

NO: 69250-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

In re the Matter of:

CHAD CLARK

Appellant

v.

ELIZABETH PAGE

Respondent

2013 AUG 15 PM 1:20
COURT OF APPEALS
STATE OF WASHINGTON
G

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Judge Snyder

APPELLANT'S REPLY BRIEF

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IDENTIFICATION OF APPELLANT

Appellant, **Chad Clark**, Pro Se, presents this Appellant's Reply Brief to the Washington Court of Appeals, Division One pursuant to RAP 10.3 (8)(c) which states, in part "(c) *Reply Brief. A reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed.*"

ARGUMENT

1. Regarding Page 1, Introduction of Respondent's Brief, Mr. Buri states, in part, "*Appellate courts defer to trial courts in parentage actions for good reason*".... "*Only when a trial court abuses its discretion does an appellate court intervene*". It is interesting that Attorney Buri doesn't see this case as an example of an abusive use of discretion. When a Judge reduces the time a parent and child are permitted to be together, without good reason of proper findings, it is time to take a closer look at things. In this matter as is well outlined in Appellant's Brief, the Judge went against his own orders, siding with one parent over another. This is reason enough to view it as a *negligent or abusive use of discretion!* When a Judge states that Appellant was trying to make Respondent look bad and subsequently used this *preconceived ideology [prejudice]* to base all further findings and orders upon, this is certainly an abusive use of discretion. Appellant *only* presented the facts and evidence at his disposal, yet, the Judge say Appellant as behaving poorly.

2. Regarding Page 2, Restatement of Issues Presented in Respondent's Brief, Attorney Buri states "*Has he failed to perfect the record, barring*

any challenge to the findings?” However, RAP 9.2 regarding Verbatim Report of Proceedings states, in part, (a) Transcription and Statement of Arrangements. **“If”** the party seeking review intends to provide a verbatim report of proceedings.....” This would lead any ordinary person of reasonable sensitivities to believe that providing said transcripts are *optional*! Further, in **Jenkins v. McKeithen 395 US 411, 421 (1969); Picking v. Pennsylvania R. Co. 151 Fed 2nd 240; Pucket v. Cox 456 Fed 2nd 233** it clearly states, in part that “Pro Se pleadings are to be considered *without* regard to technicality; Pro Se litigants pleadings are not to be held to the same high standards of perfection as lawyers. Although Attorney Buri would like to pick at technicalities rather than address the real issues of prejudice that the trial court perpetrated against Appellant and the obvious mistakes regarding income and child support calculations, as well as, a flagrant denial of *equal rights* regarding parenting in favor of his client and against Appellant; these trial court transgressions are a flagrant disregard for *fairness* and an abuse of discretion. Just because these types of rulings are the *norm* of these trial courts, it does not make them *correct* and no less an abusive use of discretion and a violation of a Father’s rights. It is time courts stop giving credence to “*Attorney Sharp Angling*” and consider the *meat* of the issues at hand; notwithstanding the technical manner in which they are presented. Otherwise, it would seem that the court is looking for reasons to dismiss or deny based upon technicalities rather than the facts!

3. Standard Calculation: Attorney Buri states “*Judge Snyder ordered Mr. Clark to pay the standard calculation, \$410.66 per month in child support for his daughter*”. How is this a “standard” calculation? Appellant’s income imputed and not based upon actual income. The court

did not take into consideration many factors associated with what was included as “income”. Garbage in, garbage out. This is, yet, another abusive use of discretion. The court ignored everything Appellant argued even though he had reasonable proof of his income and mitigating factors associated thereto. Yet, the court, took it upon itself, *sua sponte*, to impute income; setting child support at levels that are an *economic hardship* upon Appellant and because of the court callous disregard for Appellant’s arguments; a substantial injustice upon Appellant. Further, Attorney Buri states that “*The trial court’s final parenting plan gives Mr. Clark significant time with his daughter and carefully delineates school and vacation schedules*”. Who is Attorney Buri to decide what is significant time? The same rules and standard cannot be applied to every situation in *cookie-cutter-like* fashion! 102 hours in every 4-week period out of a potential 672 hours available during that same time frame. This is significant? Once again, just because these types of rulings are the *norm* of these trial courts regarding parenting, does not make said orders *correct* and no less an abusive use of discretion and a violation of a Father’s equal parenting rights. At different age intervals visitation time is actually reduced for Appellant. [*i.e. when Appellant’s daughter turns 5, the every other Tuesday and Thursday goes to every other Wednesday*] This negates potential school activities that may conflict with visitation; thus, imposing less interaction and bonding between Father and child. There are many other instances in this case where the Judge makes *sua sponte* decisions that compromise the ability for both parents to bond and interact with the child equally. Further, the trial Judge actually reduces vacation time from two “extended weekends” totaling 4 overnights per year (8 nights) to one week (7 nights) per year and permits summer vacation; that is minimal at best. Attorney’s may argue that said visitation is within the State

guidelines; but, this would totally ignore the individuality of the Father involved and, in fact, gives the Father a disincentive to be a meaningful part of his child's life, rather than an incentive. This, too, is an abuse of discretion. There have been many laws and guidelines set up by governmental agencies throughout history, many of which end up being perceived as *flagrant violations of rights* at a later date. This is certainly one of them!

