

72310-3
NO. 723103-3-I

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

IN RE THE MATTER OF:

JOHNATHAN WALKER,

APPELLANT,

and

JENNIFER JOHNSON,

RESPONDENT

APPEAL FROM KING COUNTY SUPERIOR COURT
CAUSE NO. 13-3-08138-9 KNT

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

I. Introduction – Restatement of Primary Issue.....	1
II. Summary Analysis of Respondent’s Arguments.....	2
III. Argument.....	3
1. Mr. Walker asserts no “new” arguments on appeal.....	3
2. Appellant has proven prejudice.....	6
3. Appellant did not waive any rights.....	6
4. There have been multiple published decisions in Washington state reversing for failure to adhere to CR 52(c).....	7
5. Respondent falsely argues no proof of their failure to serve required pleadings upon pro se Appellant.....	8
6. Respondent represented misleading references to the content of Clerk’s Papers and Report of Proceedings.....	9
7. This appeal is not frivolous, and request for attorney’s fees for Respondent should be rejected.....	10
IV. Conclusion.....	11

TABLE OF AUTHORITIES

Washington Cases:

Paine-Gallucci, Inc. v. Anderson, 35 Wn.2d 312, 212 P.2d 805
(1949).....8

Seidler v. Hansen, 919 14 Wn. App. 915, 547 P.2d 917
(1976).....7,

Tacoma Recycling v. Capitol Material, 34 Wn. App. 392, 661 P.2d 609
(1983).....8, 9

Cases from Other Jurisdictions:

Haines v. Kerner, et al. 404 U.S. 519,92 s. Ct. 594,30 L. Ed. 2d 652.....7

Rabin v. US Dep't of State, C.I.A., 980 F. Supp. 116 (EDNY 1997).....7

Court Rules:

CR 52: Decisions, findings and conclusions.....1, 2, 6, 7, 8, 11

KCLCR 7: Civil motions.....1

I. Restatement of Primary Issue on Review

Appellant Jon Walker was the Petitioner in the Superior Court proceedings being reviewed by this Court of Appeals. He attended the entire trial in this matter. Respondent's attorney failed to provide Mr. Walker with any copies or content of their proposed orders, contrary to Civil Rule 52(c), KCLCR 7(4)(A) and to specific order of the superior Court (CP 89). KCLCR 7 does govern motions, but Respondent's argument that it is irrelevant is incorrect. The rule further delineates the local rule of the court requiring all motions be served prior to the date of the hearing of the motion. The rule does apply insofar as a motion was filed without service upon the opposing party.

This pro se Appellant indicated this failure, a breach of natural justice, yet the adjudicator failed to enforce the rule of law, thus denying the Appellant equal protection under the law. Allowing Respondent's motion to be heard without requiring adherence to the rules ensuring Appellant's rights are protected is a failure to apply the equal protection of the law, a constitutional right. The decision and orders of the trial Court should be vacated as statute and precedent demand. This precedent is well established through multiple Washington State Appellate and Supreme Court decisions. The case is brought to this Appellate Court for review, to reverse and remand.

II. Summary Analysis of Respondent's A, B and C Arguments

A. Has Appellant asserted new arguments on appeal? No, the primary issue of Respondent's failure to provide Mr. Walker with any of the proposed orders was brought to the trial court's attention. The trial court failed to abide by fixed legal principles and by doing so abused its discretion.

B. Was Appellant prejudiced by Respondent's failure to provide copies of the proposed orders presented at the presentation hearing? Yes, clear and actual prejudice is inherent in each published decision of the Appellate Court cited in this reply. The Respondent gave no copies or content of the numerous additional findings and conclusions, which were presented at the hearing. Respondent has argued that this Appellant has no proof service was not made prior to the hearing. Appellant has already offered proof in appeal brief and reiterates in this reply's argument.

C. May an Appellant demonstrate the actual prejudice produced by a trial court's error? Yes. Respondent correctly recognizes the foundation of error brought before this Court: well-established reversible error through Respondent's failure to abide by and trial court's failure to enforce CR 52. Respondent fails to recognize this portion of Appellant's brief *is* one of multiple examples of actual prejudice to Mr. Walker. As it is an example of

the opportunity denied Mr. Walker, of raising an issue of error to the trial court, the record need not be fully developed.

