

No: 49397-7 II  
No: 49497-3-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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Kenneth Patarozzi, Petitioner

v.

Donald Edward Baxter,  
Laura Lee Baxter,  
Saun-Michelle Gaylor, Respondents

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MOTION FOR DISCRETIONARY REVIEW

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W.S.B.A.#900  
4002 Tacoma Mall Blvd., #203  
Tacoma, WA 98409

Robert B. Taub  
Attorney for Petitioner

A. IDENTITY OF PETITIONER

Kenneth James Patarozzi asks this court to accept review of the decision or parts of the decisions designated in Part B of this motion.

B. DECISION

The petitioner is requesting review of the following decisions by the Superior Court:

1. Order denying indigency, filed July 22, 2016
2. Order denying findings of indigency without oral argument, filed August 17, 2016
3. Findings of fact and conclusions of law re: respondent's motion for indigency, filed August 25, 2016.

C. ISSUES PRESENTED FOR REVIEW

1. Was the trial court required to hold a hearing in order to determine if the petitioner was indigent?
2. May a finding of indigency be denied based on the receipt of funds which are no longer available?
3. Is the petitioner indigent?
4. Is the petitioner entitled to appellate review at public expense?

If the petitioner is allowed to appeal the decision of the Superior Court on the merits, he intends to raise the following issues:

1. Was the court required to appoint an attorney to represent petitioner before deciding adequate cause?
2. Was adequate cause properly found based on evidence that was mostly hearsay and included unsworn declarations?
3. Was the court required to appoint a guardian ad litem to represent the children? As a result of the failure to appoint a guardian ad litem, the only information the court received about the children's experiences was from the Baxters, their friends and a therapist selected by them.
4. The problems experienced by the girls were a result of the petitioner being unemployed for 6 years, losing the family home to foreclosure, and being molested by their brother. At the time of trial, petitioner had a job and a place to live. The brother was no longer a part of the family. Was there sufficient evidence that the problems that

the children had suffered before placement with the Baxters would continue after trial?

5. Did the court properly find that petitioner was a hoarder and that this was a form of mental illness? There was no evidence to support the conclusion that hoarding is a form of mental illness. This finding was based on training the trial judge stated she had received before becoming a family court judge.

6. Were the court's findings established by clear, cogent and convincing evidence?

D. STATEMENT OF THE CASE

Petitioner is the father of two girls, who were 13 and 11 at the time of trial. He also has a son who was dropped as a party in this case. The children's mother, who was married to the petitioner, was also named as a respondent in the trial court. She left petitioner and the children around December 2008 and had no contact with them since. The children were then cared for exclusively by petitioner until August 2015, when he temporarily placed them with Donald and Laura Baxter, the petitioners below.

Petitioner had been laid off from his job in August 2009. He remained largely unemployed for the next 6 years. As a result, the home in which he was raising the children had been foreclosed. He had to vacate the home by the end of August 2015. On August 20, 2015 he arranged to have the children stay with the Baxters, who he had met through his

church. About one week after placing the children, he obtained a new job, where he presently continues to work. In January 2016 he was able to obtain a 3 bedroom apartment at a rent of only \$900.00 per month through the Kitsap County housing agency.

Petitioner eventually was able to obtain an attorney through Volunteer Legal Services, a qualified legal services provider in Pierce County. Petitioner's income was determined to be 98% of the limit for federal poverty guidelines. At the time of trial the court found the petitioner's net income to be \$2,170.00 per month. It set his support at \$527.00 per month for the girls. A copy of the order of child support is attached at Appendix A4. He also owed child support for his son, who had been removed as a party to this case. Prior to trial, the petitioner's child support for all 3 children had been set administratively. The Division of Child Support was deducting \$104.07 per week from petitioner's pay. Beginning July 10, 2016 the amount deducted for child support increased to \$160.15 per week (\$693.98 per month). After paying his rent and utilities, this left petitioner with about \$520.00 per month to cover food, gas, insurance, medical expenses and other necessary costs of living. As a result, he gave up his apartment and moved out August 15, 2016. By doing this, he saved \$950.00 per month on rent and electricity.

The petitioner now lives out of his car. Because he no longer lives in Port Orchard, he is able to save money on gas and tolls. However, other expenses have increased. Since petitioner has no place to cook or store

food, the cost of meals has increased. He has to eat some meals out. It costs him \$10.00 each time he takes a shower. Apparently, sleeping in your car is not cheap.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The right to parent one's children has been held to be a constitutionally protected right. See, *In re the Custody of Smith*, 137 Wn.2d 1, 13, 969 P. 2d 21 (1998), *aff'd sub nom, Troxel v. Granville*, 530 U.S. 57,120 S.Ct. 2054 147 L.Ed.2d 49 (2000). Parents have a fundamental right to autonomy in child rearing decisions. *In re Custody of Smith, supra*. In this case, the petitioner was deprived of all contact with this children. In order to have the parenting plan reviewed, he must first obtain a drug and alcohol evaluation and a mental health evaluation. If the children express an interest in seeing their father, he may then petition the court to request reunification counseling with a professional. A copy of these restrictions is found in the parenting plan at Appendix A17. The cost of these evaluations is estimated to be in the range of \$2,000.00 to \$3,000.00. Petitioner's ability to obtain them, given his financial circumstances, must be considered remote.

The court's decision is more onerous than a termination of parental rights in a juvenile dependency proceeding. At least, the court there would have had to first order reasonable services to correct any parental deficiencies. A termination of parental rights would have ended petitioner's obligation to pay child support. The decision of the court in

this case allows petitioner no contact with his children, very little hope of ever obtaining contact, and the burden of still having to pay child support.

