No. 43633-7-II

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

PAUL DAVID SHOEMAKER

Appellant,

v.

DAWN MARIE SHOEMAKER (NKA HARRIS)

Respondent.

RESPONDENT'S BRIEF IN RESPONSE

Amended.

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A. INTRODUCTION

COMES NOW, Respondent DAWN SHOEMAKER (NKA HARRIS), by and through her counsel of record, Cameron J. Fleury of McGavick Graves, P.S., and hereby responds to Mr. Shoemaker's Opening Brief filed on August 9, 2013, which, as will be described below under Relevant Procedural History, is Mr. Shoemaker's Opening Brief, despite the voluminous filings and subsequent "Amended" briefs, etc. made and filed in addition thereto.

B. STATEMENT OF THE CASE

Background. The parties met and began dating while in High School in Washington State. They become more serious, graduated and Mr. Shoemaker entered the military. They were married in Washington State and moved to Georgia. (CP 703 - 711) Thereafter, in 2006 both parties filed actions in Washington State. Dawn filed a Petition for Dissolution in Pierce County on May 18, 2006 and Mr. Shoemaker filed his Petition on March 16, 2006 (Amended on March 17, 2006) in Kitsap County. The Pierce County case was dismissed by agreement and the matter proceeded in Kitsap County by agreed Order dated June 12, 2006. The Order dated June 12, 2006 included a provision that the parties were making a good faith effort to reconcile and that an update would be provided in 60 days regarding the status.

Nothing further happened in Kitsap County Superior Court for almost two years and the Clerk's office dismissed the case administratively for non-action via Order dated January 16, 2008. (CP 349). Subsequently, the young family moved together to Utah, where Mr. Shoemaker was next stationed. After that, they moved to Japan together, again where Mr. Shoemaker was stationed. Mr. Shoemaker had a deployment after about a year of being in Japan.

Unknown to Ms. Harris, Mr. Shoemaker retained counsel in Kitsap County, who presented a Motion to Vacate the Order Dismissing the 2006 Dissolution and re-instating the 2006 Kitsap County action. (CP 352 -355) With no notice to Dawn, on September 10, 2010, the Ex Parte Order was obtained and placed their son, Ethan, with Mr. Shoemaker. (CP 356 - 358) Mr. Shoemaker presented the Order to his Command in Japan whereupon it was enforced. This is Dawn's first notice of any of this. She then retains counsel in Washington to address the temporary placement and residence issues, which were re-instated in Kitsap County Superior Court by Mr. Shoemaker's motion to vacate the administrative dismissal, who is now apparently contesting the jurisdiction of the Court where he himself initially filed the Petition for Dissolution, won the issue of competing Venue, and subsequently vacated an administrative Order of Dismissal, in order to proceed under the Kitsap County matter.

Mr. Shoemaker fired another attorney, becomes Pro Se and files an appeal in Division II, of a Temporary Order, and an objection to Washington having Jurisdiction. (CP 545) Then, when the appeal is denied, he files for Divorce in Utah, while his dissolution in Kitsap County was still pending. Mr. Shoemaker then attempts to obtain an Ex Parte Order transferring their son to him in the Utah Courts, while Ms. Harris was Residing in New York with her father. (CP 703 - 711) All of these additional actions took many months and substantial fees to resolve. Mr. Shoemaker then filed several additional matters, including some contempt motions, various additional actions in the Federal Court for the Western District of Washington. (CP 703 - 711) Each of these many actions has had to be addressed by Ms. Harris and each has eventually been dismissed after much effort and costs incurred by Ms. Harris.

Ultimately, this matter proceeded to trial in the Superior Court of Washington in Kitsap County. Final Orders in the dissolution were entered, after trial, on May 22, 2012, along with a Memorandum Decision (Clerks papers 703 – 711).

Mr. Shoemaker, timely filed his Notice of Appeal on June 20, 2012. (CP 750 - 761) The deadline for filing the Designation of Clerk's Papers was established to be August 13, 2012. Mr. Shoemaker failed to meet this deadline and this Court rightfully entered its Conditional Ruling of Dismissal on September 19, 2012. Since that time, Mr. Shoemaker has filed a series of incomprehensible and perjurious documents, which somehow have resulted in this matter still being active after over 19 months from the filing of the Notice of Appeal. Mr. Shoemaker has filed nothing which specifically identifies what issue, or issues, he is appealing, nor, has he presented any evidence documenting any cognizable injustice or error at the Superior Court level. He is simply relying on "paper terrorism" and filing nonsense, citing non-existent or no longer applicable authorities, apparently gleaned from the internet.

Mr. Shoemaker sought discretionary review to the Supreme Court regarding this Court's Order dated September 4, 2013, which allowed his 54 page Opening Brief, filed on the deadline of August 9, 2013, but disallowed his 107 page "Memorandum of Law" via Motion for Discretionary Review filed by Mr. Shoemaker on September 24, 2013.

