

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

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

The Honorable Judge Snyder

APPELLANT'S BRIEF

Chad Clark

1100 Ross Road

Bellingham, Washington 98226

[360] 220-5644 clark-ProSe@hotmail.com

Handwritten initials
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 JUN 20 AM 10:58

TABLE OF CONTENTS

A. Identification of Appellants	5
B. Assignment of Error.....	5
C. Issues Pertaining to Assignment of Error.	22
D. Standard of Appellate Review	24
E. Statement of the Case.....	24
F. Argument	30
1. Whatcom County Superior Court Judge Snyder abused his discretion when he made orders for child support and parenting without making proper findings.....	29
2. Whatcom County Superior Court Judge Snyder erred in ordering a parenting plan that is laden with errors and ignoring the facts which should have prevented the entry of said plan; ignoring Appellants recommendations.....	29
3. Appellant was deprived of the opportunity to be heard, in full, in violation of due process requirements of United States Constitution and Washington State Constitution	29

4. Whatcom County Superior Court Judge Snyder
erred in setting child support based upon
erroneous income calculations..... 34

G. Conclusion 37

TABLE OF AUTHORITIES CASES

Wash. State Phys. Ins. Exch. & **Ass'n v. Fisons Corp.**, 122
Wn.2d 299, 339, 858 P.2d 1054 (1993)..... 25

*State v. **Bilal***, 77 Wash.App. 720,722,893 P.2d 674 (1995)
(quoting *State v. Ladenburg*, 67 Wash.App. 749, 754-55,
840 P.2d 228 (1992))..... 22

*In Re Marriage of **Brady***, 50 Wn. App. 728,
731 P.2d 654 (1988)..... 24

*State v. **Enstone***, 137 Wash.2d 675, 679-80, 974 P.2d 828 [1999]
[quoting] *State v. Cunningham*, 96 Wash.2d 31, 34, 633 P.2d 886
[1981]] [internal quotation marks [omitted]]..... 27

*State v. **Finch***, 137 Wash 2d 792,808,975 P2.d 967 (1999)
(Citing) 24, 28

*In re Marriage of **Littlefield***, 133 Wn. 2d 39 (1997)..... 24

*State v. **Madry***, 8 Wash.App. 61,68,504 P.2d 1156 (1972)citing
Tumey v. State a/Ohio, 273 U.S. 510,532,47 S.Ct. 437,444,
71 L.Ed. 749 (1972)..... 28

Mayer v. Sto Indus. Inc., 156 Wn.2d 677,684,132 P.3d 115
(2006) Such is the case at bar..... 25

*State v. **Post***, 118 Wash.2d 596,619,826 P.2d 172,837 P.2d

599 (1992).....	28
<i>State v. Ra</i> , 144 Wash.App. 688, 705, 175 P.3d 609 (2008)	
citing	29
In re Custody of Salerno , 66 Wn. App. 923, 833 P.2d 470	
(1992).....	25
<i>In re Marriage of Scanlon</i> , 109 Wn. App. 167 (2001).....	24
<i>Smith v. Skagit Cy.</i> , 75 Wash.2d 715, 453 P.2d 832	
(1969).....	28
<i>Tumey v. State a/Ohio</i> , 273 U.S. 510,532,47 S.Ct. 437,444,71 L.Ed. 749	
(1972)	28
In re Marriage of Ziegler , 69 Wn. App. 602, 849 P.2d 695	
(1993);	25

IDENTIFICATION OF APPELLANT

Appellant, **Chad Clark**, Pro Se, presents this appellant’s brief on appeal to the Washington Court of Appeals, Division One.

ASSIGNMENT OF ERROR

Errors In The Findings of Fact and Conclusions:

- a. **Unnecessary Delay:** In Section 2.6, Judge Snyder wrote in a date for the signing of the residential/parenting plan of 6-29-12;

however, on that date, he didn't even allow Appellant to speak in front of the court [6-29-12 Transcript Pages 4 lines 7 thru 17], telling him to submit paperwork in accordance with WCCR 54 [f] [3] [6-29-12 Transcript Pages 6 lines 20 thru 24]. To date, the residential/parenting plan has yet to be signed, as the judge would not sign it on August 3rd, 2012 as he demanded a clean copy.

- b. **Erroneous Finding Of "No" Social Relationship:** In Section 2.10 the court copies direct language from the FNFCL presented by Respondent's Attorney, Robert Beaty, stating, in part, "*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.* Respondent also references the *6-1-12 Transcript; Page 67 lines 24 thru 25 and Page 68 lines 1 thru 2* wherein the judge states, in part "*It isn't necessarily what I said in the words that I said it, but it does reflect the findings that I made, and it does reflect the evidence as I understand it.*"
- c. **Erroneous Finding That Mother Is Preferred Caregiver:** The court, *sua sponte*, states that the Mother is the person to whom the child turns as her preferred caregiver.