4. Regarding Page 3, Statement of Facts Presented in Respondent's Brief, Mr. Buri quotes Judge Snyder in saying "*at no time did the parents engage in a substantial social relationship; they did not live together and they experienced compatibility issues from the beginning. The child neither resided in the same household with both parents nor did the parents ever co-parent as a couple*". Appellant fails to see how this is relevant to his parenting rights; however, when two people introduce each other to family members, accompany each other in social settings, spend the night at each others homes, go camping together, spend overnights out of town together; it suggests that the relationship is substantial. When the Judge states that "they experienced compatibility issues from the beginning" he takes this directly from the Respondents proposed FNFCL. This is purely inaccurate! When the Judge states that "*nor did the parents ever co-parent as a couple*", he abuses his discretion in that the Appellant was excluded from being a parent by the Respondent with the court's full support at *every stage!* How could Appellant possibly have co-parented. This is not only an abusive use of discretion and an excuse to favor one parent over another it is typical of the *anti-father/pro-mother* system that now exists in this country! This doesn't make it right! Appellant is every bit as good and loving a parent as the Mother but has been *purposefully* excluded as an *equal parent* though no fault of his own. The Respondent has taken

language from the Whatcom County Residential Guidelines and manipulated the situation to suit her agenda, instigating lack of cooperation and disagreements to ensure a shared parenting plan was not put in place. This is just a ludicrous as stating there should be no Women's Basketball Association because it is a "man's sport! The trial court abused its discretion in substantially favoring one parent over the other regarding parenting and unjustly enriching one parent over the other regardless of the income facts that were before the court.

5. At Page 4 of Attorney Buri's Brief it states that "*Mr. Clark did not transcribe the witnesses' testimony, and the appellate record contains no exhibits or materials from the trial. He also notes that the testimony transcript was not submitted.*" Exhibit materials from the trial were submitted, including the report from Mark Dooley and the two reports from Susan Kane-Ronning. This can be seen in the Designation of Clerks papers. The transcripts of the testimony were not submitted because Appellant could not afford to have them transcribed due to the financial hardship that has been perpetrated upon Appellant by the trial court. Further, *they are not required as outlined above.* Attorney Buri, again, quotes Judge Snyder, "*I got the sense from Mr. Clark's questioning of Ms. Page that to some extent, it was accusatory and judgmental, focused on trying to cast her in an obstructive light*". Appellant thought this was a trial; most of which are adversarial-to Appellant's understanding. Is Appellant mistaken, or, is he supposed to be friendly and submissive to Respondent. Attorney Buri's arguments are *irrelevant* as he's quoting a Judges comments that have "no" bearing in the case, if not extremely prejudicial! In a trial one presents facts and evidence, which is what Appellant did and nothing more! If the Judge came to a conclusion that

Ms. Page was the target of ill treatment the court could have admonished Appellant. This never happened. In any event, the resulting rulings are not remotely related to the Judge's prejudicial opinion about Appellant's *alleged* attitude toward Respondent. For Attorney Buri, to use this as a defense in his brief is, equally, irrelevant.

6. Further, at page 5, Attorney Buri, again, quotes the Judge "*it is in the best interests of V.L.P. to have increasing contact with her father over time*". Yet, this is "not" what happens. There are multiple instances throughout the parenting plan wherein Judge Snyder actually reduces Appellant's visitation time. Another quote of the Judge used by Attorney Buri, "*I find that and I conclude that the Mother has been the parent with the greatest responsibility of not only caring for the child but meeting her developmental needs up to now.*" No kidding! Appellant has been purposefully and prejudicially barred by the Mother, with full support of the court system from being an equal parent. Respondent would agree to nothing unless it was ordered by the court. To this day, Appellant would have little or no contact with his daughter if not for his actions in court. The Judge abuses his discretion by giving absolutely no credence to the fact that the Respondent/Mother has purposefully excluded the Appellant/Father from being a significant part of his child's care and developmental needs.

Mr. Buri again quotes the Judge "*I do believe, however, that you have an option for more hours as you noted, at least you can volunteer for more at Costco.*" While Appellant has volunteered for more hours, they are not guaranteed and he is still working part-time. Costco continues to reduce

payroll, because of profit and loss issues. Appellant continues to look for full time work as a teacher, as this is what he is educated for.

