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STATE OF WASHINGTON
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96676-1

77238-4
Supreme Court No.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CHRIS ONOCHIE, Petitioner

v.

STATE OF WASHINGTON, Respondent

PETITION FOR REVIEW

Chris Onochie, Pre se
7241, 185th Ave NE
P. O. Box 2671, Redmond, WA 98073

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A. IDENTITY OF PETITIONER

Petitioner/Appellant, Chris Onochie, Pro se, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

On November 19, 2018, the Court of Appeals, Div. 1 filed an opinion that affirmed the decision of a Superior Court in Marriage of Onochie v. Onochie. A copy of the Court of Appeals opinion, case No. 772384-1 is attached here.

C. ISSUES PRESENTED FOR REVIEW

1. THE APPEALS COURT OPINION
2. COULD A COURT ISSUE PERMANENT PROTECTION ORDER WITHOUT A TRIAL?
3. THE FIRST TEMPORARY PROTECTION ORDER OF MAY 13, 2016, WAS WITHOUT DUE PROCESS
4. TRIAL COURT ORDERED FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM EREKS, SIGNED AND FILED IT THE NEXT MORNING WITHOUT AN OPPORTUNITY FOR CHRIS TO SEE IT
5. THE FINDINGS, CONCLUSIONS ARE NOT SUPPORTED BY THE FACTS AND EVIDENCE
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8. THE TRIAL COURT DENIED CHRIS OPPORTUNITY TO PRESENT SOME EVIDENCE AND PREVENTED HIM AGAIN FROM REFERRING TO EVIDENCE THAT WAS ALREADY PART OF THE COURT RECORDS.
9. THE TRIAL COURT DECLINED TO ACCEPT AND CONSIDER CHRIS' FINANCIALS, PROPOSED PARENTAL PLAN, PROPOSED CHILD SUPPORT IN A CASE FILED BY CHRIS.

D. STATEMENT OF THE CASE

Chris, through his former counsel, Hester Mallonee, filed for legal separation on May 12, 2016, with an accompanying motion restraining Ereks from taking the children away from their home, church, school and neighborhood. Case: #16-3-02489 KNT. The court process was served on Ereks. At the hearing date of May 12, 2016, Ereks did not show up in court. The restraining order was signed. The commissioner signed a mailing order for the service on Ereks. The next day May 13, 2017 Ereks filed a petition for protection order restraining Chris from the Children and herself. Case #16-2-11466-1 KNT. An order for protection restraining Chris was signed same day May 13th, by the commissioner that signed the order restraining Ereks the previous day. Chris and his counsel were not served any court process before and after the issuance of this protection order. At a hearing for 16-2-466-1 (protection order) on May 27, 2016, the protection order was reissued and the hearing continued to June 9, 2016 because Chris was just served the order that morning. At a hearing for 16-3-02489-4 KNT (legal separation) and 16-2-466-1 KNT (protection order), on June 9, 2018, the order restraining Ereks was continued to June 28, 2016. And the order restraining Chris was continued to September 15, 2016. At a hearing for 16-3-02489-4 KNT (legal separation) and 16-2-11466-1 KNT(protection order) on June 28, 2016, the two parties were restrained from each other. At a hearing for 16-3-02489-4 KNT (legal separation) on September 15, 2016, the order restraining Ereks was continued to October 7, 2016. At a hearing for 16-3-02489-4 KNT(legal separation) and 16-2-11466-1 KNT(protection order) on October 7, 2016 the commissioner ruled that:

> *There was the issue raised about the timing of the DV petition in light of the parties' dissolution. Credibility on some respects is a central issue that cannot be adequately addressed without testimony, which can't be done on the motions calendar.*
>
> *So where those that put us? Puts us is I'm going to extend the temporary order. I'm not entering a full order. You can address the credulity issues with testimony at trial.* RP33

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. THE APPEALS COURT OPINION

The Appeals Court opinion runs contrary to provisions of RAP 9.2 (b) which stipulates that a party could arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised for review. RAP 9.2 (c) gave responsibility to the opposing party to transcribe and provide other parts of the verbatim report of proceedings that were not transcribed if the party wanted. RAP 9.10 states that:

> *the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate may, on its own initiative or on the motion of a party:*
>
> *i). Direct the transmittal of additional clerk's papers and exhibit or administrative records and exhibits certified by the administrative agency*
>
> *ii). Correct, or direct the supplementation or correction of the report of proceedings.*

The Courts did not define what constitutes adequate record. Errors are individually viewed against evidence proffered to support the claim of error. The burden of proof has shifted to the Courts or whom-ever denies or questions the sufficiency of the record. Precise and constructive argument to show that the record is not enough to substantiate the claims of error should be proffered.

