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SUPREME COURT  
STATE OF WASHINGTON  
Oct 16, 2013, 2:12 pm  
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5 **IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

6  
7 STEFANIE JEAN BENNETT,

8 Petitioner,

9 v.

10 JOHN MICHAEL XITCO,

11 Respondent.

NO. 89315-2

MOTION TO STRIKE PORTIONS OF  
RESPONDENT'S ANSWER TO  
PETITIONER'S PETITION FOR  
REVIEW

12 **I. IDENTITY OF ANSWERING PARTY**

13 Petitioner, Stefanie Jean Bennett, asks for the relief designated in Part II of this Motion.

14 **II. STATEMENT OF RELIEF SOUGHT**

15 Petitioner asks that four portions of the facts of Respondent's Answering Brief, filed on  
16 October 1, 2013, be stricken because they are false and misleading to this Court and are material  
17 because they are substantive facts that go to the issue of detriment.  
18

19 **III. FACTS RELEVANT TO MOTION**

20 First, the Respondent represents as fact that Ms. Bennett filed *false* domestic violence  
21 petitions against him (Answer at p.5) when in fact the first petition was not served on Mr. Xitco so it  
22 was dismissed, and the second petition was dismissed on the merits. Answer at 12. According to the  
23 trial court judge, the petitions were deemed unfounded but not false. Trial Court decision letter  
24 dated April 27, 2011 at p.3. (Exhibit A).  
25  
26

MOTION TO STRIKE PORTIONS OF  
RESPONDENT'S SUPPLEMENTAL BRIEF

1

LAW OFFICES OF ANN M. SCHWARTZ  
7683 SE 27<sup>TH</sup> STREET, STE 463  
MERCER ISLAND, WA 98040  
PH (253) 355-8906

 ORIGINAL

1           Second, the Respondent represents as fact that “both (CX and NX) missed out on moral and  
2 ethical lessons taught at Mass” (citing 1 VRP at 135-137). This was not a statement from any  
3 professional or GAL, it was a statement of Mr. Xitco during his cross examination at trial and he did  
4 not say that the children were missing ethical and moral lessons taught at *Mass* but he said the  
5 children were missing ethical and moral lessons that would be taught in any religion. 1 VRP at 137.  
6 Mr. Xitco did not take the children to Mass but he was raised Catholic. 1 VRP at 135-137. The  
7 reason this is material is that the Answer presents this fact in a manner that a professional had made  
8 this conclusion.  
9

10           Third, Respondent asserts at page 8 in his Answer “[c]uriously, although Stefanie claims that  
11 NX missed school due to his alleged poor health” (emphasis in the original), and then Mr. Xitco  
12 asserts on page 9 of his Answer “Since the 2008 Parenting Plan, Stefanie held to the belief that NX  
13 suffered from significant medical issues.” When in fact, by Stefanie’s persistence to get NX the  
14 proper health care it was discovered that NX had an impacted bowel and a lower intestinal infection.  
15 Not only does Mr. Xitco’s Answer omit this material information from his Answer—he testified to  
16 his knowledge of these facts at trial. VRP 285.  
17

18           Finally, Mr. Xitco’s Answer makes a material misstatement of fact when the Answer stated  
19 that “Stefanie also admitted that she could have *cared less* that her actions were in clear violation of  
20 the parenting plan. 3 VRP at 472; 4VRP at 549-51, 557.” (emphasis not in original). No where in  
21 these citations to the record does Mr. Bennett “admit[] that she could have ‘*cared less*’” that her  
22 actions in getting NX the proper medical care violated the parenting plan.  
23  
24  
25  
26

1 **IV GROUNDS FOR RELIEF AND ARGUMENT**

2 RAP 10.3 (5) states that the statement of the case must present “[a] fair statement of the  
3 facts...without argument.” These portions of Mr. Xitco’s Answer should be stricken because they  
4 are not supported by the record and are misleading to this Court. These misstatements and  
5 omissions are substantive facts that are relevant to the issue of detriment and are a serious departure  
6 from what the Rules of Appellate Procedure require.  
7

8 **V. CONCLUSION**

9 It is unclear why Mr. Xitco has made false and misleading statements, which are either not  
10 supported by the record or omitted so that the context is materially different from the complete  
11 record. Ms. Bennett moves to strike these portions of the Answer and moves to admit the fact that  
12 NX suffered from an impacted bowel and lower intestinal infection, which Mr. Xitco testified to at  
13 trial so that this Court has a full and accurate record on review.  
14

