communication between parties has occurred.

CONCLUSION

Because Ms. Hurley has failed to comply with the Rules of Appellate Procedure and, in the course thereof has made misrepresentations to this Court, her Appeal should be dismissed with prejudice.

RESPECTFULLY SUBMITTED this 9th day of September 2022.

ORR M^cDONNELL LAW, PLLC

/s/ Thomas C. Orr

By: _____

Thomas C. Orr

Attorney for WJG, LLC

Certificate of Service

I, the undersigned, hereby certify and affirm that a true and correct copy of the foregoing was provided at Missoula, Montana this 9th day of September 2022 to Defendant and Appellant Bobbie Hurley by email and U.S. Mail.

ORR M^cDONNELL LAW, PLLC

/s/ Thomas C. Orr
By: _____
Thomas C. Orr
Attorney for WJG, LLC

CERTIFICATE OF SERVICE

I, Thomas Charles Orr, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 09-09-2022:

Bobbi Hurley (Appellant)
4237 McNamara Lane
Bonner MT 59823
Service Method: Conventional

Electronically signed by Cathryn Arno on behalf of Thomas Charles Orr
Dated: 09-09-2022