CoA # 31574-6-III

No. 89468-0

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

Dan Barrett, Jr. *Respondent*

vs

Dan Barrett, Sr., *Appellant*

REPLY TO ANSWER TO PETITION FOR REVIEW

Dan Barrett, Sr.
Petitioner, pro se
P.O. Box 361
South Prairie WA 98385
253-273-1110

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

A. Identity of Petitioner

Daniel Barrett, Sr. hereby submits his strict reply to Respondent's Answer to Petition for Review.

B. Reply to Issues Presented by Respondent for Review

Respondent posits two Responses to Issues Presented for Review (designated a & b -- page 3, Answer to Petition). He fails to devote any specific section of his brief to argument regarding these issues, opting instead to have this Court infer that they are adequately covered by a recitation of the procedural history of this dispute.

Petitioner has been unable to find any appellate opinion which is directed to this situation, even tangentially. Petitioner has found several opinions which remark in passing that the reviewing court has no duty to search the record for issues or supporting authority. One noteworthy opinion, regarding proper adherence to the RAP, stated:

> The trial court made 54 findings of fact and 15 conclusions of law. Yet, defendants in their assignments of error make no specific reference to any finding or conclusion by number. RAP 10.3(g). Only by searching the text and the appendix can one ascertain the basis of the appeal. As to one major conclusion of law, defendants reference one specific conclusion in the statement of issue and argue another in the text. They attempt to correct this by an untimely statement of "errata."
>
> Defendants, challenging the findings of fact, assert that the findings are entitled to weight, but the ultimate determination of facts rests with the appellate court. An absolutely erroneous statement; counsel should read Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 343 P.2d 183 (1959) and its hundreds of progeny. Plaintiffs' brief is equally deficient.

> They argue, in nine pages of asserted facts, that there is substantial evidence to support the findings but cite not a single reference to the record. This is a remarkable violation of RAP 10.3(a)(4).
>
> **Harbor Enters. v. Gudjonsson, 116 Wn.2d 283, 286-287, 803 P.2d 798 (1991)**.

Petitioner urges this Court to consider Respondent's failure to submit a proper brief when it determines this matter.

Respondent cites to a single page in a single case as support for his assertion that the jurisdiction argument has been waived -- **Seattle v McCready, 131 Wn2d 266, 271, 931 P.2d 156 (1997)**. To be precise, he does not argue how that case applies to the arguments presented by Petitioner. Respondent's position is that waiver has occurred and that it precludes examination of Petitioner's jurisdictional argument and his lack of standing argument.

Page 271 of the **McCready** opinion does not speak to waiver, and jurisdiction was not an issue in that case. It is difficult to determine with precision whether any party claimed waiver as a bar regarding any of the claims, either on appeal or in the trial court.

In any event, Respondent has never meaningfully rebutted Petitioner's ongoing claim of a lack of trial court authority and/or jurisdiction. Likewise, Division Three has never explained how waiver overcomes the exclusive authority of a superior court over its cases nor has it explained how a trial court can ignore the definitive holdings of **Custody of Smith**; later known as **Troxel v Granville** which preclude custody attacks such as this one that is currently before this Court.

A lack of any rebuttal or argument against strongly infers the validity of the initial claim.

Respondent also seeks reinstatement of the Division Three commissioner's award of attorney fees. Petitioner urges this Court to ignore this request since it does not comport with the RAP 13.4(b) considerations for acceptance of review. While the rule does not specifically state that issues raised in an answer to petition must comport with subsection (b), it is illogical to read the rule as providing an advantage to the non-petitioning party that is not available to the petitioning party. In short, any issue presented for review should be bound by subsection (b) regardless of which party raises it. Even if the issue of attorney fees might comply with subsection (b), Respondent has made no argument to support it. Rather, he simply makes an emotionally-based plea designed to elicit sympathy from the Justices of this Court. This is not a proper approach and Petitioner has every confidence it won't succeed.

C. Conclusion

This Court should accept the issues stated in the Petition for Review.

Respectfully submitted:

12/20/13 Dan Barrett

date Dan Barrett Sr., *Petitioner pro se*

OFFICE RECEPTIONIST, CLERK

From: LH <pgroup@avvanta.com>
Sent: Friday, December 20, 2013 2:28 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Sup Ct #89468-0 documents for filing
Attachments: reply to answer to petition.pdf; Proof of Service 13.pdf

Per request of Mr. Dan Barrett Sr., attached please find two documents for filing in Supreme Court case #89468-0.

If there are any issues, please call Dan at 253-273-1110. Thank you.