The right to a waiver of fees on appeal has been established in cases involving issues much less significant than a total denial of parental rights. In *O'Conner v. Matzdorff*, 76 Wa.2d 589, 458 P.2d 154 (1969), the petitioner was seeking a writ of replevin and damages of \$215.50. In *Iverson v. Marine Bancorporation*, 83 Wa.2d 163, 517 P.2d 197 (1973), the petitioner was appealing a judgment in her favor of \$1,000.00, claiming that the award was inadequate. It can hardly be said that the relief that either petitioner was seeking in these cases rose to the same level of deprivation as a total denial of contact with one's children.

In order to be able to appeal, the petitioner is expected to pay a filing fee of \$290.00. He is required to arrange for a transcript of the trial record within 30 days after review is accepted, pursuant to RAP 9.2. The court reporter has estimated the cost for the transcript of trial, which only ran 1 day, is \$1,200.00. She requires a deposit of \$800.00 to begin preparation. A copy of the court reporter's estimate is attached as Appendix A24. Additional expenses will be incurred for preparation of clerk's papers and printing of briefs. Perhaps if petitioner were allowed to pay for these expenses gradually, he might be able to cover them over a two year period. That is not allowed under the rules of appellate procedure. More importantly, petitioner is denied all contact with his children and needs to have this case resolved promptly.

The trial court denied a finding of indigency without a hearing. As stated in the order entered August 17, 2016, its findings of indigency were denied without oral argument. There was no oral argument when the court entered its initial order of July 22, 2016 denying an order of indigency. The findings of fact and conclusions of law in the court's order of August 25, 2016 simply stated the court's findings and again were made without oral argument.

The determination of indigency is required to be made after a hearing. RAP 15.2(b). If a hearing had been held, the petitioner would have been able to show the court how limited his income was. He could have made clear that the rent of \$900.00 he was paying, while extremely reasonable, was a substantial part of his income. He could have discussed the bridge tolls and cost of gas incurred in commuting from Port Orchard to Tacoma. Any question the court might have had about his ability to raise funds could have been dealt with. Instead, the court decided summarily upon the papers submitted.

In its findings of August 25, 2016, the court held that an income of \$2,107.00 per month and an I.R.S. refund of \$4,997.00 were sufficient to establish that petitioner was not indigent. While a net income of \$2,107.00 per month maybe sufficient for subsistence, it allows very little money available to support the substantial costs of litigation. In *O'Conner v. Matzdorff, supra*, at 594 the court said that indigency does not require that a person suffer from absolute destitution or total insolvency. The court

said that indigency means a state of impoverishment or lack of resources which, when realistically reviewed in the light of everyday practicality, substantially and effectively impairs or prevents a litigant's pursuit of a remedy.

The court also found that petitioner's tax refund of \$4,997.00 meant he had sufficient funds to support an appeal. As petitioner explained in his declaration dated July 7, 2016, a copy of which is attached as Appendix A20, the tax refund was received because he had an earned income credit for 2015. Since the children no longer live with him, he is no longer eligible for this benefit. He also stated that he used \$3,000.00 of this money to pay 3 months rent on his apartment plus late fees. He bought a used car for \$1,000.00 in order to insure he could get to work. Since he lived in Port Orchard and worked in Tacoma, he needed an automobile. Paying \$1,000.00 for it can hardly be called extravagant. Other expenses were described, establishing that the tax refund had been exhausted. He can hardly be expected to pay the expenses of an appeal with money he no longer has.

Petitioner was screened for services and was found eligible by a qualified legal services provider. Under GR 34(a)(4), an individual found eligible for services by a qualified legal services provider is presumably indigent. The principle behind this rule is set forth in the comment as follows:

The adoption of this rule is rooted in the constitutional premises that every level of court has the inherent authority to

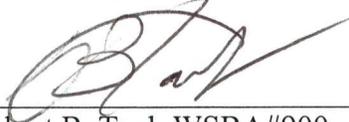
waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

F. CONCLUSION

The petitioner seeks an order of indigency allowing him to perfect his appeal from the Superior Court decision denying him any contact with his children. In order to be able to pursue his appeal, he will need a waiver of the appellate filing fee, expenses for clerk's papers and printing of briefs, and a transcript of the trial.

Date: September 14, 2016

Respectfully submitted,



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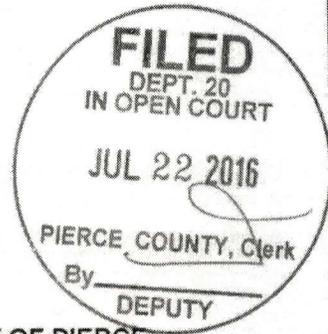
Robert B. Taub, WSBA#900  
Attorney for Petitioner

APPENDIX

	Pages
Order, filed July 22, 2016	A1
Order denying motion for finding of indigency, filed August 17, 2016	A2
Finding of fact conclusions of law re: respondent's motion for indigency, filed August 25, 2016	A3
Order of child support, filed July 1, 2016	A4
Final residential schedule, filed July 1, 2016	A13
Motion for an order of indigency, filed July 7, 2016	A20



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

RE PATAROZZI

DONALD + LAURA BAYNE  
Petitioner(s),

Cause No: 15-3-03602-4

ORDER

vs.

KENNETH PATAROZZI &  
SAUN-NICHELLE GAYLOR  
Respondent(s).

MOTION FOR ORDER OF INDIGENCY IS  
DENIED

DATED this 22 day of July, 2016.

Judge Kitty-Ann van Doorninck

Attorney for Petitioner(s)  
WSBA# 109-102

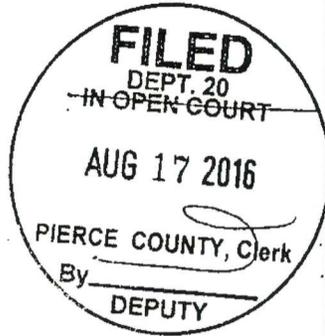
Attorney for Respondent(s)  
WSBA#

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15-3-03602-4 47433360 ORIND 08-18-16



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

DONALD EDWARD BAXTER,

Petitioner(s),

vs.