- d. **Wrong Finding Of Parental Conflict:** The court stated with absolutely no evidence that “*Parental conflict has existed and continues un-remediated to such an extent that it presents an obstacle towards shared parenting.*” Here the court adopts the language without question as provided by the Respondent; wherein they paraphrase the Judges comments believed to be taken from the [11-17-11 Transcript Page 15 lines 2 thru 10]
- e. **Erroneously Stated That Appellant Did Not Prevail Re: Contempt:** The court incorrectly stated that “*Mr. Clark filed a contempt motion, concerning make up time and did not prevail.*” [11-17-11 Transcript Pages 16 lines 7 thru 9]
- f. **The Court Paints Appellant In A False Light:** The court inappropriately portrays Appellant by stating, in part, “*The Father continues to thwart cooperation by focusing on the Mother’s personal life, his claim to equal parenting time and on his own frustrations about past events.*” It is unknown where the Respondent pulled this from, as it cannot be found in the Transcripts; thus should not be included in the orders.
- g. **Parental Conflict:** The court falsely portrays Appellant by stating “*Parental conflict arose primarily from Mr. Clark’s unbending expectations when all experts observing the situation*

are of the opinion his expectations and preferences were not in the child's best interests." Here Attorney Beaty takes from the [11-17-11 Transcript Page 5 lines 7 thru 13] and re-phrases sections of the text to better suit his client, omitting words and paraphrasing the Judges statement. "I think the primary issue in this case is parental conflict, and it's my belief from the evidence that I heard that that arises primarily from Mr. Clark's unbending expectations even when all those observing the situation from the outside are of the opinion that those expectations are perhaps [omitted] not in the child's best interests."

- h. **False Finding Of Child's Age vis a vis More Contact With Child:** Based on the testimony of Dr. Kane-Ronning and Mr. Dooley the court finds any increased contact between Mr. Clark and the child needs to be based upon the child's developmental status and her age. Attorney Beaty takes from the 11-17-11 Transcript Page 10 lines 13 thru 16. In section 2.10 of the FNFLC adopted by the court and submitted by Attorney Beaty, it is stated that "the child is 29 months old and is a healthy, robust child with normal development limits. She is well bonded with both of her parents." [11-17-11 Transcript Pages 16 lines

13 thru 15] [11-17-11 Transcript Pages 17 lines 15 thru 17]

These conclusions go directly against what the Judge has put into effect, reducing the time between the Father and child on multiple occasions at various age levels. *[11-17-11 Transcripts Page 18 lines 6 thru 8]*

- i. **False Finding Of Child Having Transition Issues:** The court incorrectly finds that the child has had trouble in her transitions from visits. She cries, needs to be held and looks for comfort, and she cannot tell you what is going on. Here Mr. Beaty omits portions from the *11-17-11 Transcript Pages 16 line 25 and Pages 17 lines 1 thru 4*. He states, in part, “I find the child has had difficulties in her transitions from visits. She’s incapable at this age of really verbalizing what her concerns are. She basically cries and needs to be held and looks for comfort. She can’t tell you what’s going on. The language adopted by the court in the FNFCL would suggest that these two occurrences are regular events; which is untrue.
- j. **Whatcom County Guidelines For Visitation Ordered:** The court erroneously concludes that a parenting plan consistent with the Whatcom County Residential Guidelines should be entered. Attorney Beaty takes from the *11-17-11 Transcript*

Pages 11 lines 24 thru 25 “In doing so, I’ve looked very carefully at the Whatcom County guidelines.” The plan signed by this consistently reduces time spent between the Father and child wherein, according to guidelines, that time should increase.

- k. **Court Suggests Plan Will Resolve Conflict:** The court found that the court proposed plan, one based upon Whatcom County Guidelines and approved by the court will address the high level of parental conflict It is unclear as to where the Respondent pulled this statement from, as it is not mentioned in the Transcripts at any point. If anything the plan approved by the court increases conflict; reductions in time regular residential time consistent throughout the plan, limited holiday visitation, minimal or no summer visitation, limited vacation time, and casting one parent as the “problem maker” when all they were trying to do was stand up for what is in the best interests of the child [increased contact between the child and parent to achieve a 50/50 plan, allowing the child to know that both parents are there for her and she is loved by both parents.]
- l. **Incorrect Findings Re: Child Support Worksheets:** The court wrongfully ordered to adopted child support worksheets

which it stated properly reflected the incomes of the parties and enter an appropriate final child support order.

Errors In The Child Support Order:

- m. **The Court Wrongfully Imputed Income:** The judge has imputed an income of \$2,505.48 based on an hourly wage of \$11.00/hr and \$850.00 received from roommate [*mother and daughter*]
- n. **Court Did Not Allow Real Estate Expenses To Be Deducted:**
The court does not allow Appellant to deduct expense such as mortgage of \$1269.73 per month, the property tax of nearly \$3000.00 per year, nor the homeowners insurance
- o. **Wrong Date For Entry Of Child Support Order:** The courts order resulted in \$500.00 over payment of child support. [*11-17-11 Transcript Pages 32 and 33*]
- p. **Reservation Of Post Secondary Educational Expenses:** Post Secondary Support Issue was reserved rather than ruled upon now. There was no reason for delay. This was adopted by the court as proposed by the Respondent, yet, was “*not*” ordered by the court.
- q. **Educational Expenses:** The court, wrongfully, included educational expenses in addition to child support. This was

adopted by the court as proposed by the Respondent, yet, was “not” ordered by the court.

