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No. 102306-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

PREDRAG TOSIC,

Petitioner,

and

HEATHER TOMASON,

Respondent.

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ANSWER TO PETITION FOR REVIEW

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**A. Introduction.**

The Court of Appeals has substantial discretion when exercising its express and inherent authority under the Rules of Appellate Procedure to manage its docket. Appellate courts may “perform all acts necessary or appropriate to secure the fair and orderly review of a case.” RAP 7.3. This authority includes conditioning a party’s right to further participate in review on compliance with the court’s orders, RAP 18.9(a), and dismissing review if a party fails to comply with those orders. RAP 18.9(b).

On March 20, 2023, the Court ordered petitioner to file his opening brief by April 28, 2023, warning him that this was the “last extension” he would be granted and advising him the “appeal will be dismissed without further notice” if the brief was not filed on that day. Petitioner failed to file his opening brief by that date, and the Court exercised its discretionary authority and dismissed his appeal on June 16, 2023. By the time the Court dismissed

the appeal, it had been pending for eighteen months and petitioner had been granted 273 extra days to file his opening brief.

The Court of Appeals' exercise of its discretionary authority to dismiss review for petitioner's failure to follow the Court's orders provides no basis for this Court's review under RAP 13.4(b). The Court's decision enforcing its own orders "to secure the fair and orderly review of a case" under RAP 7.3 and sanctioning a party under RAP 18.9 by dismissing the appeal, does not involve an "issue of substantial public interest," does not conflict with any appellate court decisions, and does not raise a significant question of law under the constitution. RAP 13.4(b).

There is also no basis for this Court to grant review based on petitioner's claim that the Court of Appeals' dismissal of his appeal violated the ADA. Petitioner made his request for ADA accommodations over six weeks after the date he had been ordered to file his opening brief. The



Court told him three months earlier that the previous extension would be the “last extension” he would be granted, and gave him notice that his appeal would be dismissed without further notice if the brief was not filed on the date ordered. The Court was not obligated to grant him another extension based on his belated ADA claim, particularly when failed to provide evidence of an alleged disability.

This Court should deny review.

**B. Restatement of the Case.**

- 1. This was an appeal from a modified parenting plan entered, and in place for, 18 months before the appeal was dismissed.**

This is an appeal from orders modifying the parties’ agreed parenting plan for their daughter, now age 6. Based on an altercation between the parents during a visitation exchange, petitioner Predrag Tosic (“Tosic”) petitioned to modify the parenting plan, which had designated respondent Heather Tomason (“Tomason”) as the

daughter's primarily residential parent and granted joint decision-making for major decisions. Tomic accused Tomason of committing domestic violence against him during this exchange, which resulted in Tomason's brief arrest. (See App. 8, Finding of Fact (FF) 31)

King County Superior Court Judge Sean O'Donnell ("the trial court") presided over the modification trial. The trial court reviewed surveillance video of the altercation and found that it had been a "minor incident" that Tomic "contrived" to characterize himself as a victim. (App. 7, FF 26)<sup>1</sup> The trial court found Tomic instigated the altercation by being "confrontational" with Tomason and "invading [her] residential time" with the daughter. (App. 7, FF 22)

The trial court "did not condone [Tomason]'s physical response" to Tomic, but found that Tomic's "ongoing bullying, his need to control, his need to be right,

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<sup>1</sup> The trial court's findings refer to the mother by her maiden name "Blakemore." The mother has since remarried and now uses the last name "Tomason."

his need to have the last word (all on display here) would push most people to their limits.” (App. 7, FF 27) The trial court found that Tomason “presents an extremely low risk, to none at all, of engaging in an incident like this with [Tosic] again.” (App. 8, FF 32)

Based on the evidence elicited at trial, the trial court did find there was a basis to modify the parenting plan and award sole decision-making to Tomason, finding there was “no realistic way that [Tosic] can effectively co-parent with [Tomason]. That arrangement would see [Tosic] engaging in unyielding struggles with [Tomason] until [the daughter] reached majority. It would be highly detrimental to [the daughter]’s well-being.” (App. 10, FF 48) The trial court found [Tomason] to be “currently better situated to be [the daughter]’s primary parent and to have sole decision-making authority for education, non-emergency health and other major life decisions . . . ” (App. 10, FF 49)

Tosic filed his notice of appeal on December 13, 2021.

2. **After already granting petitioner 234 extra days to file the opening brief, the Court of Appeals granted an additional 39 days, warning petitioner his appeal would be dismissed without further notice if the brief was not filed by the date ordered.**

Although the appeal had been pending since December 2021, the record on review was not perfected until June 12, 2022, making Tasic's opening brief initially due on July 29, 2022. Over the next eight months, Tasic was granted a total of 273 additional days to file his opening brief:

On July 28, 2022, Tasic was granted a **60-day** extension to file his opening brief by September 27, 2022, and warned that "no further extensions" would be granted. (App. 15) Tasic did not file his brief.

On September 23, 2022, Tasic was granted a **48-day** extension to file his opening brief by November 14, 2022. (App. 16) Tasic did not file his brief.

On November 14, 2022, Tasic was granted a **21-day** extension to file his opening brief by December 5, 2022. (App. 17) Tasic did not file his brief.

On December 22, 2022, Tasic was granted a **32-day** extension to file his opening brief by January 6, 2023. (App. 18) Tasic did not file his brief.

On January 19, 2023, Tasic was granted a **49-day** extension to file his opening brief by February 24, 2023. (App. 19) The Court noted that “[m]ultiple extensions have already been granted,” therefore, “in light of the significant delay, . . . sanctions of \$500 will be imposed against Tasic without further notice of this Court” if the brief is not filed on the date ordered. (App. 19) Tasic did not file his brief.

On March 6, 2023, Tasic was granted a **24-day** extension to file his opening brief by March 20, 2023, and warned that “this matter may be dismissed without further notice of this Court” if the brief was not filed on the date ordered. (App. 20) Tasic did not file his brief.

On March 20, 2023, Tasic was granted a **39-day** extension to file his opening brief by April 28, 2023. (App. 22) The Court warned that in “light of the significant delay in this case involving a child,” this was the “last extension” that Tasic would be granted, and put him on notice that “this appeal will be dismissed without further notice of this Court” if Tasic failed to file his brief.

**3. Despite being warned that the 39-day extension would be the “last,” petitioner requested another extension, which was denied.**

Tasic moved to modify the commissioner’s ruling ordering him to file his opening brief by April 28, 2023, which was denied on April 20, 2023. (App. 23) Nevertheless, the next day, Tasic filed an “emergency” motion for another extension to file his opening brief claiming multiple grounds including that he was sick, he had been busy dealing with “other matters” in the Court of Appeals and Supreme Court, and he was waiting for completion of the verbatim report of proceedings for a

nineteen-minute pretrial conference that he had belatedly designated,<sup>2</sup> which he acknowledged would be completed before the brief deadline of April 28, 2023.

On April 21, 2023, a Court of Appeals commissioner denied Totic's emergency motion and ordered him to file his opening brief by April 28, as required by the March 20 ruling. (App. 24) The commissioner did not question Totic's health concerns but noted that he has "prepared numerous and lengthy motions and filings throughout the exceptionally extended time this case has been pending, even during health challenges, and has, most recently, directed his time and efforts to additional motions rather than the brief." (App. 24)

For instance, despite claiming in his "emergency" motion that he "was incapacitated to work on Appellate

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<sup>2</sup> Notably, in the opening brief that Totic filed after the appeal was dismissed, he does not cite to the verbatim report of proceedings for this hearing despite it being the basis for his motion to modify the March 20, 2023 ruling requiring he file his brief by April 28, 2023.

Brief at least for a half of the month of March,” Totic prepared and filed four motions, and related pleadings in this Court under Cause no. 101501-1 in March and April 2023: motion to modify this Court’s commissioner’s ruling denying discretionary review of the Court of Appeals order denying his motion to stay the modified parenting plan; motion to disqualify this Court’s commissioner; motion for accelerated review of his motion to modify; and a motion for modification of the clerk’s rulings regarding the procedure and deadlines for his motion to modify, plus various “Affidavit[s] of Additional Points & Authorities.”

In the same two months, Totic sought discretionary review of the trial court’s order denying Totic’s *second* motion for recusal under Court of Appeals Cause no. 84655-8-1 and filed various memorandums or affidavits of “Points & Authorities.”

The commissioner ordered Totic to file his opening brief by April 28, 2023, but allowed Totic to “seek



permission to file an amended brief with any reasonably necessary revisions within a week or ten days” if he believed it necessary to ensure “a properly done, quality Brief.” (App. 24) However, the commissioner made clear that Tasic was required to file some form of an opening brief by April 28. (*See* App. 24)

On April 25, 2023, Tasic moved to modify Commissioner Koh’s ruling.

**4. To avoid complying with the Court of Appeals’ order requiring him to file his opening brief, petitioner improperly removed the appeal to federal court.**

On April 27, 2023, the day before his opening brief was due, Tasic filed a notice of federal removal of the appeal. Tasic admits that he removed the case specifically to avoid the Court of Appeals’ orders requiring him to file his opening brief by April 28. (Petition 12) However, notwithstanding Tasic’s attempted federal removal, the Court’s orders were still “in full force and effect until

dissolved or modified by the district court.” 28 U.S.C. §1450.

