

Case No 438127II

Court Of Appeals, Division II
Of The State of Washington

In re Marriage of

Matthew Smith, Respondent

&

McKayla Smith, Appellant

Response Brief for Appellant

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FILED
COURT OF APPEALS
DIVISION II
2013 NOV 21 PM 1:38
STATE OF WASHINGTON
BY _____
DEPUTY

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Response to Introduction

On pg. 5 line 6-15 Mr. Stewart is incorrect on what is being appealed.

1. July 11, 2011 Temporary Custody
2. Aug. 1, 2011 Adequate Cause
3. June 25, 2012 Final Parenting Plan
4. July 2, 2012 Removal of Ms. Cotton
5. July 9, 2012 Affidavit against all Hon. Judges

The first issue that needs to be addressed in Mr. Stewart's response brief is his incorrect assumption that the mandate given by the Court of Appeals in this case does not warrant a change of custody from Mr. Smith to me.

(Resp. Brief, 4) Due to the actions of this Court in vacating all parenting plans (SCP 378 paragraph 2) with the exception of the August 15, 2008 parenting plan, which designated me as the custodial parent of RS & CS (SCP 191-199), the only logical result would have been to return our children to my care after the mandate was issued unless the trial court had other legal basis for retaining the then-current custodial parenting arrangement, for which no adequate cause had been established. The other issue with Mr. Stewart's introduction is that he incorrectly states that I am appealing the Mandate, which I am not. I am, however, appealing the fact that the provisions of that mandate were not followed by the trial court which is a requirement of the judicial process per RAP Rule 12.5.

Response to Preliminary Matter

Mr. Stewart is attempting to have my appeal dismissed after having two previous motions for dismissal denied by this Court (Mr. Stewart was denied on 12-19-2012 on his Motions of The Merit & Hon. Judge Godfrey's Preamble was also denied on 12-19-2012, then on 9-12-2013, Mr. Stewart was again denied his Motion on Merits, currently he is asking for my appeal to be dismissed in his brief). His argument under this section is based on his assertion that he was not "properly served" a copy of my brief & transcript this is entirely untrue as he was served these documents multiple times via CD, standard mail & e-mail (8-1-13 Court Of Appeal records show Mr. Stewart was served) . He also asserts that he has not received a "proper transcript," The transcript, he asserts, that was received by him was "photocopy of a dog-eared transcript with corners folded over & other issues making it impossible to read the entire transcript". Although it is clear that there is a visual obstruction that is apparent in the top right corner of Exhibit A, his assertion that it was "impossible to read the entire transcript" is ridiculous. His exhibit shows only that the first four lines of one specific page is slightly obscured. There are no other issues with the readability of that document. This in & of itself does not warrant dismissal of my case as this could have been easily rectified by Mr. Stewart bringing this particular issue to my

attention at the time of service as I would have been more than willing to resend him that page. Within reference to Rap Rule 2.5 circumstances which may affect scope of review (a) (1) lack of trial court jurisdiction, (a) (2) failure to establish facts upon which relief can be granted. Rap Rule 2.5(3) (c) Law of the case doctrine restricted. The following provisions apply if the same case is again before the appellate court following remand: (2) Prior appellate court decision. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case &, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

Response to Statement of the Case

RAP Rule 10.3 (a) (5) defines the statement of the case section of a brief to be "A fair statement of the facts & procedure relevant to the issues presented for review, without argument. Reference to the record *must* be included for factual statement." (Emphasis added)

Although there are some statements Mr. Stewart brings to light that are true & correct, there are several statements made that are not accurate & do not conform to the previously stated RAP Rule 10.3 & these statements should be disregarded.

The first statement I take an issue with is Mr. Stewart stating in his

opening “The trial court may review the entire file & the record in making its decision.” Although the Appeals court can review an entire file Mr. Stewart sent up **hundreds of pages** that he did not cite & within his opening statement it is unclear whether he meant the trial court or the appellant court. Mr. Stewart also **did not** cite any rules to validate his statement with regards to review.

The second statement that I take an issue with is the “Temporary Order was entered as “Clarification” until the Mandate did issue.” When looking at the Order Dated July 11, 2011 it clearly states that it ratified the previous order signed by Hon. Judge Edwards (CP 002). Even on the Order CP 002 it clearly states that there needed to be a testimonial hearing, if you were to look to the record there has been hearings, but none for adequate cause.

The third statement I take an issue with is that Mr. Stewart states on page 7 of his brief “The reason for Mr. Smith’s motion & the court’s July 11, 2011 entry of the “temporary order” is as follows: After this court issued its ruling on Ms. Smith’s appeal, but prior to the issuance of the Mandate, Ms. Smith had attempted to change doctors & health providers for the children & had applied for state benefits claiming to be custodial parent of the children.” “She was even able to stop the DSHS Division of Child Support from its collection efforts against her based on her “flawed”

understanding of this court's ruling." Mr. Stewart fails to mention that on Page 10 of CP 008 it clearly vacated the order allowing child support & attorney fees so as far as a "Flawed Understanding" this is not a "Flawed understanding" when the Court Of Appeals clearly vacated the 2 Parenting Plans CP 008 pg. 10 & Vacated the order back dating child support CP 008 pg. 10. Mr. Stewart keeps stating adequate cause has been established, No Adequate cause has been established. The July 11, 2011 order CP002 clearly is an order that ratified an order that Hon. Judge Edwards had signed. If you look at the transcripts dated July 11, 2011 you will clearly see that on that day in testimony Hon. Judge McCauley states on pg. 13 line 9-13 that he clearly doesn't know anything about this case so it is impossible for Hon. Judge McCauley to establish adequate cause as he is unfamiliar with this case. Hon. Judge McCauley was also informed by Mr. McNeil July 11, 2011 pg. 3 & 4 beginning on line 23 on pg. 3 through line 7 on pg.4 about what was ordered by the Court of Appeals. Also if you look on pg.6 line 23- pg. 7 line 11 you will clearly see that even the contempt's were thrown out so for providing adequate cause goes there was not a reason to warrant a change in custody because those matters were addressed. Finally when looking at August 1, 2011 Hon. Judge Godfrey clearly states pg. 18 line 11-25. Hon Judge Godfrey clearly disregards the Mandate & he clearly did not read the file because if he

would have looked at the file he would have known that on July 11, 2011 no adequate cause was established & that the order that was put into effect was not only invalid, but ratified (the Black Law Dictionary Ratified means confirmation of an action which was not pre-approved & may not have been authorized, usually by a principal (employer) who adopts the acts of his/her agent (employee)). “Therefore, a court abuses its discretion if it fails to follow the statutory procedures or modifies a Parenting Plan for reasons other than the statutory criteria”. Halls, 126 Wn. App. At 606. an order signed by Hon. Judge Edwards who lacked authority due to being divested of his power by the Court of Appeals. Furthermore Mr. Stewart's statement of the case does not meet the requirements of Rap Rule 10.3 & although there are partial truths to some of the statements, there are several that are inaccurate & do not conform to the previously stated RAP Rule 10.3 & these statements should be disregarded.

Response to Argument of the Case

In accordance to RAP Rule 7.2 the July 11, 2011 order should be vacated because it was premature to the Mandate/Remand of August 1, 2011. The July 11, 2011 “Temporary Order” was a ratified order from Feb. 5, 2010 to which the divested Hon. Judge Edwards had signed & both orders should be null & void (CP 087 line 6-19) However, “custodial changes are viewed as highly disruptive to children, & there is a strong presumption in

favor of custodial continuity & against modification” McDole, 122 Wn. 2d at 610.

Mr. Stewart states that this dissolution action & follow up proceedings have been in the trial court for several years, but this is an inaccurate statement in itself because our divorce was settled on August 15, 2008. These proceedings are frivolous and have offered nothing positive for CS & RS. Our entire family has suffered injustice at the hands of Grays Harbor County Superior Court.

Grays Harbor County Superior Court has allowed Mr. Smith to continue his abuse towards me by allowing him to continue to file frivolous claims, motions, restraining orders, & contempt actions that put me in jail. I put in my original filings for divorce that Mr. Smith had threatened me with our children, testified to his abuse, & disclosed abuse to Dr. Whitehill. Mr. Smith has made accusations that I am going to take our children & run, however I have no intentions of running or leaving. My boyfriend & I have built a life together, bought a four bedroom home to raise our family in & have worked very hard to have a loving, stable, & secure environment for our three children.

Currently Mr. Smith is trying to have me jailed by making false accusations. Mr. Smith continues to alienate our children from not only myself, but the rest of their family on my side. Our children most recently

were not allowed to spend Halloween with their baby sister for the third year in a row & on Mother's Day our children were not allowed to visit with me or call me. In re Velickoff 95 Wn. App. 346(division 2) (1998) Id at 355 “ ***An effort by one parent to terminate the other parent's relationship with a child can be considered detrimental to the child, & modification based on such behavior is appropriate (SCP 489 emphasis added).***” I have never tried to stop Mr. Smith from seeing our children or having a relationship with our children.

Mr. Stewart states in his brief on page 11 line 17 that adequate cause was found, but there has not been a hearing on adequate cause & there is nothing in the record to support this. ***Failure by the trial court to make findings that reflect the application of each relevant factor is error (emphasis added)*** Stern, 57 Wn. App. At 711. Mr. Stewart continues to make accusations about my behavior on pg. 11 line 22—23 & continues to page 12 line9 without citing any form of record for these things. Mr. Stewarts goes on to talk about interfering with phone contact, but what he fails to mention is the hundreds of phone records that were testified to on April 8, 2010 pg. 28. I did ask that CS & RS not receive shots, but there is no law that says you must vaccinate & on August 25, 2010 exhibit 4 & I believe exhibit 1 shows that I did allow shots, but asked that they only be administered one at a time because of reactions in the past. Rule 12.2 in

the Disposition on Review (2) after the mandate has issued, the trial court may, however, hear & decide post judgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court. What Mr. Stewart continually fails to mention is that the COA case 403005II the mandate actually divested Hon. Judge Edwards of his power dating to Oct. of 2008. Within reference to Rule 2.5 circumstances which may affect scope of review (a) (1) lack of trial court jurisdiction, (a) (2) failure to establish facts upon relief can be granted. Rule 2.5(3) (c) Law of the case doctrine restricted. The following provisions apply if the same case is again before the appellate court following remand: (2) Prior appellate court decision. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case &, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review. If you examine the report of Dr. Whitehill exhibit 1 on April 12, 2012 pg. 18 of the report paragraph 3 ***"This report should not be constructed as a custody recommendation, as no comparable assessment of Matthew has been conducted (emphasis added)."*** Also paragraph 4 on pg. 18 of exhibit 1 on April 12, 2012 ***"Ms. Smith manifests no prominent Axis I condition likely to affect the quality of her parenting. While periodically anxious &***

using an anxiety management agent, she does not report the condition to be disabling or to affect her ability to parent. Indeed, there have been no reports brought to the undersigned's attention relative to her parenting of Kiele, who the undersigned had the pleasure to meet briefly, & who appears to be well-adjusted & bonded to her mother (emphasis added)."

There was an elevation in the scale of narcissistic, histrionic, & compulsive personality traits. I was not diagnosed with a personality disorder, but Dr. Whitehill stated that they were relevant in so much as they warrant some degree of clinical attention, especially given their potential ramifications for parenting. Dr. Whitehill gives the court a little clarity that *"narcissistic sensibility is an individual who essentially does not acknowledge difficulties, who seems to be very defensive, strong minded (emphasis added)."* I was identified as being somewhat rigid in my coping & somewhat histrionic meaning someone who seeks for stimulation-seeking activities & it's recommended that counseling be done to address them March 16, 2012 Pg 14. The June 25, 2012 order of Custody should be vacated based on that no adequate cause has been established, 26.09.260 (1) (c) (5) (a) when looking at the grounds to modify a parenting plan Mr. Smith failed to prove his case to warrant a change of custody. Specifically 26.09.260 (c) Mr. Smith lacks the burden of proof on my environment being detrimental, in fact when looking at the

pictures in the exhibits anyone can clearly see this is not an environment or situation suitable for minor children. 26.09.260 (5) (a) the current parenting plan does this. “ RCW 26.09.260 governs the procedures for modifying a permanent Parenting Plan & contains varying standards depending on the kind of modification sought. These criteria & procedures limit a court's range of discretion.” In re the Custody of Halls, 126 Wn App. 599, 606,109 P. 3d 15 (2005) The Parenting Plan of Aug. 2008 has me listed as the custodial parent & when looking to the trial court record the Mandate of 403005 II was never followed in accordance to remand nor was the Parenting Plan of Aug 2008 ever put back into effect. (CP090 line 16-19, CP091 line 1-23, CP 092 line 1-24, CP 093 line 1-18, CP 094 line 1-10). Mr. Stewart makes several claims while using Ms. Cotton’s testimony, but as I stated in my amended appeal I am also asking for the GAL to be removed based on GALR 2(CP 174-179) (March 16, 2012 pg. 148 line 1 – 156 line 14) & based on Ms. Cotton’s assertions & bias nature alone the Parenting Plan of June 2012 should be vacated.

Grounds for Removal of Gal

Ms. Cotton has clearly violated the Rules of a GALR2. Ms. Cotton has not remained professional through the court matters & she is clearly very bias in her decisions. Ms. Cotton stated in December of 2009 that she was no longer on my case & then found out she was on my case & later gave

an oral report & not a written. Ms. Cotton has never interviewed my parents, school, Rhyllie, Lynette Lyle, (SCP500, SCP509, SCP512, SCP515, & SCP522-SCP523). I have only spoken to Ms. Cotton one time back in 2008 when she was first put on the case. I have taken 2 parenting classes (certificates August 8, 2008 exhibit 1, April 12, 2011 exhibits 15, 17, 18), & done two evaluations through BHR & Dr. Whitehill (exhibit 1 of April 12, 2012). Ms. Cotton continues to focus her attention on me while never completing the job she was assigned to do (July 9, 2012 exhibit 2 order from 11-3-08 & March 16, 2012 pg. 148 line 1- pg. 156 line 14 Ms. Cotton *did not report accurately emphasis added*.) Most recent I talked to Ms. Cotton about missing my 1st weekend in April of 2013, several phone calls, & feces in our youngest son's underwear several times. Our children are 10 & 6, both want to come home & ask me all the time how much longer, but Ms. Cotton claims our children are adjusting just fine. When reviewing testimony given by Ms. Cotton our children are not fine. (August 25, 2010 exhibits 4,5,6 & exhibits from May 25, 2011 1&3, August 18, 2011 exhibit 3, April 12, 2012 exhibits 3,4,5,6,9,10,11,12,14,16,19,20,21,22,23 & finally July 9, 2012 exhibit 1& Testimony on March 16, 2012 pg. 148- pg.156 line14). Ms. Cotton still has not spoken to my parents about the exchanges even though they have been the ones to do the exchanges since 2008. Based on Ms. Cottons own

testimony, Rule 2 & several RCW I am asking for Ms. Cotton's removal. RCW 13.34.105 (1) (f). The GAL's role is to "represent & be an advocate for the best interests of the child. In order to do so, the GAL *must (emphasis added)* "investigate, collect relevant information about the child's situation, & *report* to the court *factual information regarding the best interests of the child (emphasis added)*." RCW 13.34.105(1) (a) 144 P.3d 306 (2006) In re the Marriage of Kimberly S. Bobbitt, n/k/a Kimberly S. Esser, & Ronald K. Bobbitt. Bobbitt argues that there were four reasons why the first judge should have removed the GAL & appointed a new one: The GAL (1) failed to report the child's expressed preferences regarding the parenting plan as required by RCW 26.12.175(1)(b) & the order appointing her; (2) did not represent the child's best interests when she refused to interview Bobbitt & his identified collateral contacts; (3) did not maintain independence, objectivity, impartiality & the appearance of fairness; & (4) gave advice to Esser. Bobbitt relies on the GALR, which define the role & manner of performance for GALs, to show that the GAL did not meet the expected standards of impartiality during her investigation. It has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate & report to superior courts about the best interests of the children, do their important work fairly & impartially. following public

outcry about perceived unfair & improper practices involving GALs, the legislature adopted RCW 26.12.175 to govern the interactions of courts & GALs & our Supreme Court adopted the GALR. These measures are intended to assure that the welfare of the children whose parents are involved in litigation concerning them remains the focus of any investigation & report, & that acrimony & accusations made by the parties are not taken up by an investigator whose only job is to report to the court after an impartial review of the parties & issues. To that end, GALR 2 articulates the general responsibilities of GALs. As relevant here, it states: “[I]n every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below. (b) Maintain independence. A guardian ad litem shall maintain independence, objectivity & the appearance of fairness in dealings with parties & professionals, both in & out of the courtroom. (f) Treat parties with respect. A guardian ad litem is an officer of the court & as such shall at all times treat the parties with respect, courtesy, fairness & good faith. (g) ***The Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case & to contact all parties. A guardian ad litem shall examine material information & sources of information, taking into account positions of the parties (emphasis added).*** (o) Perform duties in a timely manner.” A

guardian ad litem shall perform responsibilities in a prompt & timely manner, &, if necessary, request timely court reviews & judicial intervention in writing with notice to parties or affected agencies. In re Guardianship of Stamm v. Crowley, 121 Wn. App. 830, 91 P.3d 126 (2004), to challenge "the impact [the GAL's] actions & inactions had on the litigation of the case & the resulting influence she had on the trial court." Appellant's Br. at 19. But Stamm is inapposite. Stamm involved a GAL appointed under chapter 11.88 RCW when children petitioned for guardianship of their father & the case was tried before a jury. Stamm, 121 Wash. App. at 832-34, 91 P.3d 126. At trial, the GAL described her role as the "eyes & ears of the court," testified about Stamm's alleged incapacity, & stated that she had found certain witnesses "to be credible." Stamm, 121 Wash.App. at 840, 91 P.3d 126. Division One of this court held that the GAL had improperly testified about witness credibility & had improperly aligned herself with the trial court to bolster her assessments, which created a substantial likelihood of affecting the jury's verdicts. Stamm, 121 Wash.App. at 840-41, 844, 91 P.3d 126. I am not perfect nor do I claim or want to be. I have not always been as nice as I could have been to Ms. Cotton & I make no excuses for my behavior, but I have attempted to work with Ms. Cotton by writing letters to her & making sure her office obtained a copy of things; example is a letter of contempt's & other

actions going on SCP 512-515. I fully believe Ms. Cotton is a big part of the problem & just as much at fault, as this case is a procedural nightmare. Due to Ms. Cotton's Lack of an investigation, the trial court has made several errors in this case. Ms. Cotton continues to be bias, make assertions about my character, & does not acknowledge the real reason as to why we are here, which is the best interest of CS & RS.

Response to Disqualifications of all three Hon. Superior Court Judges

Although I did file affidavits of prejudice against all three Hon. Judges my reasoning for doing this was to obtain a warrant for a change of Venue.

With all do respects to Grays Harbor Superior Court I do not believe that this matter will ever be resolved according to the Law. I believe that a fair trial or hearing is impossible due to RCW 4.12.030(2). There are several comments & actions that violate Cannon Law. Judicial Conduct of Washington State Canon 1 under 1. 1 a judge shall comply with the law, including the Code of Judicial Conduct.

1A. Hon. Judge McCauley clearly did not comply when he ratified the Feb.5, 2010 order allowing Mr. Smith temporary custody of our minor children within a 30 day mandate (CP 001 & CP 002). Not only did he lack jurisdiction, but the court of appeals had divested Hon. Judge Edwards of his power (CP 017). Hon. Judge McCauley states on July 11, 2011 pg.13 "that he was going to stick with the order whether or not it's

effective, because Hon. Judge Edwards signed it. I'm going to adopt that schedule today until the hearing. I'm open to discussion on all of the evidence because I don't know anything about the case. But when I hear the GAL telling me that has concerns, then I have concerns. ”

1B. Hon. Judge Godfrey clearly violates the Judicial Conduct of Washington State Canon 1 less than 1.1 by stating that there was adequate cause to remove our children from my care (Aug. 1, 2011 pg. 18) when there was never an adequate cause hearing nor was there any findings of facts. Hon. Judge Godfrey also states on the Aug 1, 2011 pretrial hearing pg. 19-20 that he had looked in the file Friday up till Friday afternoon & he didn't see anything from the Court of Appeals, but if you look on Aug. 1, 2011 pg. 19 you will clearly see where Ms. Reid told the court that she supplied the mandate by fax & email to the court on Aug. 1, 2011 (CP006). With these series of violations compiled, it then resulted in the signing of child support & another Final Parenting Plan (CP132-142) in Mr. Smith's favor.

Canon 1.2 Promoting Confidence in the Judiciary a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, & impartiality of the judiciary, & shall avoid impropriety & the appearance of impropriety.

1A. Hon. Judge McCauley in my opinion did not follow Rule 1.2 on July

11, 2011 by allowing Ms. Cotton's opinion to control the situation rather than investigating the situation for himself. Not only did he allow this to happen, but he "ratified" the Feb. 5, 2010 order which does not show independence, integrity, or being impartial to the situation. When Hon. Judge McCauley "ratified" that order, I lost faith in his decision making for a judge because he did not even look at the opinion from this court, instead he allowed Hon. Judge Edwards decision to override what had been divested & sent our children back to Mr. Smith without adequate cause. Also on Oct. 24, 2011 he assigned child support & back dated it to Feb. 5, 2010 which that particular order had been vacated.

1B. Hon. Judge Godfrey in my opinion did not follow Rule 1. 2 When on Aug. 1, 2011 he stated that there was adequate cause even though there had not been a hearing for adequate cause & there had not been a Finding of Facts & Conclusion of Law entered in my case. Not only did he make a decision off assuming that Hon. Judge McCauley had found Adequate Cause, but he did not even look at the Mandate on Aug. 1, 2011. Hon. Judge Godfrey also shows his impropriety by stating "If you people don't like what I just did, appeal me (Aug. 1, 2011 pg.18)." Also "***If we had a fourth Judge, I would ship it over to the fourth judge, but we don't. So courtesy, professionalism, let's go to court (Aug. 1, 2011 pg.19 emphasis added).***" Hon. Judge Godfrey goes on to mock the court of appeals "I

don't want to *embarrass the court of appeals*, because if you go to the opinion that was written by the court of appeals, you can read & I know the exhibit number 1 I believe is this motion to amend that's titled motion to amend where-number 2, whatever it was here. Anyway, if you take a look at document it reads, motion declaration for amended parenting plan. It does not read motion to modify. So I believe the nuance here is the problem." & again, I guess maybe the court of appeals needs to pay attention to their business because the opinion reads & note, please, that I'm referring to the document motion for declaration for amended parenting plan dated Oct. 24, 2008. If you read the court of appeals decision on pg. 3, on Oct. 24 Mr. Smith moved to modify the parenting plan, & then you go through & you read the decision of why they recognize that judge Edwards affidavit of prejudice because, quite, on pg. 8, even when one judge previously settled a child custody issue & entered a parenting plan during a dissolution trial these statues entitle the parties to disqualify the judge from hearing a later petition to modify the parenting plan(Aug. 1, 2011 pg. 109- 111). " Hon. Judge Godfrey continued to mock the court of appeals, which shows a lack of respect.

RULE 2.2 Impartiality & Fairness

A judge shall uphold & apply the law, & shall perform all duties of judicial office fairly & impartially.

1A. Hon. Judge McCauley did not follow this rule in my opinion because on July 11, 2011 he “ratified” an order that Hon. Judge Edwards signed & according to the court of appeals he was divested of his power in Oct. of 2008. He also stated on July 11, 2011 that when a GAL is concerned he is too.

1B. Hon. Judge Godfrey did not show fairness when he began to say he didn’t necessarily agree with the court of appeals, but he didn’t necessarily disagree with Hon. Judge Edwards.

RULE 2.3 Bias, Prejudice, & Harassment

1B. Hon. Judge Godfrey in my opinion is prejudice to my case because in testimony on Sep. 9, 2011 pg.127 he states “because I know I’m always right.” So regardless of what the court of appeals said he was going to do what he wanted because he is always right. “I probably abused my discretion (pg.130)” ***“I think you are going to find yourself over in county jail writing a manners report if you interrupt me one more time (Jun. 13, 2012 pg.339).”*** If you look prior to Hon. Judge Godfrey saying this it shows he is done talking & I addressed him properly & I was cut off by Hon. Judge Godfrey stating the few sentences prior. He also signed an order on this date that if I don’t get treatment or continue it he will terminate my rights (SCP 489).

RULE 2.5 Competence, Diligence, & Cooperation

(A) A judge shall perform judicial & administrative duties, competently & diligently.

(B) A judge shall cooperate with other judges & court officials in the administration of court business.

1A. Hon. Judge McCauley in my opinion lacked competence because he did not look at the opinion of the court of appeals & “ratified” an order that was null & void.

1B. Hon. Judge Godfrey did not cooperate with this court by not enforcing the Mandate on Aug. 1, 2011. Instead he allowed an order that Hon. Judge McCauley “ratified” to be kept in effect rather than following the mandate & rather than Hon. Judge Godfrey cooperate with the court of appeals decision, he instead mocked the court of appeals & did not re-instate the Parenting Plan of Aug. of 2008.

RULE 2.6 Ensuring the Right to Be Heard

1B. Hon. Judge Godfrey violated my rights to be heard by cutting me off on Jun. 13, 2012 & telling me he was going to throw me in jail & write out of his book of manners. I did not ask for a Change of Venue because I did not have a hearing or trial coming up & it is my understanding unless you have one of these coming up you can't ask for a change of venue. More importantly my attorney of record Ms. Glorian refused to ask for a change of venue even though I asked her to ask for it prior to the trial for custody.

Ms. Glorian said that because my case had been in Grays Harbor for so long she felt I wouldn't prevail.

Attorney Fee

Although the Trial Court claims my motion on July 2, 2012 was frivolous I asked for the gal to be removed. Based on My grounds for removal of the Gal which is previously addressed in this response brief, amended brief, & appendix. This is not frivolous because Ms. Cotton has not done her assigned duties & I did not want her to be allowed to continue on this case. In retrospect to Ms. Cottons past assertions & current assertions of my character & her Lack of investigation I do not believe this to be a frivolous filing at all. Also in retrospect I would like to add that Mr. Stewart & his client have continued to drag me into court for the last 5yrs will no regard to our children & what this may do to them. I ask that his request for attorney fees be denied, that I be granted the cost to file this appeal, for Mr. Smith to pay all GAL fees, & Mr. Smith pay the cost to allow a change of Venue. "Attorney fees may also be available as a sanction against a party pursuing a frivolous appeal or abusing the court rules & procedures. RAP 18.9 CR 11 Rich V. Starczewski, 29 Wn. App 244, 628 P. 2d 831,rev denied, 96 Wn 2d 1002 (1981); Bryant v. Joseph Tree, 119 Wn. 2d 210, 829 P. 2d 1099 (1992). "For attorney fees in general, including fees on appeal P. Talmadge, supra, attorney fees in

Washington.

Conclusion

I ask that the court of appeals vacate the July 11, 2011 Order for Temporary Custody which was ratified from Feb. 5, 2010 that I am asking to be vacated also. The Aug. 1, 2011 Adequate cause be vacated because this was a pre- trial hearing & Hon. Judge McCauley had not established Adequate cause on July 11, 2011, The June 2012 Parenting Plan be vacated & to reinstate the Aug. 2008 Parenting Plan because the burden of proof was Mr. Smiths to prove & Mr. Smith did not prove a change in circumstance that would warrant a change of custody. To vacate the order of denial to remove the Gal & to please remove the Gal, as for the Affidavits I am not as concerned with them as I am for the reason I filed them. I am asking for this court to please be understanding & to grant a change of venue, I ask this knowing that it is up to your discretion. Finally I ask that sanctions be imposed on Mr. Smith & his attorney for frivolous filings.

date: November 20, 2013

Respectfully Submitted,



Pro Se, Appellant,

FORM 18. MOTION
[Rule 17.3(a)]

No. 438127 II

COURT OF APPEALS , DIVISION II OF THE STATE OF WASHINGTON

McKayla Smith

Appellant,

Matthew Smith

Respondent,

Motion for filing 25page response brief

1. McKayla Smith, Appellant is asking that I be granted to turn in a response brief of 25 pages.
2. I am asking that I be allowed to turn in my response brief of 25 pages to Mr. Stewarts brief.
3. The reason I am asking for this is because I am unsure if it is 20 or 25 pages and I want to make sure my response brief is accepted. I have testimony involved in this response brief, which at some points is very length due to the nature of proceedings.
4. The grounds of relief I am seeking would be very beneficial because the testimony Is important to this case.

November 20, 2013

Respectfully submitted,
McKayla Smith
McKayla Smith
Signature

Pro Se, McKayla Smith
830 Ohio Ave
Raymond, WA, 98577

FILED
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DIVISION II
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STATE OF WASHINGTON