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WASHINGTON STATE
SUPREME COURT

97528-1

Court of Appeals # 51273-4-II

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

CARMALITTA ESCARCEGA, Respondent

v.

DANIEL J. BARRETT, Petitioner

DAN BARRETT'S REPLY TO ANSWER

Daniel J. Barrett
Appellant, pro se
PO Box 361
South Prairie, WA 98385
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A. IDENTITY

DANIEL J. BARRETT makes this REPLY to the Answer to Petition for Review, filed by Carmelita Escarcega on September 9, 2019.

B. ARGUMENT RE ISSUES IN ANSWER

1. There is no finding of “intransigence” – Respondent and lawyer are being specious and disingenuous in bad faith to prejudice me

On page 1, at the end of the last full paragraph, Attorney Dan Smith drafts that the trial court “awarded fees to Escarcega...after tolerating Barrett’s repeated Motions...and other intransigence....”

The trial court NEVER found intransigence. Appendix page A-1 to A-10 and A-11 to A-23 are two transcripts from two different hearings in September and November of 2017. The word “intransigence” is found nowhere therein.

The first transcript shows the judge being outraged at my attorney who was a no show for the September hearing. A-7 line 23, to A-8 line 18. The judge went on about how the ATTORNEY’S conduct was inappropriate and violated court rules and his no show caused her to be impatient.

Again, there is NO FINDING of intransigence in either transcript at all.

In fact, the judge stated that she was going to award attorney fees no matter what. A-8, lines 23-24. (But, as we see in this record, the Court of Appeals remanded and stated that the judge did not use the proper legal standard in determining attorney fees).

Therefore, opposing counsel’s recital of the procedural record is a willful misconstruction and false narrative of what happened, obviously with the intent to

prejudice me. As an attorney with 33+ years of experience, at an 88-year-old law firm, Daniel Smith should know better than to make this claim.

“Intransigence” is one of the worst claims one can make against a party in a civil case. There is no such finding. This is egregious misconduct and under Civil Rule 11, this court can admonish or sanction him for such over the top hyperbole. He is barred by his own oath (Admission to Practice Rule 5(e)) from making ANY FACTUAL statement that prejudices me (unless warranted by the cause). Now he has drafted a blatant, fraudulent LIE that prejudices me, which is even worse and taking his oath violation to another level of misconduct. This also violates other duties of care under the Rules of Professional Conduct (RPC) including 3.3 and 4.4.

The judge rebuked my ATTORNEY for being a no-show and failing to file pleadings (which I personally made available to him). The open court rebuke was specifically directed at him. Mr. Smith is trying to pin this malpractice and dereliction of duty upon me. Mr. Smith's account is NOT the actual procedural record. This court should be upset that Mr. Smith would try to bamboozle this court on something that is easily disproved. That takes a lot of audacity.

Mr. Smith's pattern of egregious misconduct in this case is further demonstrated in the very transcripts attached. The judge dismissed my action at the trial court level – that is correct. But, she did so WITHOUT prejudice. See A-8, line 19. I filed a Motion for Reconsideration because Mr. Smith presented an order to her that stated WITH prejudice. See A-24 to A-26. The Judge signed the presented order and obviously overlooked this wording that is on line 11 of A-25.

(Maybe she trusted that an officer of the court and lawyer, Mr. Smith, would not dare present an order that contradicted her rule so greatly.)

So, I was forced for motion for reconsideration to fix the deceptive practice of Mr. Smith (slipping an order by the judge that did NOT reflect her clear, unambiguous order). I prevailed in part on the reconsideration to correct yet another attempt at deception and/or fraud in the courtroom, by Mr. Smith. See prevailing order at A-27 to A-29. The line redacted by the judge is at lines 10-11 of page A-28.

And now, Mr. Smith paints a picture here as if my every move was a willful, intransigent, abuse of the process, when I prevailed against him as a pro se (after firing my attorney) on this Reconsideration in December 2017. And I prevailed because Mr. Smith's misconduct was so overt and blatant and the judge clearly dismissed WITHOUT prejudice in her original order. But, the court was bamboozled by slight-of-hand trickery by Mr. Smith. The judge reiterates at the SECOND hearing what she already said in the first hearing: on the record she states that she never intended to order WITH prejudice. See A-15, lines 5-6 and A-16 lines 22-23. If she found intransigence, she never would have allowed me to come back again with the same motion. Mr. Smith is not just making a mistake. He's making an egregious willful misrepresentation without any excuse, except that he takes this matter personally. For some very bizarre reason, he attended a contempt motion against my 2nd wife who has been found in contempt five (5) times in my other family law case. He was there in the crowd with the contemptuous mother's family. This is personal, so Mr. Smith will lie, cheat and

steal to deceive the court in order to prevail against me. That's why he's so audacious and bold with lies that can be easily proven. His personal hatred for me has blinded him from all reason and caution that attorneys are required to have when drafting, signing and filing documents.

But for Mr. Smith's antics there never would have been an order presented that stated "WITH prejudice". So, we had to go back to court to fix Mr. Smith's misconduct. And now he claims his client was a victim of going to court, even when I prevail, and the purpose of going to court was to fix the work of Mr. Smith's unclean hands.