LCR 52 (b) states that:

> *...When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to mend them or a motion for judgment*

The argument that the record presented for appeal review is inadequate is contradictry. If the Appeals court decided the evidence before the trial

court was sufficient to support the findings by the trial court, then same the evidence and more should not be categorized by the same Appeals Court as insufficient to disproof the same findings in an appellate review.

There are provisions for alternatives to the verbatim report of proceedings in RAP 9.10. A denial of review based on an incomplete record as suggested by the Appeals Court will be an abuse of discretion.

The Appeals Court opinion that the verbatim report of proceedings was disjointed ignored the provisions of RAP 9.5 which states that:

> *A party may serve and file objections to, and propose amendments to* a narrative report of proceedings or a verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings with appellate court.

An Appeals Court's decision in a motion on June 11, 2018 granted Ereks' the following relief she sought:

> *Respondent's motion for an additional 30 days to add to the verbatim report of proceedings and file her brief should be granted as she had no notice the submitted trial transcript was purposefully deficient, and justice requires she be given the opportunity to put the full record before the appellate court".*

This Appeals Court ruling contradicted its present opinion. This error is categorized Under RAP 13.4(b)(2). The Supreme Court should review the decisions of the Appeals Court which contend that Ereks had no responsibility to supplement the records.

The Superior Court clerk declined transmittal of all designated clerk's papers to the Appeals Court for review. RAP 9.8 states that:

> *the clerk of the trial court shall send clerk's papers and exhibits to the appellate court when the clerk receives payment for the preparation of the documents.*

The rules of appeal in RAP 9.11, allows for additional evidence, where additional proof of facts is needed to fairly resolve the issues on review, and where the additional evidence would probably change the decision being reviewed. A motion filed by Chris for admittance of more evidence that could not have been presented at the trial court hearing was declined by the Appeals

Court with a statement that only record that existed during trial are to be designated and transmitted to the appeal record.

2. COULD A COURT ISSUE PERMANENT PROTECTION ORDER WITHOUT A HEARING OR TRIAL?

a). Under RAP 13.4(b)(3) this presents a question of significant question of law under the constitution of the State of Washington. The Supreme Court should review a decision of the Appeals Court which upheld a decision of the trial court to enter a finding of history of domestic violence in Nigeria, from 2002 to 2013. The protection order should be declared void and of no effect. The trial court based its order for protection on supposed happenings in Nigeria. The court had no jurisdiction to hear or pass judgement on supposed occurrences in another country.

> *I am far less interested in what happened while you were still in Nigeria, other than as it relates to the issues that I have to decide, which have to do with your financial status, both parties' financial status, and the best interests of the children. And if there is other property.* RP 53

> *Yes, Mr. Onochie. Let me tell you two things. One, what happened in Nigeria is less important than your current financial situation...* RP 221

RCW 4.12.020: states that actions to be tried in the county where cause arose.

RCW 4.12.010: states that action to be commenced where subject was situated.

Chapter 4.12 stipulates that there be a sworn affidavit. The trial court received no evidence, heard no testimony, and saw no earlier indictment or conviction from Nigeria. Jurisdiction is an issue of law reviewed de novo. Worden v. Smith, 178 Wn. App. 309, 328, 314 P.3d 1125 (2013).

b). Though the protection order hearing was continued from March 31, 2016, the trial court did not abide by LFLR 5(c)(ii):

> *Orders for domestic violence protection petitions for permanent domestic violence protection hearings will be set on the domestic violence calendar in the family law department.*

The court expressed that it had no intent to hear argument on the protection order with the following statements:

> *It relates to the issues that I have to decide, which have to do with your financial status, both parties' financial status, and the best interests of the children.* RP 42

> *Mr. Onochie, am going to interrupt you. Just to say, you can continue with this, but I want to remind you that the issues I'm going to decide have to do with a residential plan for the children, dividing property that the two of you have acquired since you've been married, and child support and spousal support. So those are the issues I'm going to decide. I just want to remind you that that's what's most important to me. If you want to continue that line of question, you're welcome".* Opening brief 18

The trial Court did not discuss the protection order during trial. When Chris asked for clarification on the accusation of domestic violence and the protection order the trial court said:

> *What's the point you are trying to make by pointing my attention to this statement.* RP 57

The court cannot give judgement on a matter that it did not adjudicate on. The Appeals Court sanction of the trial court's issuance of a protection order is reviewable, because the trial court's error borders on jurisdiction. Under RAP 13.4(b)(4), this error will develop other issues and have a ripple effect touching on others. The Supreme Court should give an opinion rendering the protection order void and of no effect.