III. Argument

1. **Mr. Walker asserts no “new” arguments on appeal.** It is undisputed that Mr. Walker received the *oral ruling* and notice of presentation hearing from the *trial court*. That was not what was proposed. There was only a reference to the letter in the orders. The substance of every proposal was new language, findings, judgments, etc. That *was* the issue raised by this Appellant when he objected to not having notice or opportunity to review these proposals. No new arguments have been raised in this appeal.

It is also undisputed that the Respondent *acknowledged* to the trial court that this Appellant needed an opportunity to review the content of the proposals which were submitted for entry. The failure to provide the Appellant opportunity to review these proposals was *obviously raised* by Pro Se Mr. Walker and *and acknowledged* by Respondent:

Mr. Stocks: “We’re here for presentation of our six orders. Mr. Walker’s here, and *he’s reviewing those. I don’t know how far he’s gotten.* [...]Under the rules, Mr. Walker doesn’t necessarily have to review and sign them.

(RP V.3 – 1, emphasis added)

This was deceptive language. Of course the Appellant doesn’t *have* to read the proposals, but he has the right to receive them before the hearing date for

his statute-protected right to review them if he chooses, which he obviously was choosing to exercise that right.

In Respondent's appellate brief he argues that Appellant didn't raise his objection that he had not been served these proposals. In fact, Appellant wasn't even aware that any of these proposals had been filed with the court prior to that hearing. Speaking of the proposals:

Mr. Stocks: "...I can hand those up, and the originals, proposed, pursuant to your ruling, and pursuant to our notice and presentation. We didn't receive a response to that notice and motion for presentation."

RP V.3 – 1.

Thus far Mr. Walker still thought the only issues being decided that day were the ones clearly stated in the notice he'd received from the trial court. *That* was the notice for presentation he thought Respondent was referring to. More so because Respondent had offered to "hand those up, and the originals, proposed" RP V.3 – 1. From that, this pro se Appellant believed the proposals hadn't been filed with the court either. Thus he had only responded to and signed the parenting plan, which Respondent had represented to him was the original parenting plan with the changes the court had required in the letter. He had no idea these proposals were actually being contemplated to be signed that day. Not until the trial court returned from recess declaring the findings of fact and conclusions of law had already been signed.

Respondent's comment that he *can* provide them to Respondent is misleading as well:

Mr. Stocks: "... Mr. Walker doesn't necessarily have to review and sign them; but *I can provide them to him to go over, to see if there's an issue.*" RP V.3 – 1, emphasis added.

He *must* provide the content for review. That right is not one the opposing party can veto. The trial court asked if Mr. Walker had a chance to "look at them" and Mr. Walker indicated he'd only "looked at four of them". RP V.3 – 1. He still was not aware these were about to be signed. Appellant's response immediately following the recess clearly indicates this fact:

Mr. Walker: "Your Honor, you have to, first off, excuse me, because *I obviously didn't know about this, about the stuff being submitted.* I thought that the judgment would be for every – all the way, across the board – for financial, and for the parenting plan." RP V.3 – 2-3, emphasis added.

Appellant still believed these proposals were only being submitted that day, not being signed and entered. The issue of no opportunity to review new submissions was raised. What he'd received from the trial court's oral ruling. The 5 additions contemplated in the letter from the trial court was all he was prepared for at this hearing. CP 87-89.

2. Appellant has proven prejudice resulting from the trial court's error. First, in Respondent's appellate brief they neglect to address their failure (bordering on misconduct) to provide notice of content or copies of

the proposed orders to Appellant for review. Appellant has demonstrated the prejudice to him by this failure: no opportunity to evaluate and prepare argument and objection against their adoption.

