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CONSOLIDATED

No. 61951-9-1

No. 62556-0-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

LAWRANCE A. EDWARDS, Appellant
v.
JULEA EDWARDS, Respondent

FATHER'S REPLY BRIEF

LAWRANCE A. EDWARDS
PRO SE APPELLANT/FATHER
P. O. BOX 17713
IRVINE CA 92623-7713

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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W

I. IDENTIFYING PARTY

Lawrance A. Edwards is the Pro Se Appellant/ Father.

II. MISREPRESENTATIONS, MISSTATEMENTS, OMISSIONS, AND THINGS THAT MAKE YOU GO HMM.

Contained throughout Mother's response brief are misrepresentations, misstatements, omissions, and things that make you go hmm. Father will address Mother's more egregious falsities.

1. On page three of the response brief, Mother stated "The mother wrote several letters to father and told him the girls needed him and asked him to re-establish contact with them." First, only two letters were submitted. Second, the dates of the letters were 04 August 2006 and 13 March 2007. Mother ignores the fact that Father during that time frame and since 2005, had continuously sent the adult student birthday cards in 2005, 2006, and 2007, Easter and Christmas presents in 2005 and 2006. The adult student never acknowledged receipt of the cards and gifts. CP 50: 23-27, 191, 195, 606.

2. On page four of the response brief, Mother stated “After years of no contact, father suddenly began demanding his 4 weeks of visitation with the parties’ youngest daughter”. Mother ignores the correspondence and communication between the youngest daughter and Father. CP 408:9-13, 575-589 591-599, 601. See also RP 22:11 to 23:3. Mother also ignores the fact that until her testimony provided at the 23 May 2008 Hearing, Father was uncertain whether the youngest daughter missed and wanted to see Father.

3. On page four of the response brief, Mother stated “Father travels to Seattle and appeared before Judge Doerty, without notice to the mother, asking for an order ‘reaffirming’ the validity of the parenting. Judge Doerty states the father must give the mother notice of his motion”. When Judge Doerty spoke of notice here he was referring to the motion for contempt he advised Father to bring. RP 8:1-18. Ex Parte is allowed under the court rules when the circumstances require. In this case, Father believed Ex Parte was appropriate and required. RP 3:4 – 8:6. Further,

Father already knew Mother had taken the youngest daughter out of town for the weekend. RP 6:9-19. Moreover, based upon Mother's prior accusation to the Bothell Police Department that Father was going to kidnap the youngest daughter, Father for his own safety, refrained from attempting to contact the Mother in person or by telephone because he knew all Mother had to do was make an allegation of threats from Father, and under the DV Laws, Father would have been arrested and charged with a crime.

4. On page four of the response brief Mother stated "due to counsel's unavailability mother asks father to continue the motions. Father refuses forcing mother to file a motion for continuance and motion to shorten time". Mother fails to disclose Father agreed to continue the CR 60 Motion and the reason why he would not agree to a continuance of the Contempt Motion was because he and the youngest daughter had been "deprived of a relationship too long due to your client's willful interference and obstructionist behavior". CP 482

4. On page four is the statement that “The father makes no request for contact with his older daughter”. Mother ignores the fact that the oldest daughter was no longer covered by the Residential Schedule as she had already turned 18 and had graduated from high school.

5. On page five of the response brief Mother stated “November 6, 2008 -Father filed a notice of appeal from the October 3, 2008 orders”. Father’s notice of appeal was due 03 November 2008 which was a Sunday, making the notice of appeal due 04 November 2008. That notice of appeal was filed 04 November 2008 but for some unknown reason was held in King County Superior Court for two days. See Father’s Motion to Extend Time dated 12 December 2008 which is part of this courts file.

6. On page eight of the response brief Mother stated “She testified that when they were married they paid the full costs for his son [from his first marriage] to attend college”. Mother

fails to disclose to the court that Commissioner specifically struck that from the order. CP 306:16-26.

7. On page one of the response brief Mother stated “The father then ‘staged’ a scene so he could file a motion for contempt”. Mother ignores: (1) the fact that Judge Doerty advised Father to bring the motion for contempt, which Father was reluctant to bring; (2) when Father asked to see the youngest daughter, Father, based upon mother’s claim that she missed and needed Father, presumed Mother would not interfere with them seeing each other; (3) Father had no way of knowing Mother would call Bothell Police and accuse him of attempting to kidnap the youngest daughter, and then take her out of town for the weekend; (4) Father refrained from seeking custodial interference and false reporting charges against Mother. CP 453-457, 565-566.

