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FILED
COURT OF APPEALS
DIVISION II

2017 JUN -8 AM 10: 27

STATE OF WASHINGTON

BY  _____
DEPUTY

No. 49345-4-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

AIMEE GUARDADO, RESPONDENT

v.

OTTO GUARDADO, APPELLANT

Appeal from the Superior Court of Clark County

No. 14-3-00510-2

BRIEF OF RESPONDENT

By
DYLAN T. TROSPER
Attorney for Respondent
WSBA #49281

TILDEN & ASSOCIATES
4001 Main St., Suite 327
Vancouver, WA 98663

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I. STATEMENT OF THE ISSUES

Appellant appeals from the Decision and Order on Motion for Reconsideration entered July 15, 2016, and requests a new trial. Appellant's motion for reconsideration was properly denied. Overall, Appellant's appellate brief fails to discernably state legal grounds for his requested relief, misstates the case, and raises objections that were not preserved at trial. Respondent asks that his appeal be denied, and for an award of attorney fees.

II. ARGUMENT IN REBUTTAL

A. Summary

Appellant assigns a dizzying array of faults to the trial court. Most of these allegations are not plead with sufficient factual specificity, and are not supported by legal analysis. None, taken alone or together, are proper grounds for Appellant's requested relief.

B. Standards of Review

This Court reviews a trial court's decision to grant or deny a motion for reconsideration for abuse of discretion. *Davies v. Holy Family Hosp.*, 144 Wn.App. 483, 497, 183 P.3d 283 (2008). This Court does not review issues not argued, briefed, or supported with citation to authority.

Valente v. Bailey, 74 Wn.2d 857, 858, 447 P.2d 589 (1968); *Avellaneda v. State*, 167 Wn.App. 474, 485 n.5, 273 P.3d 477 (2012). This Court does not consider conclusory arguments. *Joy v. Dep't of Labor & Indus.*, 170 Wn.App. 614, 629, 285 P.3d 187 (2012), review denied, 176 Wn.2d 1021, 297 P.3d 708 (2013). Passing treatment of an issue or lack of reasoned argument is insufficient to merit appellate review. *West v. Thurston County*, 168 Wn.App. 162, 187, 275 P.3d 1200 (2012); *Holland v. City of Tacoma*, 90 Wn.App. 533, 538, 954 P.2d 290 (1998). This Court does not consider issues raised on appeal that were not objected to at trial, unless the appellant shows manifest error under RAP 2.5. *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015).

C. “Discovery Abuse”

Appellant argues that the trial court committed reversible error because it did not find that Respondent committed alleged discovery abuse. This argument must fail for number of reasons. Primarily, Appellant did not move during trial for a finding of discovery violations or abuse, and does not now appeal from any such decision thereupon.

Moreover, “discovery abuse” is neither a specific term nor a ground for Appellant’s requested relief. Rather, it is a broad term defined according to the facts and circumstances of a case, and used to describe a

series of discrete discovery violations. The remedies for discovery violations are found in CR 37 and Chapter 7.21 RCW.

The crux of Appellant's discovery abuse argument is his claim that Respondent failed to disclose the existence of counseling records (broadly referred to as "the Dezsofi records"). However, Respondent disclosed that she was a patient of Jeanette Dezsofi's at least as early as June 2015, when she released and waived confidentiality as to all her medical records in Ms. Dezsofi's files. Exhibit A; Court Proceedings, 10/30/2015, p. 26-31. Disclosure of their existence satisfied Respondent's duties regarding those records. Court Proceedings, 10/30/2015, p. 32-34. The trial court's Order re: In Camera Review of July 22, 2015 also included a list of records that had been provided. Exhibit B. Although the Dezsofi records were absent from that list, Appellant took no action to pursue them.

Even if Respondent had failed in some duty regarding the Dezsofi records, the proper remedy was to exclude the records from trial. And indeed, the records were excluded upon Appellant's own motion. Court Proceedings, 1/13/2016, p. 576-582, 648-649.

Appellant further contends that the excluded records were the basis of testimony at trial. However, that is contradicted by the record, which shows that Respondent testified based on her own recollection of events

which she had personal knowledge of. Court Proceedings, 1/13/2016, p. 800-805.