Despite the Court of Appeals warning Tonic that his appeal would be dismissed without further notice if his opening brief was not filed by April 28, 2023, Tonic did not file his brief in either the Court of Appeals or the district court. Instead, on April 28, Tonic filed in the Court of Appeals a “Notice to the Court and Opposing Counsel: Federal Removal Means, this Court No Longer Has Jurisdiction,” stating “I am aware of past rulings and deadlines defined by this court. However, the jurisdiction in Re: matter of appeal of Tonic #83518-1, is now with the federal district court; and this court cannot move forward or make any rulings in this case once the federal removal has taken place . . . ” (App. 25)

On May 29, 2023, District Court Judge James Robart remanded the matter back to the state Court of Appeals. (App. 27) The appeal was not remanded on “technical

grounds” as claimed by Totic (Petition 5), but on the merits because “Totic is not the defendant, for untimeliness, and for lack of subject matter jurisdiction.” (App. 33) Judge Robart found Totic’s “attempted removal was objectively unreasonable, and likely had the effect of stalling proceedings in the Washington Court of Appeals.” (App. 34)

Judge Robart cautioned Totic “that any future attempt to remove the proceedings may justify an award of attorneys’ fees or other sanctions.” (App. 35) Presumably to avoid any further delay in remanding the case back to the Court of Appeals, Judge Robart directed the Clerk “not to accept any further filings in this matter,” and close the case. (App. 35)

**5. After the appeal was remanded back to the Court of Appeals, the Court dismissed the appeal because petitioner had not filed his opening brief.**

On June 13, 2023, the district court clerk provided the Court of Appeals with a certified copy of Judge Robart’s

order remanding the case. (App. 40) By then, Tomic had still not filed his opening brief in either the Court of Appeals or in the district court.<sup>3</sup>

The day before the Court of Appeals received the certified copy of the remand order, Tomic, on June 12, 2023, filed a motion for an extension to file his opening brief (which had been due on April 28) requesting ADA accommodations “moving forward,” including “sufficient time to prepare written pleadings.”

On June 16, 2023, the Court of Appeals denied Tomic’s motion to modify the April 21, 2023 ruling denying his “emergency” motion for an extension to file his opening brief, which had been pending when Tomic removed the appeal to district court. (App. 37) As Tomic had not filed his

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<sup>3</sup> However, as this Court recognized in denying his motion to modify, Tomic had been actively litigating in this Court (while not preparing or filing his opening brief in either the Court of Appeals or district court), between March and June, noting the “unprecedented volume of filings from Mr. Tomic.” (Cause no. 101501-1 July 18, 2023 Order)

opening brief by April 28, as previously ordered, a panel of the Court of Appeals dismissed his appeal. (App. 37-38) In light of this order, the Court of Appeals commissioner denied Totic's motion for an extension to file his opening brief and for ADA accommodations as "moot." (App. 40)

Totic moved for reconsideration of the Court of Appeals' order dismissing his appeal on July 6, 2023. On the same day, Totic finally filed an opening brief—nearly 10 weeks after the date it was ordered to be filed, and after the appeal had already been dismissed. The Court denied reconsideration on July 25, 2023. (App. 41) This Court granted Totic's request for an extension to file his petition for review.

### **C. Grounds for Denial of Review.**

- 1. Appellate courts have both express and inherent authority to dismiss an appeal when a party refuses to comply with court-imposed deadlines.**

Review of the Court of Appeals' decision dismissing Totic's appeal is not warranted on any ground under RAP

13.4(b). Tasic was ordered three times to file his opening brief by April 28, 2023—first in the March 20, 2023 commissioner ruling (App. 22), second in the Court’s April 20, 2023 order declining to modify the March 20, 2023 ruling (App. 23), and third in the April 21, 2023 commissioner ruling denying Tasic’s “emergency” motion for extension (App. 24). Tasic was warned as early as March 6, 2023 (App. 20) that his appeal would be dismissed if he failed to timely file his opening brief, yet he still refused to file it.

Appellate courts have express authority to dismiss an appeal for failure to comply with the court’s orders. RAP 7.3 authorizes appellate courts to make orders “to secure the fair and orderly review of a case,” including conditioning “a party’s right to participate further in the review on compliance with terms of an order or ruling.” RAP 18.9(a); *see also* RCW 2.28.010 (“every court of justice has power . . . to provide for the orderly conduct of proceedings before it . . .

to compel obedience to its judgments, decrees, orders and process”). If a party fails to comply with the court’s orders, RAP 18.9(b) grants the court authority to dismiss the appeal. *Winter v. Dep’t of Soc. & Health Servs. on behalf of Winter*, 12 Wn. App. 2d 815, 844, ¶169, 460 P.3d 667 (2020) (appeal dismissed when appellant failed to meet the filing deadline in the court’s ruling), *rev. denied*, 196 Wn.2d 1025 (2020).

In addition, all courts have inherent authority to manage their calendar and docket, including the power to dismiss a case as a sanction for violations of court rules, orders, and calendar settings. *See Wallace v. Evans*, 131 Wn.2d 572, 577, 934 P.2d 662 (1997) (when no court rule or statute governs the circumstances presented, a court has inherent authority to dismiss a case as a sanction for violations of other court rules, orders, and calendar settings); *State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 310, 553 P.2d 423 (1976) (“we note that an appellate court possesses the inherent

power to dismiss an appeal when a party disobeys certain trial court orders”); *State v. Castillo-Lopez*, 192 Wn. App. 741, 748, ¶14, 370 P.3d 589, *rev. denied*, 185 Wn.2d 1038 (2016) (courts have “discretion to manage their docket”).

The sanction of dismissal with prejudice may be imposed against a plaintiff who is proceeding pro se so long as the litigant has been warned that noncompliance can result in dismissal. *See e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), *as amended* (May 22, 1992), *cert. denied*, 506 U.S. 915 (1992) (affirming order dismissing pro se complaint when court granted plaintiff two opportunities to amend his complaint and each time expressly warned him that “if he did not comply with the order the clerk would enter a dismissal without further notice to him”); *see also See Winter*, 12 Wn. App.2d at 844, ¶169.

In *Winter*, Division One denied a motion to modify the clerk’s dismissal of an appeal filed by a pro se appellant



for failing to file his opening brief by the date ordered by the Court, noting that courts “hold pro se litigants to the same standards as attorneys.” 12 Wn. App. 2d at 844, ¶¶69, 70. The Court held the clerk had a “valid basis” to dismiss the appeal under RAP 18.9 when appellant received “extensions totaling over 3 months of extra time to file his opening brief” and had 40 days’ notice that the appeal would be dismissed if he did not meet the filing deadline. 12 Wn. App. 2d at 844, ¶¶69, 70.

Here, Tosic had over 9 months “of extra time to file his opening brief” and was given at *least* 39 days’ notice<sup>4</sup> that his appeal would be dismissed if he did not file his brief by April 28, 2023. The Court of Appeals thus had a “valid

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<sup>4</sup> The Court’s March 6, 2023 ruling initially gave Tosic notice that his appeal *may* be dismissed if his brief was not filed by March 20, 2023 (14 days’ notice). (App. 20) The Court then gave him an additional 39 days’ notice that his appeal *would* be dismissed if he failed to file his opening brief by April 28, 2023. (App. 22)

basis” to dismiss Tomic’s appeal, and review of that decision is not warranted.

**2. The Court of Appeals properly exercised its discretion in dismissing the appeal when petitioner was provided notice that his appeal would be dismissed if he failed to file his opening brief by the date ordered.**

Whether to dismiss an appeal ordinarily “rests within the sound discretion of the court hearing the motion.” *State v. Ashbaugh*, 90 Wn.2d 432, 439, 583 P.2d 1206 (1978); *see also Apostolis v. City of Seattle*, 101 Wn. App. 300, 304, 3 P.3d 198 (2000) (“dismissing a case for noncompliance with court orders or rules is reviewed for abuse of discretion”). A reviewing court should be wary of “unwarranted interference” with the lower court’s functions in managing its own docket. *State ex rel. Frank v. Bunge*, 16 Wn.2d 358, 361, 133 P.2d 515 (1943).

Here, the Court of Appeals did not abuse its discretion in dismissing this appeal after granting Tomic

273 extra days to file his opening brief and warning him that his appeal would be dismissed if he did not file his opening brief by April 28, 2023. Tosic may have believed the Court's order was unfair, but that does not relieve him of his duty to obey it. *Mead Sch. Dist. No. 354 v. Mead Ed. Ass'n (MEA)*, 85 Wn.2d 278, 280, 534 P.2d 561 (1975) (parties are bound to comply with an order, even if they believe it "erroneously made").

Courts are "under no obligation to grant special favors" to pro se litigants. *Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). "[T]he law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws." *Olson*, 69 Wn. App. at 626 (quoted source omitted). It is in any event clear from the record in this (and the related) case that the Court of Appeals provided Tosic more than enough accommodation in light of his pro se status by

granting him 273 extra days to file his opening brief—a delay that would likely never be granted to a represented party. The Court’s decision dismissing Totic’s appeal for failure to comply with the court-ordered deadline to file his opening brief by April 28, 2023 was well within its discretion and does not warrant review by this Court.

**3. Petitioner’s request for ADA accommodation did not limit the authority of the Court of Appeals to enforce its earlier rulings and dismiss the appeal when he failed to file his opening brief on the date ordered—over a month before he filed his ADA request.**

Totic asserts review is warranted based on his claim that the Court of Appeals ignored his request for ADA accommodations under GR 33 by dismissing his appeal. However, Totic made that request for accommodations “moving forward” for the first time on June 12, 2023. The Court’s order dismissing his appeal on June 16, 2023 merely enforced rulings that had been in place since March 20, 2023, requiring him to file his opening brief by April

28, 2023 or his appeal would be dismissed without further notice. The Court thus properly found that his request for ADA accommodations “moving forward” was moot. (App. 40)

In any event, the Court of Appeals had already provided Tasic with the accommodation that he requested—to be “given sufficient time, under my circumstances, to file all necessary pleading[s] with this court” by granting him an extraordinary 273 extra days to file his opening brief.

The fact that Tasic improperly removed the appeal to federal district court the day before his brief was ordered to be filed did not relieve him of his obligation to comply with the Court of Appeals’ order to file his brief by April 28, 2023. While removal prevented the Court from dismissing the appeal while it was removed to district court, Tasic’s obligation to file his opening brief by April 28, 2023, as required by the Court’s order remained. “All injunctions,

orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court.” 28 U.S.C.A. § 1450. If Tosic wanted to avoid having his appeal dismissed, he should have filed his opening brief in the district court by April 28, 2023—his June 12 request for ADA accommodation to extend the time for filing his opening brief came too late.