So there is a doubly-troubling set of lawyer misconduct in attacking me from the beginning in the Answer to Petition:

- (1) There is no finding of intransigence.
- (2) The judge specifically attacked my attorney's malpractice, not me for bringing frivolous actions or anything off the sort.
- (3) Mr. Smith's client is not any kind of victim, especially when I went back to court and prevailed and cleaned up Mr. Smith's blatant misconduct.
- (4) Multiple rules have been violated which were created to tether and guard against such antics (including CR 11, RPC's and oath). Mr. Smith has no excuse for getting anything wrong. He has worked on this case for almost 18 years. And he is to exercise serious caution and do diligent research when accusing anyone of anything.

2. The Court of Appeals did NOT state "Escarcega showed financial need"

Again, Mr. Smith makes up new findings of courts...findings that are nowhere in the record. The Division Two basically awarded fees by default. There's no finding of need anywhere in the record that I see.

When Mr. Smith and his client filed the Financial Declaration there was no indication that it was done so in support of a request for attorney fees. As I stated in my Objection (which is provided by the Respondent in pages A-006 to A-009 of her Appendix), I assumed that this filing was done to make up for their failure to file and serve any financial information required at the trial court level (and of course, this failure is part of the reason I prevailed in the Court of Appeals).

So, I thought it was a “too little, too late” attempt to fix the trial court record that was void of any financial documentation.

Moreover, this Financial Declaration proves that she CAN afford her attorney fees because section 6.1 of her own appendix page A-005 says she has already paid \$5,634.01 of her fees and only has a balance \$2,037.95, as stated in Section 5.11 above. Even more so, she is on an easy \$50.00/month payment plan. On top of this, the case law and public policy burden is for the Respondent to show not just her need (which does not exist) but also she must prove my ability to pay. She never attempted to do so. And that’s why I prevailed and got a remand to re-visit this issue and apply the correct legal standard. So, again, I was caught off guard by the filing of a Financial Declaration in the Court of Appeals without any cost bill from the attorney and the appellate issue at hand was failure to prove need. So, again, I assumed this was a Johnny-come-lately attempt and did not counter APPELLATE attorney fee requests because nothing was clear. So, I lost by default NOT because they proved any need nor my ability to pay—both burdens belong to the mother.

Also noteworthy is that in her Financial Declaration on appendix page A-004, Respondent claimed that she had \$157,109.16 on a federal school loan when she has Native American (Quinalt) heritage, which makes her qualify for free schooling and 100%, full financial aide. This Financial Declaration is specious. If anything, maybe she obtained a loan but that is paid by tribal funds. She also does not mention her monthly income that she qualifies for as a tribal member.

3. Respondent cites RCW 26.09.140 after citing RCW 26.50.130 for an award of fees. And once said that 26.09.140 did NOT apply Well, which one is it?

On page 6 of her answer, Respondent cites RCW 26.09.140 as a basis for awarding fees here before the Supreme Court. That statute is the very one I relied upon in Division Two when I prevailed. It reads:

“RCW 26.09.140

Payment of costs, attorneys' fees, etc.

The court from time to time after considering the **financial resources of both parties** may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.”

But, in the Court of Appeals, their own brief cited RCW 26.50.060(1) as a basis for attorney fee awards. See excerpt of brief in A-30.

But the trial court matter was NOT a domestic violence case. It was a

family court restraining order that was entered based upon the alleged lack of a father/children bond. See transcript of original judge who granted a permanent restraining order because there was not father/children contact.

My attorney who was a no show in court errantly wrote 26.50 in some pleadings but later changed/corrected it.

But, at trial court, the Respondent argued that she should get attorney fees because of a finding of bad faith. (But there actually wasn't such a finding). See her claim in A-32, on lines 6-7. She doesn't cite any legal authority either to support her argument (which is typical). And astonishingly, she says that RCW 26.09.140 does NOT apply to this case and that is the statute that I prevailed on in the Court of Appeals. Mr. Smith is "all over the map" and changing his client's story with every new pleading. Then he just asks for things and seems to get them sometimes; hence, the remand since no proper legal authority was considered for the trial court's award of fees.

Moreover, when they argued I'm in "bad faith", we all know now that the the court dismissed this case WITHOUT prejudice. (Again, see prevailing order at lines 10-11 of page A-28, and also see A-15, lines 5-6 and A-16 lines 22-23).

That's not bad faith. So, Mr. Smith helped his client lie about procedure in her declaration. Helping a client lie is a CR 11 violation, just as her lie is a violation in and of itself.

And Mr. Smith has been lying about procedure ever since, and is willfully and deceptively doing so now. The trial court allowed the issue to be revisited because it was never heard on the merits. See transcript A-20, lines 18 to 19. So,

trial court dismissed without prejudice, as stated. The award of fees was not because of any fining of "bad faith".

The main point is that Respondent is "all over the map" in her authorities cited and acts on a whim in reactionary tactics and states whatever sounds good at the moment, even if inconsistent with their own previous arguments.

But, now they ask for an award of fees here under 26.09.140. The public policy that I relied upon in prevailing in Division Two is part of what I will cite here.

Neither party is entitled to attorney fees as a matter of right. In re Marriage of Leslie, 90 Wn. App. 796, 805, 954 P.2d 330 (1998), review denied, 137 Wn.2d 1003 (1999).

A party relying on RCW 26.09.140 "must make a showing of need and of the other's ability to pay fees in order to prevail." Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 808, 929 P.2d 1204 (1997) (citing In re Marriage of Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985)).

More specifically, the party requesting the attorney's fees under RCW 26.09.140 must make a **present** showing of need to support the award. Konzen at 478.