3. THE FIRST TEMPORARY PROTECTION ORDER OF MAY 13, 2016, WAS WITHOUT DUE PROCESS.

RCW 26.50.030 – Petition for protection order states:

> *A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.281, and the existence of any other restraining, protection, or no-contact orders between the parties.*

Ereks' petition for protection order was not specific on claims of domestic violence. There was no sworn affidavit, no notice, no summons, and she failed to disclose that she was restrained by a court order the day before her petition. No service of proceedings was made on Chris. The petition did not allege that irreparable injury could result if an order is not issued immediately without prior notice to the respondent. The petition only claimed night chants by respondent. Ereks and the children were already living elsewhere. A protection order was granted after two hours of the application. The petition was not made under the provisions of ex parte.

The proceedings that produced this protection order did not observe Due process. If the service is not perfected, the court lacks personal jurisdiction to hear the case. The pleadings lack authenticated evidence, and a competent fact witness, the question is incomplete. A document cannot be cross-examined, someone must be there to testify. Under RAP 13.4(b)(3), the error of the trial court is a significant question of law under the constitution of the State of Washington. The Supreme Court should review the decision of the appeals court and declare this protection order void and of no effect.

The protection order started:

> *Based on new information presented here, the court signs this order. The court has received cause No. 16-3-02489-4 KNT, which contains a conflicting order".* Reply brief 2

This new information was not stated on the order and not on the court clerk's record. The commissioner's identity is still unknown. It is a structural error in law to import information from a legal separation case, 16-3-02489-4 KNT, from a different court, and utilize it to institute a new case of protection order, 16-2-11466-1-KNT between the same parties in a different court. The court did not observe procedural due process which is a constitutional provision that requires handling of cases are fundamentally fair.

A court commissioner observed that Chris was not served the court process. CP In a U.S. Supreme court decision on Earle v. McVeigh, 91 US 505, 23 L Ed 398, the court stated:

Due notice to the defendant is essential to the jurisdiction of all courts, as sufficiently appears from the well known legal maxim that no one shall be condemned in his person or property without notice and an opportunity to be heard in his defense.

The trial court ruling creates a conflict in law, raises a significant constitutional question, and addresses an issue of substantial public interest that affects other persons beyond the parties in the case, review is merited. The Supreme Court should set aside the judgement that produced the temporary protection order. Chris should not be bound by a judgement or any proceeding to which he was never a party or privy. Neither should he be considered in default with respect to that which never was incumbent upon him to fulfil. Standard authorities lay down the rule that in order to give any binding effect to a judgement, it is essential that the court should have jurisdiction of the person and the subject matter, and it is equally clear that the want of jurisdiction is a matter that may always be set up against a judgement when sought to be enforced or where any benefit is claimed under it, as the want of jurisdiction makes it utterly void and unavailable for any purpose.

Notice to the defendant, actual or constructive, is an essential prerequisite of jurisdiction. Due process with personal service, as a general rule, is sufficient in all cases, and such, it is believed is the law of the State of Washington.

A judgement or decree is invalid where it has no foundation of procedural due process, as where there is an absence of notice and opportunity to be heard. 16A C.J.S. Constitutional Law, $ 625; Yellowstone Pipeline Company v. Drummond, 77 Idaho 36, 287 P.2d 288.

In a Washington state Supreme Court opinion, though the matter was on rights for cross-examination, and there was affirmation, The Supreme Court expressed the following decision:

In re Cynthia Aiken v. David Aiken, No. 92631-0, the Supreme Court reasoned that subject to RCW 26.50, the petitioner must allege domestic violence by an affidavit under oath, stating specific facts and circumstances from which relief is sought. RCW 26.50 030(1). The court must order a hearing within 14 or 24 days upon receipt of the petition, depending on the type of service. RCW

> *26.50.050. The respondent must be served ast least five days before* the hearing.

To uphold this temporary protection order will set off a whole lot of cases involving others. Cases that emanated from issues related to the protection order. Upholding this protection order would be applying different standards to different people.

4. TRIAL COURT ORDERED FINDINGS OF FACT AND CONCLUSIONS OF LAW FROM EREKS, SIGNED AND FILED IT THE NEXT MORNING WITHOUT AN OPPORTUNITY FOR CHRIS TO SEE IT.

The Appeals Court stated that:

> *(Emphasis added). CR 52(c) applies only when one party enters proposed findings and conclusions of law. It is only in those instances that the five-day notice period applies.*

Chris is in agreement with the Appeals Court here. But the trial court ordered Ereks and her attorney to produce findings and conclusions of law in an email letter dated June 31, 2017. The findings and conclusions of law were emailed by Ereks on July 1, 2017, to the trial court. Chris was copied in both instances. These correspondences were amongst the evidence the Appeals Court declined to give due consideration and denied their admittance. The evidence materialized after the trial and so was not part of the trial record.