The Court of Appeals’ order made clear that the March 20, 2023 extension requiring him to file his opening brief by April 28 would be his “last.” (App. 22) Tosic was not entitled to yet another extension based on his requested ADA accommodations, filed over six weeks after the brief was already past due. Tosic cannot rely on his unsupported ADA claim to avoid the effect of his failure to comply with the Court of Appeals’ order, and this Court should not reward Tosic’s gamesmanship by granting review.

Even if Totic's request for ADA accommodations was not moot, the Court of Appeals was not required to grant Totic another extension when he "failed to satisfy the substantive requirements" under GR 33(2)(a). *Marriage of McCann*, 4 Wn. App.2d 896, 911, ¶137, 424 P.3d 234 (2018). The "substantive requirements" under GR 33 is "proof of a disability." *McCann*, 4 Wn. App.2d at 911, ¶137. A party seeking reasonable accommodations based on an alleged disability must show that they are actually suffering from an impairment. *Taylor v. Burlington N. R.R. Holdings, Inc.*, 193 Wn.2d 611, 619, ¶10, 444 P.3d 606 (2019).

Here, the only proof that Totic provided of a disability in his initial request for ADA accommodations is a June 10, 2023 doctor's note that Totic's "lungs sound good," but he was having "issues" with his sinuses, and prescribing antibiotics.<sup>5</sup> As part of his motion for

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<sup>5</sup> Although he filed his motion on June 12, 2023, he provided this doctor's note with pleadings filed on June 14.

reconsideration, filed July 6, 2023, Totic also included similar notes from March and April 2023. For instance, in March, Totic sought treatment for a cough; the treating physician described him as “alert and oriented,” with “no acute distress,” able to “easily converse[] in long run on sentences,” and “self-ambulatory.” The doctor’s note for Totic’s visit in April referred to his “chief complaint” as “Cold sx cough sx phlegm sx.”

These doctor’s notes do not support Totic’s claim of a “disability” as defined under the ADA, which is “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C.A. § 12102 (1)(A). Nor is it a “disability” under the Washington State Law Against Discrimination (WLAD), which requires showing an impairment that has a “substantially limiting effect upon the individual’s ability to perform his or her job.” RCW 49.60.040(7)(d)(i).



Other than these doctors' notes, the only evidence Tosic provided of any disability was his self-diagnosis of legal abuse syndrome (LAS) and post-traumatic stress disorder (PTSD). Tosic's self-diagnosis is not enough to trigger any requirement for the Court of Appeals to grant Tosic another extension to file his opening brief as a reasonable accommodation under GR 33. First, "Legal Abuse Syndrome' is not recognized in the DSM-V. The theory is credited to authors such as Dr. Karin D. Huffer." *Adoption/Guardianship of C.E.*, 464 Md. 26, 40, 210 A.3d 850, 858, n. 11 (2019). Second, Tosic's counselor, who testified at the modification trial, did not diagnose Tosic with PTSD. (See RP 925)

Tosic's unsupported claim that he suffers from LAS or PTSD is not sufficient to have required the Court of Appeals to provide any accommodations to him in his appeal. In *Marriage of McCann*, 4 Wn. App. 2d 896, for instance, Division One affirmed the trial court's order

denying wife's request for a recess and continuation of the trial based on her claim that she had PTSD. The only evidence the wife presented was from a licensed therapist who had been engaged by the wife to "help alleviate her anxiety." While the therapist mentioned a diagnosis of PTSD for the wife in her declaration, the therapist had not diagnosed the wife with PTSD, nor did she have the credentials to do so. As the wife's "claim of PTSD was not supported by evidence of a competent diagnosis" 4 Wn. App. 2d at 910, ¶33, Division One affirmed the trial court's decision. 4 Wn. App. 2d at 911-12, ¶37.

Similarly, in *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801, 6 P.3d 30 (2000), Division Two affirmed the trial court's order dismissing plaintiff's claim against her employer for failure to accommodate her disability. The only evidence presented by plaintiff regarding her purported disability was her testimony that she was "depressed and/or suffering from PTSD." Division Two

held that the trial court properly dismissed plaintiff's claim when, in attempting to establish the presence of a disability, the plaintiff "merely" stated "she perceived a stress problem," requiring her employers to provide her with reasonable accommodations. 101 Wn. App. at 810-11.

Review of the Court of Appeals' decision dismissing Totic's appeal is not warranted because the Court properly found Totic's request for ADA accommodations was moot. Even if it were not moot, Totic failed to prove that he had a disability to require the Court to grant him another extension as an ADA accommodation under GR 33.

**4. The Court of Appeals' dismissal of petitioner's appeal did not deprive him of due process.**

Due process requires notice, a reasonable right of access to the courts, and a meaningful opportunity to be heard. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 224, 829 P.2d 1099 (1992); *Yurtis v. Phipps*, 143 Wn. App. 680, 694, ¶ 34, 181 P.3d 849, *rev. denied*, 164 Wn.2d 1037

(2008). However, “an implicit requirement of access to the court system is that the litigation must proceed in good faith and comply with the court rules.” *Yurtis*, 143 Wn. App. at 694, ¶ 35. Tosic exercised his right of access to the courts and his opportunity to be heard on multiple occasions. The Court of Appeals did not abridge that right by dismissing his appeal after notifying him in its March 20, 2023 ruling that his appeal would be dismissed if he failed to file his opening brief by April 28, 2023.

**D. Conclusion.**

This Court should deny review.

*I certify that this answer is in 14-point Georgia font and contains 4,915 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).*

Dated this 10<sup>th</sup> day of October, 2023.

SMITH GOODFRIEND, P.S.

By: /s/ Valerie A. Villacin

Valerie A. Villacin

WSBA No. 34515

Attorneys for Respondent

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 10, 2023, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Predrag Tasic 2831 W Olympic Avenue Spokane, WA 99205 <a href="mailto:pedja.tasic@gmail.com">pedja.tasic@gmail.com</a> <a href="mailto:predrag.tasic7@yahoo.com">predrag.tasic7@yahoo.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Everett, Washington this 10<sup>th</sup> day of October, 2023.

/s/ Victoria K. Vigoren  
Victoria K. Vigoren

No. 102306-5  
SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

PREDRAG TOSIC,

Petitioner,

and

HEATHER TOMASON,

Respondent.

---

APPENDIX TO  
ANSWER TO PETITION FOR REVIEW

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SMITH GOODFRIEND, P.S.

By: Valerie Villacin

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Superior Court of Washington,  
County of King

In re:

No. 17-3-04787-6 SEA

Petitioner:

HEATHER TOSIC

And Respondent:

PREDRAG TOSIC

Final Order and Findings on  
Petition to Change a Parenting Plan,  
Residential Schedule, or Custody  
Order  
(ORMDD/ORDYMT)

**FINAL ORDER AND FINDINGS ON PETITION TO CHANGE A PARENTING PLAN,  
RESIDENTIAL SCHEDULE, OR CUSTODY ORDER**

1. This Order is based on:

- The *Petition to Change a Parenting Plan, Residential Schedule, or Custody Order*,
- The child's best interest,
- The Court's decision that there were valid reasons to hear the *Petition* in the *Order on Adequate Cause to Change a Parenting/Custody Order* signed on **JULY 25, 2019**.

And the court hearing or trial commencing on (or about) **September 20, 2021 and concluding on September 30, 2021**.

1  
2 The following people were at the hearing or trial:

- 3       ➤ Petitioner;  
4       ➤ Respondent;  
5       ➤ *Guardian ad Litem*;  
6       ➤ Witnesses for Petitioner and Respondent.

7 ***Findings & Conclusions***

8 **2. Jurisdiction (RCW 26.27.201, .221, .231, .261, .271)**

9 The court **can** decide this case for the children because:

10       **Washington order/exclusive, continuing jurisdiction** – The  
11       parenting/custody order was made by a Washington state court, and the court  
12       still has authority to make other orders for **Mira Tasic**.

13       **AND:**

14       **Home state jurisdiction** – Washington is the child’s home state because:

15       **Mira Tasic** does not have another home state.

16 **3. Major change (RCW 26.09.260(1) and (2))**

17       **Denied** – The court denies the request for a major change as requested by Dr.  
18       Tasic for the reasons outlined below. The Court will approve a minor modification  
19       to the parenting plan.

20 **INTRODUCTION**

21 This matter came before the Court on Dr. Tasic’s motion to seek a major  
22 modification of the parties’ parenting plan for their young daughter Mira.

23 The Court heard testimony over a period of 5 days (4 full and two ½ days). The  
24 following witnesses testified: the parties, Mr. Bartlett, Mr. Merritt, Dr. McKinley, Dr.  
Pirone, Danica Tasic, Jasmina Tasic Vesna Todorovic, Irene Supica, William  
Persons, Jeffrey Jaksich, Det. Ryan Potter, Officer Trevor Rogers, Dr. Singer,  
Linda Irish, Julie Reynolds and Jelena Vranjin. See docket # 282.

The Court admitted, and has reviewed, the following exhibits: 1, 2, 4, 9, 10, 24, 26,  
43, 101, 106, 107, 108, 109, 110, 130, 131, 136, 139, 150, 160, 161, 162, 163,

1 165, 166, 167, 168, 191, 192, 204, 205, 208, 210 and 217. See docket #283.  
2 The parties had ample opportunity to present their evidence, question witnesses,  
and argue their respective positions.

3 Before outlining the Court's decision and reciting the proved facts, it is worthwhile  
4 to put into context the petitioner's conduct since he agreed to the parenting plan  
for his daughter.

5 Dr. Totic is highly educated and capable. This is clear from the degrees he holds,  
6 his employment history, his own testimony, and the testimony of the witnesses  
who testified on his behalf.

7 This Court has come across few individuals in its experience who have possessed  
8 such a pervasive sense of aggrievement as Dr. Totic. It has permeated his  
9 interpretation of events, his own conduct, and has been his justification for many of  
10 his actions against individuals associated in this case – whether Ms. Blakemore, or  
the domestic violence evaluator, Ms. Irish, or the appointed guardian ad litem, Dr.  
Singer.