While that issue was pending, on September 16, 2013, Mr. Shoemaker filed a "Notice with Appendix to Judge's Panel Ruling dated September 4, 2013..." which was 88 pages and on the same date he filed a "Fourth Amended Opening Brief and Appendix" and "Fourth Amended Appendix" (Separate documents of 54 pages and 88 pages were filed at that

time). The Court of Appeals entered an Order Denying his Motion to File Amended Opening Brief on September 18, 2013.

Mr. Shoemaker then moved for a Discretionary appeal to the Washington State Supreme Court, which, over objection, set the matter for oral argument. Oral argument was heard on this issue and the Supreme Court denied his motion and remanded to the Court of Appeals. There was a Motion to Stay appellate court proceedings while this matter was addressed, which was granted. On November 8, 2013 the Washington State Supreme Court denied Mr. Shoemaker's Motion for Discretionary Review the remanding the matter for further proceedings in the Court of Appeals.

After the time for Appeal of that Order had expired, the Court of Appeals submitted a letter from the Clerk indicating that the Respondent's Brief was to be due January 9, 2014

C. ARGUMENT

Ms. Harris argues that there are no debatable issues presented by Mr. Shoemaker in his voluminous incomprehensible pleadings and "briefing" submitted in this matter. One issue that appears to have been presented, albeit improperly, is an argument the Superior Court of the State of Washington does not have jurisdiction over him; which appears to be based upon his behaviors and allegations showing he is one of a group of vexatious litigants known as "Freemen", "Freemen on the Land", "Sovereign Citizens", or many other iterations, which have been grouped together as "OPCA" or Organized Pseudo-legal Commercial Argument Litigants. A very thorough and well written opinion, which has no precedential value, but is extremely informational regarding these types of vexatious litigants, may be found at the following link:

http://www.albertacourts.ab.ca/jdb/2003-/qb/Family/2012/2012abqb0571ed1.pdf

Court of Queens Bench of Alberta, Meads v. Meads, 2012 ABQB 571 (2012)

Mr. Shoemaker also appears to be arguing that the Superior Courts of Washington do not have jurisdiction over dissolutions of marriage. Again, this argument is as patently incorrect as the rest of his allegations and incomprehensible gibberish. One of the common practices employed by OPCA litigants is to make bald assertions unsupported by anything in an attempt to transfer the burden of proof to the other party. This is exactly such an instance. The fact that the Superior Courts of the State of Washington have jurisdiction over marriage dissolution matters is clearly set forth in RCW title 26. It should be up to Mr. Shoemaker to produce some reasonable and legitimate basis for his allegation that the court below did not have jurisdiction over him or his marriage. Once a specific and comprehensible argument was produced, a fair opportunity to respond may be possible. Frankly, the fact that Washington Courts have Jurisdiction over marriage and issues related to dissolutions thereof is longstanding and irrefutable.

It bears noting here, as was argued below in response to Mr. Shoemaker's assertion that the Court of Washington did not have jurisdiction over him, that it was he who filed the initial dissolution action in Kitsap County Superior Court; it was he who battled to keep Jurisdiction in the Kitsap County Superior Court when the Respondent herein filed a Petition for Dissolution in Pierce County; and ultimately, it was he who filed the Motion to Vacate the administrative dismissal of the dissolution action in Kitsap County Superior Court, while he was stationed outside the United States, and caused the Superior Court of Kitsap County Washington to vacate the dismissal and resume the dissolution proceedings. Said proceedings being the proceedings herein below he is appealing. The trial judge, Sally F. Olsen, thoroughly discussed the basis for the Court's Jurisdiction over both Mr. Shoemaker and this matter in her Memorandum Decision dated May 22,

2012, (See Clerk's Papers at 703 – 711) which accompanied the final documents in this dissolution of marriage.

D. REQUEST FOR AN AWARD OF FEES AND COSTS

I respectfully request the Appeal be dismissed with fees and costs awarded to the Ms. Harris.

Rule of Appellate Procedure 14 describes the circumstances and procedures for determining whether an award costs is warranted. Rule of Appellate Procedure 18 describes the circumstances and procedures for an award of fees and expenses. This section is set forth to support Ms. Harris' requests for fees, costs and sanctions for the following reasons.

Ms. Harris requests an award of fees, expenses and costs under RAP 18.9, which provides broad authority for the appellate court to impose attorney's fees as a sanction.

In addition, CR 11 sanctions are appropriate and made applicable to appeals under RAP 18.7. CR 11 provides for sanctions for an attorney, or unrepresented party, who files any document that does not meet all of four specific criteria. These criteria for submission of documents are set forth in CR 11 (a), which state as follows: "...to the best of the...party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; or (4) the denials of factual contentions are warranted on the evidence..." Here, it is clear Mr. Shoemaker is intentionally violating several of these individually sufficient factors.

Further, the appellate court may award a party attorney's fees as sanctions, terms, or compensatory damages when the appeal is frivolous. Reid v Dalton, 124 Wn. App 113 (2004). An appeal is frivolous if considering the record in its entirety; the court is convinced the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal. Tiffany Family Trust Corp. v. City of Kent, 155 Wn. 2d 225 (2005). An appeal should be deemed frivolous if all determinations of the trial court are supported by substantial evidence or well established law. Dearborn v. Upton, 34 Wn. App 490, (1983).