8. On page two of the response brief Mother stated “father and his new wife sent an email to the girls telling them they got the letter and basically saying ‘have a nice life’”. Father believes the he email speaks for itself. CP 499.

9. On page two Mother states “The youngest daughter visits her father in California. She does not want to return because of the bad things that were said about her older sister and her mother”. That claim is false and has been previously challenged by Father. CP 237:22 to 238:7.

10. On page nine of the response brief Mother stated “It was impossible to verify his actual income. . . The father did produce his 2007 W-2’s but redacted the name of all but one of his employers. Why would he redact the name of his employers? So his current income could not be verified”. Father responds as follows. First, Father produced all of his financial information (complete 2006 and 2007 tax returns, bank statements from 01/20/07 to 04/16/08, pay-stubs from 01/01/08 to 04/30/08). CP 220. Second, Mother fails to disclose to the court that Father eventually provided un-redacted W-2’s within weeks of the 23 June 2008 hearing. Third, Father finds it ironic Mother would make this argument since it was Mother who submitted fraudulent tax returns to the IRS and took the girls as deductions in violation

of the Order of Child Support. CP 22:29 – 23:13, 38:8 – 40:1, 301:7-17.

Fourth, Father redacted the W-2's in an effort to protect his employment. Mother had repeatedly attempted to undermine Father's ability to make a living and find gainful employment. CP 35:23 to 36:18, 39:29 to 40:1. Further if Mother's claim that Father made approximately \$200,000 the last year the parties were married, how does Mother explain the trial court's decision and willingness to reduce Father's child support in 2005 from \$1274.00 to \$835.02. CP 4:10-11, 381:12.

III. QUOTES

A. *"I think the majority underestimates the depravity, wickedness, and meanness of some parent who would injure their own child to deprive the other parent of his or her natural and fundamental right to maintain a relationship with their own child"*. Concurring opinion of Chief Justice Sanders in Marriage of Littlefield, 139 Wn. 2d 39 (1997).

B. *“When you have the law and not the facts, you argue the law. When you have the facts and not the law you argue the facts. When you have neither the law nor facts, you misrepresent the law and facts, yell, pound the table, and engage in character attacks”.*

Attorney saying amended by L.A. Edwards

C. *“Emotions can be the greatest enemy of common sense and logic in that they can undermine one’s ability to do effective critical thinking”.* L.A. Edwards

IV. DEFINITIONS

A. Ad Hominem – a fallacy that launches an irrelevant attack on the person originating an argument instead of responding to the substantial issues raised in the argument, and is an attempt to circumvent and avoid a legitimate issue by arbitrarily attacking the person who raised it in lieu of the argument.

B. Red Herring – a fallacy that attempts to divert and/or distract attention away from the real and main issues of the dispute.

C. Non-Sequitur – A fallacy that contains a claim that is not relevant to the contested issues and/or that is not supported by the evidence or premise purportedly supporting it.

D. Straw Man – a fallacy that attacks an argument the opponent did not advance as a way to obscure the important issues.

E. Emotive Language – also known as loaded language; language that manipulates the connotative meaning of words to establish a claim without proof and often becomes an impediment to rational decision making; it attempts to persuade an audience by getting them to respond emotionally to images and associations evoked by the language used rather than by judging the quality of the arguer's evidence and reasoning.

F. Misrepresentation – to give a false or misleading representation, omit key and relevant facts, usually with the intent to deceive or be unfair

G. False Cause – a fallacy where the arguer offers a cause for a consequence that is not directly related to the consequence, and that attributes only one cause to a complex problem and cause.

V. PRESUMPTIVE ARGUMENTS

For the sake of argument, let us assume that every negative claim and allegation Mother says about Father is true. Even if the negative claims were true, that would not and does not change the fact that the court orders of 23 May 2008, 13 June 2008, and 03 September 2008 were erroneous and should be reversed. Moreover, Mother cites to no authority that the trial court can ignore the requirements of RCW 26.19.090 or ignore the constitutional safeguards because the Father is not a perfect Father. Mother's arguments in her response brief are fallacious and laced with emotional appeal in an attempt to tap into what she believes is the inherent racism in our judicial system with the hope that the court will ignore the true and documented facts and the correct application of the law. Father is hopeful this court will ignore the unsubstantiated claims and allegations of Mother, and ignore Mother's attempt to sway the court through emotional appeal, and make its ruling based upon the facts supported by the record and the applicable law.