The Financial Declaration PROVES that the Respondent has NO NEED for help paying attorney fees. She loses on her request for attorney fees under the RCW 26.09.140 that she cites.

C. CONCLUSION

This Petition for Review should be accepted. The Court of Appeals did not follow their own standard that they used when granting me relief (a remand). And the Response to this Petition is totally disingenuous, showing any relief the Respondent ever gets is usually obtained by fraud upon the court. Their arguments should be disregarded and found in bad faith and the court should consider at least admonishing Mr. Smith who should know better than to try and mislead the court.

Respectfully submitted on September 24, 2019.

A handwritten signature in black ink, appearing to read "Dan Barrett". The signature is written in a cursive, flowing style.

Daniel J. Barrett, Appellant, pro se

APPENDIX

DATE	DESCRIPTION	PAGE #'S
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CARMELITA BARRETT,)
)
Petitioner,)
)
vs.) Superior Court
) No. 97-3-02158-7
DANIEL BARRETT,)
)
Respondent.)

VERBATIM REPORT OF PROCEEDINGS

September 29, 2017

Before the HONORABLE KARENA KIRKENDOLL

APPEARANCES:

For the Petitioner: DANIEL W. SMITH
Campbell, Dille, Barnett & Smith, PLLC
For the Respondent: Pro Se

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1 BE IT REMEMBERED that on Friday, September 29, 2017,
2 the above-captioned cause came on duly for hearing before the
3 HONORABLE KARENA KIRKENDOLL, Judge of the Superior Court in and
4 for the County of Pierce, State of Washington; whereupon, the
5 following proceedings were had, to wit:

6
7 <<<<<< >>>>>>

8
9 THE COURT: Derek Smith? Attorney Derek Smith?
10 No. It's --

11 MR. BARRETT: Derek isn't here.

12 THE COURT: Are you Mr. Barrett?

13 MR. BARRETT: I'm Mr. Barrett.

14 THE COURT: Okay. Are you ready to go forward,
15 Mr. Smith?

16 MR. DANIEL SMITH: I'm ready to go forward.

17 MR. BARRETT: He filed the papers asking for a
18 continuance.

19 THE COURT: Mr. Barrett, where is your
20 attorney?

21 Come on up, please, sir.

22 MR. BARRETT: He's involved in -- like I say,
23 he filed this statement with the court two days ago.

24 MR. DANIEL SMITH: I found it last night on
25 LINX.

1 THE COURT: I have not seen it, because believe
2 it or not, I prepare for my dockets before the night
3 before.

4 MR. BARRETT: Yeah.

5 THE COURT: I've already granted one
6 continuance in this matter. I'm going to allow you to make
7 a record, Mr. Barrett. Are you still represented by
8 Mr. Smith?

9 MR. BARRETT: Yes.

10 THE COURT: And he sent you down here today?

11 MR. BARRETT: Yes.

12 THE COURT: Do you want to tell me anything
13 else, sir?

14 MR. BARRETT: I would prefer to have him here
15 before I go any further.

16 THE COURT: Mr. Daniel Smith, may I hear from
17 you?

18 MR. DANIEL SMITH: Yeah, Your Honor. This
19 is -- into the record, this is Cause No.
20 05-3-00148-4 [sic].

21 This matter was brought on Mr. Barrett's motion to
22 remove an order for protection, a permanent order for
23 protection, and I believe the hearing was at the end of
24 June.

25 And the Court heard argument for both counsel and then

1 denied the request without prejudice and asked that
2 Mr. Barrett provide some information to the Court so that
3 the Court could better rule on this.

4 Three months have passed. We've continued it,
5 actually, two different times. This is the third date that
6 we've noted since that June 30th date.

7 And I saw -- when I was preparing last night, I saw on
8 LINX that Mr. Smith, Derek Smith, had filed a motion to
9 continue. We hadn't been served with a copy of that, but
10 we did see it.

11 We need to go forward on this, Your Honor.
12 Mr. Barrett, as we stand here, still has not provided a
13 declaration and affidavit or any of the documentation that
14 the Court has required him to provide.

15 On the other hand, my client has provided the Court
16 with substantial information about a case that was in
17 Kittitas County that they did not disclose to the Court.
18 It actually went up on appeal. There's a permanent
19 restraining order in that case as well against Mr. Barrett
20 protecting my client and the children.

21 That wasn't disclosed to the Court. I think that
22 might have made a difference in this Court's ruling three
23 months ago.

24 We'd asked for attorneys' fees at that time for
25 several reasons, one being we didn't even have a

1 declaration from Mr. Barrett. We still don't. It's just
2 his client's declaration.

3 And so we filed a declaration after that hearing, and
4 then we filed another one just recently with the additional
5 fees that we've incurred getting ready for this hearing.
6 It didn't include today's time, but I just -- Your Honor, I
7 work with attorneys all the time when we have scheduling
8 issues. But when we were here in June, you advised both of
9 us that you were going to be rotating into CD1 and we had
10 to be heard by the end of this month. I recall that.

11 We set a date, and then we set a second date, and then
12 we set this date and we agreed to this date.

13 And when I read this last night, it says that he was
14 in trial earlier this week and then has a trial that starts
15 next week. Well, we don't try cases on Fridays. That's
16 when we come in and do motions. So there's no reason that
17 he shouldn't be here.