KENNETH JAMES PATAROZZI,

Respondent(s).

Cause No: 15-3-03602-4

ORDER DENYING MOTION FOR FINDINGS OF INDIGENCY WITHOUT ORAL ARGUMENT

(OR)

This matter having come on by way of Respondent's Motion for Findings of Indigency, and the Court having reviewed the file, Respondent's pleadings and having previously denied Respondent's Motion for Findings of Indigency on July 22, 2016;

IT IS HEREBY ORDERED that Respondent's Motion for Findings of Indigency is improper and denied without oral argument.

DATED this 17th day of August, 2016

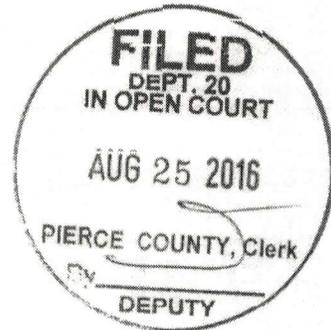
*[Signature]*  
JUDGE KITTY-ANN van DOORNINCK

ORDER DENYING MOTION WITHOUT ORAL ARGUMENT

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**IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

DONALD EDWARD BAXTER,

Petitioner(s),

vs.

KENNETH JAMES PATAROZZI,

Respondent(s).

Cause No: 15-3-03602-4

**FINDINGS OF FACT CONCLUSION OF LAW  
Re: RESPONDENT'S MOTION FOR  
INDIGENCY**

(OR)

This matter having come on before the court on July 22, 2016 by way of Respondent's Motion for Order of Indigency, and the Court having denied Respondent's motion, makes the following findings:

FINDINGS OF FACT

Pursuant to the declaration filed by Kenneth Patarozzi on August 4, 2016 where he declares his income as \$2109.00 per month and that he received an IRS refund of \$4997.00. This is consistent with the DSHS investigation to support the child support order.

CONCLUSIONS OF LAW

This court finds that he is not indigent so that the public will not need to pay for his appeal in this family law matter.

DATED this 25<sup>th</sup> day of August, 2016.

JUDGE KITTY-ANN van DOORNINCK

FINDINGS OF FACT

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15-3-03602-4 47177785 ORSW 07-05-16



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8 **SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE**

9 In re the Custody of:  
10 Jamie Lynn Patarozzi  
11 Tracy Cricket Patarozzi  
12 Children,

13 Donald Edward Baxter  
14 Laura Lee Baxter  
15 Petitioners,

16 and  
17 Saun-Michelle Gaylor  
18 Kenneth James Patarozzi  
19 Respondents.

No: 15-3-03602-4

Order of Child Support

Temporary Order (ORS)  
 Final Order (ORS)

Clerk's Action Required

17 I. JUDGMENT SUMMARY

18 1.1 JUDGMENT SUMMARY FOR ALL NON-MEDICAL EXPENSES

19 [X] OTHER: Back support is addressed in 3.20.

20 21 1.2 JUDGMENT SUMMARY FOR MEDICAL SUPPORT

22 Does Not Apply.

23 II. BASIS

24 2.1 TYPE OF PROCEEDING.

25 This order is entered pursuant to a Non Parental Custody Order.

26 2.2 CHILD SUPPORT WORKSHEET.

27 The child support worksheet which has been approved by the court is attached to this order  
28 and is incorporated by reference or has been initialed and filed separately and is incorporated  
by reference.

ORDER OF CHILD SUPPORT (TMORS, ORS) - 1  
WPF PS 01.0500 Mandatory (7/2015) - RCW 26.26.132  
IVD# 2592528

Mark Lindquist  
Pierce County Prosecuting Attorney's Office  
949 Court E  
Tacoma WA 98402-5616  
Family Support (253)798-7444  
(800)248-5130

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1 2.3 OTHER: The child, James A. Patarozzi is not included in this Order of Child Support  
2 because he no longer resides with the petitioners and has been dismissed from this action.  
3 Any prior Order of Child Support whether administrative or judicial remains in affect.

4 III. FINDINGS AND ORDER

5 IT IS ORDERED that:

6 3.1 CHILDREN FOR WHOM SUPPORT IS REQUIRED:

<u>Name</u>	<u>Age</u>
Tracykrick Patarozzi	11 years
Jamie-Lean Patarozzi	13 years

7 3.2 PERSON PAYING SUPPORT (OBLIGOR #1):

8 Name: **Kenneth J Patarozzi**  
9 Birth Date: 02/22/1970  
10 Service Address: [You may list an address that is not your residential address where you  
11 agree to accept legal documents.]  
12 4656 SE Nina Ln Apt H202  
13 Port Orchard WA 98366

14 **The obligor parent must immediately file with the court and the Washington State  
15 Child Support Registry, and update as necessary, the Confidential Information Form  
16 required by RCW 26.23.050.**

17 **The obligor parent shall update the information required by paragraph 3.2 promptly  
18 after any change in the information. The duty to update the information continues as  
19 long as any support debt remains due under this Order.**

20 For purposes of this Order of Child Support, the support obligation is based upon the  
21 following income:

22 C. The net income of the obligor is imputed at \$ 2170.00 because:  
23 the obligor's income is unknown.

24 The amount of imputed income is based on the following in order of  
25 priority: The court has used the first option for which there is  
26 information:

27  reliable historical rate of pay information

28 PERSON PAYING SUPPORT (OBLIGOR #2)

Name: **Saun Michelle Gaylor**  
Birth Date: 11/21/1979  
Service Address: [You may list an address that is not your residential address where you  
agree to accept legal documents.]  
198 S Peninsula Rd  
East Jordan MI 49727