7. At Page 6, Mr. Buri states that “*Mr. Clark argued that the proposed findings were filled “with a lot of opinion, false statements, just inaccuracies”*”. This is the truth and the Judge abused his discretion by permitting these opinions, false statements and inaccuracies to be permitted in the FNFCL; making it not a finding of facts and conclusions, but rather a finding of opinion, lies and misleading statements and information that the trial court accepted as fact.

8. At Page 7, Attorney Buri, quotes “*The court directed Mr. Clark to provide a red-lined version of his objections to the proposed orders, as required under Whatcom County Local Rule 54(f)(3)*”. WCCR 54(f)(3) states the following: Though not mandatory, the court urges counsel to prepare written objections so the court can compare paperwork easily. The preferred form is that used in session laws, where undesired language is struck through and new language is underlined. This simply means that Mr. Buri is incorrect in his statement of “required” and furthermore affirms Judge Snyder’s abuse of discretion. “*Mr. Clark agreed to entry of the findings of fact and the support order.*” Appellant signed the orders, “As To Form Only” which means he is signing as a matter of course; but, does not agree with the content. Yet, Attorney Buri, presents Appellant’s signature as if Appellant’s *agreed with the findings and orders!* Nothing could be further from the truth!

9. At Page 8, quoting Judge Snyder, Buri writes “*I have looked at Ms. Krug’s (Ms. Page’s attorney). I think they are really close. I think they’re*

probably correct, and you've pointed out small details, and that's all." This suggests abuse of discretion because the Judge did not look at all the material. He stated it himself by excluding the review of the Petitioners paperwork. Furthermore, he suggests doubt, using phrases such as "think they are" and "probably correct". The details Appellant pointed out were significant to a parent. Judge Snyder only permitted small things to be discussed and dismissed most of what Appellant had to say.

10. Reconsideration: Mr. Buri states "*Mr. Clark did not file a motion for reconsideration and now appeals the findings of fact, support order and parenting plan.*" It is not mandatory to file a motion for reconsideration. When the Appellant believed bias favoring the Respondent is present and considering the gross abuse of discretion presented, there is a lack of belief, trust and confidence in the Judicial System on the part of Appellant; particularly Judge Snyder. Why would Appellant possibly want to ask an extremely prejudicial and, perhaps, negligent judge for a reconsideration. This would be both a waste of time and money for the Appellant.

11. At Page 9, regarding Argument in the Respondent's Brief, Mr. Buri states, in part, that "*Mr. Clark has failed to transcribe the trial testimony or designate any trial exhibits.*" Trial Testimony is not mandatory and Appellant could not afford same. Appellant did, however, submit trial exhibits; including, but not limited to, reports from Mark Dooley and Dr. Susan Kane-Ronning.

12. Required Standards: Attorney Buri quotes case law stating, "*pro se litigants are bound by the same rules of procedure and substantive law as*

attorneys” There is plenty of opposing case law including, but not limited to **Jenkins v. McKeithen** 395 US 411, 421 (1969); **Picking v. Pennsylvania R. Co.** 151 Fed 2nd 240; **Pucket v. Cox** 456 Fed 2nd 233 which clearly spell out that “Pro Se pleadings are to be considered without regard to technicality; Pro Se litigants pleadings are not to be held to the same high standards of perfection as lawyers.” This is *notwithstanding* the fact that courts *always* have wide discretion in what they will accept and what they will not accept. There is very little that trial judges are bound by, yet, Attorney Buri presents his argument as if Appellant’s entire case has no credence because of these *alleged* violations.

13. At Page 10, Attorney Buri goes onto dwell upon the transcripts, stating that “*Mr. Clark has forfeited his right to review on the merits.*” Appellant’s position is well outlined above in that he should not be held to the same standard’s as an attorney, that the court has complete discretion in this regard and that the transcripts are unnecessary to prove abusive use of discretion; which, in fact, cannot be prove with transcripts. Abusive use of discretion is a form of prejudice which more a feeling than a *black or white* certainly with proof!

14. At Page 11, Attorney Buri states that “*He provides no facts to support his claimed errors. Instead, he argues that the trial court agreed with Ms. Page’s evidence, not his.*” Judge Snyder did agree with Ms. Page’s “so called” evidence, but abused his discretion by not taking into consideration all of the evidence provided by Appellant; failing to use it to make a sound judgment that is in the best interests of the child.