The trial court did not discuss the Dezsofi records in its Findings of Fact because they were not part of the trial record, and thus were not material. To the extent that Respondent alleges that the court failed to apply the correct standard for sealing records, the argument is inapplicable because Respondent is not appealing the decision to seal. Respondent did not object to having the records sealed, and thus cannot appeal that decision. Even were this an appeal of the decision to seal, *Ishikawa's* compelling interest standard would not apply. The “good cause” standard applies to sealing documents in a civil case where, as here, the documents were produced during discovery but did not become part of the court’s decision-making process. *Bennett v. Smith Bunday Berman Britton, PS*, 156 Wn.App. 293, 308 (2010) (distinguishing *Ishikawa's* five-factor “compelling interest” standard).

Pauline Weber is a friend of Respondents who also happens to be a professional counselor. Ms. Weber has never treated Respondent, or spoken to her in a professional capacity. Court Proceedings, 10/30/2015, p. 23-32, 36-38.

D. “Abuse of Discretion”

Appellant's allegations constitute neither abuse of discretion, nor adequate grounds for his requested relief. Appellant's allegations regarding abuse of discretion confuse the issues and misconstrue the evidence. For instance, the contested ethnic information is background information that the state records – it does not appear on the actual birth certificate. The contested medical testing is a moot issue. Appellant's embryo argument is simply bizarre, and the alleged contract between the parties is not dispositive regarding the characterization of the embryo as property.

Appellant's allegations regarding abuse of discretion should not even be reviewed by the Court, because they have not been argued, briefed, or supported with citation to authority. *Valente v. Bailey*, 74 Wn.2d 857, 858, 447 P.2d 589 (1968); *Avellaneda v. State*, 167 Wn.App. 474, 485 n.5, 273 P.3d 477 (2012). Rather, they constitute conclusory arguments lacking in both rationale and supporting facts or legal authority. *Joy v. Dep't of Labor & Indus.*, 170 Wn.App. 614, 629, 285 P.3d 187 (2012); *West v. Thurston County*, 168 Wn.App. 162, 187, 275 P.3d 1200 (2012); *Holland v. City of Tacoma*, 90 Wn.App. 533, 538, 954 P.2d 290 (1998).

E. “Numerous Errors”

Appellant's section E and Appendix A are largely comprised of disjointed and conclusory statements which do not constitute grounds for his requested relief. Appellant's allegations in these sections should be disregarded for the same reasons stated in the preceding paragraph.

Appellant's complaints about the division of property are all decisions that were properly within the discretion of the trial court, and which constitute the court's credibility determinations. Appellant's complaints about intransigence fail to realize that the court's finding was based not just on the quantity of his filings, but moreover on the quality of the arguments raised therein.

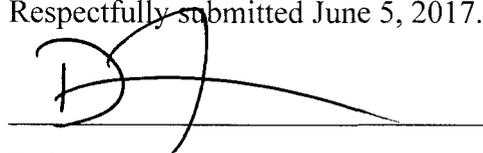
F. Fees and Costs

It is within the discretion of the Court to award fees and costs in this case. RAP 18.1; RCW 26.09.140. Attorney fees and court costs are warranted, because Appellant failed to clearly state legitimate grounds for his requested relief, and made numerous frivolous claims. Appellant's sprawling brief and attachments are yet another example of the intransigence found by the trial court.

III. CONCLUSION

Appellant has failed to show that the trial court abused its discretion when it denied his motion for reconsideration. Respondent asks that Appellant's appeal be denied, and for an award of attorney fees and court costs.

Respectfully submitted June 5, 2017.

A handwritten signature in black ink, appearing to read 'Dylan T. Trosper', is written over a horizontal line. The signature is stylized with a large initial 'D' and a long, sweeping tail.

Dylan T. Trosper, WSBA #49281

Attorney for Respondent

INDEX TO APPENDIX: RESPONDENT'S BRIEF

In re the Marriage of Guardado

Court of Appeals, Deivision Two, No. 49345-4-II

<u>Exhibit</u>	<u>Description</u>
A	Letter to Jeanette Dezsofi re medical records release
B	Order Re: In Camera Review filed 07/22/2015
C	Decision and Order on Motion for Reconsideration filed 07/15/2016
D	Order Denying Access to Restricted Court Records filed 02/15/2017

~~June 26, 2015~~

Jeanette Dezsofi
650 Officers Row
Vancouver, WA 98661

Re: Aimee Guardardo, Case Number 14-3-00510-2

To Whom it May Concern,

Enclosed please find a Release and Waiver of Confidentiality with regard to the above-named patient of yours. By order of the court, we are required to provide all of the medical records of Aimee Guardardo in your files, to Judge Veljacic, at the following address:

Hon Bernard Veljacic
Clark County Superior Court Judge
Clark County Courthouse
1200 Franklin, Fourth Floor Administration
Vancouver, WA 98660

Please provide these medical records to the Judge at your earliest convenience. Please include a coversheet with the case number to the Judge in an envelope marked CONFIDENTIAL - FOR THE JUDGE'S EYES ONLY.

Feel free to contact me with any questions or concerns.

Kindest regards,
McKELL GRAFF, PLLC
LEGAL & CONCILIATION SERVICES

FAYE BREITREED
Attorney at Law

FEB/tkl
enclosures
cc: Michael V. Roe (w/out enclosure)

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EXHIBIT A
PAGE 1 of 1

COPY ORIGINAL FILED
JUL 22 2015
Scott G. Weber, Clerk, Clark Co.

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

6	IN RE: THE MARRIAGE OF:)	
7	AIMEE GUARDARO,)	
8)	Case No.: 14-3-00510-2
9	Petitioner,)	
10	and)	ORDER RE: IN CAMERA REVIEW
11	OTTO GUARDARO,)	
12	Respondent.)	

I received and reviewed In Camera 1232 pages of medical and psychological records, as set out in the table below. I considered the documents under CR26, which allows parties to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." The current action entails establishment of a Parenting Plan for 2 year old Clara Guardaro, the only common child of the Petitioner and Respondent. My ruling regarding relevance alone, per category of documents, for purposes of discovery is as set forth in the table attached as Exhibit A hereto.

At the core of a relevance analysis is the concept of materiality -- that is whether the fact to be proved by the evidence is of consequence to the determination of the action. ER 401. Additionally, CR 26 guides us away from a simple admissibility determination, broadening the scope of discovery to those materials that are "reasonably calculated to lead to the discovery of admissible evidence. Even in this broad sense, I do not conclude that Hannah's (Petitioner's child from another relationship) treatment records for treatment that began shortly after Clara was born and while Hannah was 15-16 years old are material to the establishment of the parenting plan for Clara. The same is true for records from earlier this year. I am aware of

1 Respondent's theory that whatever Hannah's negative experiences may be, they can be traced
2 at least in part to Petitioner's parenting. Frankly, I find that theory a thin one when considering
3 that Clara and Hannah's circumstances in early childhood are separated by almost two decades.
4 (This does not even get to the issue of applicability of the physician-patient privilege.)

5 The relevance of the remaining categories of materials in the table should be self-
6 evident, so I will not provide an analysis here.

7 THEREFORE, IT IS HEREBY ORDERED: materials are ruled relevant or irrelevant as listed
8 in the table attached as Exhibit A hereto. Relevant materials will be released on August 14,
9 2015, absent any filings requesting action contrary to this Order, at which point hearing dates
10 and briefing schedule will be set.

11 Dated this 21 day of July, 2015

12 
13 _____
14 Bernard Veljacic
15 Superior Court Judge, Dept. 5

16 BFV:lmk

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EXHIBIT A

Index - in camera review

Subpoenaing party	Records	Bates stamp	Relevant	Not relevant
Roe	Pamela Kinsey	1 - 2	XX	
Roe	Rose Family Medicine	3 - 13		XX
Roe	NeuroHealth Assoc.	14 - 21		XX
Roe	Vancouver Clinic	22 - 112		XX
Breitreed	Priority Chiropractic	112 - 133		XX
Breitreed	Women's Health Today	134 - 171		XX
Breitreed	Elizabeth Cook	172 - 247		XX
Breitreed	Vancouver Clinic Steven Koh	248 - 288		XX
Breitreed	Monte Nido Eating Disorder	289 - 403		XX
Breitreed	Vancouver Clinic Stephen Miller	404 - 530		XX
Breitreed	Eating Recovery Center	531 - 1095		XX
Breitreed	Oregon Reproductive Med	1096 - 1232	XX	

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JUL 15 2016
Scott G. Weber, Clerk, Clatsop

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

IN RE: MARRIAGE OF:)
AIMEE GUARDARO,)
)
Petitioner,) Case No.: 15-3-01902-1
)
and) DECISION and ORDER ON
) MOTION FOR RECONSIDERATION
OTTO GUARDADO,)
)
Respondent.)

The court hereby denies Respondent's Motion for Reconsideration in its entirety for the following reasons:

1. Respondent did not identify the particular basis from CR 59 on which he is seeking reconsideration or new trial. See CR 59.
2. Respondent takes issue with the Court finding Petitioner's version of facts credible at the time of trial. This is the province of the Court and not a basis to order a new trial.
3. Respondent asserts that there is new evidence which, had he known what the petitioner would testify to, he would have brought at the time of trial. The purpose of pre-trial preparation is to learn and anticipate what the opposing witnesses may testify to. Although viewing the case in hindsight, the respondent may have a series of points he wishes to make, the fact of the matter is that none of the evidence he offers via his Motion for New Trial is evidence that was unavailable to him pretrial had he prepared ahead of time. Respondent's failure to anticipate argument or testimony does not justify a new trial.
4. The Court has made inferences from the testimony at trial. One of those is that respondent, in initially requesting ownership/possession of the embryo, sought to do so for the purpose of allowing the embryo to mature. The Court inferred that this would be done by implanting the embryo in a live woman with a uterus. The Court also

1 inferred that this would be his partner. If this inference is erroneous, and he would
2 implant the embryo in "someone" other than his partner, it still does not change the
3 outcome of the Court's decision in any way. It is legally insignificant.

- 4 5. Respondent in opening conceded that he could not force petitioner to reproduce, which
5 eliminated the option of respondent taking possession and using the embryo where
6 petitioner is objecting to this course of action. Contentions to the contrary post-trial are
7 misplaced.

8 Any other issues raised by respondent are dismissed pursuant to Paragraph 1 herein;
9 the Court stands by its written trial decision.

10 Dated this 15 day of July, 2016.

11 
12 _____
13 Bernard Veljacic
14 Superior Court Judge, Dept. 5

15 BVF:lmk

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SCOTT G. WEBER, CLERK
CLARK COUNTY

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Superior Court of Washington, County of Clark

In re the Marriage of:

No. 14-3-00510-2

AIMEE DENEEN GUARDADO

COA No. 49345-4-II

Petitioner,

and

ORDER DENYING ACCESS TO
RESTRICTED COURT RECORDS

OTTO MICHAEL GUARDADO

(ORDYMT)

Clerk's action required: 1, 7

Respondent.

ORDER DENYING ACCESS TO RESTRICTED COURT RECORDS

1. Money Judgment Summary

Judgment for	Debtor	Creditor	Amount	Interest
Fees and Costs (section 6)	Otto Guardado	Aimee Guardado	\$750	\$0
Yearly Interest Rate: 12%				
Lawyer: Dylan T. Trosper	represents: Aimee Guardado			
Lawyer: N/A	represents: Otto Guardado, pro se			

2. The Court has considered a Motion to allow Respondent, Otto Guardado, access to confidential court records ("the Dezsofi records") restricted by GR 22(c)(2).

> The Court Finds

3. Notice: All parties were properly served with the Motion.

ORDER DENYING ACCESS

Page 1 of 3

Tilden & Associates
4001 Main Street, Suite 327
VANCOUVER, WA 98663
(360) 695-0290

EXHIBIT D
PAGE 1 of 4

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PMC

1 **4. Privacy and safety v. public or personal interest**

2 The Court considered GR 15, GR 22, and the "*Ishikawa* factors". The motion should be
3 denied because the privacy and safety interests of the Petitioner and children in this case
4 outweigh Respondent's personal interests and the public interest in access. Compelling
5 reasons to seal the records existed at the time of sealing, and continue to exist.

6 Respondent did not make a sufficient showing of need to access the records. The records
7 are not part of the trial record, were excluded from trial upon Respondent's own request,
8 and the trial court did not consider the records when making its rulings. Respondent's
9 interest in access is even lesser now than it was at the time of sealing. Respondent does
10 not have a compelling interest in accessing the content of the records to further his
11 arguments on appeal, or for any other reason.

12 Respondent was present at the time of sealing, and was given opportunity to object.
13 Respondent did not object to sealing the records.

14 Sealing the records was, and remains, the least restrictive means available and effective
15 to protect the interests threatened. Petitioner and her minor daughter's privacy and safety
16 interests are threatened by the risk that Respondent may misuse the records to further
17 vexatious litigation, including the potential of publication. Excessive litigation on the part of
18 Respondent has been a pattern throughout this case, was a factor in the decision to seal,
19 and remains a factor now. Respondent's misuse of litigation has included credible
20 allegations of abnormal prying and investigation tantamount to harassment.

21 Petitioner has compelling privacy and safety interests in having her and her minor
22 daughter's mental health counseling records sealed. Records of this type are protected by
23 statute. The public has, at best, a negligible interest in having the documents unsealed.