At the last day of trial, the trial court informed the parties to come take a look at the findings of fact before she made judgement and file. Chris' reply brief 12. Under CR 52(a)2(B), findings of fact and conclusions of law are required in connection with all final decisions in child custody, legal separation proceedings. See Marriage of stern, 68 Wn. App. 922, 926, 846 P.2d 1387. Therefore Chris was restricted on all corners from a fair judgement

The trial court ruling creates a conflict in law, raises a significant constitutional question, and addresses issues of substantial public interest that affects persons beyond the parties in the case, review is merited. The Supreme Court should set aside the decisions of the Appeals court and order a remand so the parties can comment on the findings and file motions if necessary. The trial

court did not abide by the rules and that set off confusion amongst the parties who as a result expected different outcomes from the court's actions. LCR 52(a) states:

> *Generally. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law. Judgement shall be entered pursuant to Rule 58, and may be entered at the same time as the entry of the findings of fact and the conclusions of law.*

There was no separation between the facts and conclusions. There was no judgement. LCR 52(b) – Amendment of findings: States that upon motion of a party filed not later 10 days after entry of judgement, the court may amend its findings or make additional findings, and may amend the judgement accordingly. The motion may be made with a motion for a new trial pursuant to rule 59. The court's action did not permit this, because the findings were hurriedly filed the next morning. Ereks' response brief is a testimony to the fact that the findings of fact and conclusions of law were her writings.

> *Given the incomplete verbatim report of proceedings, Ereks is forced to rely on the finding of fact itself as evidence of what she testified to at trial, as can be inferred from the detail of this finding, the trial court based this finding on testimony from Ereks.*
> Ereks' Response brief 4. Footnote.

> *Ereks offered in-depth testimony about her work and job history to form the basis of finding 22.4.* Ereks' response brief 15.

> *Teena Essang Ekpo's testimony forms the basis for finding 22.2 when she recounted to the court how she had to give Ereks money to cover the family's expenses as what was sent by Chris when he was abroad was insufficient.* Ereks' response brief 15.

> *As would be expected in a contested.....deprives the appellate court of the ability to determine whether substantial evidence supports the findings based as it was on Ereks' testimony.* Ereks' response brief 8. Footnote

> *After considering the evidence, the trial court entered detailed findings and conclusions about a marriage in support of a carefully crafted parenting plan, order for child support, order for protection, and final divorce order.* Ereks' response brief 1.

In Ereks' response brief 1 above, the flow of thought and activities are well displayed. The trial court entered findings/conclusions in support of a carefully crafted proposed orders. Logically and sequentially, the findings come after, not before as a support of Ereks' proposed orders. A typical remedy is a remand for more specific findings. The Supreme Court should reverse the decision of the Appeals court and remand the matter back to the trial court for the parties to comment on the findings and file motions where necessary.

5. THE FINDINGS, CONCLUSIONS ARE NOT SUPPORTED BY THE FACTS AND EVIDENCE.

The trial court's factual findings are not supported by substantial evidence. A trial court's discretionary decision rests on untenable reasons if it relies on unsupported facts. The decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take.

> *Findings, conclusions of law and judgement which are contrary to and not supported by the facts, or contrary to the law must be reversed. Grisinger v. Hubbard, 21 Idaho 469, 122 P.853.*

In the event of a review the evidence will show that the trial court's decision are contrary to what the record reveal. See opening and reply briefs. The Appeals Court opinion upholding the trial court's findings despite the evidence should be reviewed by the Supreme Court. A remand for additional evidence is the standard.

6. THE TRIAL COURT ENTERED MARRIAGE DISSOLUTION INSTEAD OF LEGAL SEPARATION

The trail court entered a decree of marriage dissolution which exceeded the parameters requested in the original petition for legal separation. The Supreme Court should review the decision of the trial court and its affirmation by the Appeals Court because the decision was not supported by RCW 26.09.030:

> *If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the*

other party objects and petitions for a decree of dissolution or declaration of invalidity

The law states that for marriage dissolution, the court will enter final orders after:

a. Expiration of the 90 days waiting period upon motion of the petitioner if the respondent was properly served, but failed to respond.

b. The parties agree on all issues, including property division, parenting arrangements, financial support.

c. The court conducts a trial to resolve disputed issues.