15 Respectfully submitted,

16  
17 DATED this 16<sup>th</sup> day of October, 2013  
18

19  
20 ISI by GDE for Ann Schwartz  
21 Ann M. Schwartz, WSBA#26163  
22 Attorney for Stefanie Jean Bennett  
23  
24  
25  
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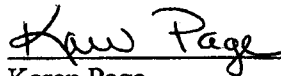
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**CERTIFICATE OF SERVICE**

I, KAREN PAGE, hereby certify that on October 16, 2013 I served a copy of the Reply to Petition for Discretionary Review and the Motion to Strike Portions of Respondent's Answer to Petitioner's Petition for Review on P. Craig Beetham, Attorney at Law, 1200 Wells Fargo Plaza, 1201 Pacific Avenue, Tacoma, WA 98402 electronically via email at cbeetham@eisenhowerlaw.com.

DATED this 16<sup>th</sup> day of October, 2013.

Respectfully Submitted:

  
\_\_\_\_\_  
Karen Page  
Paralegal to Gregory D. Esau

# *Exhibit A*

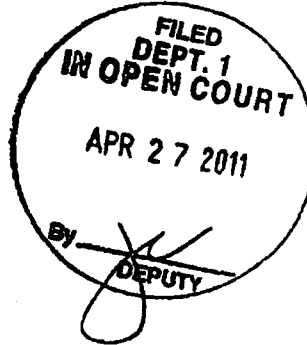


02-3-01183-6 36310019 CTD 04-29-11

**RIOR COURT  
OF THE  
STATE OF WASHINGTON  
FOR PIERCE COUNTY**

**JAMES R. ORLANDO, JUDGE**  
L. Janet Costanti, *Judicial Assistant*  
DEPARTMENT 1  
(253)798-7578

334 COUNTY-CITY BUILDING  
930 TACOMA AVENUE SOUTH  
TACOMA, WA 98402-2108



April 27, 2011

Mr P. Craig Beetham  
Attorney at Law  
1200 Wells Fargo Plaza  
1201 Pacific Avenue  
Tacoma, WA 98402

Ms Marcella Hughes  
Attorney at Law  
418 Carpenter Rd SE Ste 104  
Olympia, WA 98503-7905

Re Bennett and Xitco  
Pierce County No 02-3-01183-6

Dear Counsel.

In the academy award winning film, Kramer v Kramer, Dustin Hoffman (Ted) consoles his son (Billy) after losing a custody case. The exchange is as follows:

"Billy, sometimes when a mother and a  
Father are divorced, there's a  
discussion about who the child should  
live with, the mother or the father.  
Now there is a man who is very wise.  
He's called a judge. And a judge has  
a lot of experience with divorces  
and he decides who it would be best  
for the child to live with.

**BILLY**  
Why does he decide?

**TED**  
Because. Well, that's what he does.  
He's a very powerful man.

**BILLY**

Like a principal?

**TED**

Bigger than a principal The judge  
sits in robes in a big chair The  
judge has thought a lot about us,  
about you and me and your mom, and  
he has decided

(a deep breath)

he has decided that it would be  
best for you to live with your mom  
Joanna in her apartment

(fake cheerful)

And I'm very lucky Because even  
though you'll live with your mom  
Joanna I'll get to see you once a  
week for dinner and a couple of  
weekends a month

**BILLY**

I don't understand, daddy

**TED**

(trying very hard not  
to cry)

What don't you understand, pal?

**BILLY**

Where will my bed be, where will I  
sleep?

**TED**

At your mom's She'll have a bed for  
you in your own room

**BILLY**

Where will my toys be?

**TED**

I'll send your toys there and I'm  
sure you'll get some new ones

**BILLY**

Who will read me my stories?

**TED**

Your mom

**BILLY**

(worried)

Daddy, what if The Face comes when  
I'm at mommy's?

**TED**

Your mom knows all about The Face,

okay? Don't worry, she'll tell The  
Face to beat it

**BILLY**

Will you come and say good-night to  
me every night?

Suddenly Ted can't stand it any longer.