18 And so I'd respectfully request that the Court deal
19 with this matter this morning.

20 THE COURT: Mr. Barrett, do you want to say
21 anything further?

22 MR. BARRETT: The court over in Kittitas did
23 not enter a restraining order against Carmelita. That's
24 totally false.

25 THE COURT: Is the amount that you're seeking,

1 Mr. Smith, \$2,847.27?

2 MR. DANIEL SMITH: It was up until -- I filed
3 another financial declaration. I think it's another 500.

4 I filed another financial declaration. The work we've
5 been doing in between is another \$534.55.

6 And if the Court were to award two hours for this
7 morning, that would be another \$590. That would add to
8 \$3,972.71.

9 THE COURT: Mr. Barrett, do you understand why
10 we are here arguing about attorneys' fees? That's what
11 this hearing was for.

12 MR. BARRETT: Well, I don't, because I've done
13 everything I can to forward the case. And from what I
14 understood, we weren't going to determine whether they got
15 any fees until we found out whether I was successful in
16 getting the restraining order lifted, which I've done --
17 I've progressed towards that. But different people have
18 gone on vacations, et cetera, et cetera. So I'm moving
19 forward. I've done the assessment. I've done what I can.

20 MR. DANIEL SMITH: And I'm going to object,
21 Your Honor. None of that is in the record, and he's had
22 three months.

23 THE COURT: None of it is in the record. I've
24 been waiting three months for this matter to be brought
25 back in front of me. I asked your attorney and Mr. Smith,

A - 007

1 the last time that they were both here in front of me, to
2 do this as soon as possible. I was assured that it would
3 be done as soon as possible. That's why I didn't rule on
4 the attorneys' fees.

5 Now I'm here with the second request for a
6 continuance. The first request was at least done timely
7 and there was good cause.

8 You do not, as an attorney or a layperson, file a
9 motion in LINX the night before a scheduled hearing date
10 and think that you're going to get a continuance. That's
11 simply not how it works.

12 I'm not granting a continuance, and I am awarding the
13 attorneys' fees that are being requested. And this is
14 because of wasted time from these continuances that have
15 been ongoing and the failure to bring this forward to me in
16 a timely manner as I requested three months ago when we
17 started this. So I am awarding attorneys' fees in the
18 amount of \$3,972.71.

19 I denied your case without prejudice, allowing you to
20 bring it back. And that's why I put the attorneys' fees
21 issue on hold, as a courtesy. I thought we'd all come back
22 and go through this.

23 I would have awarded fees whether you were successful
24 or not, but this has not gone forward like it was intended
25 to by me. There's been delay after delay.

A - 008

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So do you have an order, Mr. Smith?

MR. DANIEL SMITH: I do, Your Honor.

THE COURT: I've added to this order that the motion to continue is denied.

Mr. Barrett, I'd ask that you sign this as acknowledgment of what's happened in the courtroom. You don't have to sign it, but I would appreciate it if you would.

Thank you. We'll give you a copy of that. Ms. Bartelson will make a copy right now so you can take it to your attorney.

MR. BARRETT: Okay. I guess my other questions I have are for Derek.

THE COURT: Right.

MR. BARRETT: Okay.

(Matter adjourned)

A - 009

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CARMELITA BARRETT,

Petitioner,

vs.

DANIEL BARRETT,

Respondent.

)
)
)
) Superior Court
) No. 97-3-02158-7
)
)
)
)

REPORTER'S CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

)
) ss
)

I, Kaedra A. Wakenshaw, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken on September 29, 2017, in the matter of the above-entitled cause.

Dated this date of October 5, 2017.

KAEDRA A. WAKENSHAW, CCR, RPR, CRR
Official Court Reporter

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re:

No. **97-3-02158-7**

CARMELITA ESCARCEGA,

Petitioner

COPY OF TRANSCRIPT FROM
NOVEMBER 3, 2017 HEARING

and

DANIEL J. BARRETT

Respondent.

Attached herewith is a true copy of the Verbatim Report of Proceedings from the
November 3, 2017 hearing in this case before the Honorable Judge Karena Kirkendoll.

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

Signed at South Prairie, Washington on November 13, 2017.



Daniel J. Barrett, pro se
Respondent

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CARMELITA BARRETT,
Petitioner,
and
DANIEL BARRETT,
Respondent.

COPY

Superior Court
No. 97-3-02158-7

VERBATIM REPORT OF PROCEEDINGS

November 3, 2017

Before the HONORABLE KARENA KIRKENDOLL

APPEARANCES:

For the Petitioner: DANIEL W. SMITH
Campbell, Dille, Barnett & Smith, PLLC
For the Respondent: Pro Se

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(None)

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(None)

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1 BE IT REMEMBERED that on Friday, November 3, 2017, the
2 above-captioned cause came on duly for hearing before the
3 HONORABLE KARENA KIRKENDOLL, Judge of the Superior Court in and
4 for the County of Pierce, State of Washington; whereupon, the
5 following proceedings were had, to wit:

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7 <<<<<< >>>>>>

8
9 THE COURT: All right. Are we ready on the
10 Barrett matter? Carmelita Barrett and Daniel Barrett --

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: -- 97-3-02158-7.

13 MR. SMITH: Good morning, Your Honor.

14 For the record, I'm Daniel Smith, the attorney for
15 Carmelita Escarcega, and we are the responding party this
16 morning.