The court made conclusive statements in reply to Chris' insistence on legal separation:

> Chris: *Your honor, because its legal separation, the respondent can't file for divorce. RP 47*
>
> Trial court: *...converting a petition for legal separation into a dissolution. And it doesn't look like I can. It, under RCW 26.09.030 (d), it says, if the petitioner requests a legal separation, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity. We don't have a separate petition here.* RP 51
>
> Trial court: *So we're going to proceed in a, in this matter as under the legal separation petition.* RP 51

There is no-where in the court records where Ereks and her counsel brought this matter up again after this discussion. The trial court exhumed it at end of the trial as it tried to persuade Chris once again. But the court was not counsel to Ereks, and Chris was aware of that fact. The entry of marriage dissolution was detrimental to Chris' family life, aspirations and condition of their children. The court ostensibly entered dissolution just to facilitate entry of final orders. Authority to make an award of spousal support is incidental to divorce. The superior court departed from the accepted and usual course of judicial proceedings. The Appeals Court sanctioned this departure, which calls for a review by the Supreme Court. Under RAP 13.4(b)(3), it is a question of law under the constitution of the State of Washington. The constitutional rights of

the party and their children were affected. It also involves an issue of substantial public interest, because of the entrance of others that would take part in the after math of the separation.

7. THE TRIAL COURT WAS BIASED AGAINST CHRIS

The trial court considered only the submission of Ereks before the court made up her mind that she knew what transpired between the parties. Error 1. RP 39. Before the matter in the cause was mentioned, the court said of the accusation of domestic violence against Chris:

> *Please try and prove that. Tell me how you are going to prove that. You're telling me that this is not true, so what kind of evidence would you like me t consider to show me that it's not true?* RP58.

When the court was shown foundational claims in the accusation, the court said:

> *So you are saying this is not an innocent mistake.* RP 26

RCW 10.58.020 states:

> *Presumption of innocence states that every person charged with the commission of crime shall be presumed innocent until the contrary is proved by competent evidence beyond reasonable doubt.*
>
> *In re Oliver (1947) 333 U.S. 257, 273-75: "Any person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense ...a right to his day in court...are basic in our system of jurisprudence.*

CJC Rule 2.3 states that:

> A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or other subject to the judges direction and control to do so.

In re Borch, 57 Wn. 2d 719 722, 359 P.2d 789 (1961)

8. THE TRIAL COURT DENIED CHRIS OPPORTUNITY TO PRESENT SOME EVIDENCE AND PREVENTED HIM AGAIN FROM REFERRING TO EVIDENCE THAT WAS ALREADY PART OF THE COURT RECORDS.

Chris' constitutional rights to defend himself was hindered. Under RAP 13.4(b)(3), there is a significant question of law here. The trial court declined references to CPS and police records that were part of the trial court record. As Chris presented fresh copies of the CPS and Police records for admittance into exhibits, the trial court also turned them down. Ereks' attorney stated:

> *And your honor, I'm flipping quickly through the CPS reports we provided to petitioner in discovery....*RP 63

The CPS reports mentioned above had some parts whited out. Chris raised an objection to this whiting out through a motion, attaching the CPS reports. The court ignored the motion. When Chris presented fresh copies for admittance as exhibits, to substitute the whited ones, the court declined them.

When Chris designated these records for the appellate clerk record, they were declined from been transmitted. The trial court and Superior court clerk committed error that prevented Chris from arguing his case at trial and hampering a deserved appellate review.

The trial court prevented Chris from presenting the 27 page FCS parenting plan evaluation report as evidence. Opening brief 20. But permitted Ereks to present a 43 page FCS parenting plan evaluation report as evidence. The reports were different and Chris was not allowed to see what was in possession of the respondent. The Supreme Court should review this discretion of the trial court and order a review.

9. THE TRIAL COURT DECLINED TO ACCEPT AND CONSIDER CHRIS' FINANCIALS, PROPOSED PARENTAL PLAN, PROPOSED CHILD SUPPORT IN A CASE FILED BY CHRIS.

The trial court rejected Chris' Proposed Parenting plan, Child support, Order of legal separation, Findings of fact & conclusions of law, WSCSS Worksheets, and Financial declaration, in a suit he filed. The court said:

> *Well here's what am going to do. We're going to run copies. So we'll make sure that you get copies, Ms Ludwick. But these are simply copies and a trial brief, so I'm happy to have them. They're not actually made exhibits or anything. They'll just be like courtesy copies to me, and we'll make copies for you, Ms Ludwick.* RP 272

The court was unable to apply the rules spelt out in RCW 26.19.035 – Standard for application of the child support schedule to Chris documents and condition. The trial court did not have enough information on Chris before it ordered the child and spousal support. The Appeals Court did not take a critical look at this matter before it made its opinion. The Court said:

> *Later the court accepted Chris' proposed family law order, parenting plan, financial declaration, child support order, and trial brief.*
>
> *Chris' fifteenth assignment of error is that the court abused its discretion by imputing an income to him of $4,042.45 per month as part of the child support calculation.*
>
> *It is undisputed that Chris was underemployed at the time of the trial.*
> Appeals court opinion

The appeals Court again misstated facts. The Court did not make citations or reference to the records for the above claims. Chris did not present family law order. In the assignments of error, Chris expressed an opinion that the increase of child support was uncalled for, because the trial court had nothing to justify the increase. Raiser was the paying arm of Uber not a third employer as claimed. Though Ereks and her attorney imputed an amount as income from Uber, Chris question the fact that no deductions of running cost was made from the Uber earnings. Cost of gas, insurance, toll fees, maintenance, car wash, must be deducted from the gross earning to arrive at net earnings, as stipulated in Washington State. The trial court did not comply with the requirements of RCW 29.19.035(3) and RCW 26.09.187 because the court did not have the necessary financial information from Chris.