11 This perceived aggrievement, and his anger that accompanies it, fuels Dr. Totic's  
12 sense of entitlement to conduct himself in an unyielding and bullying manner. This  
13 conduct has been either overlooked or dismissed by his witnesses, and some of  
the professionals who work with him, as merely Dr. Totic having a strong  
14 personality or enjoying a good argument.

15 During trial Dr. Totic acknowledged that sometimes his tone can be unpleasant in  
16 tone or that he can be persistent. But what he displayed in this litigation is much  
17 more than tone or standing by principles. The disdain he has for people he  
perceives as treating him poorly, or with whom he disagrees, is pervasive. This  
18 has manifested itself unfounded accusations against the courts, Mr. Eagle, against  
the GAL, and in making reports to State authorities in which he attacks Ms. Irish's  
19 (the domestic violence investigator) licensure. He has accused Dr. Singer and Ms.  
Irish of collaborating against him, he has complained that the mother of his child is  
20 a sociopath and he has suggested that her husband may be a sex offender. Dr.  
Totic has accused Dr. Singer of committing felonies, witnesses of perjuring  
themselves and Mr. Eagle of unethical conduct.

21 So this record is absolutely clear -- all of these accusations are unproved.

22 The future reader of this Order should know that this Court finds it unlikely that Dr.  
23 Totic will stop believing in his victimhood when it comes to his relationship with  
Mira's mother. He believes that he is fighting an injustice aimed at him.

24 Dr. Totic's perceived victimization flows from his belief that State agencies and the

1 courts, and anyone else who says something critical of him, are part of a cabal of  
2 anti-father, anti-heterosexual, anti-non-American/immigrant haters out to  
undermine him and interfere with his relationship with his daughter.

3 Judicial officers or justice system professionals handling Dr. Tasic's case in the  
4 future must do so with clear boundaries and the expectation he will attempt to  
5 retaliate (in a physically non-violent way) against people who do not share his view  
6 of events and who report that in any official way. He has minimal insight into his  
7 own conduct (or worse, if he does have insight, he does not care about its impact)  
and, sadly for those on the receiving end of it, that conduct can result in their  
emotional exhaustion, frustration and anger.

8 It is likely that Dr. Tasic will interpret this Court's findings, and this introductory  
9 warning, as another example of the 'Orwellian' and 'massive' fraud he perceives  
as being perpetuated against him.

10 Accordingly, this Court's most significant concern moving forward is that Dr. Tasic  
11 will weaponize his daughter against Ms. Blakemore as he reacts to this perceived,  
12 additional, grievement. This could come in many forms, but the easiest ones –  
13 and the one for which he has shown no reservation – is putting down Ms.  
Blakemore and making accusations against her in front of Mira to persuade  
(directly or indirectly) the child that there is something wrong or sinister about her  
mom.

14 It is also this Court's concern that Dr. Tasic will want to litigate every flaw he sees  
15 in this parenting plan, every slight associated with implementing it, and every  
16 small, inconsequential or non-material violation of it. Indeed, since this Court  
17 concluded trial, Dr. Tasic has filed at least 10 post-trial briefs, in addition to  
numerous emails to this Court's bailiff, arguing substantive issues in the case. See  
docket #293.

18 It is this Court's observation that Dr. Tasic is motivated by wanting to be affirmed  
19 that his perceived grievement is real, that he is the best person to parent Mira,  
20 and that those who have taken a different view are not just wrong, but are  
schemers and liars.

21 The modification of this parenting plan attempts to address, and manage, this  
22 possible future conduct. But it also, perhaps optimistically, tries to preserve a  
relationship for Mira to have with her father.

23 To be clear, this parenting plan is not for Dr. Tasic or Ms. Blakemore. This plan is  
24 for Mira and to help her parents navigate their unfortunate relationship as they  
help her on her path to independence and adulthood. This plan's success for Mira  
depends on her parents and their willingness to comply with it.

1  
2 With this backdrop, the Court makes the following Findings of Fact:

- 3 1. The parties met in February 2013 and married a short time later in August  
4 2013.
- 5 2. The have one daughter, Mira, born on January 28, 2017.
- 6 3. The parties separated and stopped living together in February 2017.
- 7 4. The parties signed an agreed parenting plan on December 14, 2018. Both  
8 parties signed this agreement with the assistance of experienced legal counsel.  
9 When signing the 2018 Parenting Plan, both parents chose to do so freely,  
10 voluntarily, knowingly and intelligently. While this standard is more familiar to  
11 other legal settings, the Court references it here because there is no evidence  
12 of confusion on the part of either party when they signed. There is no evidence  
13 that either party engaged in any subterfuge or coercion to convince or force the  
14 other party to sign the agreed Parenting Plan.
- 15 5. In July 2019, Dr. Tasic sought the appointment of a Guardian ad Litem. His  
16 attorney at the time of this appointment was Kathryn Abel. The GAL's  
17 involvement was, in part, a response to an incident that occurred during Mira's  
18 exchange on June 9, 2019.
- 19 6. Dr. Tasic suggested three possible GALs, including William Singer whom the  
20 Court eventually appointed to this case.
- 21 7. The Court charged the GAL to investigate all issues related to Mira's parenting  
22 and to look at allegations of domestic violence involving both parties as well as  
23 to report back on Ms. Blakemore's mental health.
- 24 8. Mira is now over four years old. Under the agreed Parenting Plan, she has  
spent a majority of her time with her mother.
9. Ms. Blakemore provides Mira with a stable home. They have a strong  
relationship. Mira's relationships with her grandmother, her step-father and her  
half-sibling are also all strong and loving.
10. Ms. Blakemore has steady and constant employment.
11. Dr. Tasic has not been as fortunate in consistency in his employment. At trial,  
he was out of work and hoping to secure an academic appointment in the near  
future.
12. Ms. Blakemore provides Mira with a loving home. There is no evidence of  
current or ongoing domestic violence, substance abuse, acute mental illness or  
other conditions in her home which would detrimentally impact Mira's  
upbringing.
13. Dr. Tasic, in his trial testimony, conceded that Ms. Blakemore today is currently  
a fit parent. He has a litany of complaints against her from the past which he  
contends disqualifies her to be the primary parent for Mira.
14. Dr. Tasic spent considerable time at trial, and after trial in his briefing,  
complaining that Ms. Blakemore did many things that led to his abuse at her

- 1 hands. He painted a picture that he was a victim of beratement, scorn, yelling  
2 and physical violence.
- 3 15. There was yelling in the relationship to be sure. And there were times that the  
4 parties were physical with one another, including an incident that occurred in  
5 Pullman in 2016 where Dr. Tosic shoved his wife onto a bed. The picture that  
6 he attempts to paint of Ms. Blakemore (abusive, out of control) are  
7 unpersuasive to this Court in the level of harm he claims he suffered. And  
8 even if the events occurred as he described, Dr. Tosic was fully aware of them  
9 when he agreed to the parenting plan that he now seeks to modify.
- 10 16. The events that precipitated this modification action, specifically what occurred  
11 at the exchange in June 2019 are worth noting.
- 12 17. The child exchange occurred in June 2019 in Ellensburg, Washington outside a  
13 fast food restaurant. It was daylight. There is surveillance video of the incident  
14 that Dr. Tosic introduced at trial.
- 15 18. The video from the fast food restaurant is relatively clear, although images in  
16 the distance are harder to discern. What is clear from this Court's review is  
17 that at approximately 45 seconds into the video, the parents had exchanged  
18 Mira, with Dr. Tosic giving Mira to Ms. Blakemore. The exchange was over.  
19 The video shows that Ms. Blakemore has Mira in her arms and is walking away  
20 from Dr. Tosic with the child. Dr. Tosic's residential time with Mira had ended.  
21 Mira was in her mother's care and Ms. Blakemore's residential time with Mira  
22 had begun.
- 23 19. What the video and trial testimony also revealed was that at the time of the  
24 child exchange Ms. Blakemore was unhappy with Dr. Tosic. She related a  
number of issues that were frustrating to her, including Dr. Tosic's chronic  
tardiness to child exchanges, the long drive to pick Mira up, Dr. Tosic's failure  
to be current in his financial obligations to their daughter and Dr. Tosic's  
unyielding, righteous personality that permeated their encounters.
20. The video shows Dr. Tosic lingering at his car and then at roughly 1:12 into the  
video, he walks across the parking lot from his car to approach Ms. Blakemore,  
Ms. Blakemore's mother and Mira.
21. Dr. Tosic testified at trial that he went to Ms. Blakemore's car because he  
wanted to give Mira a kiss goodbye and give her a sweater. This is not  
credible. The more likely reason is that he wanted the last word on whatever  
topic Ms. Blakemore had confronted him about just a few seconds earlier. Ms.  
Blakemore had clearly yelled at him (likely something unpleasant) and Dr.  
Tosic was not going to back down. Indeed, at about this time Ms. Blakemore  
hands him some paperwork (since he had followed her to her car) and then  
disconnects with him to get in to her car. She does so at about 1:53 in the  
video, a point in which Dr. Tosic can be seen verbally responding to Ms.  
Blakemore's animated discussion with him.