However, the evidence and record establishes the contrary. For instance CP 560 and 561 are documents wherein Father sought mediation between the girls and him self, and was rebuffed by Mother. (See Appendix A attached hereto and incorporated herein by this reference)

VI. ESSENCE OF MOTHER'S ARGUMENTS

A. Father is responsible for the destruction of the father/daughter relationship; therefore he should be required to pay college costs for Jacquelyn.

B. Since Father agreed to pay college costs for Jacquelyn in the Settlement Agreement, and failed to move to modify the settlement agreement, he should be required to pay college costs for Jacquelyn.

VII. FATHER'S REPLY ARGUMENTS

A. Trial Court's Rejection of Father's Contract Defenses was Erroneous

Father raised the contract defenses of condition precedent, frustration, public policy, and the covenant of good faith and fair

dealing. Mother concedes the validity of the frustration, public policy, and covenant of good faith and fair dealing contract defenses. Mother however claims the condition precedent defense fails because Father was responsible for the destruction of the relationship between himself and the girls. Father responds to this argument as follows. First, Mother provides no specific evidence or cites to any specific behavior to support this claim. Second, Mother's claim is undermined by CP 560 which is an email dated 25 July 2005 where Father requested mediation for himself and the girls and mother rebuffed him, and the fact that Father reached out to the girls after the June 2005 letter and continued to send letters, cards and presents to the girls. CP 49:13-51:26, 575-582, 584-599, 601-603, 608-609., cp 239:14 -242:11. Moreover, the records show Mother had no true desire for the father and girls to have a relationship. CP 235:25 -236:17.

Mother further argues the girls were not a party to the contract or the motion, therefore none of Father's contract defenses apply to the girls. Mother cites to know authority to support this

claim, and in fact the law is to the contrary. The girls were third party beneficiaries to the contract and contract defenses flow to and apply to third party beneficiaries. Del Guzzi Const. Co. v. Global Northwest, Ltd., 105 Wn. 2d 878, 886, 719 P. 2d 120 (1986), Lonsdale v. Chesterfield, 99 Wn. 2d 353, 662 P. 2d 385 (1983), Kinnee, et al v. Lampson, et al, 58 Wn. 2d 563, 566-67 (1961) Oman v. Yates, 70 Wn. 2d 181,187 (1967), Shaffer v. McFadden, 125 Wn. App. 364, 369-370 (2005), Vancouver Co. v. Farrell, 62 Wn. App. 386, 814 P. 2d 255(1991). It is ironic that Mother argues that the contract defenses do not apply to the girls because they were not parties to the action, but then argues they were not necessary parties.

Mother also argues that if Father did not want to pay for college costs that he should have filed a motion to modify the order of child support. Father responds as follows. First, father was still hopeful that a relationship would be re-established between himself and the adult student. Second, bringing a motion to strike the college support language from the order of child support would

have only further alienated the adult student from Father. Third, Father knew that if he had brought such a motion, the trial court would have found it premature and sent him packing. Fourth, Father presumes Mother is arguing “anticipatory repudiation”. The case law is a bit confusing but it appears to say that a party to a contract cannot invoke “anticipatory repudiation” unless there is a statement or action that unequivocally establishes the repudiating party will not perform prior to the time of performance. CKP, Inc. v. GRS Construction, 63 Wn. App. 601, 821 P. 2d 63 (1991). Here there was no such statement or action, and in fact, Mother was telling Father the girls wanted a relationship with Father. The law also seems to say that Father had the legal right to wait to see if the repudiation was withdrawn. Walker v. Herke, 20 Wn. 2d 239, 240 (1944), Algona v. Pacific, 35 Wn. App 517, 677 P. 2d 1124 (1983)

B. The Trial Court was Required to Apply RCW 26.19.090

Mother argues that RCW 26.19.090 was not applicable and that the trial court was not required to comply with RCW

26.19.090. The language of the statute belies Mother's claim. RCW 26.19.090(2) in pertinent states "When considering whether to order support for postsecondary educational expenses, the court shall . . ." In this case the court was called upon to order college costs and the court had to "consider" whether it would grant Mother's motion.

C. The Trial Court Failed to Comply with RCW 26.19.090 and Failed to Enter Findings of Fact

Mother cedes the trial court failed to comply with the mandatory requirement to enter Findings of Facts and identify the factors considered in the Finding of facts. Marriage of Scanlon, 109 Wn. App. 167, 181, 34 P. 3d 877 (2001). Mother argues the court properly considered the statutory factors of RCW 26.19.090 but cedes the trial court did not determine and/or find that the adult student was "in fact dependent and relying upon the parents for the reasonable necessities of life", the adult student's "needs", and "the expectation of the parties for their children when the parents were together". The trial court's failure to consider and apply

those statutory requirements of RCW 26.19.090 was fatal to the court's award of college costs.