- r. **Court Implies Unpaid Daycare:** The court erroneously implies that daycare is unpaid. This was adopted by the court as proposed by the Respondent, yet, was “not” ordered by the court.

Errors In The Final Parenting Plan Entered October 26, 2012

- s. **The Court Eliminates Weekly Contact:** At Section 3.1 Judge Charles Snyder eliminates weekly contact with the child involved, Virginia Lynn; ordering visits to take place on an alternating week basis. This deviates for “no good reason” from the previous parenting plan that was in effect which permitted visitation each Tuesday and Thursday from 4:15 PM to 7:15 PM. Judge Snyder ordered that the visits during week be limited to every other week on Tuesdays and Thursdays from 4:15 until 7:15 PM. Language in the transcript from 11-17-11 is confusing and makes suggestions that visits should occur on a weekly basis. However, Judge Snyder upheld the presented alternating Tuesday and Thursday visitation until the age of 5. [11-17-11 Transcript: Page 13 lines 8 thru 11] [11-17-11 Transcript: Page 19 lines 8 thru 12] The Judge actually reduces the amount

of time the child spends with the Father until an increase of time occurs during the weekend at age 3. Identify the awkwardness of this paragraph and this placement of the commas, perhaps suggesting an error on behalf of the Court Reporter (several Court Reporter errors can be found in the transcript). *Compare to 6-1-12 transcript Page 23 lines 7 thru 10* “the ages to two and five shall continue to have the 4:15 to 7:15 Tuesday and Thursday every other week, and on Saturday he’ll continue to have his weekend alternating weekends Saturday from 10:00 to Sunday at 12:00.” [11-17-11 transcript: pg 20 lines 8 thru 9] “And again, he continues to have his mid-week contacts with the child.” Emphasis on CONTINUES, no use of the word alternating.

- t. Alternating Weekends: With the inclusion of the alternating weekend visitation of Saturday 10:00 AM until Monday 10:00 AM, the alternating Tuesday and Thursday visitation puts more than one week between visitations. This is *not in the best interests of the child*, creating separation anxiety between the child and the non-custodial parent, leaves the child feeling abandoned and puts distance between the parent and the child.

[11-17-11 transcript: pg. 12 lines 18 thru 21] [11-17-11 transcript: pg. 22 lines 13 thru 14]

- u. **Court Contradicts Its Own Order:** Judge Snyder once again contradicts his own order, taking directly from the Respondents proposed Final Parenting Plan, stating “*reasonable adjustments will be made for either parent’s work related travel.*” On 11-17-11, Judge Snyder ordered “parties shall coordinate their schedules and reasonable adjustments shall will be made for each other’s work schedules.” *[11-17-11 Transcript: Page 19 lines 23 thru 25]* On 6-1-12, Judge Snyder, once again, took directly from the Respondents proposed Parenting Plan “*Reasonable adjustments will be made for either parent’s work related travel.*” *[6-1-12 Transcript: Page 51 lines 23 thru 24]* Also, on 8-3-12, Judge Snyder states “*My ruling says reasonable adjustments shall and will be made for each other’s work schedule.*” He later states, “*Then I think it should read reasonable adjustments will be made for either parent’s work schedule including related travel.*” *[8-3-12 Transcript: Page 7 lines 19 thru 21]* On 10-26-12, Judge Snyder adopts the language proposed by the Respondent, “reasonable adjustments will be made for either parent’s work related travel.” *[10-26-12*

Transcript: {Page 5 lines 1 thru 3} As can be seen, Judge Snyder contradicts his own rulings during each hearing, suggesting an abuse of discretion and a biased favor of the Respondent.

- v. **Reduction Of Visitation:** At Section 3.2 Judge Snyder reduces visitation even further down to every other Wednesday from 4:15 to 7:15 PM; adopting the proposed language from the Respondents parenting plan. This is a straight reduction in time. At no other place in the regular visitation is there an increase in visitation. Also, moving weekday visits to alternating Wednesdays puts more than ten days between visitations. There is no increase in the weekend visitations during this time, effectively reducing the contact between the child and the non-custodial parent. Judge Snyder original ruling stated that between the ages of 5 and 8 “*we will continue essentially the same schedule.*” [11-17-11 *Transcript: Page 20 lines 1 thru 2*] On 6-1-12, Judge Snyder adopts the language proposed by the Respondent, changing every other Tuesday and Thursday to every other Wednesday, suggesting that the Judge had not reviewed his own notes and simply adopted the Respondents proposal as the truth, ignoring the Appellant. [6-1-12 *Transcript*