17 THE COURT: And will you identify yourself,
18 sir, please?

19 MR. BARRETT: Excuse me?

20 THE COURT: Will you identify yourself, please?

21 MR. BARRETT: Yes. I'm Dan Barrett.

22 You have to excuse me. My right hearing aid broke,
23 and so I'm operating less than --

24 THE COURT: Thank you for letting me know. In
25 the future, if you need hearing assistance, we do have

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1 devices that might assist you.

2 MR. BARRETT: Oh, really? All right. Okay.

3 THE COURT: All right. Gentlemen, I'm going to
4 cut to the chase here.

5 We received an order on reconsideration from
6 Mr. Barrett. And that order was asking me on its face to
7 reconsider the September 29th, 2017 order signed by this
8 Court where I awarded attorneys' fees, but it also was
9 asking the Court to reconsider the June 30th, 2017 order
10 denying the motion to lift the restraining order.

11 This is a procedural mess, because at the original
12 hearing date, back on June 30th, 2017, there had been no
13 documentation filed. There was no declaration from
14 Mr. Barrett. There was nothing that the Court could work
15 with. And because of that, the other side didn't have the
16 opportunity to respond to what Mr. Barrett was pleading.

17 In addition, I can't reconsider what happened on
18 June 30th, 2017, with a motion for reconsideration filed on
19 October 9th, 2017.

20 Are you both tracking with me?

21 MR. SMITH: Yes.

22 THE COURT: Mr. Barrett --

23 MR. BARRETT: Yes.

24 THE COURT: -- there are rules about how long
25 you have to file a motion for reconsideration. So

A - 015

1 procedurally, this is not before me except for the
2 motion -- that portion of Mr. Barrett's motion for
3 reconsideration on the attorneys' fees.

4 I went back through everything. And on
5 September 29th, 2017, it was not my intent to deny
6 Mr. Barrett's motion with prejudice. I didn't make that
7 ruling. And I have prepared a corrected order. I'm not
8 reconsidering that because that was not my ruling.

9 I've prepared a corrected order denying the motion to
10 lift restraining order, denying the continuance, and
11 awarding fees, and I have interlineated out that portion of
12 that order that says I'm denying his motion with prejudice
13 because I didn't.

14 I'd like you both to sign this. I'm making it
15 nunc pro tunc back to that date.

16 Then my ruling on the motion for reconsideration
17 regarding attorneys' fees is that I am denying your request
18 for reconsideration. You have to pay the attorneys' fees
19 that I have ordered already.

20 So I'm handing down both of these orders, and I would
21 like both of you to sign them.

22 So, Mr. Barrett, you have the right to bring your
23 motion back if you choose to do so, but you have to do so
24 in a procedurally correct manner. That's all.

25 MR. BARRETT: That's it.

A - 016

1 THE COURT: That's all. I can't do anything
2 else. I had absolutely nothing before me last June that
3 you have filed this month. Yeah.

4 MR. SMITH: May I respond, Your Honor?

5 THE COURT: You may.

6 MR. SMITH: Your order on June 30th stated that
7 the motion that they had filed to vacate the permanent
8 restraining order had to be heard in the month of August.
9 That was a requirement that you had. And the matter was
10 continued, I think, three different times, and we finally
11 heard it a month or so ago. So I think it was on
12 September 29, 2017, when it was finally heard.

13 So they also -- in June, you had a very specific court
14 order on June 30th saying that he shall provide his sworn
15 declaration for the subsequent hearing, which he didn't do.
16 He was required to provide treatment records, which he
17 didn't do. He was required to provide evaluations, which
18 he didn't do. And he was required to provide a current
19 domestic violence evaluation, which he didn't do. And you
20 still didn't have any declarations from him.

21 THE COURT: That's true.

22 MR. SMITH: So my client's -- we've been in
23 court multiple times.

24 THE COURT: I understand.

25 MR. SMITH: And we have filed a memorandum in

A - 017

1 support of our position. We've had this matter noted up
2 more than once. And if -- there's nothing in the record
3 right now as we stand here that supports the fact that that
4 order for protection that was entered 15 years ago by
5 Judge Chushcoff after a trial should be vacated and --

6 THE COURT: Mr. Smith, I'm going to interrupt
7 you because I've got a very full docket this morning.

8 MR. SMITH: Okay.

9 THE COURT: Sir, all the reasons that you've
10 just enumerated are why you were awarded \$3,900 in
11 attorneys' fees. I am not going to deny this without [sic]
12 prejudice. That was not my intent. It's not been heard on
13 the merits.

14 If we continue down this procedural path where your
15 client is being forced to jump through hoops for no
16 purpose, you're going to get more attorneys' fees.

17 MR. SMITH: Okay.

18 THE COURT: But I'm not going to deny this with
19 prejudice when it has not been heard on the merits.

20 MR. SMITH: All right.

21 MR. BARRETT: And, Your Honor, this is just
22 basically stating that I got a copy of this; correct?

23 THE COURT: Sir, that's the motion denying
24 your -- you're asking me to reconsider the attorneys' fees,
25 and I'm denying your motion. That's the order denying your

A - 018

1 motion --

2 MR. BARRETT: Okay.

3 THE COURT: -- for attorneys' fees.

4 MR. BARRETT: Okay. Because I get a copy
5 either way; correct?

6 THE COURT: Yeah, you're going to get a copy of
7 that.

8 MR. BARRETT: Okay. I'll just get copies of
9 both.

10 THE COURT: Okay. And that is the order that
11 says -- I'm correcting that to say I did not deny your
12 motion with prejudice.