- 1 22. Ms. Blakemore’s mother is then seen buckling Mira into the car. Dr. Tasic  
2 remains in proximity to the car and then begins to place himself into Ms.  
3 Blakemore’s vehicle to, as he testified, give Mira the goodbye kiss. It is this  
4 Court’s conclusion that Dr. Tasic did this – lingering, entering the car, invading  
5 Ms. Blakemore’s residential time with her daughter – to be confrontational. His  
6 testimony that he was concerned for Mira’s safety or her health or that this was  
7 habitual was not credible.
- 8 23. The video shows that Mira’s grandmother next tries to close the car door. Dr.  
9 Tasic prevents her from doing this at approximately 2:04 on the video by  
10 placing himself between the door and the car. His hand is on the door to keep  
11 it open.
- 12 24. Ms. Blakemore swiftly exits the passenger seat (where she had been sitting) to  
13 confront Dr. Tasic. She pushes him on the shoulder.
- 14 25. What happens next, including Dr. Tasic’s 911 call to the police department, can  
15 best be compared to a soccer or football player taking a dive or doing a flop,  
16 and then looking to the referee for a yellow card.
- 17 26. Dr. Tasic’s response and his continued characterization of himself as the victim  
18 in this incident was, and is, contrived. He was not hurt. He was not scared.  
19 He was not thrown to the ground or spit on. He was not scratched or punched.  
20 He took three fingers to the shoulder and tried his best to turn this minor  
21 incident that he provoked into an account where he was the victim of an  
22 egregious assault.
- 23 27. This Court does not accept Dr. Tasic’s characterization of himself as the victim  
24 or this incident as egregious. And while this Court does not condone Ms.  
Blakemore’s physical response, Dr. Tasic’s ongoing bullying, his need to  
control, his need to be right, his need to have the last word (all on display here)  
would push most people to their limits.
- It is unfortunate that this played out in front of Mira and it is unfortunate that Dr.  
Tasic used Mira to ensure that Ms. Blakemore did not leave the scene of their  
argument. It is worth noting that using his child this way gave him no pause or  
reason to reflect on the outcome for her – either at the time of the incident or  
two years later at trial (indeed, he continues to explain his conduct as trying to  
protect Mira from her mother or to give the child a sweater because she had a  
cold). His testimony that he was concerned for Mira’s safety, or that his kiss  
good bye was routine, was not credible.
29. The evidence shows that Mira was never in danger during this confrontation  
and never in danger because of her mother. Ms. Blakemore was not driving  
the car so, even if angry or upset because of her encounter with Dr. Tasic,  
Mira’s grandmother was behind the wheel. Ms. Blakemore was not grabbing  
the child or putting her between herself and Dr. Tasic.

- 1 30. While Mira may have been alarmed to hear her parents argue in that instant,  
2 there is no evidence that this incident caused the girl lasting harm. Even the  
3 well-intentioned Dr. Pirone recognized the limits of such a connection in his  
4 testimony and testified it was not likely to have any lasting impact on Mira.
- 5 31. The consequences for Ms. Blakemore of Dr. Totic doing a “flop” have been  
6 significant, including her arrest, criminal charges, a parenting plan modification  
7 action, a domestic violence assessment and two years of litigation in various  
8 forums.
- 9 32. The Domestic Violence Assessor, Judge Fennessy in Spokane County, and  
10 Dr. Singer the GAL, as well as Ms. Blakemore’s counselor, have all at some  
11 point concluded that she presents an extremely low risk, to none at all, of  
12 engaging in an incident like this with Dr. Totic again. The Court shares this  
13 conclusion.
- 14 33. What has happened since this June 2019 incident has been a substantial  
15 waste of the parties’ and this Court’s time. It has also been immensely  
16 stressful for Ms. Blakemore and other people who have come into Dr. Totic’s  
17 orbit through this case.
- 18 34. Dr. Totic’s response to Ms. Irish’ report and Dr. Singer’s report, in which both  
19 find that he was the aggressor for the June 2019 incident, have been alarming.
- 20 35. After receiving her evaluation, Ms. Irish testified about Dr. Totic’s phone calls  
21 to her co-workers (screaming at a receptionist), his aggressive tone, and his  
22 numerous accusations against her professionalism. The Court found Ms. Irish  
23 a credible witness.
- 24 36. Dr. Totic filed complaints against Ms. Irish with the Washington State  
Department of Health. This was an effort to have Ms. Irish de-certified or her  
license removed and, as she testified, her livelihood threatened. Dr. Totic  
believes that Ms. Irish has conspired with Dr. Singer to malign him, even going  
so far to point out that since the two lived relatively close to one another they  
were likely conspiring against him in their neighborhood.
37. Ms. Irish testified at trial that Dr. Totic “terrified” her, as a result of his attacks  
on her professionalism and her career. As noted above, the Court found her to  
be a credible witness and that the emotional response she has had to Dr Totic  
– unlike anything she has experienced in her career – was as real as it was  
painful.
38. Dr. Totic’s treatment of Dr. Singer has been more extreme than his treatment  
of Ms. Irish. Dr. Singer has over 155 emails from Dr. Totic during the court of  
his appointment. Dr. Totic has threatened Dr. Singer with legal action, has  
been abusive to him in writing and verbally, and believes that the professionals  
on this case, including Dr. Singer, are conspiring against him and in favor of  
Ms. Blakemore. Indeed, in his words there is a vast conspiracy by ‘certain



- 1 apologists and enablers of female-against-male domestic violence' which serve  
2 as the backdrop to any report or finding sympathetic to Ms. Blakemore.
- 3 39. Dr. Singer, who acted professionally preparing his report and in his trial  
4 dealings with Dr. Totic, describes Dr. Totic's conduct as "extremely controlling  
5 behavior". The Court shares this assessment.
- 6 40. Some of the observations that Dr. Singer made about Dr. Totic in his report  
7 have been upsetting to Dr. Totic, but the Court finds them credible. For  
8 example, Dr. Singer wrote that Dr. Totic did not share with him much about his  
9 parenting of Mira when Dr. Singer came to observe Mira with her father,  
10 because Dr. Totic perseverated on speaking "deleteriously of Ms. Totic  
11 [Blakemore] and why she should not be allowed to parent the child." He did  
12 not discuss his relationship with Mira because he was lamenting "this  
13 nightmare (and brazen anti-father and anti-non American-name/immigrant  
14 discrimination by many different state agencies and agents involved in this  
15 process."
- 16 41. The Court in fact lost count of the number of times Dr. Totic insulted Dr. Singer  
17 personally or insulted his work during trial and in briefing. These insults, and  
18 Dr. Totic's unhappiness with Dr. Singer, permeated nearly every hour that the  
19 parties in were in trial before this Court.
- 20 42. Dr. Totic provided some helpful information regarding his relationship with his  
21 daughter, but spent most of his trial testimony outlining his victimhood. It  
22 appears that when Mira is with him, Dr. Totic attends to her needs,  
23 encourages her to socialize with other children, and exposes her to his faith  
24 community and to his family.
43. In short, Dr. Totic is a competent parent when he is focused on Mira. The  
GAL's testimony and report left this Court with an initial impression that the  
relationship between Dr. Totic and Mira is superficial or devoid of warmth. Dr.  
Totic is clearly motivated to be with Mira and expressed his love for her. But  
this Court is concerned that Dr. Totic's sense of injustice, and his need to fight  
that perceived injustice, will derail or undermine his relationship with her.
44. There have been significant changes since the parties signed Mira's parenting  
plan. They include Ms. Blakemore remarrying and having another child and an  
abusive use of conflict directed at Ms. Blakemore by Dr. Totic. See RCW  
26.09.191.
45. This conflict is toxic and it not only impacts Ms. Blakemore in every interaction  
she has with Dr. Totic, but it also presents a serious risk of damage to Mira's  
psychological development if Dr. Totic's unyielding approach to his relationship  
with Ms. Blakemore, and his unyielding approach to parenting, is not blunted.  
It is in Mira's best interests that this situation changes.
46. Dr. Totic's focus in this litigation has been to intimidate and belittle Ms.  
Blakemore so that his modification proposal will prevail. As noted above, he

- 1 has made numerous allegations about her and her husband that are either  
2 embellished or untrue. He has repeatedly called her a liar and has asked for  
invasive court intervention before she would be allowed to parent Mira.
- 3 47. The level of toxicity he has brought to this case, with the June 2019 child  
4 exchange perhaps being a prominent example, was not contemplated by the  
Court when it approved the agreed parenting plan.
- 5 48. One change that must occur involves decision making. There is no realistic  
6 way that Dr. Tosic can effectively co-parent with Ms. Blakemore. That  
7 arrangement would see Dr. Tosic engaging in unyielding struggles with Ms.  
8 Blakemore until Mira reached majority. It would be highly detrimental to Mira's  
9 well-being.
- 10 49. Ms. Blakemore is currently better situated to be Mira's primary parent and to  
11 have sole decision-making authority for education, non-emergency health and  
12 other major life decisions (early marriage, enlisting before the age of 18,  
13 piercings and tattoos, etc).
- 14 50. Ms. Blakemore's employment and living situation is stable, Mira has strong,  
15 loving relationships with the other people in Ms. Blakemore's home, and Ms.  
16 Blakemore has been providing the bulk of daily parenting (dentist and doctors  
17 appointments, getting to and from school, haircuts, and the like).
- 18 51. Dr. Tosic has moved this Court to compel Ms. Blakemore to undergo another  
19 domestic violence assessment, citing collusion, inadequacy and other  
20 perceived flaws of Ms. Irish's work. The facts presented at trial do not support  
21 his motion or his interpretation of both Ms. Irish's and Dr. Singer's conclusions.  
22 The DV assessment completed by Ms. Irish was thorough and sufficient for this  
23 Court's analysis in deciding this modification. The same can be said for the  
24 GAL report on the issue of domestic violence. The motion to compel is  
DENIED.
52. Dr. Tosic seeks an additional mental health examination for Ms. Blakemore.  
The Court has been appraised of Ms. Blakemore's mental health and has  
observed her during this trial, including when Dr. Tosic cross-examined her.  
She is stable, undergoing appropriate counseling, and fully capable of  
continuing to parent Mira. Her mental health needs are being met and they do  
not interfere with her parental responsibilities. An additional assessment is  
unnecessary. This request is DENIED.
53. Dr. Tosic has complained that trial was rushed and, in post-trial briefings, he  
appears to seek a new trial. The parties had ample opportunity to present their  
cases, examine witnesses and argue their positions. The motion for a new trial  
is DENIED.
54. Dr. Tosic's request to extend or grant a civil domestic violence protection order  
filed in Spokane County is DENIED.

1 55. The Court's other conclusions will be found in the revised parenting plan which  
2 will issue the same day as this Order.