Before the trial court could reach the factors in RCW 26.19090, the trial court "shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life". The word "shall" imposes a mandatory duty. Coalition for the Homeless v. DSHS, 133 Wn. 2d 894, 905, 908(1997). The word "and" is conjunctive and when used both requirements must be present. Ski Acre v. Kittitas County, 118 Wn. 2d 852 (1992), Childers v. Childers, 89 Wn. 2d 592, 596 (1978). Since the child was not dependent upon Father, the award of college costs was erroneous. Further, since no determination of the adult student's needs and parents' expectation were considered, the order was erroneous. Mother bears the burden of persuasion pursuant to RCW 26.19.090.

D. The Trial Court Erred When it Awarded College Costs

Mother cedes and ignores all of the arguments contained in this section of Father's opening brief (pages 29-36). Mother only

argues that the award of college costs was appropriate because Father had advanced degrees, that the adult student was an honor student, had applied for about 25 scholarships, and worked since June 2007. None of those arguments/claims address the arguments proffered by Father. Father notes that the adult daughter and Mother to this day have refused to provide Father with any information regarding the “25 scholarships” applied for or financial aid offered to the adult daughter. CP 349-354.

E. The Trial Court Did Not Properly Apply Marriage of Kelly

Mother argues that her motion for college costs was filed before the adult student graduated from high school and was not an indispensable party. Father responds as follows. First, Mother cedes that the adult child had turned 18 before Mother filed her motion for college costs. Second, Mother ignores the plain language in Marriage of Kelly where the court stated “when a parent files a petition **before the child reaches majority**, the court retains jurisdiction after the child becomes an adult”. In this case, the motion was not filed before the adult became an adult which is

18 in the State of Washington. Third, Mother mixes up, leaves out language, and misstates what the court said in Marriage of Kelly. The full sentence from page 791 is “*Moreover, because the court was able to afford complete relief to the parties in this case, Miranda was not a necessary party under CR 19(2)*.”

Father’s argument here was that in order to comply with the requirements of RCW 26.19.090, the court needed to hear from and have the adult student provide evidence of her need and what steps she had taken to pay for her own college. Here that was not done. Forth, even Commissioner Sellers found that the motion needed to be brought before the adult student turned 18. CP 298:17-20. Commissioner Sellers however held that the matter was before the court when the settlement agreement was signed by the court in 2001. CP 298:19-26. This reasoning is questionable because when the court signed off on the settlement agreement in 2001, there was no dispute regarding the payment of college costs. That dispute did not occur, at the earliest until June 2005. Therefore, there was no dispute before the court in 2001, and the

closest analogy Father can come up with is the statute of limitation rules. If we apply Commissioner Sellers' reasoning, then the statute of limitations would never run on disputes in contracts because it was before the court when the court signed the settlement agreement.

F. Father's Constitutional Challenges Were Ceded by Mother

With the exception of Mother's argument that Father's Constitutional arguments have no merit because Father had agreed to pay for the adult student's college costs, Mother cedes all of Father's Constitutional objections to the order of 23 May 2008. An agreement to provide services or money does not preclude Father from raising Constitutional Challenges to the specific performance of a clause in a contact. See Shelly v. Kramer, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed 1161 (1948), Mutual of Enumclaw Ins. CO. v. Maura Wiscomb, et al, 95 Wn. 2d 373, 622 P. 2d 1234 (1980), Decker v. Decker, 52 WN. 2d 456 (1958), State v. Noah, 103 Wn. App. 29 (2000).

G. The Trial Court's Award of \$2000.00 for Contempt Motion was Erroneous

Mother is correct when she argues the court did not make a finding of bad faith as the basis for awarding Mother \$2000.00 in attorney fees. What the trial court said was "*Given the respondent's part in his estrangement from his children to essential deny their fears and concerns is not supportable. The timing of all of this, uh, is also highly suspect*". The court did not find bad faith or that the motion was brought without reasonable basis. The trial court did sign an order that stated "*that father is the primary cause of the failure of his relationship with his children and the reason they do not want to see him. The mother has a reasonable excuse for failing to comply with the parenting plan regarding visitation with*" the youngest daughter. This was new information not previously contained within the court's oral ruling.