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1 **The obligee parent must immediately file with the court and the Washington State**  
2 **Child Support Registry, and update as necessary, the Confidential Information Form**  
3 **required by RCW 26.23.050.**

4 **The obligee parent shall update the information required by paragraph 3.2 promptly**  
5 **after any change in the information. The duty to update the information continues as**  
6 **long as any support debt remains due under this Order.**

7 For purposes of this Order of Child Support, the support obligation is based upon the  
8 following income:

9 C. The net income of the obligee is imputed at \$ 1256.00 because:  
10 the obligee's income is unknown.

11 The amount of imputed income is based on the following in order of  
12 priority: The court has used the first option for which there is  
13 information:

- 14  minimum wage in the jurisdiction where the parent lives at full-time earnings  
15 because the parent:
- 16  has a recent history of minimum wage jobs
- 17  recently came off public assistance, general assistance-unemployable,  
18 supplemental security income, or disability.
- 19  was recently released from incarceration , or
- 20  is a high school student;
- 21  no reported work history but resides in Michigan.

22 3.3 PERSON RECEIVING SUPPORT (OBLIGEE):

23 Name: State of Washington and/or Donald and Laura Baxter  
 24 Birth Date: KNOWN TO REGISTRY  
 25 Service Address: [You may list an address that is not your residential address where you  
 26 agree to accept legal documents.] KNOWN TO REGISTRY

27 **The obligee parents must immediately file with the court and the Washington State**  
28 **Child Support Registry, and update as necessary, the Confidential Information Form**  
29 **required by RCW 26.23.050.**

30 **The obligee parents shall update the information required by paragraph 3.3 promptly**  
31 **after any change in the information. The duty to update the information continues as**  
32 **long as any support debt remains due under this Order.**

33  Other: The obligees are not parents; they are the caretakers who have custody of the  
34 children; they are receiving public assistance, and their right to child support has  
35 thus been assigned to the State of Washington.

36 The obligor may be able to seek reimbursement for day care or special child rearing expenses  
37 not actually incurred. RCW 26.19.080

38 3.4 SERVICE OF PROCESS.

39 **SERVICE OF PROCESS ON THE OBLIGOR AT THE ADDRESS REQUIRED BY**  
40 **PARAGRAPH 3.2 OR ANY UPDATED ADDRESS, OR ON THE OBLIGEE AT THE**

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1 ADDRESS REQUIRED BY PARAGRAPH 3.3 OR ANY UPDATED ADDRESS, MAY  
2 BE ALLOWED OR ACCEPTED AS ADEQUATE IN ANY PROCEEDING TO  
3 ESTABLISH, ENFORCE OR MODIFY A CHILD SUPPORT ORDER BETWEEN  
THE PARTIES BY DELIVERY OF WRITTEN NOTICE TO THE OBLIGOR OR  
OBLIGEE AT THE LAST ADDRESS PROVIDED.

4 3.5 TRANSFER PAYMENT.

5 The obligor parent shall pay the following amounts per month for the following children:

6	<u>Name</u>	<u>Amount Obligor 1</u>	<u>Amount Obligor 2</u>
7	Tracy Cricket Patarozzi	\$263.50	\$ 50
8	Jamie Lynn Patarozzi	\$263.50	\$ 50
9	TOTAL MONTHLY AMOUNT	\$527.00	\$100

10  The parents' combined monthly net income exceeds \$12,000 and the court sets child  
support in excess of the presumptive amount for \$12,000 because:

11  The court finds that the obligor's child support obligations owed for all his or her  
12 biological or legal children exceeds 45% of his or her net income and it is  just  
13  unjust to apply the 45% limitation based upon the best interests of the child(ren)  
and the circumstances of each parent as follows: The court has not make a finding  
14 that it is unjust to exceed the 45% limitation.

15  If one of the children changes age brackets, the child support shall be as follows:

16  This is a downward modification that has caused an overpayment of \$ \_\_\_\_\_. This  
amount shall be repaid or credited as follows:

17  This is an upward modification that has caused an underpayment of \$ \_\_\_\_\_. This  
amount shall be paid as follows:

18 **THE OBLIGOR PARENT'S PRIVILEGES TO OBTAIN OR MAINTAIN A  
19 LICENSE, CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR OTHER  
20 SIMILAR DOCUMENT ISSUED BY A LICENSING ENTITY EVIDENCING  
21 ADMISSION TO OR GRANTING AUTHORITY TO ENGAGE IN A PROFESSION,  
OCCUPATION, BUSINESS, INDUSTRY, RECREATIONAL PURSUIT, OR THE  
22 OPERATION OF A MOTOR VEHICLE, MAY BE DENIED, OR MAY BE  
SUSPENDED IF THE OBLIGOR PARENT IS NOT IN COMPLIANCE WITH THIS  
SUPPORT ORDER AS PROVIDED IN CHAPTER 74.20A REVISED CODE OF  
23 WASHINGTON.**

24 3.6 STANDARD CALCULATION.

25 \$ 631 per month. (See Worksheet, line 17.)  
26 \$ 100 per month. (See Worksheet, line 17.)

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1 3.7 REASONS FOR DEVIATION FROM STANDARD CALCULATION.

2 The child support amount ordered in paragraph 3.5 does deviate from the standard  
3 calculation for Obligor #1 because: See 2.3 of this order and Section 26 of the Child Support  
Worksheets.

4 The child support amount ordered in paragraph 3.5 does not deviate from the standard  
5 calculation for Obligor #2.

6 3.8 REASONS WHY REQUEST FOR DEVIATION WAS DENIED.