3. Appellant did not waive any right relating to CR 52, as

Respondent argues in their brief. The court's allowance of a 10 minute recess was not a reasonable opportunity for review. Immediately following the recess the first statement made was by the trial court: "And I have signed the Judgment Order. Here are the Findings and Conclusions. And what are the questions on the other items?" RP V.3 – 2. The trial court did not, after the short recess, ask this Appellant if he had read or looked through the proposals, as was his right. The adjudicator had already signed the findings of fact, conclusions of law and judgment, parenting plan, etc. Those were signed before any curing of the objection. This is reversible error.

Mr. Walker did not waive any right: he never once declared he'd had opportunity to review the proposals. He was not afforded any continuance nor did he agree to move forward. There is no rule or statute, which requires a petitioner make a motion for reconsideration and include this argument before an appeal may be filed.

The trial court failed to adhere to fixed legal principles. The error was the trial court's failure to address this most vital component of

Appellant's due process rights and his objection at the hearing. Appellant only seeks relief from the resulting prejudice¹.

4. There have been multiple published decisions in Washington state finding failure to adhere to CR 52(c) failure of the right to due process, a constitutional right. Respondent's assertion that no decisions in our state demonstrating this prejudice have been published. On the contrary, this prejudice has been the basis of multiple published decisions by *this* Appellate Court to reverse rulings because of prejudice to the party that didn't receive notice under CR 52(c). What other interpretation can there be that the prejudice violates the Appellant's right to due process?

"5 days' notice of presentation would be of small value to a defeated party without also having **notice of the contents of the proposed findings of fact and conclusions of law, in order to have time to evaluate them and prepare argument against their adoption.** Any other construction of the rule would be unreasonable and we must conclude that **the 5-day notice requirement applies both to notice of submission and to service on the adverse party of copies of the proposed findings of fact and conclusions of law.**" *Seidler v. Hansen*, 919 14 Wn. App. 915, 547 P.2d 917 (1976) (emphasis in **bold** added by Appellant).

Another persuasive case demanding reversal on the exact same grounds presented by Appellant:

"The failure to give 5 days' notice of the content of the proposed findings and conclusions pursuant to CR 52(c) was error and requires that the

¹ Appellant's citation of *Rabin v. US Dep't of State*, C.I.A., 980 F. Supp. 116 (EDNY 1997) is not a Washington case, but is persuasive in addition to our nation's Supreme Court opinion in *Haines v. Kerner, et al.* 404 U.S. 519 insofar as it sets a precedent as to the strictness of the formality required by pro se litigants. Appellant seeks no special treatment as a pro se litigant, only that the form and formality of his arguments, objections, etc. be liberally construed.

findings of fact, conclusions of law and judgment be vacated.” *Paine-Gallucci, Inc. v. Anderson*, 35 Wn.2d 312, 212 P.2d 805 (1949).

Again the precedent is upheld by this Appellate Court:

“CMH is entitled to 5 days' notice of presentation of any proposed findings and conclusions **in order to evaluate them and prepare all relevant arguments against their adoption.**” *Tacoma Recycling v. Capitol Material*, 34 Wn. App. 392, 661 P.2d 609 (1983) (emphasis in **bold** added).

5. Respondent falsely argues no proof of their failure to serve required pleadings upon pro se Appellant; however, between the Clerk’s Papers submitted by this Appellant and those which Respondent supplemented with their response all pleadings filed between the last day of trial and the presentation of orders hearing are included in the clerk’s papers: Docket numbers 129 – letter on oral ruling dated 6/09/14 CP 87-89; 129a – Respondent’s notice of hearing CP * ___ (**Respondent’s supplemental papers*); 129b – Respondent’s motion for presentation of orders with attached proposed orders CP * ___; 129c – Respondent’s notice of presentation CP ___. Note each pleading 129a, b and c were filed 6/13/2014, with docket number 130 – a declaration of Respondent’s attorney regarding attorney fees CP * ___; finally 131 – final orders signed and dated 6/20/2014. No declaration or proof of service was ever filed. Despite Respondent’s claim that Appellant has not proven their lack of service of the pleadings the fact *has* been proven. Actual proof is the absence of service filed or proven in the Superior Court 13-3-08138-9 case docket. Each

relevant pleading has been transmitted for this appeal's clerk's papers as noted above.