3 **4. Minor change (RCW 26.09.260(5), (7), and (9))**

4 **Approved** – The court approves a minor change to the parenting/custody order.  
5 The basis for this minor change is detailed in the findings above.

6 The court signed the new *Parenting Plan* or *Residential Schedule* filed separately  
7 today.

8 The minor change is approved because:

- 9 • The requested change is in the child's best interest and does not change  
10 the person the child lives with most of the time; and
- There has been a substantial change in the child's or a parent's situation.
- Dr. Tasic's abusive use of conflict.

11 ***Check reason/s for this change:***

12 The requested change will impact the child's schedule on fewer than 25 full days  
13 a year.

14 ***Are there any limitations on the parent whose time is being increased?***

15 No.

16 **5. Restrictions on the parent with less parenting time**

17 **Limit** – To protect the child, the court will limit the participation in decision making of  
18 the parent who already has less than half of the parenting time with the child.

19 The reasons for this limitation are listed in the new *Parenting Plan* or *Residential*  
20 *Schedule* signed by the court today. This *Parenting Plan* or *Residential Schedule* is  
approved and filed separately. (RCW 26.09.191, 26.09.260(4))

21 **6. Other Changes (RCW 26.09.260(10))**

22 Because of a substantial change in one parent's/child's situation, the court  
23 approves changes to the following parts of the *Parenting Plan* or *Residential*  
24 *Schedule* that are in the children's best interest:

Decision-making

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**7. Child Support**

**Approved** – The court approves a change to child support. The changes to the parenting/custody order affect child support by:

The income of the parties has changed since the last child support order was entered.

**8. Protection Order**

Does not apply.

No one requested an *Order for Protection* in this case.

**9. Restraining Order**

Does not apply.

No one requested a *Restraining Order* in this case.

**10. Other Findings**

See above.

**COURT ORDERS**

**11. Decision**

**Approved** – The court approves the *Petition*. All temporary orders are ended. The court signed the following orders filed separately today:

*Parenting Plan/Residential Schedule*

*Child Support Order*

The *guardian ad litem* is discharged.

**12. Other Orders**

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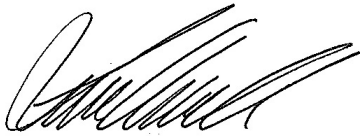
**ORDERED.**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Judge Sean P. O'Donnell*

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 17-3-04787-6  
Case Title: TOSIC VS TOSIC  
Document Title: FINDINGS OF FACT AND CONCLUSIONS OF LAW  
Signed By: Sean O'Donnell  
Date: November 15, 2021



---

Judge: Sean O'Donnell

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 22C471BDBBADB7622DCA6C95C191992CF79C14F6  
Certificate effective date: 1/30/2019 8:24:49 AM  
Certificate expiry date: 1/30/2024 8:24:49 AM  
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Sean O'Donnell:  
nHo0hQvS5hGLVE33AFk6yQ=="

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

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July 29, 2022

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Case #: 835181  
Heather Totic, Respondent v. Predrag Totic, Appellant

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on July 28, 2022, regarding Appellant's Motion for Extension of Time to File Clerk's Papers and Exhibits until August 10, 2022:

Granted.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

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September 23, 2022

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Case #: 835181  
Heather Tomic, Respondent v. Predrag Tomic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on September 23, 2022, regarding Appellant's Motion for Extension of Time to File Appellant Brief until November 14, 2022:

Granted.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law



*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

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November 14, 2022

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Case #: 835181  
Heather Tomic, Respondent v. Predrag Tomic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on November 14, 2022, regarding Appellant's Motion for Extension of Time to File Appellant Brief until December 5, 2022:

Granted.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

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December 23, 2022

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Case #: 835181  
Heather Tasic, Respondent v. Predrag Tasic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on December 22, 2022, regarding Appellant's Motion for Extension of Time to File Appellant Brief until January 6, 2023:

Granted.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

DIVISION I  
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January 19, 2023

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Case #: 835181  
Heather Totic, Respondent v. Predrag Totic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on January 19, 2023, regarding Appellant's Motion for Extension of Time to File Appellant Brief until February 24, 2023:

Appellant Predrag Totic, pro se, appeals a final order and findings on petition to change a parenting plan, residential schedule, or custody order and a final parenting plan entered on November 2021. This case has been pending for well over a year. Totic's opening brief remains overdue. Multiple extensions have already been granted. Attorney Kenneth Kato, who filed a notice of appearance for Totic on September 23, 2022, filed a notice of withdrawal on January 5, 2023. Totic then filed a motion for an additional 45-day extension of the time to file his brief until February 24, 2023 "given the recent withdrawal of counsel."

The requested extension is granted until February 24, 2023. However, in light of the significant delay in this matter, if the brief is not filed by February 24, 2023, sanctions of \$500 will be imposed against Totic without further notice of this Court.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law

LEA ENNIS  
Court Administrator/Clerk

*The Court of Appeals  
of the  
State of Washington*

DIVISION I  
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March 6, 2023

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Case #: 835181  
Heather Totic, Respondent v. Predrag Totic, Appellant  
King County Superior Court No. 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 6, 2023:

This case concerns modifications of a parenting plan for the parties' five-year-old daughter. Appellant Predrag Totic's opening brief remains overdue, initially due July 2022. In light of the significant delay, this Court has denied consolidation of this matter with Totic's new notice from the trial court's denial of his motion for recusal of the trial judge (No. 84655-8-1) or a stay of briefing in this matter pending our Supreme Court's ruling on his motion for discretionary review of this Court's denial of his motion to stay the trial court's decisions in this matter. Our Supreme Court denied Totic's motion for discretionary review, for a stay, and for declaratory relief.

Meanwhile, Totic filed statements of arrangements, without regard to the briefing deadline. If the brief is not filed by March 20, 2023, this matter may be dismissed without further notice of this Court.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

Page 2 of 2  
March 6, 2023  
Case #: 835181

law

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

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March 20, 2023

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Case #: 835181  
Heather Tasic, Respondent v. Predrag Tasic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 20, 2023, regarding Appellant's Motion for Extension of Time to File Appellant Brief:

This case concerns modifications of a parenting plan for the parties' five-year-old daughter. This case has been pending for a year and three months. Appellant Predrag Tasic has not filed his opening brief. His brief was initially due July 2022 and has remained overdue for eight months. His brief is currently due March 20, 2023. Tasic filed a sixth motion for extension, requesting an extension until 30 days from the date of filing of the report of proceedings based on his third supplemental statement of arrangements he filed on March 6, 2023 without proof of service on the transcriber.

In light of the significant delay in this case involving a child, Tasic's motion for extension is granted in part for the last time as follows. Tasic shall file his opening brief by April 28, 2023. This is the last extension. Tasic may expedite the filing of the report of proceedings. If the brief is not filed by April 28, 2023, this appeal will be dismissed without further notice of this Court.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of:

HEATHER TOSIC,

Respondent,

v.

PREDRAG TOSIC,

Appellant.

No. 83518-1-I

ORDER ON MOTION TO  
MODIFY

Appellant Predrag Tasic moves to modify the commissioner's March 20, 2023 ruling on Tasic's "MOTION / REQUEST FOR ONE FINAL TIME EXTENSION FOR THE MAIN BRIEF DUE TO SUPPLEMENTAL SOA TRANSCRIPTS / VRPs." Respondent Heather Tomason has filed an answer, and Tasic has filed a reply. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is DENIED.

*Díaz, J.*

*Birk, J.*

*Smith, C.G.*

*The Court of Appeals  
of the  
State of Washington*

LEA ENNIS  
Court Administrator/Clerk

DIVISION I  
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April 21, 2023

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Case #: 835181  
Heather Totic, Respondent v. Predrag Totic, Appellant  
King County Superior Court 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on April 21, 2023, regarding Appellant's Motion for Extension of Time to File Appellant Brief:

Appellant Predrag Totic has filed a seventh motion for extension of time to file his opening brief, characterizing his motion as an emergency. In a ruling issued March 20, 2023, Commissioner Masako Kanazawa warned Totic that this case would be dismissed if he did not file the brief by April 28, 2023. Totic requests an additional two to three weeks beyond April 28, based on his ongoing illness and his expectation that the supplemental report of proceedings will be filed today.

While this Court does not question the seriousness of Totic's health concerns and does not seek additional briefing or proof as to his condition, this Court's file establishes that Totic has prepared numerous and lengthy motions and filings throughout the exceptionally extended time this case has been pending, even during health challenges, and has, most recently, directed his time and efforts to additional motions rather than the brief. At this point, Totic should simply file his opening brief by the April 28 due date established by Commissioner Kanazawa with the understanding that if, for example, he files a brief on that day that is not "a properly done, quality Brief" from his perspective, he may seek permission to file an amended brief with any reasonably necessary revisions within a week or ten days and likely reach the same result. To be clear, Totic's emergency motion for additional time beyond April 28, 2023 to file his opening brief is denied at this time.

Sincerely,



Lea Ennis  
Court Administrator/Clerk

law



COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

In re the Marriage of                    )  
HEATHER TOMASON,                    ) **Case # 83518-1**  
(formerly Heather Tomic)            )  
  Respondent,                    )  
  ) NOTICE TO THE COURT AND  
  ) OPPOSING COUNSEL: FEDERAL  
  ) REMOVAL MEANS, THIS COURT  
  ) NO LONGER HAS JURISDICTION  
  )  
  ) and  
  )  
Predrag Tomic, a man                    )  
  ) Appellant.  
  )  
\_\_\_\_\_ )

Predrag Tomic, Appellant Sui Juris in this appeal, the underlying child custody matter and all related matters, respectfully notifies and reminds this court (Washington state Court of Appeals – Division I) and the opposing counsel (OC) that above referenced case #83518-1, as of April 27, 2023, has been removed to a federal district court. **Notice of Removal (NOR) was filed with this court in the morning of April 27; followed by Amended Notice of Removal (with Exhibits) filed later in the day on 4/27/2023.** As such, at the present time this Court (CoA – Div. I) has no jurisdiction until further notice from the federal court for Western District of Washington. The new federal case No. is 2:23-cv-00619-JLR. OC has chosen to file a Response in Re: 835181 after they have already been served/notified of the federal removal. I am aware of past rulings and deadlines defined by this court. However, the jurisdiction in Re: matter of appeal of Tomic #83518-1, is now with the federal district court; and this court cannot move forward or make any rulings in this case once the federal removal has taken place, effective today, April 27, 2023.