Page 16 lines 8 thru 13] And, on 8-3-12, Judge Snyder states “*I don’t see anything here where I said that the Tuesday/Thursday would change to Wednesday.*”**[8-3-12 Transcript: Page 12 lines 6 thru 7]** On 10-26-12, Judge Snyder once again took the Respondents language of alternating Wednesdays and adopted it as the Final Parenting Plan orders. **[10-26-12 Transcript: Page 6 lines 8 thru 19]** Once again Judge Snyder adopts the language from the Respondent pertaining to adjustments in the schedule, contradicting his own order. **[Please see references to transcripts under section 3.1 pertaining to this issue]** Further, Judge Snyder continues to adopt the language from the Respondent that goes against his own original ruling pertaining to weekday visits and reasonable adjustments to the schedule that are work related. **[Please see references to transcripts under section 3.1 & 3.2 pertaining to these issues.]**

- w. **Schedules For Breaks:** At Section 3.3, The schedule for Winter Break / Christmas has been a topic of lengthy discussion. Again Judge Snyder bounces back and forth on his ruling, abusing his discretion repeatedly. In the end, Judge Snyder adopts the proposed language from the Respondent, limiting Christmas visitation to 24 hours. On 11-17-11, Judge

Snyder states *“Everybody wants to be able to have their own traditions, and everybody wants to be able to have it be as they would like. Both parties are entitled to that same thing, and it seems to me that the only fair way that that can be done is we’re going to alternate the Christmas schedule. Every other year, you can do exactly as you want. The other year, you have to do something different.”* [11-17-11 **Transcript: Page 20 lines 15 thru 21**] On 11-17-11, Judge Snyder states *“So beginning in 2012, from the first day, from after school first day of winter break until 6:00 PM on Christmas Eve, the child will be with Mr. Clark, and then she will then go to her mother’s house 6:00 PM on Christmas Eve to the end of winter break.”*[11-17-11 **Transcript: Page 21 lines 2 thru 9**] Judge Snyder implies that there is a Christmas break, suggesting we adhere to the Bellingham School District Winter Break Schedule. Here Judge Snyder misspoke, stating in even years the father will have Christmas Eve and the mother will have Christmas. [11-17-11 **Transcript Page 21 lines 2 thru 4**] Judge Snyder later states that in even years Christmas will be spent with the father and in odd years Christmas will be spent with the mother. [11-17-11 **Transcript Page 24 lines 20 Thru 22**] On 6-1-12 [Transcripts

Page 18 lines 11 thru 13] Mr. Beaty: “So we said, well, he must have meant preschool.” Judge Snyder replies The Court: “Yes, I did.” **[6-1-12 Transcript Page 18 lines 23 thru 25]** On 8-3-12, there is a five page discussion concerning Winter/Christmas break. Within this conversation Judge Snyder makes the following references: During preschool age, the Bellingham School District school schedule should be used to establish the beginning and the end of the winter break. This decision was based on the fact that the childcare that the child attends is a business and therefore does not have an extended break. **[Reference 8-3-12 Transcript Page 14 lines 14 thru 17]** Judge Snyder directly contradicts himself from 6-1-12 as above. The Judge acknowledges that “Winter Break” is two weeks long. **[8-3-12 transcript Page 15 lines 14 thru 15]** “Then I think it’s pretty appropriate to do, make it half and half.” **[8-3-12 Transcript Page 16 lines 10 thru 15]** “*It was the Court’s intent that there be some days, a period of time with Mr. Clark and a period of time with the child’s mother, with Miss Page, and Christmas is the dividing line.*” **[8-3-12 Transcript Page 17 lines 8 thru 17]** Also, on 10-26-12 Judge Snyder reverts back to a 24-hour period visitation for Christmas even after he

acknowledges his 8-3-12 statement. [*10-26-12 Transcript Page 8 lines 3 thru 10*] As the Presiding Judge who has been on the bench for over 20 years, Judge Snyder should be aware that daycare facilities do not typically hold extended holiday closures, as they serve many different families from the community.

- x. **Summer Vacation:** At Section 3.5 Ages 1 – 5: Judge Snyder permits no extended visitation over the summer during this age. At Ages 5 – 8: Judge Snyder permits 10 additional days of visitation during the summer; however, it is stipulated that the child shall not be away from the Mother more than 7 days. [*inconsistent*] At Ages 8 – 18: Judge Snyder permits 21 days of visitation during the summer months. [*11-17-11 Transcript Page 12 lines 13 thru 16*] Adding zero (0) days between until the age of five is not “substantial.” Adding ten (10) days between the ages of five and eight is not “substantial” Adding twenty-one (21) days between the ages of eight and 18 is not “substantial” The ruling by Judge Snyder disregards “substantial time in the summer”, even between the ages of 8 – 18, regardless that there is **NO** time between 1 – 5 and only 10 days between 5 – 8.

- y. **Designation Of Weekends:** At Section 3.6, Judge Snyder ruled that between the ages of 3 – 8 that the Father may designate two of his residential weekends per year to be extended from Thursday through Monday start of school. The first matter would be that the age range should be consistent with that of the summer schedule present age to 5, 5 to 8, and 8 to 18. At this same age range, Judge Snyder permits the Mother two vacation events per year which do not interfere with the Father's weekend residential time. *[11-17-11 Transcript Page 24 lines 2 thru 4]* This ruling permits the Mother to take away the Father's alternating weekday visitation/s, which establishes a two week separation from the child and the father. In any case both parents should be allowed vacations that are "equal"one week long and do not permit a separation from either parent more than one week.
- z. **Holiday's:** At Section 3.7 Judge Snyder adopts the language from the Respondents proposed parenting plan regarding New Year's Day. Taking away New Year's Day from the Father once the child starts Kindergarten. *[11-17-11 Transcript: Page 24 line 24]* It was previously stated: "New Year's Day will all go to the Father." *[6-1-1ddd2 Transcript Page 34 lines 23*

thru 25 & pg. 35 lines 1 thru 9] [10-26-12 Transcript Page 18
lines 12 thru 14] Judge Snyder adopts language in section 3.7 from the Respondent that contradicts previous rulings and language within the proposed and accepted plan by the Respondent. New Year's Day with the father – all. Then there is language changing that once the child starts Kindergarten. Christmas Eve and Christmas Day are outlined with specific dates and times, contradicting language in section 3.3 Under section 3.9 of the Final Parenting Plan, establishing priorities, section 3.7 (Specified Holidays) is given preference over section 3.3 (Winter Vacation). This language overrules the designated dates and time provided in 3.3, limiting winter vacation to a 24 hour period.

- aa. **Order Goes Against Previous Ruling:** At Section 3.13 Judge Snyder once again adopts the language from the Respondents proposed plan regarding adjustments to the visitation schedule and work schedules, going against his previous ruling. [*Please see references to transcripts under section 3.1 pertaining to this issue.*]
- bb. **General Abuse of Discretion:** Judge Snyder briefly addresses the first right of refusal on 11-17-11, but then does not permit

either parent with first right of refusal. [*11-17-11 Transcript Page 15 lines 11 thru 15*] Judge Snyder repeatedly adopted and incorporated language proposed by the Respondent that was not actually ruled on. The court had informed the Appellant that he would not make rulings and incorporate language into the parenting plan that he had not already ruled on. An example from the Appellant includes asking for first right of refusal; Denied. An example from the Respondent includes the adoption of language indicating that makeup time that is caused due to changes in the schedule made by the mother must be arranged by the father within two weeks or it is lost: Adopted by Judge Snyder. [*10-26-12 Transcript: Page 24 lines 6 thru 8*]

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- a. **Did The Court Err By Unnecessarily Delaying Signature Of Parenting Plan?**
- b. **Did The Court Err In Finding Of “No” Social Relationship?**
- c. **Did The Court Err In Finding That Mother Is Preferred Caregiver?**
- d. **Did The Court Err In Finding That There Is Parental Conflict?**

- e. **Did The Court Err By Stating That Appellant Did Not Prevail
Re: Contempt?**
- f. **Did The Court Err by Painting Appellant In A False Light?**
- g. **Did The Court Err In Stating That Parental Conflict Exists?**
- h. **Did The Court Err By Finding That Child's Age Is A Factor For
More Visitation With Father?**
- i. **Did The Court Err By Finding Child Having Transition Issues?**
- j. **Did The Court Err By Finding In Favor Of Whatcom County
Guidelines For Visitation?**
- k. **Did The Court Err By Stating That Its Suggested Plan Will
Resolve Conflict?**
- l. **Did The Court Make Incorrect Findings On Child Support
Worksheets?**
- m. **Did The Court Wrongfully Impute Income?**
- n. **Did The Court Err By Not Allowing Real Estate Expenses To Be
Deducted:**
- o. **Did The Court Err By Entering Child Support On Wrong Date?**
- p. **Did The Court Err By Reserving Post Secondary Educational
Expenses?**
- q. **Did The Court Err By Including Educational Expenses?**
- r. **Did The Court Err When It Implied Unpaid Daycare?**

s. Did The Court Err In Many Instances By Adopting Respondent's Proposed Parenting Plan When Said Plan Contradicts Its Previous Orders?

STANDARD OF APPELLATE REVIEW

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.¹ A court necessarily abuses its discretion if its decision is based on an erroneous view of law.² The appearance of fairness doctrine applies to judicial and quasi-judicial decision makers.³ In family law matters the trial court is obliged to dispose of the property and liability of the parties in a manner that shall "appear just and equitable after considering all the factors⁴.

STATEMENT OF THE CASE

Firstly, this appeal is properly before the court and filed within the time frame as required by the Rules Of Appellate Procedure. [RAP]

¹ *In re Marriage of Littlefield*, 133 Wn. 2d 39 (1997).

² *In re Marriage of Scanlon*, 109 Wn. App. 167 (2001).

³ *State v. Finch*, 137 Wash2d 792,808,975 P2.d 967 (1999) (Citing *State v. Post*, 118 Wash.2d 596,619,826 P.2d 172,837 P.2d 599 (1992)).

⁴ *RCW26.09.080; In Re Marriage of Brady*, 50 Wn. App. 728,731 P.2d 654 (1988).

Further, the trial court's ruling was an abuse of discretion, manifestly unreasonable and should be overturned.⁵ Based on the trial court's comments and colloquy at the hearing, its failure to take into consideration issues the Appellant proposed to it make it appear as though it either misunderstood the law or disregarded it. "For the trial court to make the rulings that it did, without reason, findings or a *viable* explanation, is not only shocking, it indicates the trial court's failure to review the facts and law applicable to this matter. "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law."⁶ "A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts."⁷ Therefore, the trial court's ruling was an abuse of discretion, manifestly unreasonable and must be overturned.⁸

The "*Superior Court has committed probable error and the decision of the Superior Court substantially alters the status quo or*

⁵ In re Marriage of Ziegler, 69 Wn. App. 602, 849 P.2d 695 (1993); In re Custody of Salerno, 66 Wn. App. 923, 833 P.2d 470 (1992).

⁶ Wa sh. State Phys. Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

⁷ Mayer v. Sto Indus.! Inc., 156 Wn.2d 677,684,132 P.3d 115 (2006». Such is the case at bar.

⁸ In re Marriage of Ziegler, 69 Wn. App. 602, 849 P.2d 695 (1993); In re Custody of Salerno, 66 Wn. App. 923, 833 P.2d 470 (1992).

substantially limits the freedom of a party to act.” In the matter at hand, Appellant presented substantial evidence to the court in an attempt to effectuate *fair and proper* court orders, yet the court *summarily* ignored everything Appellant had to say. In fact, the courts decision will cause more conflict between the parties and will serve to impoverish Appellant and cause him to be subjected to Respondent’s *whims and abuses*.

The court made inadequate findings without explanation of any kind how it reached its conclusions. The court seemed to focus upon the Respondent/Mothers’ contentions and/or upon statements from evaluators [*which based their decisions solely upon statements from Respondent*] Nothing could be more prejudicial! There was substantial evidence that Respondent was causing conflict yet this was ignored. Although the court has *broad discretion*, it cannot dispense with *equity* as it would be deemed an abuse of discretion.

A judicial abuse of discretion occurs when a judge acts in an arbitrary or unreasonable way that results in unfairly denying a person an important right or causes an unjust result. In the matter at hand, the court abused its discretion in that it unreasonably failed to consider the substantial evidence that Appellant attempted to present; even the *completely logical argument* that if gross income from rental property is to be considered and added into calculations for child support purposes, then,

congruent thinking would also allow justifiable expenses to be deducted as well. The courts actions clearly show that the court acted way out of line in light of the facts. An abuse of discretion occurs only when the decision or order of the court is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons” as in the matter at hand.⁹

Also, generally, the appellate court will not reverse a judgment as against the weight of the evidence if there is any believable evidence in the case that supports the trial court's judgment. The appellate court has the duty to weigh the evidence and determine whether the findings of the trial court were so against the weight of the evidence as to require a reversal and a retrial. The reviewing court can reverse the judgment when the verdict is so clearly unreasonable, given the evidence, that it is unjust. In the matter at hand, Appellant believes that the evidence and his efforts are clearly in his favor and against Respondent and the trial courts ruling.

Regarding the subsequently entered parenting plan, the court totally abused its discretion, as outlined in the above referenced sections, by merely adopting or *rubber-stamping* the proposed parenting plan order proffered by Appellant’s legal counsel. Appellant attempted to bring these

⁹ State v. Enstone, 137 Wash.2d 675, 679-80, 974 P.2d 828 [1999] [quoting State v. Cunningham, 96 Wash.2d 31, 34, 633 P.2d 886 [1981]] [internal quotation marks omitted].

very issues to the attention of the court on numerous occasions during the hearing and presentation of parenting orders; however, it was clear that the court was going to go along with whatever was in the proposed plan of the Respondent. The court ordered parenting plan is *highly prejudicial* to the Appellant/Father and, in fact, reduces his parenting time as his child becomes older and is contrary to State and County Sanctioned Guidelines.

A fair trial with a fair tribunal is a basic requirement of due process.¹⁰ Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true upon denies the person due process of law.¹¹ The law goes further than requiring an impartial judge; it also requires that the judge appears to be impartial.¹² Past decisions of Washington State Courts have applied the appearance of fairness doctrine when decision-making procedures have created an appearance of unfairness.¹³ The doctrine seeks to prevent "the evil of a biased or potentially interested judge,"¹⁴ A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a

¹⁰ *State v. Madry*, 8 Wash.App. 61,68,504 P.2d 1156 (1972)

¹¹ *Tumey v. State a/Ohio*, 273 U.S. 510,532,47 S.Ct. 437,444,71 L.Ed. 749 (1972).

¹² *State v. Post*, 118 Wash.2d 596,618,826 P.2d 172 (1992) (Citing *State v. Madry*, 8 Wash.App. 61,70,504 P.2d 1156 (1972).

¹³ *Smith v. Skagit Cy.*, 75 Wash.2d 715, 453 P.2d 832 (1969).

¹⁴ *State v. Finch*, 137 Wash.2d 792,808,975 P.2d 967 (1999).

fair, impartial, and neutral hearing.¹⁵ In case at hand, from the record, it appears that Appellant's faith was predetermined by the Superior Court Judge before conclusion of the case because of actions of the Judge and his attitude.

ARGUMENT

In Findings of Fact and Conclusions:

- a. In Section 2.6, the court has written in a date for the signing of the residential/parenting plan of 6-29-12. On this date the Judge did not even allow Appellant to speak in front of the court, telling Appellant to submit paperwork in accordance with WCCR 54 f 3. To date the residential/parenting plan has yet to be signed, as the judge would not sign it on August 3rd, 2012 because he wanted a clean copy. The courts actions caused Appellant an unnecessary delay and caused additional litigation as the signed parenting plan could not be included within this discretionary review.
- b. In Section 2.10 the judge takes language directly from the FNFLC submitted by Respondent's Attorney, Robert Beaty and states, in part:

¹⁵ *State v. Ra*, 144 Wash.App. 688, 705, 175 P.3d 609 (2008) citing *State v. Bilal*, 77 Wash.App. 720,722,893 P.2d 674 (1995) (quoting *State v. Ladenburg*, 67 Wash.App. 749, 754-55, 840 P.2d 228 (1992)).

“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.” While the parties did not live together, they did date for approximately four months in a monogamous relationship. It is Appellant’s opinion that this is substantial. Regarding the statement about compatibility issues, this is a lie presented by the Respondent, that the court seemed to accept; unconditionally. Our relationship was healthy and mutual with no compatibility issues. Respondent alleged compatibility issues for the sole purposes of denying and/or frustrating Appellant’s access to his child and to retain complete control of the child.

- c. The judge states that the mother is the person to whom the child turns as her preferred caregiver; however, how can the court make such a decision when he never witnessed any such situation and cannot make such a finding of fact as it is purely circumstantial. If the court is to believe representations of the Respondent/Mother and disregard everything the Appellant has to say, what is the purpose of any court action? The court might as well just issue *“cookie-cutter”* orders rather than pretend that due process has taken place.
- d. The court goes on to make a finding that *“Parental conflict has existed and continues un-remediated to such an extent that it presents an*

obstacle towards shared parenting.” The primary source of “*conflict*” is from Respondent. Respondent disagrees on the amount of time the parties’ daughter should spend with each of them. The “shared” parenting plan Appellant proposed did not go to a 50/50 plan until the child was older than 5 years old. Through a shared parenting plan, the “conflict” existing would be extinguished. A court must make findings and in that process state its reasons for its findings.

- e. The court states, “*Mr. Clark filed a contempt motion, concerning make up time and did not prevail.*” Once again, where does the court obtain this information and opinion? Because the Respondent, Ms. Page, agreed to permit the make-up time owed to Appellant, the commissioner ruled that she was not in contempt. It does not negate the fact that it was necessary to take her to court to obtain said make-up time. Respondent was, in fact, in contempt as her actions were “*willful*”. It is interesting to note that the court makes findings that support whatever outcome it wishes. In this case, there was no finding of contempt against the Respondent, yet numerous wrong or distorted findings made against Appellant; all of which “*could*” be used against Appellant in the future for precedent purposes.
- f. The found that “*The Father continues to thwart cooperation by focusing on the Mother’s personal life, his claim to equal parenting*

time and on his own frustrations about past events.” Appellant has no interest in the personal life of Ms. Page; however, he believes an equal parenting plan is in the best interest of the child and the issue of past events was to provide insight into how Ms. Page continually attempted to block Appellant out of their daughter’s life. If anything, Ms. Page has focused upon Appellant’s personal life, investigating his Mother’s retirement party when he asked if he could take their daughter to Twisp to visit. Ms. Page threatened to not allow the visit when she read in the local paper that the “official” retirement party was on Sunday, questioning how Appellant was going to be able to return the child in time. Ms. Page has done investigation on Appellant’s finances, searching the internet to discover Appellant’s ad for a roommate. She used this information to have rent included in child support.

- g. The court found that parental conflict arose primarily from Mr. Clark’s unbending expectations when all experts observing the situation are of the opinion his expectations and preferences were not in the child’s best interests. This court should know that there were two experts who observed the situation, Dr. Kane-Ronning and Mark Dooley. Mark Dooley stated in his report that a 50/50 plan would be in the best interests, provided there was minimal conflict between the parents. Dr. Kane-Ronning repeatedly violated the confidentiality agreement

signed by herself, Mr. Dooley, Ms. Page and myself regarding several group mediations. If the court is going to base its decision upon the lack of conflict in a case and if conflict emanates from the Mother and if the Mother will not stop causing conflict; the court perpetuates more conflict and, thereby, decreases the possibility/probability of the Father ever receiving more time with his child. The court is supposed to act in an *unbiased* manner.

- h. Based on the testimony of Dr. Kane-Ronning and Mr. Dooley the court finds any increased contact between Mr. Clark and the child needs to be based upon the child's developmental status and her age. Mark Dooley did not testify in court; only Dr. Kane-Ronning. Dr. Kane-Ronning violated her confidentiality agreement multiple times and when objections were made by Appellant, the court overlooked them. Much of Dr. Kane-Ronnings report was based solely upon statements made by Ms. Page with "*no third party substantiation*"!
- i. The court finds that the child has had trouble in her transitions between visits. She cries, needs to be held and looks for comfort, and she cannot tell you what is going on. There were two instances out of countless other occasions wherein the parties' daughter cried and in both instances it was when the mother was picking the child up from the Fathers house, indicating the child wanted to stay with the Father.

The court has merely interpreted what the Mother stated, believing said statements as absolute truth and disregarded *everything* stated by the Appellant/Father. What could be more biased and disparate?

- j. The court concludes that a parenting plan consistent with the Whatcom County Residential Guidelines should be entered. The parenting plan entered by the court is *not* consistent with the Whatcom County Residential Guidelines. Said order disregards weekly contact and appropriate time for summer vacations.
- k. The court ordered that the plan approved by the court will address the high level of parental conflict; however, the ordered plan has not addressed any kind of conflict and offers no remedy to the Appellant/Father if the Mother continues her pattern of conflict.
- l. The ordered that the court should adopt the child support worksheet reflecting the incomes of the parties and enter an appropriate final child support order. The child support worksheet does not reflect Appellant's actual income and creates a severe financial strain that compromises his ability to provide a stable home for his daughter. Further, as outlined below, the court *must* use congruent thinking in imputing income. The worksheets are completely erroneous as the figures do not allow the Appellant to deduct actual expense related to

his real estate; however, the court counted *all* of the “roommate” income in its calculation of child support.

Child Support Order:

m. The court imputed an income of \$2,505.48 per month to Appellant based upon an hourly wage of \$11.00 per hour; plus, \$850.00 per month received from Appellant’s roommate [*mother and daughter*] This calculation is incorrect and non-congruent. Firstly, the imputed income is not entered in the correct spot on the child support worksheet as it is listed under a] Wages and salaries, rather than “f.] Imputed income. Next, Appellant is a part time employee working at \$11.00 per hour; averaging approximately 25-27 hours per week. [*This is not full time*] Further, the \$850.00 per month that Appellant receives has been a necessity to avoid losing his home. If he hadn’t taken in these roommates, he would not be able to provide a house for himself and his daughter. Moreover, the child support order and supporting worksheets do not take into consideration the mortgage of \$1,269.73 per month, the property taxes of nearly \$3,000.00 per year, the homeowners insurance and/or other expenses that Appellant *should* be entitled to deduct. \$850.00 per month is *not* reflective of the true income from the property. As outlined above, the court was *quick* to

impute income and to calculate *gross* income; but, would not allow Appellant to deduct very real expenses. This is a substantial injustice to Appellant and an economic hardship.

- n. The original hearing and order took place on November 17, 2011, wherein the child support order should have been signed. The subsequent hearing that took place on June 1, 2012 resulted in the court setting child support from June 1, 2012 forward. This decision resulted in \$500.00+ of overpayment in child support.
- o. In section 3.14 the judge reserved the right to request post secondary support. Even though Appellant disputed post secondary support, the court reserved it. This, in fact, encourages further litigation in the future when the matter could have been resolved now.
- p. The judge included educational expenses that are not defined. For instance if the Mother chooses to send the daughter to a private school, Appellant would be obligated to pay a percentage of the annual tuition when there are free public schools available. The Mother should not be given unilateral decision making; however, should educational expense be included over and above basic child support. This just sets up the Mother to commit more abuse.
- q. The judge includes terminology in section 3.21, unpaid day care, this is untrue. All day care was paid and is current.

r. All of the rulings should be reversed and/or clarified.

CONCLUSION

Appellant asks that the court 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: 6/19/13



Chad Clark, Appellant
1100 Ross Road
Bellingham, Washington 98226
(360) 220-5644
clark-ProSe@hotmail.com

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JUN 20 AM 10:58

IN THE COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION I

CHAD CLARK

Appellant,

NO: 69250-0-I

and.

ELIZABETH PAGE

Respondent,

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

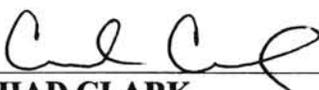
I, **CHAD CLARK**, do hereby affirm that on the 19th Day of June, 2013 I PERSONALLY mailed copy of Appellant's brief to Respondent at the following address:

Phillip James Buri

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: 6/19/13



CHAD CLARK

RETURN OF SERVICE

**Chad Alan Clark
1100 Ross Rd
Bellingham, WA 98226
360-220-5644**