15. At Page 12, Attorney Buri states “*Mr. Clark’s monthly obligation at §410.66, is the standard calculation*”. RCW 26.19.071, states, in part, that “*the court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed*”. Is this standard? This is a phrase that would have to be subject to interpretation [*discretion*] which the court interpreted the way “it” wanted; against Appellant and in favor of Respondent. Apparently, the court can use discretion to serve its purpose and to help Respondent but never in favor of Appellant’s views. There is nothing voluntarily about this. Jobs are hard to find right now, Appellant is lucky to be working at all. After all, in June 2013, Whatcom County reported an unemployment rate of 8.5%, while Washington State had an overall rate of 6.8%, yet, the court failed to take any of this into account. The court, in from its safe and secure courtroom decided that Appellant can earn more and obtain more hours, regardless of the facts. Appellant is a certificated elementary teacher and yet, cannot find appropriate full time work.

16. At Page 13, Attorney Buri goes onto discuss RCW 26.19.071(3)(u), “*the court must include rent as a source of income.*” This alleged “income” was forced upon Appellant as a necessity just to pay the mortgage, or, leaves his home to foreclosure. The imputed rental income jeopardizes a stable living environment for the child, is a *wash* financially and should not be used in the calculation of child support. Again, the court exercised *discretion* in using rental income as income for the calculation of child support, yet failed to use any discretion in favor of Appellant with child support nor with Appellant’s parenting rights. Further, the alleged “income” is not reoccurring, in that the tenant paying \$850.00 per month is moving out and now the market is only bearing \$700.00 for the

available two bedrooms. Furthermore, the court failed to take into consideration the debt load of the Appellant. i.e. the costs of living provided on the financial declaration, house payments, loans, insurance, property taxes; inter alia.

17. Parenting Plan, Attorney Buri states the parenting plan is reasonable and appropriate. Under what circumstances and definition does this parenting plan fall under reasonable and appropriate? Appellant has committed no criminal act, has no charge of domestic violence against him and has always tried to be as involved as the Respondent/Mother as the court would allow Appellant to be. Still, Appellant is only *allowed* just over 100 hours in a course of a 28 day period; far from reasonable and appropriate! In fact, it is an insult regardless of the “so-called” State guidelines. If this were the Judges child or Attorney Buri’s child, would they consider this to be reasonable and appropriate?

18. Abusive Use Of Discretion Is Legal Error: Attorney Buri states that Appellant’s arguments are not associated with legal errors that this Court should review on appeal; however, an abuse of discretion is a legal error.

19. At Page 14, Untenable, continuing on, Attorney Buri sites *Marriage of Luckey, 73 Wn. App. 201, 207-208, 868 P. 2d 189 (1994) (citations omitted)* “... Abuse of discretion is defined as discretion exercised on untenable grounds or for untenable reasons”. What could be more untenable than giving the Appellant/Father a little over 100 hours and the Respondent/Mother 572 hours? What could have possibly been the Judge’s thinking? Untenable is correct!

20. At Page 14, Reasonable Plan, Attorney Buri states “*Because the court carefully drafted a reasonable parenting plan, no grounds exist for this Court to adjust the residential schedule more to Mr. Clark’s preference.*” Judge Snyder would have to have done “some” of the work in order to “carefully draft” draft a plan, let alone a reasonable one. For the majority of the plan, he took the Respondents suggestions and copied them verbatim, contradicting his own orders in several instances to agree with the Respondents paperwork. What could be more biased and an abuse of discretion?

21. Attorney Buri requests attorney fees for Respondent. If Ms. Page had been willing to work together in a manner that is cooperative and putting the parties’ daughters best interests first to where the parties could co-parent and co-exist, court would never have been necessary. Respondent caused her own legal fees because of her intransigence and Appellant is in no better position to afford fees than is the Respondent.

CONCLUSION

Appellant asks that the court consider all of the above-referenced responses to Respondent’s Brief and remand these matters back to the trial court for correction, finding that the trial court abused its discretion in light of the facts presented to it.

DATED: 8/14/13



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**IN THE COURT OF APPEAL OF THE STATE OF WASHINGTON
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CHAD CLARK

Appellant,

and.

ELIZABETH PAGE

Respondent,

NO: 69250-0-1

**RETURN OF SERVICE
CLERK'S ACTION REQUIRED**

I, **CHAD CLARK**, do hereby affirm that on the 17 Day of August, 2013 I PERSONALLY mailed copy of Appellant's brief to Respondent at the following address:

Buri Funston Mumford, PLLC 1601 F St. Bellingham, WA 98225

I declare under penalty of perjury under the laws of the State of Washington: That, I am now and at all times herein mentioned a citizen of the United States and resident of the State of Washington, over the age of eighteen years.

DATED: 8/14/13



CHAD CLARK

RETURN OF SERVICE

**Chad Alan Clark
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