

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/15/2018 2:07 PM  
BY SUSAN L. CARLSON  
CLERK

No. 95743-6

SUPREME COURT  
OF THE STATE OF WASHINGTON

No. 49345-4

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

In re the Marriage of:

AIMEE GUARDADO,

Respondent,

and

OTTO GUARDADO,

Petitioner

---

RESPONDENT'S RESPONSE TO PETITION FOR REVIEW

---

Marie N. Tilden  
WSBA #16870  
4001 Main St., Ste. 327  
Vancouver, WA 98663  
(360)695-0290

Attorney for Respondent

TABLE OF CONTENTS

A. Why This Court Should Not Grant Review	<u>Page</u>
1. Otto Guardado did not cite any conflict with other published decisions of the Court of Appeals or of the Washington Supreme Court; any significant question of law under either the US Constitution or the Constitution of the State of Washington; or any substantial public interest at issue. RAP 13.4 (b) (1-4).....	2
2. Otto Guardado objected to the entry of Aimee Guardado’s counseling records at trial, and the trial court granted his motion to exclude the records.....	1
3. Otto Guardado did not argue the issue before the trial court that the counseling records not be sealed and cannot raise it for the first time on appeal.....	1
4. Otto Guardado misstates the facts of the case.....	2
B. Conclusion.....	3

## WHY THIS COURT SHOULD NOT GRANT REVIEW

### 1. Alleged “discovery misconduct”.

The remedy Otto sought at trial for Aimee’s alleged failure to produce counseling records was to strenuously argue *against their admission as evidence*. The trial court *granted his request* and ruled that it would “disallow admission of those records”. Report of Proceedings (Jan 13, 2016 at 657). Otto received the remedy he sought.

Otto did not move for a mistrial. He cannot now argue for a more significant remedy than the one he sought at trial.

### 2. Sealing of the records.

Otto’s argument that the trial court erred in sealing Aimee’s counseling records without applying the analysis of *Seattle Times Co. v. Ishikawa*, 97 Wn. 2d. 30, 640 P.2d716 (1982) fails because he did not argue this issue before the trial court. Per RAP 2.5 (a), a party may not raise an issue for the first time on appeal. He moved for them to be excluded, a request that the trial court granted.

### 3. Distribution of the embryo.

The trial court properly considered the parties’ interests in the embryo. It concluded that it could not properly force Aimee to give birth to another child, a well-supported decision. Both parties’ interests were clarified: the embryo would be stored until an agreement is reached in the

future. Otto's rights were protected by allowing him to continue to pay for storage of the embryo to protect his interest if he chose.

4. Otto has failed to demonstrate that any of the requirements of RAP 13.4 (b) (1-4) are met.

None of his arguments state any basis for compliance with RAP 13.4 (b) (1-4). He listed no conflicts with published decisions of other courts (Court of Appeals or Supreme Court); no issues of substantial public interest; or any significant question of law. It is not Aimee's responsibility to discern how his arguments against the trial court's ruling fit within the parameters of RAP 13.4 (b). Nor is it the court's responsibility to "make arguments for the parties that they have not made themselves". *Cave Props. V. City of Bainbridge Island*, 199 Wn. App. 651, 663, 401 P.3d 327 (2017).

5. Otto misstates the facts of the case.

Otto's misstatements should arouse concern about his truthfulness. For example, Otto states that the trial court made its in camera review of the counseling records and then **forwarded the relevant records to Dr. Poppleton**. *Petition for Review at page 4*. The relevant records were released to the parties. No records were ever sent directly to Dr. Poppleton, the custody evaluator, by the court. Such an action would be inappropriate by any yardstick.

## CONCLUSION

Otto has failed to meet his burden to show how any of his complaints about the ruling of the Court of Appeals satisfy the requirements of RAP 13.4 (b) (1-4). He seems unable to differentiate between a *holding* of a case and application of the law to individual facts of a case. His brief seeking review seems to demonstrate his confusion regarding his burden to meet the standards of RAP 13.4 (b) (1-4).

Accordingly, this honorable court is asked to deny his petition for review.

Submitted this 15 day of May, 2018.



---

Marie N. Tilden, WSBA 16870  
Attorney for Aimee Guardado, Respondent

**TILDEN & ASSOCIATES**

**May 15, 2018 - 2:07 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95743-6  
**Appellate Court Case Title:** In re the Marriage of: Aimee Guardado and Otto Guardado  
**Superior Court Case Number:** 14-3-00510-2

**The following documents have been uploaded:**

- 957436\_Answer\_Reply\_20180515140326SC893548\_7159.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Respondents Response to Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- dylan@nwfamilyattorneys.com
- dylan@vernmccraylaw.com
- oguardado@gmail.com

**Comments:**

---

Sender Name: Karen Townley - Email: karen@nwfamilyattorneys.com

**Filing on Behalf of:** Marie M. Tilden - Email: marie@nwfamilyattorneys.com (Alternate Email: marie@nwfamilyattorneys.com)

Address:  
4001 Main St., Suite 327  
Vancouver, WA, 98663  
Phone: (360) 695-0290

**Note: The Filing Id is 20180515140326SC893548**