

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 BRYAN SCHROTBERGER,

10 Plaintiff,

v.

11 GRAYS HARBOR COUNTY, et al.

12 Defendants.

CASE NO. C15-5949-RBL

ORDER ON MOTIONS

DKT. #75, 77

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14 THIS MATTER is before the Court on Plaintiff Schrotberger's Motion for an Extension  
15 of Time [Dkt. #75] and his Motion for Reconsideration [Dkt. #77]. Schrotberger sued  
16 Defendants for their use of excessive force while he was detained at the Grays Harbor County  
17 Jail. A jury returned a verdict in Schrotberger's favor on May 10, 2017, and judgment was  
18 entered the next day. Thirty-two days later, Schrotberger moved for attorneys' fees and costs.  
19 The Court misread the motion's noting date and mistakenly thought Schrotberger had neglected  
20 to file a reply, and as such, had failed also to explain why his motion was untimely. The Court  
21 denied his motion:  
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1           1           The Motion was noted for June 23, and Schrotberger's Reply was due that day. He did  
2           2           not reply, or otherwise address any of the Defendants' arguments.

3           3           Because the Motion was not timely filed, it is **DENIED**. Even if the Court considered the  
4           4           Motion as timely, based on some persuasive articulation of why it was not filed timely, the Court  
5           5           would be inclined to reduce the fees and costs awarded, for the reasons and in the amounts  
6           6           advocated by the Defendants.

7           See Dkt. #74 (Order on Motion for Fees) at 2.

8           Schrotberger post-hoc moved for an extension of time asking the Court to permit him to  
9           bring his already-late-filed motion for fees. His attorney argues she could not have brought his  
10          motion sooner because she and defense counsel were attempting to resolve the matter outside  
11          court. She also explains that her paralegal was out of town and she was busy with another case,  
12          so she overlooked the deadline to request fees. Defendants argue Schrotberger has failed to  
13          establish excusable neglect, and to allow him to move for fees so late would prejudice them  
14          because they missed the window to appeal.

15          The Court may extend a deadline "on a motion made after the time has expired if the  
16          party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b). When determining  
17          whether the party's neglect is "excusable," courts consider (1) the danger of prejudice to the  
18          opposing party, (2) the length of the delay, and its potential impact on judicial proceedings, (3)  
19          the reason for the delay, including whether it was within the reasonable control of the movant,  
20          and (4) whether the movant acted in good faith. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs.*  
21          *Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489 (1993).

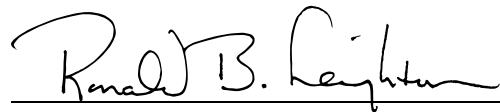
22          The totality of these factors persuade the Court to grant Schrotberger's motion. While this  
23          delay was entirely in his control, any prejudice to the Defendants can be eliminated by the Court  
24          extending their time period to appeal for good cause under Federal Rule of Appellate Procedure

1 4(a)(5)(A)(ii); the delay did not affect the judicial proceedings, as they were already complete;  
2 and Defendants concede Schrotberger acted in good faith. If defense counsel was collaborating  
3 with Schrotberger's attorney to resolve the matter outside of court, as Schrotberger contends,  
4 then defendants cannot be genuinely surprised that after negotiations failed, Schrotberger moved  
5 for fees. Therefore, Schrotberger's Motion for an Extension of Time [Dkt. #75] is GRANTED.

6 Schrotberger also asks the Court to reconsider denying his motion for fees, now that he  
7 has explained why his motion was untimely. The Court will not grant a motion for  
8 reconsideration until it has allowed the non-moving party to file a response. *See* Local Rule CR  
9 7(h)(3). The Court INVITES Defendants to respond to Schrotberger's motion for reconsideration  
10 by Friday, August 4.

11 IT IS SO ORDERED.

12 Dated this 17<sup>th</sup> day of July, 2017.

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15 Ronald B. Leighton  
16 United States District Judge  
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