## CERTIFICATE OF COMPLIANCE

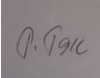
Pursuant to RAP 18.17, I certify this document contains 280 words. DATED this 27<sup>th</sup> day of April, 2023. In Spokane, Washington.



Predrag Tasic, Appellant Sui Juris / “Pro Se”  
2831 W. Olympic Ave, Spokane, WA 99205  
Phone: 217-390-6515      Email: [predrag.tasic@ieee.org](mailto:predrag.tasic@ieee.org)

## CERTIFICATE OF SERVICE

I certify that on April 27, 2023, I served a copy of this (Amended) Notice of Removal through the COA e-Filing portal on Heather Blakemore-Tomason’s appellate attorneys of record.



---

Predrag Tasic, Appellant “Pro Se” / Sui Juris; minor child’s father; a living man

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PREDRAG TOSIC,

Plaintiff,

v.

HEATHER BLAKEMORE-  
TOMASON,

Defendant.

CASE NO. C23-0619JLR

ORDER

**I. INTRODUCTION**

Before the court is Defendant Heather Blakemore-Tomason’s motion to remand this action back to state court and for attorneys’ fees incurred in bringing the motion. (MTR (Dkt. # 6); Reply (Dkt. # 36).) Plaintiff Predrag Tasic, who proceeds *pro se* and *in forma pauperis* (“IFP”), opposes the motion. (Resp. (Dkt. # 31).) Mr. Tasic has also filed several motions for leave to file additional briefs and materials in support of his opposition to Ms. Tomason’s motion to remand. (*See* 1st Mot. (Dkt. # 32); 2d Mot. (Dkt.

# 35); *see also* 5/22/23 Tasic Decl. (Dkt. # 28); 5/23/23 Tasic Decl. (Dkt. # 29); Prop. 2d Resp. (Dkt. # 33); App'x. (Dkt. # 34.) The court has reviewed the parties' submissions, the relevant portions of the record, and applicable law. Being fully advised, the court DENIES Mr. Tasic's motions to file additional materials, GRANTS in part and DENIES in part Ms. Tomason's motion, and REMANDS the matter back to state court.

## II. BACKGROUND

Mr. Tasic and Ms. Tomason, who were formerly married, have a parenting plan for their minor daughter. (*See* 5/1/23 Villacin Decl. (Dkt. # 7) ¶ 3, Ex. 1 (Parenting Plan).) In June 2019, Mr. Tasic filed a petition in King County Superior Court to modify the parenting plan. (*Id.* ¶ 4, Ex. 2 (Modification Petition).) On November 15, 2021, the family court ruled against Mr. Tasic after a five-day trial and Mr. Tasic sought review of the decision in the Washington State Court of Appeals, Division I. (*Id.* ¶ 5, Ex. 3 (Order Denying Modification Petition).)<sup>1</sup> There, Mr. Tasic's opening appellate brief was due, after many extensions, on April 28, 2023 (*id.* ¶ 15, Ex. 13 (denying Mr. Tasic's emergency motion for an extension to file an opening brief)), but Mr. Tasic removed his own civil action to this court on April 27, 2023 (*see* NOR (Dkt. # 5)). Ms. Tomason now moves to remand the case back to state court because, among other reasons, (1) this court lacks jurisdiction over the action, (2) Mr. Tasic, who filed the petition for modification, is not entitled to removal as the *de facto* plaintiff in the underlying action, and (3) Mr.

<sup>1</sup> The Court of Appeals also denied Mr. Tasic's request to stay the modification order pending appeal. (*See* 5/1/23 Villacin Decl. ¶¶ 6-7, Exs. 4-5.) Mr. Tasic continues to litigate this request as well as motions to disqualify judges and court commissioners in state court. (*See id.* ¶¶ 8-12, Exs. 6-10 (attaching various state court documents).)

Tosic's removal was untimely. (Mot. at 2.) Ms. Tomason also seeks attorneys' fees for having to bring the remand motion. (*Id.* at 13.)

### III. ANALYSIS

The court begins by addressing Mr. Tosic's motions to file additional materials in support of his response to Ms. Tomason's motion to remand. The court then analyzes Ms. Tomason's motion to remand before turning to her request for attorneys' fees.

#### A. Mr. Tosic's Motions to File Additional Materials

This District's Local Rules permit a responding party one brief in opposition to any motion, including a motion to remand. *See* Local Rules W.D. Wash. LCR 7(b)(2). The court already granted Mr. Tosic's request for an extension of time to respond to Ms. Tomason's motion. (5/23/23 Order (Dkt. # 30).) Nevertheless, Mr. Tosic asks the court for leave to file additional materials in support of his response to Ms. Tomason's motion to remand. (*See* 1st Mot.; 2d Mot.; *see also* 5/22/23 Tosic Decl.; 5/23/23 Tosic Decl.; Prop. 2d Resp; App'x.)

The court has reviewed Mr. Tosic's filings and determined that they have no effect on the court's decision. Accordingly, the court DENIES Mr. Tosic's motions for leave to file additional materials.

#### B. Motion to Remand

The federal removal statute provides that unless otherwise prohibited, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such

action is pending.” 28 U.S.C. § 1441(a)(1). A defendant must file a notice of removal “within 30 days after the receipt . . . of a copy of the initial pleading” in state court, or, if the initial pleading is not removable, “within 30 days after receipt . . . of a copy of an amended pleading, motion, [or] order.” *Id.* § 1446(b)(1), (c)(3). Federal courts strictly construe the removal statute and must reject jurisdiction if there is any doubt as to the right of removal in the first instance. *Hawaii ex rel. Louie v. HSBC Bank Nev., N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The removing defendant faces a “strong presumption” against removal and bears the burden of establishing, by a preponderance of the evidence, that removal was proper. *Gaus*, 980 F.2d at 567.

1. Mr. Tosic is not the Defendant

A plaintiff has no right to remove his own suit to federal court. *See, e.g., Chicago, R.I. & P.R. Co. v. Stude*, 346 U.S. 574, 580 (1954) (stating that plaintiff cannot remove action); *Yakama Indian Nation v. State of Wash. Dept. of Revenue*, 176 F.3d 1241, 1248 (9th Cir. 1999) (“The right to remove a case from state to federal court is vested exclusively in ‘the defendant or the defendants’”) (quoting 28 U.S.C. § 1441(a)); *Szanto v. Lewin*, No. CV 12-00535 MMM, 2012 WL 4513745, at \*1 (C.D. Cal. Sept. 30, 2012) (collecting cases supporting proposition that a plaintiff cannot remove their own action); *Edwards v. Edwards*, No. 2:22-CV-08814-SB-JC, 2023 WL 172020, at \*1 (C.D. Cal. Jan. 12, 2023) (remanding case because plaintiff could not remove their own action).

Ms. Tomason argues that Mr. Tosic’s purported removal of his own case to this court was improper. (MTR at 11-12.) State court filings identify Mr. Tosic as the

“respondent” in the petition to modify the parenting plan (*see* Modification Petition), but only because Ms. Tomason filed the initial action for a parenting plan (*see* Parenting Plan (identifying Ms. Tomason as the “petitioner”)). Mr. Totic, moreover, does not dispute that he initiated the same action he purportedly removed. (*See generally* Resp.) Mr. Totic is not the defendant in the underlying action and was therefore not entitled to remove his own lawsuit. *See* 28 U.S.C. § 1441(a)(1).

2. Mr. Totic’s Purported Removal was Untimely

Ms. Tomason argues that even if Mr. Totic were not the *de facto* plaintiff in the underlying action, his purported removal is extremely untimely. (MTR at 12.) Mr. Totic filed his removal notice on April 27, 2023, seeking federal “take over” of all state court proceedings, including the family court’s November 15, 2021 order denying his petition. (*See* Order Denying Modification Petition; Prop. NOR (Dkt. # 1-1) at 5 (requesting “that the federal court take over” all state court cases between the parties).) Mr. Totic therefore did not file his notice of removal within the 30 days after receipt of an order presenting a basis for removal, as required by the removal statute. *See* 28 U.S.C. § 1446(c)(3). The court rejects Mr. Totic arguments that the statute’s time limitations should not apply to him. (*See* Resp. at 11.) The court is also unpersuaded that his removal was timely because the Washington Court of Appeals issued rulings in April 2023 (*see id.*) because Mr. Totic sought to remove his underlying petition (*id.* at 2; Prop. NOR at 5). Accordingly, Mr. Totic’s purported removal was untimely.

### 3. The Court Lacks Subject-Matter Jurisdiction Over This Action

“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). “[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.* (citing *Gully v. First Nat’l Bank*, 299 U.S. 109, 112-13 (1936)). The domestic relations exception divests federal courts of jurisdiction over any action seeking “issuance or modification of a divorce, alimony, or child-custody decree.” *Bailey v. MacFarland*, 5 F.4th 1092, 1096 (9th Cir. 2021) (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 704 (1992)).

Ms. Tomason argues that the domestic relations exception bars federal review of the parties’ parenting plan. (MTR at 5-10.) The court agrees: Mr. Tasic’s petition to modify the parties’ parenting plan—a “child-custody decree”—falls squarely within the domestic relations exception and belongs in state court. *See Bailey*, 5 F.4th at 1096; (Modification Petition). Thus, because Mr. Tasic’s petition does not pose any federal question, it could not have originally been brought in federal court. (*See Modification Petition*); *Caterpillar Inc.*, 482 U.S. at 392.