The trial court was unable to apply the rules spelt out in RCW 26.09.220, Parenting arrangements.

> (1) (a) *The court may order an investigation and report concerning parenting arrangements for the child... pursuant to RCW 26.12.175.*
>
> (2)*...the investigator or person appointed under subsection (1) of this section may consult with and obtain information from medical,*

psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the report by the investigator or person appointed under subsection (1) of this section may be received in evidence at the hearing.

(3) ...The investigator or person appointed under subsection (1)of this section shall make available to counsel and to any party not represented by counsel his or her file of underlying data and reports, complete texts of diagnostic reports made to the investigator or appointed person pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom he or she has consulted. Any party to the proceeding may call the investigator or person appointed under subsection (1) of this section and any person whom the investigator or appointed person has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

FCS, the investigator on DV assessment concealed information from CPS, Police, children's schools, children's hospital/doctor. FCS refused to allow Chris see the reports and records. FCS did not utilize information gotten from these institutions for their dv assessment report. FCS, instead utilized information from certain medical experts. Again the reports from these experts were not disclosed, their qualifications, experience, observations were concealed. Opening brief 10.

FCS, investigator on parenting plan evaluation did not conduct an evaluation on the parties and their children. The court assigned the evaluation project for the Onochies to FCS on January 2017. But a report was prepared three months before the assignment was given. Opening brief 28.

There was no visitation report, no home visits, non-observance of the children with their father. The FCS investigator did not know the topic of the evaluation, and did not know the contents of the evaluation report. That was why Ereks had a different report and the court refused to allow Chris present the evaluation report as exhibit. Opening brief 20, 27. The Supreme Court should

review the opinion of the Appeals court and order a remand to the trial court for an amended parenting plan, child custody, spousal support.

F. CONCLUSION

For the aforesaid reasons, I humbly ask the Supreme Court to grant a review of the opinion of the Appeals Court and a review of the decisions of the trial court.

[Date] December 19, 2018

Respectfully submitted,

Chris Onochie
Pro se

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the state of Washington that on the date below, the original of the Petition for Review was filed in the Washington State Appeals Court, Division 1, under Case #772384-1. True copies were sent to the following, through USPS first class registered mails:

1) Kathryn Ludwick, 11005 Main street, Bellevue, WA 98004
2) Washington State Appeals Court, 600 University Street, Seattle, WA 98101

Dated: December 19, 2018.

Chris Onochie
Pro Se

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of CHRIS AZUKA ONOCHIE, Appellant, and EREKPOEBINIMI ANITA ONOCHIE, Respondent.	)	No. 77238-4-I DIVISION ONE UNPUBLISHED OPINION FILED: November 19, 2018

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2018 NOV 19 AM 8:40

MANN, J. — Chris Onochie appeals the trial court orders dissolving his marriage to Ereks Onochie[1], the parenting plan, child and spousal support, and protection order. Chris makes fifteen assignments of error. We affirm.

I.

Ereks and Chris Onochie were married on July 6, 2002, in Port Harcourt, Nigeria. The parties have six children together. The family moved to Seattle, Washington in 2013. Ereks alleged that during their marriage, there were numerous incidents of domestic violence between the couple.

[1] Erekpoebinimi A. Onochie has changed her name to Ereks Ezekiel-Appah. In order to avoid confusion, we refer to the parties by their first names. We mean no disrespect.

Chris petitioned for legal separation on April 21, 2016. At the same time he also filed for a restraining order and was denied. Ereks filed for a temporary protection order for herself and her children on May 13, 2016, which was granted. The order was renewed multiple times and was extended to the trial date.

At trial, Chris appeared pro se. Chris attempted to discredit Ereks's claims of manipulation and violence. At multiple points during the four-day trial, the trial court attempted to redirect Chris's presentation of evidence to the relevant issues before it and Chris's desired outcome from the dissolution proceeding. The court indicated it was not very "interested in what happened 14 years ago" and was "far less interested in what happened . . . in Nigeria other than as it relates to the issues that [the court has] to decide, which have to do with [Chris's] financial status, both parties' financial status, and the best interests of the children." When Chris attempted to discredit Ereks's allegations of abuse from 2002 and 2004, the trial judge stated "you can talk about a lot of things that aren't really pertinent to the issues that this proceeding is about. So just because they've been talked about in the past doesn't mean you have to talk about them here."