As no service was made, proven by the absence of required proof of service, Mr. Walker had no notice of the heavy majority of the findings, conclusions and judgments presented and signed. Respondent's assertion that the orders signed on 6/20/2014 did not differ from the letter of the court, which Appellant did receive is purposely deceptive. While the proposed orders *included* the opinions of the trial court more than 70% of Respondent's content was their own additional language, findings, judgments, etc. The staggering 100% of the financial judgments, findings, conclusions were never contemplated in the trial courts oral ruling letter. CP 87-89. Respondent argues the parenting plan was largely similar to what Respondent had filed in the beginning of this matter most of the details in the parenting plan including restrictions and other provisions were new language not contemplated by the trial court CP 87-89.

The prejudice to Appellant in not having any opportunity to **“evaluate them and prepare all relevant arguments against their adoption”** (*Tacoma Recycling v. Capitol Material*, 34 Wn. App. 392, 661 P.2d 609 (1983)) is evident, reversible error and stands on statute and precedent.

6. Respondent represented misleading references to the content of Clerk's Papers and Report of Proceedings. In the Respondent's brief, page 6, the footnote asserts unsubstantiated claims irrelevant to the issue in

question: Respondent's attorney alleges Appellant had historical conduct "of showing up to hearings unprepared" (Respondent brief p.6 footnote) but the citation is to *their own trial brief* – CP 39, not any determination or oral ruling of the trial court. It is not even included in the self-serving proposed orders. Only the self-serving judgment of intransigence proposed in the faulty orders signed 6/20/14. The same footnote in Respondent's appellate brief on page 6 falsely claims that this Appellant had agreed to electronic service, and then cites the Report of Proceedings to substantiate that claim; however, the page cited from the RP RP V.2 – 22, contains no information of any agreement to electronic service. Nor have there ever been any assertions that Respondent completed service by any means, electronic or otherwise. Both specious representations to this Appellate Court must be viewed as attempts to cloud the foundation of the reversible error: Respondent failed to provide the information demanded by rule of law and precedent.

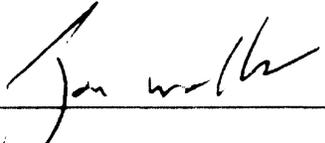
7. This appeal is not frivolous, and request for attorney's fees for Respondent should be rejected. This Appellant's appeal to this Court for reversing error necessary because of Respondent's own actions, their failure to follow simple procedure. The Appellant has demonstrated the financial inability to afford his own attorney and his family's financial situation, receiving state benefits. CP Trial Exhibit 120. Attorney fees for Respondent

should be denied and this Appellate Court should impose any sanctions deemed appropriate as this appeal is considered.

IV. Conclusion

Mr. Walker filed a petition for a parenting plan and order of child support. He attended the entire trial, despite his representation withdrawing a month prior to trial. His objection to having no notice of the proposed orders, however “inartfully” presented, should have been properly addressed before any orders, findings, conclusions or judgments were signed and entered. The trial court abused its authority by not affording Appellant’s due process rights to review the numerous formal pleadings being signed. This pro se Appellant should have been afforded his right to notice of the contents of the proposed findings of fact and conclusions of law, in order to have time to evaluate them and prepare argument against their adoption. *Tacoma Recycling v. Capitol Material*, 34 Wn. App. 392, 661 P.2d 609 (1983). Statute requires 5 days notice (CR 52(c)). The statute was not followed. This is reversible error. This Appellant asks this Appellate Court to vacate the orders of June 20, 2014 and remand to the trial court for completion of the trial matter, for presentation of orders and final arguments to that end.

Respectfully submitted this the 22nd day of September, 2015.



Jonathan Walker, Pro Se Appellant

SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF KING

WALKER ET ANO

vs.

JOHNSON

Case No.: 13-3-08138-9 KNT

CERTIFICATE OF E-SERVICE

(AFSR)

I, Annette Baughman Walker, certify that I initiated electronic service of the following document(s) on the parties listed below who have consented to accept electronic service via the King County eFiling Application. Service was initiated on September 23, 2015 at 03:04:05 PM.

Document(s):

1. BRIEF

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Executed this 23rd day of September, 2015.

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