Father responds as follows. First, Judge Doerty initiated the idea of the contempt motion not Father, and Judge Doerty

himself encouraged Father to bring the contempt; similar to the entrapment procedures used by law enforcement. Second, none of the above language was spoken by Judge Doerty during his oral ruling. Third, where in the record is substantial evidence to support either Judge Doerty's oral ruling or the order Judge Doerty signed? Mother never points to or identifies what the substantial evidence is that supported the oral ruling and written order. In fact the evidence supports Mother was the primary cause of the disruption in the relationship between the youngest daughter and Father. For instance Mother precluded mediation/counseling between Father and the girls; Father continues to send letters, cards, and presents to the youngest daughter through 2009; Mother continuously made negative comments to the girls about Father and share adult information about the parties' marriage that was not appropriate to share with the girls. Also, the youngest child's response email to Father clearly shows she was not afraid of Father. RP 22:11- to 23:3. See also CP 338 and CP 408:2 – 409:25 where Mother said she would let the youngest daughter

visit Father if he gave Mother his address and driver's license number which he did but Mother still refused to let the youngest daughter visit Father.

H. Bad Faith Finding and Award of \$2000.00 for CR 60 Motion Erroneous

Mother claims and repeats Judge Doerty's finding that Father's CR 60 Motion was brought in bad faith on the basis that the issues raised in the CR 60 were a rehash of the same arguments advanced at the 23 May 2008 hearing. Father responds as follows. First, mother fails to cite to substantial evidence that Father's CR 60 Motion was brought with fraudulent motives, dishonest purposes, and with the intent to harass Mother. Second, Mother cedes Father's arguments that: (1) Mother's behavior contradicted the testimony she gave at the 23 May 2008 and 12 June 2008 hearings; CP 7:7 -8:21; (2) mother failed to disclose all of her income, assets, and resources to the court CP 224:28 to 225:4, 226:5 to 228:5; and (3) Mother refused to comply with Judge Sellers' order to provide academic records to Father, reimburse

Father for her proportionate share of healthcare insurance premiums Father paid. CP 3:9-26. Third, Mother ignores the evidence that the above claims contained in Father's CR 60 motion were not raised until 06 August 2008.

What is interesting to note is that Mother never denies she failed to disclose all assets, income, resources, and/or filed fraudulent financial documents with the court; her argument is simply that Father should have raised the issue at the 23 May 2008 hearing. Well as previously noted, Father did not realize the potential that Mother filed fraudulent documents to the court until Mother sent Father a copy of her credit card bill and father began to wonder where Mother was getting the extra money from. CP 224:28 – 225:4, 226:5 – 228:5

I. Refusal to Vacate Order Erroneous

Mother cedes Father's arguments on pages 16-21 of his opening brief regarding why the trial court's refusal to vacate the 23 May 2008 order was erroneous. Further, Mother never denies that she failed to disclose all income, assets, resources, or that she

filed fraudulent financial documents, thus the court can conclude that mother did submit fraudulent financial documents and failed to disclose all income, assets, and resources. If based upon that evidence the trial court refused to vacate the order, there is nothing much left for Father to argue.

J. Award of Attorney Fees by Sellers and Doerty Erroneous

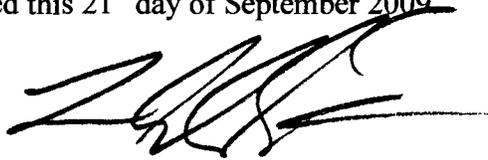
Mother argues the award of attorney fees of \$2000.00 at the 23 May 2008 hearing and the \$500.00 at the 13 June 2008 hearing was appropriate and supported by RCW 26.09.140 and RCW 26.18.160. Father responds as follows. First, Mother does not cite to any evidence in the record that either of those statutes were raised by Mother in her pleadings at the 23 May 2008 and 13 June 2008 hearings. Thus, this court does not have an evidence to establish the basis for the award of attorney fees. Third, neither Mother nor her attorney submitted a proper fee declaration for evaluation by the court and Father. Forth, the issue of Father contributing to the adult student's college was a valid and disputable issue; especially in light of the fact that the same issue

(college costs when no relationship existed between child and father) was heard in Lewis County Superior Court, (Marriage of Cole, 2001) and Spokane County Superior, (Vineau v. Jenkins, 2007) with both courts siding with the Father.

VII. CONCLUSION

Based upon the above argument, Father respectfully requests the court to reverse the orders of 23 May 2008, 13 June 2008, and 03 October 2008 in their entirety. Father further requests an award of costs incurred in litigating this matter.

Respectfully submitted this 21st day of September 2009



Lawrance Edwards, Pro Se Father

POSTSCRIPT

Father currently does not have the funds to copy the record cited to in his pleadings. However, father's wife gets paid Friday, 25 September 2009, and at that time, will make copies of the record cited and send it to the court for the court's convenience.