Mr. Tasic’s assertion that this court has jurisdiction because he argues that his federal statutory and constitutional rights were violated by the state courts in the underlying proceeding is unavailing. (*See Resp.* at 4-7.) Mr. Tasic did not plead these issues in his petition. *See Caterpillar Inc.*, 482 U.S. at 392-93. Mr. Tasic cites several federal cases that address constitutional familial rights implicated by state court decisions, but none provides an avenue to federal adjudication of familial rights via



removal of an order on a child-custody decree. (*See* Resp. at 5); *see e.g., Troxel v. Granville*, 530 U.S. 57 (2000) (deciding appeal from Washington Supreme Court); *Santosky v. Kramer*, 455 U.S. 745 (1982) (deciding appeal from New York’s highest court); *Quillion v. Walcott*, 434 U.S. 246 (1978) (deciding appeal from Georgia Supreme Court); *Stanley v. Illinois*, 405 U.S. 645 (1972) (deciding appeal from Illinois Supreme Court). Rather, the United States Supreme Court reviewed each of these cases after the parties had exhausted their appeals in state courts. *See* 28 U.S.C. § 1257 (providing, in part that “Final judgments or decrees rendered by the highest court of a State . . . may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question.”). Thus, remand is appropriate because the action could not have originally been filed in federal court.

#### 4. Summary

The court GRANTS Ms. Tomason’s motion to remand because Mr. Tosic is not the defendant, for untimeliness, and for lack of subject matter jurisdiction. The court need not address Ms. Tomason’s remaining arguments in favor of remand.

#### **C. Request for Attorneys’ Fees**

The court may award attorneys’ fees and costs incurred in bringing a motion for removal if the attempted removal was objectively unreasonable. *See Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136 (2005); 28 U.S.C. § 1447(c) (allowing awards of “just costs and any actual expenses, including attorney fees” incurred due to removal); *see also Houden v. Todd*, 348 F. App’x 221, 223 (9th Cir. 2009) (finding removal objectively unreasonable where “[t]he relevant case law clearly foreclosed [the] attempted removal.”)

(citing *Patel v. Del Taco, Inc.*, 446 F.3d 996, 999-1000 (9th Cir. 2006)). However, the court retains discretion to determine whether “unusual circumstances warrant a departure from the rule in a given case.” *Martin*, 546 U.S. at 141. Such a departure should nevertheless be faithful to the purposes of the awarding fees under 28 U.S.C. § 1447(c), which are to “deter removals sought for the purpose of prolonging litigation and imposing costs on the opposing party.” *Id.*

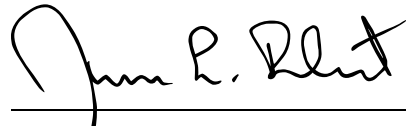
Ms. Tomason seeks an award of \$9,980.00 in attorneys’ fees incurred in bringing the instant motion, arguing Mr. Totic’s removal lacked an objectively reasonable basis. (See Mot. at 13-14; Reply at 9-11; 5/26/23 Villacin Decl. (Dkt. # 37) ¶ 7, Ex. C (describing fees incurred).) The court agrees that Mr. Totic’s attempted removal was objectively unreasonable, and likely had the effect of stalling proceedings in the Washington Court of Appeals. The court nevertheless concludes that an award of fees is not warranted here for two reasons. First, because Mr. Totic is not represented by counsel, the court cannot conclude that Mr. Totic knew he lacked any reasonable basis for removal. See *John Daly Boulevard Assocs., LP v. Gonzales*, No C 14-4213 PJH, 2014 WL 6808343, at \*3 (N.D. Cal. December 2, 2014) (declining to award fees where unrepresented, IFP defendant might not have known she lacked a basis for removal). Second, the court determined that Mr. Totic lacks the funds to pay court filing fees when it granted his application to proceed IFP. (See IFP App. (Dkt. # 1) at 1 (representing that Mr. Totic has been unemployed since August 2021, lives off his savings, and has no income); 5/1/23 IFP Order (Dkt. # 4)). An award of attorneys’ fees that Mr. Totic is likely unable to pay would not serve the removal statute’s deterrent purpose. See *John*

*Daly Boulevard*, 2014 WL 6808343, at \*3 (finding award of fees inappropriate due to *pro se*, IFP defendant's financial status). The court therefore declines to award Ms. Tomason attorneys' fees but cautions Mr. Tasic that any future attempt to remove the proceedings may justify an award of attorneys' fees or other sanctions.

#### IV. CONCLUSION

For the foregoing reasons, the court DENIES Mr. Tasic's motions for leave to file additional materials (Dkt. ## 32, 35) GRANTS Ms. Tomason's motion to remand (Dkt. # 6) and denies Ms. Tomason's request for attorneys' fees. The court DIRECTS the Clerk to REMAND this matter to the Washington State Court of Appeals, Division I, to CLOSE this case, and not to accept any further filings in this matter.

Dated this 29th day of May, 2023.



---

JAMES L. ROBART  
United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
OFFICE OF THE CLERK  
AT SEATTLE

RAVI SUBRAMANIAN  
CLERK OF COURT  
700 STEWART ST.  
SEATTLE, WA 98101

June 13, 2023

Washington State Court of Appeals, Division I  
One Union Square  
600 University St  
Seattle, WA 98101-1176

RE: Tosic v. Blakemore-Tomason  
Case #2:23-cv-00619-JLR

Dear Clerk:

Please find enclosed the certified copy of Judge James L. Robart's *Order Remanding Case to State Court* in the above-referenced case. A certified copy of the docket sheet is also included.

**Please return the copy of this cover letter with the following information:**

*Superior Court Case Number(s):* 83518-1

*Assigned to Judge:* \_\_\_\_\_

*Completed by Deputy Clerk:* \_\_\_\_\_

Thank you in advance for your cooperation and assistance.

Sincerely,

s/Laura Hobbs,  
*Deputy Clerk*

Enclosures

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

HEATHER TOSIC,  
  
Respondent,  
  
v.  
  
PREDRAG TOSIC,  
  
Appellant.

No. 83518-1-I

ORDER DENYING MOTION TO  
MODIFY AND DISMISSING  
APPEAL

Appellant Predrag Tasic moves to modify the commissioner’s April 21, 2023 ruling denying Tasic’s “Emergency Motion for Extra Time for Appellate Brief due to Recent / Ongoing Illness of Appellant Pro Se Re: Necessary Time Extension for the main Brief (Corrected).”<sup>1</sup>

We have considered the motion under RAP 17.7 and have determined that it should be denied. We have also determined that this appeal should be dismissed pursuant to the commissioner’s March 20, 2023 ruling stating that if Tasic did not file an opening brief by April 28, 2023, this appeal would be dismissed without further notice.

Now, therefore, it is hereby

ORDERED that the motion to modify is DENIED; and it is further

<sup>1</sup> Bold face omitted.

ORDERED that this appeal is DISMISSED.

Seldman, J.

Bruner, J

H. G. A. J.

June 20, 2023

Valerie A Villacin  
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Catherine Wright Smith  
Smith Goodfriend PS  
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Predrag Totic  
2831 W. Olympic Avenue  
Spokane, WA 99205  
pedja.totic@gmail.com

Case #: 835181  
Heather Totic, Respondent v. Predrag Totic, Appellant  
King County Superior Court No. 17-3-04787-6

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on June 20, 2023:

This case concerns modifications of a parenting plan for the parties' five-year-old daughter. This case has been pending since December 2021. On June 16, 2023, a three-judge panel of this Court denied Totic's motion to modify Commissioner Jennifer Koh's April 21, 2023 ruling that denied his "Emergency Motion for Extra Time for Appellate Brief due to Recent/Ongoing Illness of Appellant Pro Se Re: Necessary Time Extension for the main Brief (Corrected)." This Court dismissed this appeal pursuant to my March 20, 2023 ruling that provided that if Totic did not file an opening brief by April 28, 2023, this appeal would be dismissed without further notice.

Meanwhile, while his motion to modify was pending, Totic filed a notice of removal to federal court, which later granted respondent Heather Tomason's motion to remand the matter to this Court. Before the remand, while his motion to modify was pending, Totic filed another motion for extension of time (until June 26, 2023) to file his opening brief, requesting accommodations under the Americans with Disabilities Act (ADA) "going forward, on all matters pertaining to this case and any/all related cases." He filed additional documents related to his accommodation request, before this Court entered an order dismissing this appeal on June 16, 2023.

Page 2 of 2  
June 20, 2023  
Case #: 835181

Because this Court has dismissed this appeal, Tosic's request for extension and accommodations appears moot for this appeal. Tosic may seek review of this Court's dismissal order in the Supreme Court and requests accommodations in that court. I note that he has requested accommodations in another matter pending in this Court (No. 84655-8).

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis". The signature is fluid and cursive, with a prominent loop at the end.

Lea Ennis  
Court Administrator/Clerk

law



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of:

HEATHER TOSIC,

v.

PREDRAG TOSIC,

Respondent,

Appellant.

No. 83518-1-I

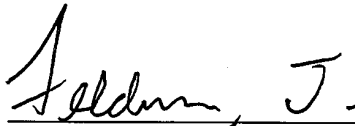
ORDER DENYING MOTION  
FOR RECONSIDERATION

Appellant Predrag Totic has moved for reconsideration of the order filed on June 16, 2023. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

  
\_\_\_\_\_

**SMITH GOODFRIEND, PS**

**October 10, 2023 - 2:17 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,306-5  
**Appellate Court Case Title:** Heather Totic v. Predrag Totic

**The following documents have been uploaded:**

- 1023065\_Answer\_Reply\_20231010141536SC954121\_8197.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was 2023 10 10 Answer to Petition.pdf*

**A copy of the uploaded files will be sent to:**

- cate@washingtonappeals.com
- pedja.totic@gmail.com
- predrag.totic7@yahoo.com

**Comments:**

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**Filing on Behalf of:** Valerie A Villacin - Email: valerie@washingtonappeals.com (Alternate Email: andrienne@washingtonappeals.com)

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Seattle, WA, 98109  
Phone: (206) 624-0974

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