**TED**

Look, it's getting cold Why don't  
you go inside where it's warm I'll  
be along in a minute "

In the end, on the day the exchange is to occur to Mom's residence (Meryl Streep), she shows up and changes her mind Despite the bitterness of the battle, she decides it would be best for Billy to stay with his father

I would hope that these parties would watch the movie at some point but I realize that it is just a movie, and in the present case we are dealing with real life decisions that have real consequences

I find that the petitioner has met his burden to show that based upon facts that have risen since the 2008 modification, that a substantial change has occurred in the circumstances of the children and that the modification is in the best interest of the children and is necessary to serve their best interest

The limited psychological information about Ms Bennett is troubling She has refused to provide the full report to the court, but the Guardian ad litem summary shows a troubled profile on any of the tests given She has used conflict in a manner that is likely to cause long term harm to the children She has unilaterally prohibited the children from attending a part of their school curriculum, namely Thursday morning mass She has allowed them to miss an excessive number of days from school, which I believe is her "silent" protest over the children attending the parochial school which she originally agreed that they would attend. She has filed unfounded domestic violence petitions and called the police for well-child checks for no good reason

This passive-aggressive behavior has damaged the children and their relationship with the father. These two children are the only two at St Pat's not attending mass. They are "out of the norm", and for developing children being "out of the norm" can have long term negative consequences. Ms Bennett knows how strongly Mr. Xitco feels about school attendance and she has deliberately allowed this issue to become a weekly source of contention, in large part I see as her way to get back at him for his perceived slights towards her

The emotional gamesmanship needs to end. These children are already using the parental fight to gain an advantage over their parents The beach motorcycle incident is a prime example.

These children have been over counseled and will soon believe that they are not normal They need to be children and participate in normal activities, develop normal friendships, get in to normal child "trouble"

I direct that further counseling cease immediately unless requested by the child I order that the children reside with father from Monday after school until Friday morning when he takes them to school The



mother will pick them up from school on Friday and return them to school on Monday morning. The exchange shall occur at school

If the children show a pattern of missed school on Mondays (more than once a quarter), then I will direct that the children be returned on Sunday night at 6pm

When school is not in session, the exchange shall occur at the Tully's on Tacoma Avenue (across from Harvester), or at a location arranged by the attorneys. These parties do not have the ability to communicate civilly and further in person communication should not occur. The contact should be by e-mail and text message only. The children may call the other parent when residing with them.

On the last weekend of the month, Mr. Xitco shall pick Nico up from school and return him to school on Monday morning. This is in part to the child's request that he spend some time with his father without Chloe present. I think this is reasonable.

I will adopt the balance of Mr. Xitco's parenting plan for holiday and summer visitation. The father shall have sole decision making on educational decisions and non-emergency health care decisions. Ms. Bennett has abused these two areas of the parenting plan. The school mass and attendance issues have already been discussed. Her unilateral decision to take Nico for a non-emergency doctor visit for a second opinion is the other abuse.

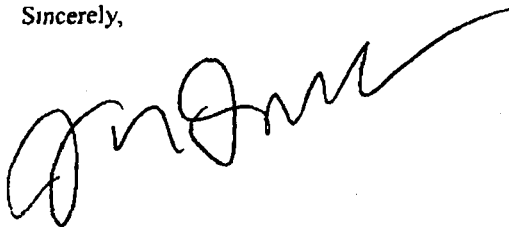
I do not find Ms. Bennett credible on her financial testimony. The tax returns she presented as filed make no sense. I will adopt the child support numbers provided by Mr. Xitco including the requested residential credit.

I do not believe that Ms. Bennett has the ability to pay attorney fees to Mr. Xitco. However, should she engage in conduct similar to what has occurred, I would award attorney fees in the future.

I will appoint a "Special Master" to be the first contact for parenting plan disputes. The initial cost will be paid by Mr. Xitco, but ultimate division of cost will be decided by the Special Master or by later court order.

I will appoint Scott Candoo as Special Master if he is willing to accept it. If not, I will ask for three names from each of you and decide accordingly.

Sincerely,



James R. Orlando

## OFFICE RECEPTIONIST, CLERK

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**To:** Karen Page  
**Cc:** cbeetham@eisenhowerlaw.com; anndefense45@hotmail.com; Gregory Esau  
**Subject:** RE: 89315-2 - Stefanie Jean Bennett v. John Michael Xitco

Rec'd 10-16-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Karen Page [<mailto:kpage@elmlaw.com>]  
**Sent:** Wednesday, October 16, 2013 2:10 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** [cbeetham@eisenhowerlaw.com](mailto:cbeetham@eisenhowerlaw.com); [anndefense45@hotmail.com](mailto:anndefense45@hotmail.com); Gregory Esau  
**Subject:** 89315-2 - Stefanie Jean Bennett v. John Michael Xitco

Clerk:

Attached for filing is the Reply to Petition for Discretionary Review and the Motion to Strike Portions of Respondent's Answer to Petitioner's Petition for Review.

Thank you.

Karen Page

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Karen Page - Paralegal  
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