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Case No. 92674-3

SUPREME COURT OF THE STATE OF WASHINGTON

ADAM TORRES, *Appellant*

v.

MEGAN ROLAND, *Respondent.*

BRIEF OF RESPONDENT

DENNIS SCHROADER
Attorney for Respondent

Dennis E. Schroader, Jr.
Attorney at Law
1105 Tacoma Ave S
(253) 376-4595
WSBA # 49065
SchroaderLaw@gmail.com

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I. STATEMENT OF ISSUES

- A. Whether under RAP 4.2(a) the Court should dismiss the present appeal as improperly filed?
- B. Whether the Court should award attorney's fees to Respondent?

II. STATEMENT OF THE CASE

A. Procedural History

On June 30, 2015, Appellant (petitioner in the matter below) filed an Objection to Intended Relocation in the Superior Court of Thurston County, and petitions to modify the Parenting Plan and Child Support orders in this case. On November 10, 2015, a trial was held at which the Appellant litigated *pro se*, entered no exhibits into evidence, and presented no witness testimony other than his own. Appellant alleged at trial that Respondent and/or Respondent's then fiancé (now husband) were physically and emotionally abusing the child in question, but provided nothing but his testimony in support thereof. Respondent was represented by counsel, and gave testimony herself, as well as presented several witnesses who also gave sworn testimony. Respondent's testimony, and that of her witnesses, established a warm and loving relationship between mother and son, and affirmatively refuted allegations of abuse.

The trial court, after having heard the testimony of the witnesses, and argument of the parties, analyzed the requisite factors for consideration in a child relocation case under RCW 26.09.520. The court below, even after denying the statutory presumption to Respondent, ruled

in Respondent's favor. Presentment of final orders was made, and the orders were so entered, on December 11, 2015.

B. Statement of the Case on Appeal

On January 8, 2016, Appellant filed his "Notice of Appeal to the Supreme Court" with the clerk of the Superior Court of Thurston County. That notice was then forwarded to this Court as a petition for direct review. On or about June 18, Appellant served Respondent's counsel with "Appellant Brief."

In Appellant's briefing, he assigns error to the trial court's findings of fact, specifically that the trial court declined to find in favor of Appellant's allegations of abuse of the child. Appellant's Brief, p 4. Appellant also introduces facts not in evidence at trial. *Id.* at 4-5. Throughout Appellant's statement of the case, he attempts to convince this Court to relitigate the facts at trial. *Id.* at 5-12. Appellant's summary and argument point to no errors in law, and raise no issues involving "fundamental and urgent [matters] of broad public import which requires prompt and ultimate determination," RAP 4.2(a)(4), which is the only grounds upon which he could possibly establish a basis for direct review.

III. SUMMARY OF THE ARGUMENT

The Appellant, being held to the same standard as an attorney in these matters, has filed a frivolous appeal stating no grounds on which this Court, or a lower appellate court, could reasonably grant a reversal of any

of the trial court's decisions, or the final result. This Court should therefore dismiss the present appeal, and award reasonable attorney's fees to the Respondent.

IV. ARGUMENT

A. THE PRESENT APPEAL SHOULD BE DISMISSED BECAUSE APPELLANT HAS FAILED TO RAISE ISSUES SUFFICIENT FOR DIRECT REVIEW BY THIS COURT, AND BECAUSE APPELLANT PRESENTS NO ISSUES LEADING TO A REASONABLE POSSIBILITY OF REVERSAL BY THIS OR ANY OTHER APPELLATE COURT.

1. Direct review is inappropriate, because Appellant fails to identify any of the factors set forth in RAP 4.2(a).

This Court should dismiss the present appeal for failure to raise issues sufficient for review by this Court. The Rules of Appellate Procedure provide that:

A party may seek review in the Supreme Court of a decision of a superior court which is subject to review as provided in Title 2 only in the following types of cases:

- (1) *Authorized by Statute.* A case in which a statute authorizes direct review in the Supreme court.
- (2) *Law Unconstitutional.* A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.
- (3) *Conflicting Decisions.* A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.
- (4) *Public Issues.* A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) *Action Against State Officer*. An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

(6) *Death Penalty*. A case in which the death penalty has been decreed.

RAP 4.2(a) (italics in the original).

Although Title 2, as referenced above, permits review of this case, because it stems from a final judgment of a superior court, RAP 2.2(a)(1), none of the factors permitting direct review by this Court are present in the case at bar, or alleged in Appellant's Statement of Grounds for Direct Review or Appellant's Brief.

First, there is no statute authorizing direct review of a superior court's decision in a relocation trial. Second, Appellant makes no allegation, directly or indirectly, that the relocation statute, or any other applicable statute, is unconstitutional within the meaning of RAP 4.2(a)(2). Third, there are no conflicting decisions cited by Appellant. Fourth, Appellant identifies no issues of "broad public import," even though this is the only prong upon which he could possibly establish a basis for direct review. Fifth, no state officer is identified as a party. Sixth, and finally, this is not a death penalty case.

For these reasons, this Court should reject direct review.

2. Appellate review is inappropriate, because Appellant fails to identify any issues that could reasonably lead to reversal of the trial court's decision.

In the present case, the Appellant finds error with a number of the trial court's decisions and rulings, none of which are supported by the

record. In point one, the Appellant assigns error to the trial court's decision not to admit a photograph that the appellant allegedly took of a bruise on his son, and which the appellant alleges now, as he alleged at trial, was evidence of physical abuse at the Respondent's home. Statement of Grounds for Direct Review by the Supreme Court, p 1; Appellant's Brief, p 4, 13. Upon objection by Respondent's counsel, the trial court refused to admit the photograph for the Appellant's failure to properly authenticate.