13 MR. BARRETT: Right.

14 THE COURT: Mr. Barrett, you signing or not
15 signing, you agreeing or not agreeing doesn't matter.

16 MR. BARRETT: Okay.

17 THE COURT: So picking and choosing whether you
18 want to sign an order --

19 MR. BARRETT: Okay.

20 THE COURT: -- over the other one, it makes no
21 sense.

22 MR. BARRETT: Thank you.

23 THE COURT: I would prefer you to sign them to
24 show you were in the courtroom --

25 MR. BARRETT: Right.

A - 019

1 THE COURT: -- because I'm going to write
2 "Refused to sign." Ms. Bartelton's going to make copies.

3 MR. BARRETT: Thank you.

4 THE COURT: Mr. Barrett, do you understand
5 what's happened here this morning legally?

6 MR. BARRETT: Not -- not completely, no.

7 THE COURT: It was not my intent to deny your
8 case with prejudice. I'm correcting that.

9 MR. BARRETT: Okay. Thank you.

10 THE COURT: I am denying your request that I
11 take back the attorneys' fees. They were awarded for a
12 reason.

13 Ms. Bartelton, will you make sure that Mr. -- you want
14 a copy, Mr. Smith?

15 MR. SMITH: I'll get it off LINX.

16 Your Honor, Mr. Barrett filed paperwork two days ago,
17 and I didn't see it until I was preparing for this hearing.
18 He never served me. I would like the Court to instruct
19 Mr. Barrett to serve my office with anything that he files
20 with the Court.

21 THE COURT: I will instruct both of you that
22 you must follow the rules of procedure. The Court will not
23 hear the case, Mr. Barrett, unless it's filed appropriately
24 and all parties have been appropriately served.

25 I know you're at a slight disadvantage, given the

A - 020

1 status of your legal representation, but I cannot help
2 that, and I can't help you with that. There are sources in
3 Pierce County that you can seek out for legal assistance.

4 I do have the working papers here. These were yours.
5 I'm going to give these back.

6 MR. SMITH: Thank you.

7 THE COURT: These were yours. Okay?

8 MR. BARRETT: Okay.

9 THE COURT: But, Mr. Barrett, just so you do
10 understand, anything you file with the Court must be served
11 on Mr. Smith's office. Okay?

12 MR. BARRETT: I believe it was served
13 correctly. Thank you.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Mr. Barrett, you're going to get
16 copies here. Thank you.

17 MR. BARRETT: Okay. Thank you.

18 (Matter adjourned)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

CARMELITA BARRETT,

Petitioner,

vs.

DANIEL BARRETT,

Respondent.

)
)
) Superior Court
) No. 97-3-02158-7
)
)
)
)

REPORTER'S CERTIFICATE

STATE OF WASHINGTON

COUNTY OF PIERCE

)
) ss
)

I, Kaedra A. Wakenshaw, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken on November 3, 2017, in the matter of the above-entitled cause.

Dated this date of November 8, 2017.

COPY

KAEDRA A. WAKENSHAW, CCR, RPR, CRR
Official Court Reporter

A - 022

I N V O I C E

KAEDRA WAKENSHAW
KW Transcription, LLC
PO Box 65503
Tacoma, WA 98464
(253) 820-4941
kwtranscriptions@gmail.com

Date: November 8, 2017
Invoice: 110317-Barret
(Paid in full.) VVW
Vendor No. SWV0218825-00

DANIEL BARRETT, PRO SE
Paid in person

IN RE: CARMELITA BARRETT vs. DANIEL BARRETT
Cause No. 97-3-02158-7

For transcribing proceedings held in the above matter
November 3, 2017.

Original and copy of transcript of proceedings held before
THE HONORABLE KARENA KIRKENDOLL.
(Motion for Reconsideration)

11 pages	Transcript:	\$60.50
	Postage:	\$ N/A

TOTAL: \$60.50

THANK YOU!

*** PLEASE MAKE CHECKS PAYABLE TO KAEDRA WAKENSHAW ***

A - 023

23960001
10/4/2017



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In re the Marriage of:

CARMELITA ESCARCEGA (fka
BARRETT),

Petitioner,

And

DANIEL BARRETT,

Respondent.

No. 97-3-02158-7

ORDER DENYING MOTION TO LIFT
RESTRAINING ORDER

[] Clerk's Action Required

THE CLERK IS HEREBY DIRECTED TO ESTABLISH A MONEY JUDGMENT IN FAVOR
OF CARMELITA ESCARCEGA AND AGAINST DANIEL BARRETT IN THE AMOUNT OF
\$3972.21 FOR ATTORNEY'S FEES.

JUDGMENT SUMMARY

Judgment Creditor:	Carmelita Escarcega
Judgment Debtor:	Daniel Barrett
Principal Judgment Amount:	\$ _____
Interest to Date of Judgment:	\$ _____
Attorney's Fees:	\$ <u>3972.21</u>
Costs:	\$ _____
Interest Rate:	12%
Other Recovery Amounts:	\$ <u>0</u>

ORDER DENYING MOTION TO
LIFT RESTRAINING ORDER - Page 1 of 3

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.