24 The initial order to seal, and the present order to maintain the seal, are not broader in
25 application or duration than necessary to serve their purpose. The orders are specific to
the Dezsofi records, and the parties were and are allowed access to all records used in
the case.

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5. Attorney fees

Under RCW 26.09.140, and considering Respondent's status as a *pro se* litigant, an award of reasonable attorney fees is justified.

> The Court Orders

6. The Motion for Access is denied.

7. Respondent to pay Petitioner's attorney fees in the amount of \$750, interest to be calculated at 12% per annum.

Ordered.

2/15/17
Date


The Honorable Bernard F. Veljacic

Presented by:


Petitioner's attorney signs here + WSEA # 49281

~~Accepted and agreed.~~ This order may be signed by the Court without further notice to me:


Respondent signs here

Dylan T. Trosper February 9, 2017
Print Name Date

Otto M. Guardado February 9, 2017
Print Name Date

Objection to content. 

ORDER DENYING ACCESS

Page 3 of 3

Tilden & Associates
4001 Main Street, Suite 327
VANCOUVER, WA 98663
(360) 693-0290

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Superior Court of Washington
County of Clark

In re the Marriage of:

AIMEE DENEEN GUARDADO
Petitioner,

and

OTTO MICHAEL GUARDADO

Respondent.

NO. 14-3-00510-2

GR 17 DECLARATION

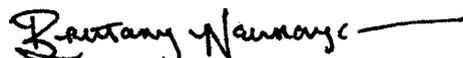
I, Brittany Newhouse, hereby declare the following:

I am the legal assistant for Tilden & Associates, attorneys for the Petitioner, Aimee Deneen Guardado. I am the age of 18 and I am not an interested party in the above-entitled matter.

On the 9th day of February, 2017, I received a signed email copy of the signature page for the Order Denying Access to Restricted Court Records. I have examined the document, determined it consists of four (4) pages, including this page, and found it to be complete and legible.

I certify and declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge, and if called upon to testify, I could and would testify competently thereto.

Signed at Vancouver, Washington on the 10th day of February, 2017.



Brittany Newhouse, Legal Assistant

GR 17 DECLARATION

TILDEN & ASSOCIATES
4001 MAIN STREET, SUITE 327
VANCOUVER, WA 98663
PHONE 360-695-0290
FAX 360-695-1000

MARIE N. TILDEN

ATTORNEY AT LAW PS
4001 MAIN STREET SUITE 327
VANCOUVER, WA 98663
PHONE 360-695-0290

June 6, 2017

State of Washington
Court of Appeals, Division II
950 Broadway, #300
Tacoma, WA 98402

*Re: Marriage of Guardado
No. 49345-4-11
Superior Court Cause No. 14-3-00510-2*

RECEIVED
JUN 08 2017
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Dear Appeals Court Clerk:

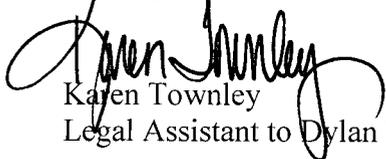
Dylan Trospen represents the Petitioner, Aimee Guardado. The Respondent, Otto Guardado, is represented pro se.

We are currently not set up with your e-file portal and therefore ask that you please file the following document:

1. Certificate of Service date 06/06/2017

Thank you for your time filing our document.

Best regards,



Karen Townley
Legal Assistant to Dylan Trospen

/kat

Enclosures

FILED
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DIVISION II
2017 JUN -8 AM 10:22
STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re the Marriage of:

OTTO M. GUARDADO,

Appellant,

No. 49345-4-II

and

Superior Court Cause

No. 14-3-00510-2

AIMEE D. GUARDADO,

Respondent.

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury under the laws of the state of Washington that I have served a true and correct copy, except where noted, of the following documents:

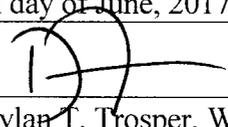
Respondent's Brief

Upon the individual(s) listed by the following means:

Otto Guardado
800 NW 75th Street
Vancouver, WA 98660

U.S. Postal Service (First Class)
 Facsimile to 360-694-7601
 Hand Delivery
 Email
On the 5th day of June, 2017 @ 4:37 pm

DATED: June 6, 2017

By: 
Name: Dylan T. Trosper, WSBA #49281
Title: Attorney for Petitioner

CERTIFICATE OF SERVICE

TILDEN & ASSOCIATES
4001 MAIN STREET, SUITE 327
VANCOUVER, WA 98663
PHONE 360-695-0290
FAX 360-934-4802