In point two of Appellant's Statement of Grounds for Direct Review, the Appellant alleges that the trial court held a bias against him and his status as a disabled veteran, and that the court used such status as grounds for limiting his parenting role. No such indication was ever given by the trial court, and the parenting plan entered does not reflect any limitation of the Appellant's parenting role. The court merely permitted the Respondent to relocate within the state. *Id.* Point two in Appellant's Brief seems to ask a question requiring a legal analysis rather than providing one assigning error. Appellant's Brief, p. 2, 13.

In points three, four, six, and ten of Appellant's Statement of Grounds for Direct Review,, Appellant alleges facts that were also asserted at trial, but does not assign any legal error to the trial court. Statement of Grounds for Direct Review by the Supreme Court, pp 1-3. The trial court weighed the evidence and the relocation factors to be considered under RCW 26.09.520 on the record, and found in favor of the

Respondent. These points raised by the Appellant are nothing more than his attempt to relitigate the merits before this Court. In points five, seven, and eight, the Appellant alleges facts that took place after the trial, and are thus not part of the record on review. *Id.* In point nine, the Appellant expresses his confusion that the “evidence” he used in the temporary hearing on August 26, 2015, was not sufficient at the full relocation trial on November 10, 2015. *Id.* His confusion that the standards and burdens of proof are different for the different hearings is not a legal basis upon which an appellate court may reverse the court below. Finally, point eleven is nothing more than appeal to passion or prejudice on his behalf. *Id.* No one at any time during hearings, trial, or negotiations ever questioned the Appellant’s bravery, service to our country, or his sincerity.

With regard to the remaining points in Appellant’s Brief, points 3, 4, and 5, are similar attempts to relitigate facts alleged at trial, while points 6 and 7 allege facts arising after the trial, and thus are not properly before this Court, or any other appellate court, for review. Appellant’s Brief, pp 4-7, 13-14.

While it is beyond dispute that the Appellant is clearly sincere in his belief, one can be sincere and sincerely wrong; the Appellant here sincerely is. Nothing in his Statement of Grounds for Direct Review by the Supreme Court, or Appellant’s Brief raises any legal issues such that this Court should accept direct review, nor does it assign error as would be reviewable upon appeal as a matter of right to the Court of Appeals.

For these reasons, this Court should dismiss the present appeal.

B. THE COURT SHOULD AWARD ATTORNEY'S FEES TO RESPONDENT BECAUSE APPELLANT HAS WILLFULLY FAILED TO COMPLY WITH THE RULES OF APPELLATE PROCEDURE, AND HAS FILED A FRIVOLOUS APPEAL.

It is well established by a long line of Washington law that a *pro se* litigant is held to the same standard as an attorney. *Kelsey v. Kelsey*, 179 Wn. App. 360, 368, 317 P.3d 1096, 1100 (2014) *review denied*, 180 Wn.2d 1017, 327 P.3d 54 (2014) and *cert. denied*, 135 S. Ct. 451, 190 L. Ed. 2d 330 (2014); *West v. State, Washington Ass'n of Cty. Officials*, 162 Wn. App. 120, fn 13, 252 P.3d 406 (2011); *Edwards v. Le Duc*, 157 Wn. App. 455, 460, 238 P.3d 1187, 1190 (2010); *Carver v. State*, 147 Wn. App. 567, 575, 197 P.3d 678, 682 (2008); *Batten v. Abrams*, 28 Wn. App. 737, 739, 626 P.2d 984, 986 (1981). Thus, the Appellant in the present case, although proceeding *pro se*, must be held to account as though he were represented by counsel.

The Rules of Appellate Procedure permit the Court to sanction a party who “files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the ... failure to comply.” RAP 18.9.

1. Appellant has filed a frivolous appeal by attempting to relitigate the merits that were decided at trial instead of alleging any reversible errors of law, and presenting issues that lead to no reasonable possibility of reversal of the lower court's decisions.

When evaluating whether an appeal is frivolous for purposes of entitlement to an award of appellate attorney fees, the Court of Appeals

considers the following factors: (1) a civil appellant has a right to appeal; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; and (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Espinoza v. Am. Commerce Ins. Co.*, 184 Wn. App. 176, 202, 336 P.3d 115 (2014) (citing *Griffin v. Draper*, 32 Wn. App. 611, 616, 649 P.2d 123 (1982)).

Here, Appellant makes no legal argument whatsoever, and simply asks this Court to retry the case below. While Appellant and Respondent may sincerely and reasonably debate the merits of the facts as presented at trial, those facts have been heard already, and findings and conclusions have been entered. There are no debatable issues of law presented in any of Appellant's documents filed with this Court, and his argument is entirely without legal merit.

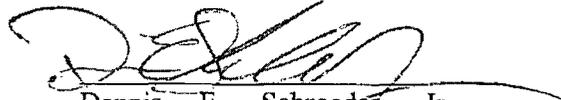
For these reasons, this Court should hold that the Appellant's appeal is frivolous, and award reasonable attorney's fees to Respondent..

V. CONCLUSION

For the reasons set out above, the Respondent respectfully requests this Court to dismiss the Appellant's action, to hold that this appeal is frivolous, and to award sanctions in the amount of reasonable attorney's fees for the necessity of responding to the same.

Dated: July 19, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis E. Schroeder, Jr.", written over a horizontal line.

Dennis E. Schroeder, Jr.
WSBA# 49065
1105 Tacoma Ave S
Tacoma, WA 98402

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Attached please find Brief of Respondent.

Regards,

Dennis Schroader
Attorney at Law

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Please find attached the Notice of Filing transcripts on appeal at the Supreme Court.

Aurora Shackell, RMR CRR

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