7 Does not apply. A deviation was requested.

8 3.9 STARTING DATE AND DAY TO BE PAID:

9 **Starting Date: June 1, 2016**  
10 **Day(s) of the month support is due: 1st**

11 3.10 INCREMENTAL PAYMENTS.

12 Does not apply.

13 3.11 MAKING SUPPORT PAYMENTS.

14 *Enforcement and collection:* The Division of Child Support (DCS) provides support  
15 enforcement services for this case because:  This is a public assistance case  this is a  
16 case in which a parent has requested services from DCS  a parent has signed the  
17 application for services from DCS on the last page of this support order. (Check all that  
18 apply.)

19 Support payments shall be made to:

20 **Washington State Support Registry**  
21 **P. O. Box 45868**  
22 **Olympia, WA 98504**  
23 **Phone: 1-800-922-4306 or 1-800-442-5437**

24 A party required to make payments to the Washington State Support Registry will not receive  
25 credit for a payment made to any other party or entity. The obligor parent shall keep the  
26 registry informed of whether he or she has access to health insurance coverage at reasonable  
27 cost and, if so, provide the health insurance policy information.

28 3.12 WAGE WITHHOLDING

Withholding action may be taken against wages, earnings, assets, or benefits, and liens  
enforced against real and personal property under the child support statutes of this or any  
other state, without further notice to the obligor parent at any time after entry of this order  
unless an alternative provision is made below:

[If the court orders immediate wage withholding in a case where DCS does not provide  
support enforcement services, a mandatory wage assignment under Chap. 26.18 RCW must  
be entered and support payments must be made to the Support Registry.]

Wage withholding, by notice of payroll deduction or other income withholding action  
under Chapter 26.18 RCW or Chapter 74.20A RCW, without further notice to the

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obligor, is delayed until a payment is past due, because :  
 the parties have reached a written agreement which the court approves that provides for an alternate arrangement.  
 the Division of Child Support provides support enforcement services for this case [see 3.11] and there is good cause [as stated below under "Good Cause"] not to require immediate income withholding which is in the best interests of the child and, in modification cases, previously ordered child support has been timely paid:  
 Good Cause:

3.13 TERMINATION OF SUPPORT:

Support shall be paid: until the children reach(es) the age of 18 or as long as the children remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

3.14 POST SECONDARY EDUCATIONAL SUPPORT:

The right to request for post secondary support is reserved until support terminates, provided that the right is exercised before support terminates as set forth in paragraph 3.13.

3.15 PAYMENT FOR EXPENSES NOT INCLUDED IN THE TRANSFER PAYMENT.

Does not apply because all payments, except medical, are included in the transfer payment.

The mother shall pay 36.7% and the father 63.3% (each parent's proportional share of income from the child support schedule worksheet, line 6) of the following expenses incurred on behalf of the children listed in Paragraph 3.1:

- daycare that is work-related
- education expenses
- long distance transportation expenses
- other:

Payments shall be made to  the provider of the service or  the parent receiving the transfer payment.

3.16 PERIODIC ADJUSTMENT.

Does not apply.

3.17 INCOME TAX EXEMPTIONS:

- Does not apply.
- Tax exemption for the children shall be allocated to the petitioners.
- The parents shall sign the federal income tax dependency exemption waiver.
- Other:

**Under federal law, the parent who claims the income tax exemption for the child may be subject to a tax penalty if the child does not have medical insurance coverage.**

3.18 MEDICAL SUPPORT - HEALTH INSURANCE

Both parents shall be responsible for ensuring the child(ren) listed in paragraph 3.1 are covered by health insurance coverage as follows:

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3.18.1 HEALTH INSURANCE

[X] The court has insufficient evidence to decide how insurance coverage for the children should be provided. Both parent's medical support obligations may be enforced by the Division of Child Support or by the other parent under RCW 26.18.170 as described in paragraph 3.18.2, below.

OR

[ ] The [ ] mother [ ] father shall pay the health insurance premium because the court has considered the needs of the child, the cost and extent of coverage, and the accessibility of coverage.

[ ] The other parent shall contribute their proportionate share of the premium paid. (check one)

[ ] The health insurance premium is included in the worksheets. No separate payment is needed.

[ ] The health insurance premium is not included in the worksheets. Separate payment is needed. A parent or nonparent custodian may ask DCS or the court to enforce payment of the proportional share.

[ ] The other parent is excused from contributing to health insurance premiums for state purposes because:

Neither parent must pay an amount for health insurance premiums that is more than twenty-five percent (25%) of their basic support obligation, unless otherwise ordered by the court.

[ ] Other:

Both Parents' obligation:

If the child(ren) is(are) receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the child(ren) listed paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and

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1 Health Services may seek direct enforcement of the coverage through the other  
2 parent's employer or union without further notice to the other parent as provided  
3 under Chapter 26.18 RCW.

### 3.18.2 CHANGE OF CIRCUMSTANCES AND ENFORCEMENT

4 A parent required to provide health insurance coverage must notify both the Division of  
5 Child Support and the other parent when coverage terminates.

6 If the parents' circumstances change, or if the court has not specified how medical support  
7 shall be provided, the parents' medical support obligations will be enforced as provided in  
8 RCW 26.18.170. If a parent does not provide proof of accessible coverage for the children  
9 through private insurance, a parent may be required to satisfy his or her medical support  
10 obligation by doing one of the following, listed in order of priority:

- 11 1) Providing or maintaining health insurance coverage through the parent's  
12 employer or union at a cost not to exceed 25% of that parent's basic support  
13 obligation;
- 14 2) Contributing the parent's proportionate share of a monthly premium being  
15 paid by the other parent for health insurance coverage for the children listed  
16 in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's  
17 basic support obligation; or
- 18 3) Contributing the parent's proportionate share of a monthly premium paid by  
19 the state if the child receives state-financed medical coverage through DSHS  
20 under RCW 74.09 for which there is an assignment.