The trial court heard testimony from Ereks and Chris, Deborah Hunter, the social worker who wrote the parenting plan, Larkspur Van Stone, the social worker who conducted the domestic violence assessment, Teena Essang-Ekpo, Ereks's sister, Esseme Essang-Ekpo, Ereks's brother-in-law, and a woman who professionally supervised Chris's visits with his children.[2]

[2] The report of proceedings does not contain the full testimony of any of these witnesses. Instead, the report is comprised of short excerpted sections of testimony.

On July 10, 2017, the trial court entered a decree of dissolution.[3] The court also entered a parenting plan and child support order, imputing income to Chris because he was unemployed at the time of trial. The court also entered a one-year domestic violence protection order.

Chris appeals all orders entered.

II.

A.

The law does not distinguish between litigants who elect to proceed pro se and those who seek assistance of counsel. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). A pro se litigant must comply with applicable procedural rules, and failure to do so may preclude review. Olson, 69 Wn. App. at 626. It is the appellant's burden to provide a record for review that is sufficient to address the issues raised on appeal. RAP 9.2; Stevens County v. Loon Lake Prop. Owners Ass'n, 146 Wn. App. 124, 130, P.3d 846 (2008). Furthermore, this court will not consider arguments that are unsupported by references to the record, or meaningful analysis. State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (finding the argument was insufficiently briefed to warrant review); RAP 10.3(a).

Chris provided this court with a limited record for review, which substantially prevents review of his claims. The report of proceedings provided are disjointed and the excerpts are out of context. Some of Chris's assignments of error relate to the sufficiency of the evidence, and the incomplete report of proceedings prevents this court from determining whether the parties presented sufficient evidence. Additionally, Chris

[3] Chris had initially filed for an order of separation, but at the end of trial, both parties agreed to a decree of dissolution.

assigns error to credibility determinations made by the finder of fact, which are unreviewable. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (credibility determinations are for the trier of fact and cannot be reviewed on appeal).

Chris raises several issues for the first time on appeal. The appellate court may refuse to review any claim of error that was not raised below. RAP 2.5(a). The rule provides specific exceptions where the appellate court must review errors raised for the first time on appeal. RAP 2.5(a). Chris does not argue that any of the exceptions are applicable in this appeal. Chris also raises legal arguments for the first time in his reply brief, which this court declines to address. The appellate court may decline to consider arguments raised for the first time in a reply brief. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

The record is inadequate to review assignments of error 2, 6 through 10, and 12. Similarly, assignments of error 1, 3, 4, and 11 were not adequately preserved below. Thus, only assignments 5, 13, 14, and 15 are reviewable.

B.

Chris's fifth assignment of error contends that the trial court abused its discretion by allowing Ereks and her attorney to withdraw exhibits and replace them with doctored exhibits. Chris argues that the court allowed Ereks and her attorney to make changes to exhibit 150 (the temporary child support order) exhibit 157, (Ereks's proposed parenting plan), and exhibit 158, (Ereks's proposed dissolution order). We disagree.

"The standard of review for evidentiary rulings made by the trial court is abuse of discretion." Peralta v. State, 187 Wn.2d 888, 894, 389 P.3d 596 (2017) (citing City of Spokane v. Neff, 152 Wn.2d 85, 91, 93 P.3d 158 (2004)).

Exhibits 157 and 158 were proposed orders. Ereks submitted revised proposed orders and Chris objected to their admission. The court explained that the proposed orders may be modified during the proceeding, but ultimately the court would draft the final order. The court stated:

> What the parties will end up with will be my decision, but that's part of what this process is all about is that each side can tell me what it is you want. And the order of child support, it's her proposal. Now you'll be able to question her about it or you'll be able to present your own proposal.

Later the court accepted Chris's proposed "family law order, parenting plan, financial declaration, child support order, and trial brief." Thus, Chris's argument that exhibits 157 and 158 were doctored is without merit.

Exhibit 150 was not designated in the record. However, the report of proceedings sheds light on Chris's objection. Exhibit 150 was a temporary order for child support entered by the trial court on October 7, 2016, by a court commissioner. Chris attempted to elicit testimony from Ereks that she forged his signature on the document. Ereks answered that she did not sign his name. Chris later argued to the court that it is clear his signature was forged on the document. However, the trial court indicated that she could not tell from the evidence Chris presented that his signature was forged, rather all that was presented was the question to Ereks of whether she "signed it or could identify it, and she could not."

Chris failed to show that the court abused its discretion by allowing the temporary court order for child support to remain in the record.