Attorneys at Law
317 South Meridian
Puyallup, Washington 98371

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2396
10/26/2017

Principal judgment amount shall bear interest at 12% per annum.
Attorney Fees, Costs and Other Recovery amounts shall bear interest at 12% per annum.
Attorney for Judgment Creditor: Daniel W. Smith
Attorney for Judgment Debtor: Derek M. Smith

THIS MATTER having come before the Court, the Petitioner, Carmelita Escarcega, by and through her attorney of record, Daniel W. Smith, of CAMPBELL, DILLE, BARNETT, & SMITH, P.L.L.C., and the Respondent, Daniel Barrett, by and through his attorney, Derek M. Smith, of the LAW OFFICES OF SMITH & WHITE, P.L.L.C., and the Court having reviewed the records and files herein and being fully advised in the premises, now, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Respondent's Motion to Lift Restraining Order is hereby denied with prejudice; and it is further

ORDERED, ADJUDGED AND DECREED that the Petitioner, Carmelita Escarcega, is hereby awarded judgment against the Respondent, Daniel Barrett, in the amount of \$ 3972⁷¹ for attorney's fees; and it is further

ORDERED, ADJUDGED AND DECREED that _____
Motion to continue denied.

DONE IN OPEN COURT this 29th day of September, 2017.

Kirkendoll
JUDGE KARENA KIRKENDOLL

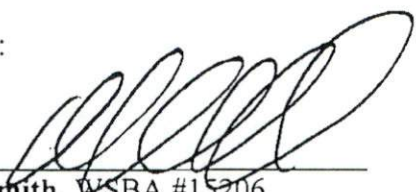
ORDER DENYING MOTION TO LIFT RESTRAINING ORDER - Page 2 of 3

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Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
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A-848-44 fr. simle **025**

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10/4/2017

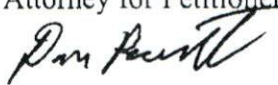
Presented by:



Daniel W. Smith, WSBA #15206
Attorney for Respondent

Approved as to Form and Content;
Notice of Presentment Waived:

Derek M. Smith, WSBA #26036
Attorney for Petitioner



**ORDER DENYING MOTION TO
LIFT RESTRAINING ORDER - Page 3 of 3**

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A-026

11/8/2017 29040001



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In re the Marriage of:

CARMELITA ESCARCEGA (fka
BARRETT),

Petitioner,

And

DANIEL BARRETT,

Respondent.

No. 97-3-02158-7

CORRECTED
ORDER DENYING MOTION TO LIFT
RESTRAINING ORDER, *denying*
continuance, and awarding
[] Clerk's Action Required *fees.*

Nunc Pro Tunc

THE CLERK IS HEREBY DIRECTED TO ESTABLISH A MONEY JUDGMENT IN FAVOR
OF CARMELITA ESCARCEGA AND AGAINST DANIEL BARRETT IN THE AMOUNT OF
\$ 3972.71 FOR ATTORNEY'S FEES.

JUDGMENT SUMMARY

Judgment Creditor:	Carmelita Escarcega
Judgment Debtor:	Daniel Barrett
Principal Judgment Amount:	\$ _____
Interest to Date of Judgment:	\$ _____
Attorney's Fees:	\$ <u>3,972.71</u>
Costs:	\$ _____
Interest Rate:	12%
Other Recovery Amounts:	\$ <u>0</u>

ORDER DENYING MOTION TO
LIFT RESTRAINING ORDER - Page 1 of 3

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253-845-4900

A - 027

1 Principal judgment amount shall bear interest at 12% per annum.
2 Attorney Fees, Costs and Other Recovery amounts shall bear interest at 12% per annum.
3 Attorney for Judgment Creditor: Daniel W. Smith
4 Attorney for Judgment Debtor: Derek M. Smith

5 **THIS MATTER** having come before the Court, the Petitioner, Carmelita Escarcega, by
6 and through her attorney of record, Daniel W. Smith, of CAMPBELL, DILLE, BARNETT, &
7 SMITH, P.L.L.C., and the Respondent, Daniel Barrett, by and through his attorney, Derek M.
8 Smith, of the LAW OFFICES OF SMITH & WHITE, P.L.L.C., and the Court having reviewed
9 the records and files herein and being fully advised in the premises, now, therefore, it is hereby

10 ~~ORDERED, ADJUDGED, AND DECREED that the Respondent's Motion to Lift~~
11 ~~Restraining Order is hereby denied with prejudice, and it is further~~

12 **ORDERED, ADJUDGED AND DECREED** that the Petitioner, Carmelita Escarcega, is
13 hereby awarded judgment against the Respondent, Daniel Barrett, in the amount of
14 \$ 3972⁷¹ for attorney's fees; and it is further

15 **ORDERED, ADJUDGED AND DECREED** that Petitioner's
16 Motion to continue denied.
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20 DONE IN OPEN COURT this 3 day of NOV. 2017.
21 Nunc pro Tunc to 9/29/17.

22 Kirkendoll
23 JUDGE KARENA KIRKENDOLL
24

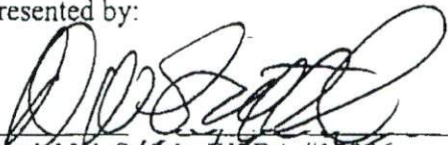
ORDER DENYING MOTION TO
LIFT RESTRAINING ORDER - Page 2 of 3

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CAMPBELL, DILLE, BARNETT,
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253-845-4911
A - 028

11/8/2017 2:58:4

Presented by:



Daniel W. Smith, WSBA #15206
Attorney for Respondent

Approved as to Form and Content;
Notice of Presentment Waived:

Daniel Barrett refused to sign.