21 A parent seeking to enforce the obligation to provide health insurance coverage may apply  
22 for support enforcement services from the Division of Child Support; file a motion for  
23 contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show  
24 Cause re Contempt); or file a petition.

### 3.19 UNINSURED MEDICAL EXPENSES.

25 Both parents have an obligation to pay their share of uninsured medical expenses. The father  
26 shall pay 63.3% of uninsured medical expenses (unless stated otherwise, the father's  
27 proportional share of income from the Worksheet, line 6) and the mother shall pay 36.7% of  
28 uninsured medical expenses (unless stated otherwise, the mother's proportional share of  
income from the Worksheet, line 6).

### 3.20 BACK CHILD SUPPORT.

Unpaid back child support that may be owed is not affected by this order.

Back interest that may be owed is not affected by this order.

### 3.21 PAST DUE UNPAID MEDICAL SUPPORT

Unpaid medical support that may be owed is not affected by this order.

Back interest that may be owed is not affected by this order.

All

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1 3.22 OTHER UNPAID OBLIGATIONS

2 [X] Other obligations that may be owed are not affected by this order.

3 [X] Back interest that may be owed is not affected by this order.

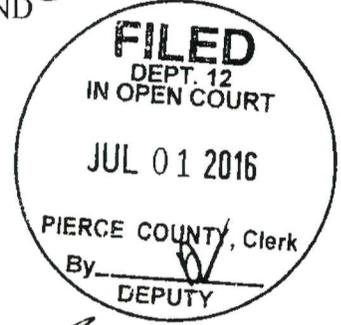
4 3.23 OTHER

5 DATED: July 1, 2016

*Stephanie Arend*  
JUDGE STEPHANIE AREND

7 Presented by:

8 Monica I. LaBeck  
9 Monica I. LaBeck, WSBA #14153  
10 Deputy Prosecuting Attorney



11 Approved for Entry;  
12 Notice of Presentation Waived:

12 Donald E Baxter  
13 Donald Baxter  
14 Petitioner Pro se

*Laura Baxter*  
Laura Baxter  
Petitioner Pro se

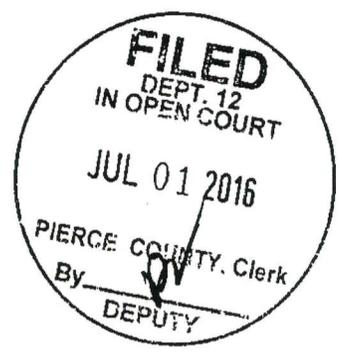
16 Saun Michelle Gaylor  
17 Respondent Pro se

18 Kenneth J Patarozzi *ATTY FOR*  
19 Respondent Pro se

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**Superior Court of Washington  
County of Pierce**

**Jamie-Leann, and Tracy-Kricket  
Patarozzi**

**Donald and Laura Baxter** Child(ren),

Petitioner(s),

and  
**Kenneth J. Patarozzi and  
Saun-Michelle Gaylor**  
Respondent(s).

**No. 15-3-03602-4**

**Residential Schedule**  
 Proposed (PRS)  
 Temporary (TRS)  
 Final Order (RS)

This residential schedule is:

- the final residential schedule signed by the court pursuant to a nonparental custody decree signed by the court on this date or dated 07/01/2016.
- the final residential schedule signed by the court pursuant to an order signed by the court on this date or dated 07/01/2016, which modifies a previous residential schedule or custody decree.  a temporary residential schedule signed by the court.
- proposed by (name) Donald and Laura Baxter.

***It is Ordered, Adjudged and Decreed:***

**I. General Information**

This residential schedule applies to the following children:

<u>Name</u>	<u>Age</u>
<b>Jamie-Leann Patarozzi</b>	<b>12</b>
<b>Tracy-Kricket D. Patarozzi</b>	<b>10</b>

**II. Basis for Restrictions**

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Under certain circumstances, as outlined below, the court may limit or prohibit a person's contact with the child(ren) and the right to make decisions for the child(ren).

**2.1 Limiting Conduct of Kenneth J. Patarozzi (RCW 26.10.160)**

- Does not apply.
- Kenneth J. Patarozzi's residential time with the children shall be limited or restrained completely because  Kenneth J. Patarozzi has engaged in the conduct which follows:

- Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions (this applies only to parents, not to a person who resides with a parent).
- Physical, sexual or a pattern of emotional abuse of a child.
- A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.
- A conviction as an adult or adjudication as a juvenile of a sex offense involving a minor.
- A finding that the person is a sexual predator.
- Other: Illegal drug <sup>use</sup> ~~in the same room as Jamie-Leann and Tracy-Kricket Patarozzi, blowing marijuana smoke in the faces of the children that resulted in the children intoxication.~~

**2.2 Limiting Conduct of Saun-Michelle Gaylor (RCW 26.10.160)**

- Does not apply.
- Saun-Michelle Gaylor's residential time with the children shall be limited or restrained completely because  Saun-Michelle Gaylor has engaged in the conduct which follows:

- Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions (this applies only to parents, not to a person who resides with a parent).
- Physical, sexual or a pattern of emotional abuse of a child.
- A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.
- A conviction as an adult or adjudication as a juvenile of a sex offense involving a minor.
- A finding that the person is a sexual predator.
- Other:

**III. Residential Schedule**

These provisions set forth where the child(ren) shall reside each day of the year and what contact the child(ren) shall have with each party.

**3.1 Schedule for Children Under School Age**

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There are no children under school age.  
 Prior to enrollment in school, the child(ren) shall reside with (nonparental custodian) Donald and Laura Baxter, except for the following days and times when the child(ren) will visit the following parties:

Kenneth J. Patarozzi from: (day and time) N/A to (day and time) N/A [ ] every week [ ] every other week [ ] the first and third week of the month [ ] the second and fourth week of the month [X] other: **Never**

Saun Michelle Gaylor from: (day and time) N/A to (day and time) N/A [ ] every week [ ] every other week [ ] the first and third week of the month [ ] the second and fourth week of the month [X] other: **Never**

### 3.2 School Schedule

Upon enrollment in school, the child(ren) shall reside with (nonparental custodian) Donald E and Laura L Baxter, except for the following days and times when the child(ren) will visit the following parties:

Kenneth J. Patarozzi from: (day and time) \_\_\_\_\_ to (day and time) \_\_\_\_\_ [ ] every week [ ] every other week [ ] the first and third week of the month [ ] the second and fourth week of the month [X] other: ~~Never~~ **None at this time.**

Saun Michelle Gaylor from: (day and time) \_\_\_\_\_ to (day and time) \_\_\_\_\_ [ ] every week [ ] every other week [ ] the first and third week of the month [ ] the second and fourth week of the month [X] other: **Never**

[ ] The school schedule will start when each child begins [ ] kindergarten [ ] first grade [ ] other:  
**Does not apply**

### 3.3 Schedule for Winter Vacation

The child(ren) shall reside with (nonparental custodian) Donald E and Laura L Baxter during winter vacation, except for the following days and times when the child(ren) will visit the following parties:

Same as 2.1 and 2.2 \_\_\_\_\_ :

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**3.4 Schedule for Other School Breaks**

The child(ren) shall reside with (nonparental custodian) Donald E and Laura L Baxter during other school breaks, except for the following days and times when the child(ren) will visit the following parties:

Same as 2.1 and 2.2 \_\_\_\_\_:

**3.5 Summer Schedule**

Upon completion of the school year, the child(ren) shall reside with (nonparental custodian) Donald E and Laura L Baxter \_\_\_\_\_, except for the following days and times when the child(ren) will visit the following parties:

Same as school year schedule.

Other:

Same as 2.1 and 2.2 \_\_\_\_\_:

**3.6 Vacations**

Does not apply.

The schedule for vacation is as follows:

**3.7 Schedule for Holidays**

The residential schedule for the child(ren) for the holidays listed below is as follows:

New Year's Day	Same as 2.1 and 2.2 _____
Martin Luther King Day	Same as 2.1 and 2.2 _____
Presidents' Day	Same as 2.1 and 2.2 _____
Memorial Day	Same as 2.1 and 2.2 _____
July 4 <sup>th</sup>	Same as 2.1 and 2.2 _____
Labor Day	Same as 2.1 and 2.2 _____
Veterans' Day	Same as 2.1 and 2.2 _____
Thanksgiving Day	Same as 2.1 and 2.2 _____
Christmas Eve	Same as 2.1 and 2.2 _____
Christmas Day	Same as 2.1 and 2.2 _____

For purposes of this residential schedule, a holiday shall begin and end as follows (set forth times):

Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

Other: No visitation from either biological parent.

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**3.8 Schedule for Special Occasions**

The residential schedule for the child(ren) for the following special occasions (for example, birthdays) is as follows:

Special occasion:

Mother's Day \_\_\_\_\_ Same as 2.1 and 2.2 \_\_\_\_\_  
Father's Day \_\_\_\_\_ Same as 2.1 and 2.2 \_\_\_\_\_  
\_\_\_\_\_

[X] Other: No visitation from either biological parent.

**3.9 Priorities Under the Residential Schedule**

[X] Does not apply because the parents have no visitation or restricted visitation.

[ ] Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

[ ] Rank the order of priority, with 1 being given the highest priority:

\_\_\_\_\_ winter vacation (3.3) \_\_\_\_\_ holidays (3.7)  
\_\_\_\_\_ school breaks (3.4) \_\_\_\_\_ special occasions (3.8)  
\_\_\_\_\_ summer schedule (3.5) \_\_\_\_\_ vacation with parents (3.6)

[x] Other: No visitation from either biological parent.

**3.10 Restrictions**

[X] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

[ ] Kenneth J. Patarozzi's residential time with the children shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply: No visitation from either biological parent.

**3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child(ren) shall be as follows:

Does not apply see 2.1 and 2.2

**3.12 Other**

No visitation from either biological parent.

*This Parenting Plan may be reviewed upon FATHER completing a drug/alcohol evaluation and a mental health evaluation, and the children express an interest in seeing him. Upon completion of these evals Father may request reunification counseling with a professional.*

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### 3.13 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within five days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of a Child.).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

**If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.**

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, [Objection to Relocation/Petition for Modification of Custody Decree/parenting Plan/Residential Schedule]. The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

#### IV. Other Provisions

There are no other provisions.

There are the following other provisions:

#### V. Declaration for Proposed Residential Schedule

Does not apply.

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[ ] (Only sign if this is a proposed residential schedule.) I declare under penalty of perjury under the laws of the state of Washington that this residential schedule has been proposed in good faith and that the statements in Part II of this Schedule are true and correct.

Signature \_\_\_\_\_ Date and Place (City and State) of Signature \_\_\_\_\_

Signature \_\_\_\_\_ Date and Place (City and State) of Signature \_\_\_\_\_

**VI. Order by the Court**

It is ordered, adjudged and decreed that the residential schedule set forth above is adopted and approved as an order of this court.

**Warning.** Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

If a party fails to comply with a provision of this plan, the other parties' obligations under the plan are not affected.

Dated: July 1, 2016 \_\_\_\_\_  
*Stephonia Alford*  
**Judge/Commissioner**

Presented by: \_\_\_\_\_ Approved for entry: \_\_\_\_\_  
*Donald E Baxter*  
Signature of Party or Lawyer/WSBA No. \_\_\_\_\_ Signature of Party or Lawyer/WSBA No. \_\_\_\_\_

Donald E Baxter \_\_\_\_\_ Laura L Baxter \_\_\_\_\_  
Print Name \_\_\_\_\_ Print Name \_\_\_\_\_

*DBT* \_\_\_\_\_ *Laura L Baxter* \_\_\_\_\_  
Signature of Party or Lawyer/WSBA No. 23-102 \_\_\_\_\_ Signature of Party or Lawyer/WSBA No. \_\_\_\_\_

Robert Taub \_\_\_\_\_ \_\_\_\_\_  
Print Name \_\_\_\_\_ Print Name \_\_\_\_\_



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July 07 2016 2:25 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 15-3-03602-4

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ORIGINAL

SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE

In re the Custody of:

JAMIE LYNN PATAROZZI, and  
TRACY-KRICKET PATAROZZI,  
Children,

DONALD EDWARD BAXTER, and  
LAURA LEE BAXTER,  
Petitioners,

and

SAUN-MICHELLE GAYLOR, and  
KENNETH JAMES PATAROZZI,  
Respondents.

No: 15-3-03602-4

MOTION FOR ORDER OF  
INDIGENCY

Comes now Kenneth James Patarozzi, respondent, and moves, pursuant to GR34 and RAP 15.2, for an order of indigency permitting respondent to appeal the non-parental custody decree, findings of fact and conclusions of law, residential schedule, and order of child support with worksheets, all entered July 1, 2016.

MOTION FOR ORDER  
OF INDIGENCY-1

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Robert Taub & Associates  
family lawyers  
4002 Tacoma Mall Blvd., Suite 203  
Tacoma, Washington 98409  
(253) 475-3000

1 This motion is based upon the respondent's declaration, set forth below,  
2 Respondent's financial declaration, dated July 7, 2016, sealed financial source  
3 documents, filed July 6, 2016, memorandum of law in support of appeal, and upon the  
4 court file herein

5 Dated: July 7, 2016.

6   
7 Robert B. Taub, WSBA#900  
8 Attorney for Respondent/Father

9 Kenneth James Patarozzi, hereby states as follows:

10 I ask the court to order the following to be provided at public expense:  
11 all filing fees, reproduction and distribution of briefs, preparation of a verbatim report of  
12 proceedings, and preparation of necessary clerk's papers. There is no way that I can  
13 afford to pay these expenses Attached is an estimate of \$1,200.00 for the cost of the trial  
14 transcript. I understand the filing fee for an appeal is \$290.00. In addition to that, there  
15 will be expenses for reproduction and distribution of the appellate brief and preparation  
16 of clerk's papers.

17 My net income is only \$2,109.00 per month. From this I have to pay \$950.00 per  
18 month for my rent and electricity. The court set child support at \$527.00 per month for  
19 my two girls. I also have to pay \$142.00 per month for the support of my son James, who  
20 will be starting his senior year of high school this September. These expenses alone total  
21 \$1,619.00, which is 77% of my net income and leaves me with only \$490.00 per month  
22 to buy food, pay for gas to get to work, medical and car insurance, and other necessary  
23 expenses.

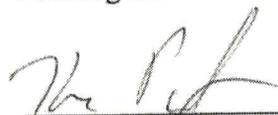
1 The court will note that for the 2015 tax year I had a tax refund of \$6,832.00. This  
2 was based upon the child tax credit and earned income credit. I was eligible for these  
3 credits in 2015, since the children had lived with me for more than 6 months that year.  
4 This tax refund was reduced by \$1,835.00 because of the child support debt I owed after  
5 the children had been placed with the petitioners. My net refund was \$4,997.00.

6 After I received the tax refund, I used \$3,000.00 to pay 3 months rent on my  
7 apartment plus late fees. I had a bill for \$300.00 for a storage unit I needed to store my  
8 belongings after my home was foreclosed. I paid \$400.00 to repair my automobile. Even  
9 after the repairs, the car was not reliable and I ended up spending another \$1,000.00 to  
10 purchase a used car. I need to have a car in order to be able to get to work from my home  
11 in Port Orchard to Concrete Technology in Tacoma. I paid \$250.00 for a supervised visit,  
12 which only lasted 2 minutes. Arranging for the testimony of Kate Lee at trial costs  
13 \$150.00. The total of all these expenses is \$5,100.00. This more than exhausted my tax  
14 refund. Since April I have missed two weeks work without pay due to illness and car  
15 problems. It costs \$75.00 per week to commute to work. At this time, I have no savings  
16 and I am living on the edge of financial ruin.

17 I authorize the court to obtain verification information regarding my  
18 financial status from banks, employers, or other individuals or institutions, if appropriate.  
19 I will immediately report to the court any change in my financial status which materially  
20 affects the court's finding of indigency.  
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1 I seek review in good faith. A brief statement of the nature of the case and the  
2 issues sought to be reviewed has been prepared by my lawyer, who is handling this case  
3 without fees. I was referred to him by Volunteer Legal Services, who reviewed my  
4 finances and determined I was eligible for pro bono legal services.

5 Dated this 7<sup>th</sup> day of July, 2016 at Tacoma, Washington.

6 

7 Kenneth James Patarozzi

# Baxter vs. Patarozzi

Jan-Marie Glaze

Tue 7/5/2016 8:55 AM

Inbox

To:taubfamilylawyers@msn.com <taubfamilylawyers@msn.com>;

Mr. Taub ~

The estimate for the trial transcript for Baxter vs. Patarozzi is \$1200. If you would like me to prepare that transcript, please remit a deposit to me in the amount of \$800. The balance will be due prior to delivery. If this is for an appeal, please follow the RAPs.

Thank you,

--

Jan-Marie Glaze  
Official Court Reporter  
Department 12, Judge Arend  
253-798-6584

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