No. 92117-2

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

In re the Marriage Of:

Michael St. George Bent,

Appellant,

v.

LaShandre Nichele Bent,

Respondent.

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Michael Bent asks this Court to take review of an unpublished opinion unremarkably affirming the trial court's highly discretionary decision on relocation and parenting. Michael neglects to mention that the appellate court held that his appeal is frivolous, nor does he seek review of that holding. His Petition is equally frivolous.

The trial court permitted LaShandre Bent to relocate with the parties' teenage children, finding – among other things – that LaShandre has been the primary residential parent since their birth, and is best suited to help them adjust to the divorce. The court's ruling is entirely consistent with the parenting evaluator's recommendations, and is supported by substantial evidence. Michael did not challenge any of the court's findings or even address the order's substance. The appellate court correctly affirmed.

On appeal and here, Michael asserts a bevy of constitutional arguments, most raised for the first time on appeal, inadequately briefed, and previously rejected by our courts. There is no conflict, where the appellate court followed lockstep this Court's apposite cases. There is no substantial public interest in this run-of-the-mill dissolution and relocation matter.

This Court should deny review and award LaShandre fees.

FACTS RELEVANT TO PETITION FOR REVIEW

A. The appellate court correctly held that Michaels' appeal was frivolous, a point he neglects to mention here.

As the appellate court correctly noted in its unpublished decision, it was difficult to understand issues on appeal as basic as which trial court orders Michael appealed from. Unpub Op. at 1 n.1. This made responding to Michael's appeal unusually difficult and time consuming. It is no less difficult to understand Michael's Petition for Review.

The appellate court began it analysis be properly declining Michael's request to treat him leniently because he is *pro se*, noting the court must treat *pro se* litigations the same as attorneys. Unpub. Op. at 5. The court also noted that Michael failed to assign error to any factual findings, so they are verities on appeal. *Id.*

The appellate court noted the Michael's many constitutional arguments raised for the first time on appeal, were unclear, lacked adequate development and legal support, and lacked merit. Unpub. Op. at 6-9. The court rejected each of these meritless claims, ultimately ruling that Michael's appeal was frivolous and awarding LaShandre fees. Unpub. Op. at 14-15. Michael does not address this point.

B. In this straightforward dissolution and relocation case, the trial court exercised its broad discretion to permit LaShandre Bent's requested relocation, consistent with the parenting evaluator's recommendations.

The appellate court's opinion accurately sets forth the facts relevant to the appeal, and LaShandre will not repeat them here. Unpub. Op. at 1-4. There are, however, statements in Michael's Petition that warrant correction.

Michael misleadingly states that the trial court "did not find [LaShandre] credible," referring to LaShandre's request for RCW 26.09.191 restrictions. Pet. at 2. The trial court did not remotely question LaShandre's credibility, stating only that it was not persuaded that Michael presented a threat to LaShandre. RP 724-25.

For pages, Michael criticizes LaShandre's parenting, her lifestyle, and her work ethic. Pet. at 2-4. He continues his refrain that LaShandre is unable to properly parent the children and that he wants her to get psychological help for a mental illness only he imagines. *Id.* In stark contrast, Michael presents himself as a wonderful father who is far more adept at parenting than is LaShandre. *Id.* at 3-4. The picture Michael paints is at odds with the trial court's unchallenged findings, verities on appeal.

Parenting evaluator Dr. Landon Poppleton went through the relocation factors at length, ultimately opining that LaShandre should be permitted to relocate. BR 18-21; Ex 2. The trial court agreed, relying heavily on Dr. Poppleton's report and recommendations. CP 104-06; RP 720-730. The appellate court accurately summarized the findings as follows (Unpub. Op at 3-4)[1]:

> On August 20, 2014, the trial court issued an oral ruling. The trial court found Dr. Poppleton's report and testimony to be "very instructive and reliable." VI RP at 724. On October 10, 2014, the trial court entered written findings of fact and conclusions of law, a dissolution decree, a permanent parenting plan, a child support order, and an order on objection to relocation.
>
> The trial court designated La Shandre as the primary custodial parent because, based on the testimony of Dr. Poppleton, La Shandre, and Michael, she spent the majority of the time with the children. After considering each RCW 26.09.520 relocation factor, the trial court ordered that La Shandre could relocate with the children. The trial court entered the following written findings based on the factors enumerated in RCW 26.09.520: (1) La Shandre and Michael both have a strong relationship with the children, but La Shandre has been more involved with the children's lives. (2) Although there is no agreement for La Shandre to relocate with the children, La Shandre and Michael had previously significantly discussed moving the family to Florida and the evidence presented supports that they agreed a move to Florida would be beneficial for the children. (3) It would be more detrimental to disrupt contact between the children and La Shandre and she will be the better parent to help the children work through changes resulting from the move to Florida than Michael. (4) Restrictions under RCW 26.09.191 do not apply. (5) La Shandre sought the relocation in good faith, and Michael objected in good faith. (6) Although there will be adjustments to new schools in Florida and negative effects of moving the children, there is no evidence of physical detriment

[1] Michael's complaint that the trial court failed to apply RCW 26.19.187 is addressed in the argument section below. Pet. at 6-7.

> and no detriment sufficient to rebut the presumption. (7) This factor does not apply because the quality of life in both locations is comparable. (8) The parenting plan provides an "alternate arrangement sufficient to continue the children's relationship with [Michael]." Clerk's Papers (CP) at 105. (9) This factor does not apply. (10) The financial benefits to La Shandre and the children outweigh the cost. (11) The trial court did not consider this factor because it was making a final decision. [Footnote omitted.]

REASONS THIS COURT SHOULD DENY REVIEW.

A. The appellate court's unpublished decision is consistent with this Court's decision in *Marriage of King*.

Michael first asks this Court to take review to establish that there is a fundamental right to a parent child association. Pet. at 11-12. Contrary to Michael's suggestion, the appellate court did not hold that parents have no right to "associate" with their children. *Id.* Rather, the court held that parents' fundamental rights to the care and custody of their children are not implicated in dissolution proceedings in the same manner that they are implicated in dependency proceedings. Unpub. Op. at 6. Basing its analysis on this Court's decision in ***Marriage of King***, the appellate court explained:

> In support of his argument, Michael relies on ***In re the Marriage of King***, 162 Wn.2d 378, 386, 174 P.3d 659 (2007). But his reliance is misplaced. In that case, our Supreme Court held that in dissolution proceedings, the trial court must balance the rights of both parents and further held that fundamental constitutional rights are not implicated as in a termination or dependency proceeding. ***King***, 162 Wn.2d at 385. "The entry of a parenting plan effectuating the legislative

> purpose of continued parental involvement in the children's lives does not equate to an action where the State is seeking to terminate any and all parental rights and parental involvement with the children, severing the parent-child relationship permanently." ***King***, 162 Wn.2d at 385. The entry of a parenting plan is a statutory requirement when children are involved in the marriage, and entry of such does not terminate either parent's parental rights. ***King***, 162 Wn.2d at 385. Rather, it allocates parental rights to ensure that the parents may still exercise those rights. ***King***, 162 Wn.2d at 385. "Even where a parenting plan results in [children] spending substantially more, or even all, of ... [their] time with one parent rather than the other, both parents remain parents and retain substantial rights, including the right to seek future modification of the parenting plan." ***King***, 162 Wn.2d at 386; RCW 26.09.260.
>
> This case is a dissolution proceeding with a parenting plan, not a termination or dependency proceeding. The state is not a party to the proceedings and had no say in determining how La Shandre's and Michael's residential time was divided. Michael provides no developed argument as to why the parenting plan does not effectuate the legislative purpose of continued parental involvement. Thus, the interest at stake in this proceeding is not a fundamental parental liberty interest. We reject Michael's argument.

Unpub. Op. at 6-7 (quoting ***In re Marriage of King***, 162 Wn.2d 378, 174 P.3d 659 (2007)). In short, the appellate court correctly followed this Court's precedent. There is no conflict or issue of substantial public interest.

B. The Relocation Act does not violate the Equal Protection Clause.

Though it is difficult to ascertain Michael's next argument, it appears to be that the Relocation Act violates the Equal Protection

Clause by "discriminating" between parents without a threshold determination that one parent is unfit. Pet. at 12-15. The appellate court rejected Michael's equal protection argument, correctly holding that "Michael cites no case supporting his claim that the state has drawn any distinction or classification to which he is subject. In addition, the record contains no basis to conclude that the state is responsible for any classification." Unpub. Op. at 8. The same is true here. Petition at 12-15.

Michael now asserts that designating him the obligor parent and LaShandre the obligee violates the Equal Protection Clause. Pet. at 14. This assertion is entirely unsupported. *Id.* Requiring the parent with vastly more income and vastly less residential time to pay child support is not an equal protection violation. Nor does it violate the Equal Protection Clause to designate LaShandre a "custodian" for the sole purpose of complying with federal statutes. Pet. at 14.

The "rules" Michael proposes would completely erode much of Washington's statutory framework and common law governing parenting plans, child support, modifications, relocations, and other matters, orders and pleadings related to children. This Court should deny review.

C. The appellate court correctly held that the trial court properly considered applicable statutes.

Michael appears to argue that the trial court improperly applied RCW 26.09.520 only, neglecting to apply RCW 26.09.187. Pet. at 15-16. As the appellate court held, however, the trial court properly applied the statutory factors in .187, noting in particular findings that LaShandre has been the primary residential parent, providing the day-to-day parenting since the children were born and that separation from LaShandre would be detrimental:

> Here, the trial court considered all of the evidence presented at trial and properly applied the statutory factors contained in RCW 26.09.187(3)(a). In particular, the trial found that the evidence showed the children demonstrate a good relationship with each parent and La Shandre has been the primary parent, carrying the demands of day-to-day parenting. RCW 26.09.187(3)(a)(i), (iii). The trial court acknowledged the importance of the children spending significant time with Michael at "this stage in their lives" and gave more time to Michael with the children than Dr. Poppleton recommended. VI RP at 730; RCW 26.09.187(3)(a)(iv). But the trial court also found that separating the children from La Shandre would be detrimental and determined that the children should reside primarily with her.
>
> . . . The trial court also heard testimony regarding Michael's employment and included provisions for telephone access in accordance with Michael's schedule. RCW 26.09.187(3)(a)(vii). Because the trial court based its residential provision decision on the statutory factors set forth in RCW 26.09.187(3)(a) and on the evidence presented, its decision was not based on untenable grounds or manifestly unreasonable. Therefore, the trial court did not abuse its discretion when it established the residential provisions in the parenting plan.

Unpub. Op. at 11-12. This issue certainly does not merit this Court's review.

D. LaShandre's parental fitness was (and is) not at issue.

Michael also argues that this Court should take review to hold that a trial court must find that a parent is fit before awarding primary residential parentage under RCW 26.09.187. Pet. at 15-16. The appellate court correctly declined to consider Michael's similar argument that the State's "parens patriae duty obligated it to assure the Bent children were entrusted to fit parent(s)." Unpub. Op. at 9 n.7 (quoting BA 28). As in the Petition, that argument was "unclear, misplaced, and unsupported by any legal basis." Unpub. Op. at 9 n.7. In any event, the multi-factor tests in RCW 26.09.187 and 26.09.520 are plainly sufficient to ensure that children are placed with fit parents.

E. Child support is not an unlawful taking.

While again difficult to ascertain, Michael appears to argue that child support, and perhaps also maintenance and the property distribution, are unlawful takings. Pet. at 16-20. Characterizing child support as a "penalty," Michael appears to argue that he cannot be ordered to pay child support unless he refuses to care for the children, or is "convicted of violating LaShandre's rights." Pet. at 18-

19. Michael made similar arguments on appeal, claiming that the "huge financial burdens" the trial court imposed violated due process. Unpub Op. at 8 (quoting BA 39). The appellate court properly declined to consider that argument, where it was nothing more than a naked casting into the constitutional sea. Unpub Op. at 8-9.