~~Derek M. Smith, WSBA #26036,
Attorney for Petitioner~~



ORDER DENYING MOTION TO
LIFT RESTRAINING ORDER - Page 3 of 3

I:\DATA\DW\DW\Escarcega, Carmelita\Order Denying.rtf

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A - 029

I. INTRODUCTION

Attorney's Fees. The Court's award of attorney fees was appropriate. Mr. Barrett's Motion to Lift the Permanent Restraining Order was brought pursuant to RCW 26.50. Attorney's fees are authorized by RCW 26.50.060(1)(g) which allows for reasonable attorney's fees. Ms. Escarcega filed under seal two (2) Declarations regarding attorney's fees incurred in support of her request for an award of attorney's fees. The Court had statutory authority to award attorney's fees in this case.

II. STATEMENT OF THE CASE

Judge Bryan Chushcoff entered a Permanent Restraining Order at trial in 2002 against Daniel Barrett on Ms. Escarcega's Petition to Modify the Parenting Plan relative to the parties' five (5) children. (CP 167.) At the conclusion of the trial, Mr. Barrett was awarded no visitation with any of the parties' five (5) children. (CP 167.) Prior to the trial, Mr. Barrett had shot Carmelita Escarcega's boyfriend in the stomach while in the presence of two (2) of the children. (CP 168.) Mr. Barrett was subsequently charged with first degree assault. (CP 168.)

Daniel Barrett filed a Motion on May 16, 2017 to lift the Permanent Protection Order that had been entered by Judge Bryan

October 26 2017 2:14 PM

KEVIN STOCK
COUNTY CLERK
NO: 97-3-02158-7

Superior Court of Washington
County of Pierce

CARMELITA ESCARCEGA (fka
BARRETT),

Petitioner,

And

DANIEL BARRETT,

Respondent.

No. 97-3-02158-7

RESPONSIVE DECLARATION OF
CARMELITA ESCARCEGA IN
RESPONSE TO MOTION FOR
RECONSIDERATION

I, Carmelita Escarcega, hereby declare as follows:

Attorney. I cannot comment on Mr. Barrett's relationship with his attorney, however, I will point out that

(a) Mr. Barrett never filed a sworn declaration in support of his original Motion to Vacate the Protection Order and

(b) Mr. Barrett never provided documentation as ordered by this Court on June 30, 2017.

Domestic Violence. I have the right to appear at these hearings so the Court can see that I care about what the Court does. I was in attendance with my children who were there to support me. The 1997 domestic violence assault was dismissed. This evidence was before the

RESPONSIVE DECLARATION OF
CARMELITA ESCARCEGA IN RESPONSE
TO MOTION FOR RECONSIDERATION
Page 1 of 2

CAMPBELL, DILLE, BARNETT,
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Attorneys at Law
317 South Meridian
Puyallup, Washington 98371

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253-845-4941 fax
A-031

1 Trial Court when the Permanent No Contact Order was entered. A Parenting Plan involving a
2 subsequent divorce is not relevant to the issues before this Court.

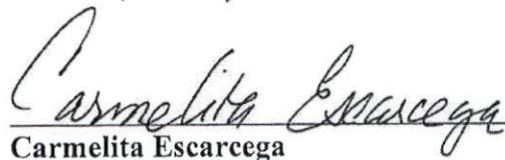
3 Testimony. I did not testify before the Court. The Court heard argument of counsel
4 based on the record.

5 Attorney Fees. The Court found that the Motion to Vacate the Protection Order was
6 brought in bad faith. RCW 26.0 9.140 does not apply.

7 Conclusion. Mr. Barrett has provided no basis or evidence to support his Motion for
8 Reconsideration. He is the one who filed the original motion and he is the one who has the
9 burden to persuade the Court to vacate the Protection Order which he did not do.
10

11 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
12 is true and correct.

13 Dated this 26 day of October, 2017, at Puyallup, Washington.

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15 
16 Carmelita Escarcega

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RESPONSIVE DECLARATION OF
CARMELITA ESCARCEGA IN RESPONSE
TO MOTION FOR RECONSIDERATION
Page 2 of 2

CAMPBELL, DILLE, BARNETT,
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A-032

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, September 24, 2019 4:24 PM
To: 'Dan Barrett'
Cc: 'dans@campbellbarnettlaw.com'
Subject: RE: C of A #51273-4-II --- REPLY to Answer to Petition for Review (emailed with Clerk approval due to server down)

Received 9-24-19.

From: Dan Barrett [mailto:danieljbarrett@outlook.com]
Sent: Tuesday, September 24, 2019 3:39 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'dans@campbellbarnettlaw.com' <dans@campbellbarnettlaw.com>
Subject: C of A #51273-4-II --- REPLY to Answer to Petition for Review (emailed with Clerk approval due to server down)

To Whom It May Concern,

I received permission to file by email the attached Reply because the portal is not working and in fact the entire www.Courts.WA.gov site will not pull up for me on my computer.

Please advise if there is anything else you would like me to do.

This email is being CC'd to opposing counsel Dan Smith for email service and so there are no ex parte communications with the court.

Thank You,

DANIEL J. BARRETT
PO Box 361
South Prairie, WA 98985
(253) 273-1110
DanielJBarrett@outlook.com