An award of fees, expenses, costs and sanctions is wholly supported and warranted in this matter for having to address his myriads of incomprehensible pleadings and repeated failures to follow the Rules of Appellate Procedure

In the Superior Court, RCW 26.09.140, RCW 26.18.160, RCW 4.84.185, 4.84.080, RCW 7.21 each provide separate bases for awards of fees, costs and sanctions. RCW 26.09.140 provides for an award of fees based upon need and ability to pay. RCW 26.18.160 provides that "in any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney's fees..." Here, while this matter is not specifically under Chapter 18, it is a Title 26 matter wherein the obligee is being forced to defend the award of maintenance and support during the proceedings and support in the final Decree. In RCW 4.84 the legislature has provided that an award of costs, including statutory attorney's fees may be awarded to a prevailing party as well as to a party who prevails in a frivolous action. The legislature has also provided that a party who is found in contempt shall have

fees and costs awarded against them RCW 7.21.010 defines contempt as follows:

(1) "Contempt of court" means intentional:
(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;
(b) Disobedience of any lawful judgment, decree, order, or process of the court;
(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or
(d) Refusal, without lawful authority, to produce a record, document, or other object.

Clearly Mr. Shoemaker's actions fall squarely within this definition.

Further, in section .020 the legislature specifically granted to the commissioners of the State Supreme Court, the Court of Appeals, the Superior Court. RCW 7.21.020 states as follows:

"A judge or commissioner of the supreme court, the court of appeals, or the superior court, a judge of a court of limited jurisdiction, and a commissioner of a court of limited jurisdiction may impose a sanction for contempt of court under this chapter."

Clearly, Mr. Shoemaker not only here, but in his many actions and appeals filed in other courts regarding this matter, has engaged in frivolous and vexatious litigation designed to harass, intimidate and confound the court. His intentional actions have caused Ms. Harris to incur substantial attorney's fees and costs, which she as a single mother who is not receiving the court ordered support, from Mr. Shoemaker, nor any of the fees, costs, sanctions, etc. already ordered against him (which have not been stayed by the posting of a supersedeas bond, nor by the Motion for Stay) simply cannot afford. Mr. Shoemaker is obviously attempting to force Ms. Harris and their child to become helpless and fend for themselves.

In re Marriage of Crosetto, 82 Wn. App. 545, (1996), and In Re Marriage of Morrow, 53 Wn. App. 579 (1989) similarly hold that once intransigence is found, fees may be awarded regardless of the financial resources of the parties and need not be segregated.

E. REQUEST FOR SANCTIONS PURSUANT TO RAP 18.9(c).

Ms. Harris further requests that sanctions be imposed against Mr. Shoemaker in favor of Ms. Harris due to Mr. Shoemaker's continued non-compliance with court orders and rules of appellate procedure. Ms. Harris has incurred substantial fees and costs in defending against this obviously frivolous appeal and ancillary proceedings. She has further suffered considerable delay in this matter and her life, and that of her son, have been on hold for almost two years since trial and almost four years since Mr. Shoemaker reinstated this matter.

An award of fees and sanctions is appropriate per RAP 10.2(i) and RAP 18.9(a) based upon Mr. Shoemaker's failure to timely file and/or serve his Opening Brief and as a consequence of Mr. Shoemaker's unceasing efforts to delay the expeditious consideration of this case on the merits by this Court.

F. CONCLUSION

For the above reasons this Court should dismiss this appeal and award Ms. Harris her fees, expenses, costs as well as order sanctions against Mr. Shoemaker. Ms. Harris has been through enough and should be allowed to move on with her life without the constant harassment via vexatious litigation by Mr. Shoemaker, as she has suffered throughout this matter.

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RESPECTFULLY SUBMITTED this 24th day of January 2014

By: _____
Cameron J. Fleury, WSBA #23422
Of Attorneys for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
IN AND FOR DIVISION II

In re the Marriage of: PAUL DAVID SHOEMAKER, Appellant, AND DAWN MARIE SHOEMAKER, Respondent.	No. 43633-7-II DECLARATION OF SERVICE OF RESPONDENT'S AMENDED BRIEF IN RESPONSE

JESS BUCKLEY hereby declares under penalty of perjury of the laws of the State of Washington that the following is true and correct to the best of my knowledge:

I am the Family Law Paralegal for Cameron J. Fleury of McGavick Graves, P.S., Attorney for Respondent Dawn Shoemaker; I am not a party of interest in this matter, am over the age of 21, and make this Declaration based upon personal knowledge.

On January 24, 2014, I placed two copies of Respondent's Amended Brief in Response in the U.S. Mail, as follows:

Mr. Paul Shoemaker
PSC 5000 735 5th St
JBLM-McChord Field, WA 98438

One copy was sent certified with return receipt requested and the other was sent standard.

Dated 24th day of January, 2014.

JESS BUCKLEY

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