C.

Chris's thirteenth assignment of error is that he filed for an order of separation, and the trial court improperly converted the order to a decree of dissolution. This

argument is unsupported by the record. Ereks indicated during preliminary matters that she preferred a dissolution rather than a separation. Chris indicated that for strategic reasons, he preferred a separation. The court explained the difference between a dissolution and separation, and indicated the issue could be revisited after both sides presented their evidence.

Before closing argument, the court revisited the issue and Chris stated that he wanted a "divorce:" "[y]our Honor, I want it to be a divorce, but I want to be the one that moved the motion because I did before, for certain strategic reasons." The court indicated that there would be no motion, the court would simply enter the final order as a dissolution rather than a separation. The court clarified, "[i]s that what you want?" Chris replied "[y]es."

An agreement to change the legal separation petition to a legal dissolution petition provides an adequate basis for a decree of legal separation. In re Marriage of Ferree, 71 Wn. App. 35, 47, 856 P.2d 706 (1993) (indicating that the parties agreement to a decree of legal separation was enforceable because the agreement coupled with the original petition provided an adequate basis for the legal separation).

Since Chris indicated he preferred a "divorce," he cannot argue on appeal that the court improperly entered a decree of dissolution. The trial court did not err when it entered the decree of dissolution.

D.

Chris's fifteenth assignment of error is that the court abused its discretion by imputing an income to him of $4,042.45 per month as part of the child support calculation. We disagree.

This court reviews child support orders for an abuse of discretion. In re Marriage of Pollard, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). A trial court's discretion is narrowed only by the statutory requirement to use the child support schedule and corresponding worksheet. RCW 26.19.035(3).

A parent may not avoid or reduce his or her child support obligation by refusing to work or by being intentionally underemployed. Lambert v. Lambert, 66 Wn.2d 503, 509-10, 403 P.2d 664 (1965). When a parent is intentionally underemployed or unemployed, the court is required to impute income. RCW 26.19.071(6). The court determines whether a parent is voluntarily underemployed or unemployed based on the "parent's work history, education, health, and age, or any other relevant factors" to determine the level of employment a parent is capable and qualified to perform. RCW 26.19.071(6); In re Marriage of Sacco, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990). Once the court determines that a parent is intentionally underemployed or unemployed, the court determines the amount of income to be imputed. RCW 26.19.071(6).

Chris has failed to meet his burden to establish that the trial court abused its discretion by imputing income to him. It is undisputed that Chris was underemployed at the time of the trial. Chris tendered his resignation letter to the United States Postal Service (USPS) on June 22, 2017, citing the need to "sort out domestic issues that require a long time to deal with." From the record, it does not appear that Chris made any arguments during trial that he was incapable of working.

Chris's income related to his earnings from Uber, LYFT, and Raiser, LLC was calculated using his bank statements from 2016, totaling $9,140.18. The trial court calculated Chris's income from working at USPS using his W-2 for 2016. The W-2

equaled $39,377.40. However, the W-2 was not a designated exhibit for this appeal. Chris's USPS paystubs were included in the record, which show that at the end of 2016, his gross pay was $40,199.37—more than the amount the trial court used in its calculation. Totaling all of Chris's 2016 income, the trial court imputed gross income of $4,042.45 per month. After deductions, Chris's net income was $3,243.77 per month. Chris has failed to demonstrate that the court abused its discretion by imputing his 2016 income.

E.

Chris's fourteenth assignment of error alleges that "[t]he trial court erred when it hurriedly filed Findings and Conclusions the next day after its preparation, without giving the parties opportunity to view it, and against the court's promise to make its judgment known before it is filed." We disagree.

CR 52(c) provides:

> Unless an emergency is shown to exist, or a party has failed to appear at a hearing or trial, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions. Persons who have failed to appear at a hearing or trial after notice, may, in the discretion of the trial court, be deemed to have waived their right to notice of presentation or previous review of the proposed findings and conclusions.

(Emphasis added). CR 52(c) applies only when one party enters proposed findings and conclusions of law. It is only in those instances that the five-day notice period applies.

The findings and conclusions entered by the trial court were not based on proposed findings and conclusions, thus the five-day notice period did not apply in this case. The trial court's entry was proper.

Chris contends that the trial court stated "and so my hope would be that I could get decisions out to you before my absence so that you have some resolutions." This is not an accurate quote from the record. The trial judge explained to both parties approximately how long it takes to draft a final order, and that after the final order is entered, she generally gives the parties the opportunity to schedule time with the court to explain the final decision, and how she reached her conclusion. The court indicated that appearing in court was not mandatory, and the second option was to send out the final order to the parties. Both parties agreed that the second option was preferable. Chris's argument is without merit.

We affirm.

WE CONCUR: