

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

No. 47809-9-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

In re: Marriage of Gray

MICHAEL KENICHI GRAY, Petitioner,

v.

SARA JUNE GRAY, Respondent

APPELLANT'S REPLY BRIEF

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P/M: 4/29/16

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**I. REPLY TO RESPONDENT'S STATEMENT OF
THE CASE**

The Statement of the Case provided in the Respondent's Brief lacks any relevant information related to the issues presented for review. More importantly, nowhere in the Statement of the Case, or anywhere in the Respondent's Brief, does Ms. Gray provide any factual information with proper reference to the record. RAP. 10.3(a)(5) defines the Statement of the Case section of the brief to be "A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement."

The majority of the statements in the Statement of the Case are not accurate or do not conform to the previously stated RAP rule 10.3(a)(5) and these statements should be disregarded.

Throughout the Statement of the Case and the entirety of the Respondent's Brief, Ms. Gray attempts to reference several unknown documents or exhibits to support her allegations and opinions. However, none of the case history in the Respondent's Brief references the record accurately, nor is it relevant to the issues Mr. Gray presented in the Appellant's Brief.

Although the majority of the Statement of the Case in the Respondent's Brief is irrelevant as no supported facts were provided, there are a few assertions that bear correction. For example, Ms. Gray states "*CPS reports were unfounded despite verbal testimony of the children describing the abusive event*" (Respondent's Brief Page 8-9). This statement made by Ms. Gray mirrors one she gave at trial at which point the court refuted her comments *RP 5/18/2015 51, CP 178*

Ms. Gray: *"They said it was unfounded. I can see why. Ms. Montgomery denied it and they have no choice to label that as unfounded. Now, a year later - -"*

The court: *"What evidence do you have that it happened?"*

Ms. Gray: *"I don't have physical evidence, I have the testimony of our children."*

The court: *"Actually, you don't have the testimony of your children."*

Ms. Gray: *"You're right, it is my word."*

This had already been referenced in the Appellant's Brief in detail. Reiterating her unsubstantial and unfounded claims even now to the appellate court only further validates the Appellant's concerns of Ms. Gray's abusive use of conflict.

Ms. Gray states on page 6 the Respondent's Brief that she left the family home *"to escape domestic violence."* Also, that photographs of *"bruising"* were *"supplied to the court appointed GAL"*. Ms. Gray then references a GAL report which is not included in the record. There is no citation

to the record and therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

On page 7 of the Respondent's Brief, Ms. Gray quotes a statement made by her mother, Mary Sutton, in the GAL report not included in the record. Ms. Gray then adds quotes from the GAL, referring to the GAL report not included in the record. Nothing on Page 7 of the Respondent's Brief cites the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

Beginning on Page 7, continuing onto Page 8 of the Respondent's Brief, Ms. Gray adds her interpretation of the recommendation of the GAL. Ms. Gray then references a declaration not included in the record "*with a seven page description of the abuse she was a victim of.*" Also, Temporary Restraining Orders and a No Contact Order which are not included in the record. Nothing on Page 8 of

the Respondent's Brief cites the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

Ms. Gray begins to discuss the unfounded CPS report on Page 8 of the Respondent's Brief and continues on Page 9 referring to "*verbal testimony of the children describing the event and written testimony of the children's grandfather describing Evan's testimony given to him.*" None of which is included in the record. The remainder of Page 9 describes Ms. Gray's perception of the visitation exchanges. Page 8 of the Respondent's Brief does not cite the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

Page 10 begins with Ms. Gray's view of the communication between her and the Appellant regarding the children. Ms. Gray asserts that the "*children have never witnessed an incident between Mr. Gray and Ms. Gray since Ms. Gray left March 2011 which was her impetus for*

leaving.” Reference to a “Verbatim Report” is mentioned although there is no distinction in which one Ms. Gray is referring to. Nothing on Page 10 of the Respondent’s Brief cites the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

Beginning on page 10, continuing onto Page 11 of the Respondent’s Brief, Ms. Gray quotes a statement made by the children’s counselor, Kim Green. Nowhere on Page 10 of the Respondent’s Brief does Ms. Gray cite the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

Ms. Gray starts what would be interpreted as an argument from Page 11 onto Page 12 quoting the GAL report which is not part of the record. None of the Statement of the Case on page 12 of the Respondent’s Brief does Ms. Gray cite the record therefore the appellate court cannot

verify the validity of these statements nor does it conform to RAP 10.3(a)(5).

II. REPLY TO RESPONDENT'S ARGUMENT

a. Adequate Cause

Ms. Gray improperly interpreted PCLSPR 94.04(c)(1) as Adequate Cause was not required by Mr. Gray to present his counterclaim to the court. The response to Ms. Gray's petition along with the amended proposed parenting plan and supporting declaration was filed timely and served properly in accordance with CR 15(a) *CP 60-67, CP 78-86*.

PCLSPR 94.04(c)(1) would allow the responding party to file a counter motion to be heard at the same date in the event there is an existing motion or adequate cause hearing. However, there was no counter motion filed when Ms. Gray motioned for Temporary Orders.

CR 13(a) permits the pleader the opportunity to state a counterclaim against the opposing party when serving the pleading if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. Further, Ms. Gray failed to include any mention of this issue in the Argument of the Respondent's Brief.

b. Improper use of court time

Ms. Gray claims the court misused time at trial by discussing Mr. Gray's counterclaim as if it were irrelevant. Since Mr. Gray's counterclaim was properly presented to the court, no amount of the court's time was improperly used.

Additionally, Ms. Gray failed to include any mention of this error in the issues pertaining to the assignment of error in her Respondent's Brief.

c. "Victim"

Ms. Gray claims in her Argument and throughout the Respondent's Brief that Mr. Gray "*uses the court system to continue his abuse.*" Respondent's Brief page 13. Ms. Gray attempts to use the Argument to thwart the issues presented by Mr. Gray.

It is fact that since the Parenting Plan was implemented February 1st, 2012 (*CP 39-52*), Ms. Gray has been the perpetrator in initiating court proceedings. Ms. Gray's first attempt to modify the Parenting Plan was filed March 31st, 2014 *CP 240-244*. Ms. Gray attempts to use allegations of "abuse" of a new "victim" as an avenue to persuade the court of her opinion of the Appellant.

Six months later, the next attempt was again initiated by Ms. Gray on September 5th, 2014 (*CP 28-38*). This time the reasoning stated was that the children had started school

and the distance between Ms. Gray and the Appellant's residences.

In the case cited by Ms. Gray, *Davey v. Dolan*, 496 F. Supp. 2d 387 (S.D.N.Y. 2007), the Court reaffirms its findings "*[g]iven the utter lack of merit of plaintiffs claims, his vexatious litigation history, and the fact that he has continually and continues to file repetitive suits despite prior court orders,*" an injunction prohibiting plaintiff from pursuing related litigation was proper. This case however, seems to accurately describe the behaviors of Ms. Gray and the meritless claims she has presented to the Court with her motions. Each time Ms. Gray petitioned to modify the Parenting Plan brought more unnecessary strain to the children by abusing conflict.

d. RAP 10.3(a)(6)

Just as Ms. Gray had done in the Statement of the Case in the Respondent's Brief, the Argument includes several statements and references not included in the record.

Page 12 states that the Appellant "*filed multiple reconsiderations over the years.*" (Respondent's Brief page 12) Also, that Mr. Gray "*took our Final Orders to the Appeals Court in 2012*" (Respondent's Brief page 13). Ms. Gray then states on page 13 of the Respondent's Brief that the Appellant filed "*seven pages of health records.*" None of the documents referred to on Page 13 cite the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(6).

On Page 15 Ms. Gray misquotes the Appellant by stating "*He declares at the Adequate Cause hearing that he believes the plan is fine and should remain the same.*" Also incorrectly cited is Letter from Dept 12 and Copies of Emails

Ms. Gray describes as an "*emotional and dramatic plea.*"

None of the documents referred to on Page 15 cite the record therefore the appellate court cannot verify the validity of these statements nor does it conform to RAP 10.3(a)(6).

III. CONCLUSION

Due to the fact that much of Ms. Gray's Statement of the Case does not conform to RAP 10.3(a)(5), this Court should defer to the statement of the case included in the Appellant's Opening Brief. Furthermore, since there are no factual statements provided by Ms. Gray in the Respondent's Brief as there is no proper reference to any of the record, the majority of the Respondent's Brief should be disregarded by the appellate court.

Ms. Gray continues to demonstrate an abusive use of conflict even within the Respondent's Brief. Allegations made by Ms. Gray which were found to be unsubstantiated

by the trial Court were presented in the Respondent's Brief as fact.

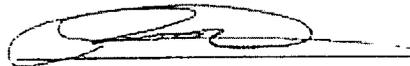
The restrictions the trial court is permitted to place on a parent's involvement in the child's life when there is serious damage to the child's psychological development are required in accordance with RCW 26.09.191(3)(e). The abusive use of conflict is evident in Ms. Gray's Respondent's Brief.

Ms. Gray states the Appellant has "*zero evidence to support his claims and accusations*". However, RCW 26.09.191(3)(e) does not require a showing of actual damage to the child's psychological development, only a danger of such damage *In re Marriage of Burrill, 113 Wn. App. 863, 872, 56 P.3d 993 (2002)*.

The Court's decision to deny the Appellant's counterclaim should be reversed and Mr. Gray's Proposed Parenting Plan (CP 78-86) should be adopted in the best

interests of the children in accordance with RCW 26.09.002 and conform to the objectives set forth in RCW 26.09.184(1). Enforcing both statutes would protect the children from the potential danger of future physical, mental, or emotional harm.

Respectfully submitted this 29th day of April, 2016

A handwritten signature in black ink, appearing to read "Michael Kenichi Gray", written over a horizontal line.

Michael Kenichi Gray
Appellant

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6 **COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON**

7 Petitioner:

8 Michael Kenichi Gray

9 and.

10 Respondent:

11 Sara June Gray

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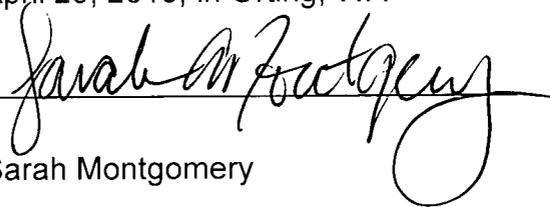
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APPELLANT'S REPLY BRIEF

Pierce Co. Superior Cause
No. 11-3-01148-7

12 I certify under penalty of perjury under the laws of the State of Washington that,
13 on the date stated below, I did the following:

14 On the 29th day of April 2016, I mailed by certified U.S. Mail with return receipt
15 the Appellant's Reply Brief in the above-entitled matter to Sara Gray at the following
16 address: 8615 185th Ave KP N Vaughn, WA 98394

17 April 29, 2016, in Orting, WA

18 

19 Sarah Montgomery