In addition to being entirely unsupported, Michael's argument would result in a huge injustice if adopted. Throughout the appellate process, Michael has argued that if a parent needs child support, then the trial court must designate the other party the primary residential parent so long as he is fit. According to Michael, any other result unconstitutionally infringes on the economically-advantaged spouse's property rights. In other words, Michael proposes that the dispositive factor in determining residential placement is who has more money. This absurd proposition does not warrant this Court's review.

F. The appellate court's decision is consistent with this Court's many decision holding that statutes are presumed constitutional.

Finally, Michael asks this Court to take review to announce that statutes affecting fundamental rights are not presumed constitutional. Pet. at 20. The appellate court correctly rejected Michael's request for a declaratory judgment on this point, citing

three of this Court's opinions holding that statutes are presumed constitutional and that the burden of establishing unconstitutionality is on the challenger. Unpub. Op. at 5 (citing ***Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.***, 182 Wn.2d 342, 350, 340 P.3d 849 (2015) (challenging the former Washington State Liquor Control Board's spirit licensing fee structure); ***Amunrud v. Bd. of Appeals***, 158 Wn.2d 208, 215, 143 P.3d 571 (2006) (arguing that suspending his commercial driver's license for failing to pay child support violated procedural and substantive due process); ***In re Marriage of Johnson***, 96 Wn.2d 255, 258, 634 P.2d 877 (1981) (challenging the constitutionality of statute governing child support collection services)).[2] Again, there is no conflict here – the appellate court followed this Court's precedent. *Id.*

G. This Court should award LaShandre fees incurred in responding to Michael's Petition.

Michael neglects to mention that the appellate court held that his appeal is frivolous, awarding LaShandre fees on that ground, and also based on her need and Michael's ability to pay. Unpub. Op. at 14-15; RCW 26.09.140; RAP 18.9. Michael does not claim that the fee award was erroneous or ask this Court to review it. This Court

[2] The appellate court also noted that it was not the proper forum to entertain Michael's request for a declaratory judgment. Unpub. Op. at 5.

should order Michael to pay LaShandre's fees incurred responding to his Petition. RAP 18.1.

Michael attempts to turn a straightforward dissolution and relocation case into a constitutional morass. As the appellate court correctly held, Michael failed to make clear the orders he appealed from and "provide[d] no argument specific to any to the orders." Unpub. Op. at 15. Michael raised "numerous meritless constitutional issues for the first time, most of which pertain to well-settled areas of the law and some of which have no bearing on this appeal." *Id.* Michael's petition is no less frivolous – he raises the same arguments that the appellate court held frivolous without challenging that holding. This Court should award LaShandre fees. RAP 18.9.

Fees are also appropriate based on LaShandre's need and Michael's ability to pay. RCW 26.09.140. The appellate court correctly held that LaShandre has "significant financial need," where she is unemployed and her income was about half of her monthly expenses. Unpub. Op. at 15. LaShandre's earning capacity is about $40,000 to $45,000, about one-third of Michael's $126,000 annual income. *Id.* And Michael receives annual bonuses too. *Id.* This Court should grant LaShandre fees under RCW 26.09.140 and RAP 18.1. LaShandre will comply with RAP 18.1(j).

CONCLUSION

This Court should deny Michael's meritless Petition for Review and award LaShandre fees.

RESPECTFULLY SUBMITTED this 9th day of September, 2015.

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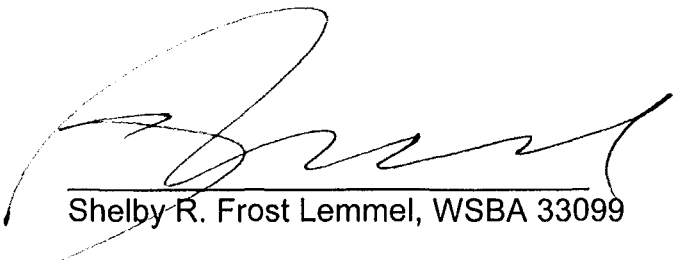

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ANSWER TO PETITION FOR REVIEW

Case: *Bent v. Bent*

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THANK YOU.

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