

FILED
Court of Appeals
Division II
State of Washington
12/12/2019 8:41 AM

No. 50009-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re: Marriage of Masons:

TATYANA MASON,
Appellant *pro-se*,

And

JOHN MASON and MS. ROBERSON,
Defendants.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY,

Recusal Judge Hirsch

BRIEF OF APPELLANT

Tatyana Mason, *pro se*

P. O. Box 6441
Olympia, WA 98507
Tatyanam377@gmail.com
206-877-2619

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iv

WASHINGTON & IMMIGRATION STATUES..... v

I. INTRODUCTION.....1

II. THIS COURT SHOULD DETERMINE.....3

III. ASSIGMENT OF ERROR.....4

IV. ISSUES PERTAINING TO ASSIGMENT OF ERROR.....5

V. STATEMENTS OF THE CASE.....6

A. Mr.Gairson’s testimony and his report for the 2016 trial, provides all necessary factual background on Tatyana’s immigration damaged status which is directly contradicts to the opposed party’s falsehoods in the 49839-1-II and 45835-7-II cases.....6

1. Mr. Gairson’s report and testimony were fond credible by the 2016 trial court and this court approved his fees.....6

2. John brought Tatyana to the U.S. on K-1 visa.....7

3. John abused Tatyana through her immigration status during their marriage and after divorce.....7

B. During the majority of marriage and after, Tatyana and her children were not supported By John and she lived in **SafePlace** on DSHS and her school loan in order to survive.....10

C. D.V. Protection order issued against John.....13

D. After final divorce John continue his control over Tatyana’s life by using the court system in the manner of which it was not designed.....13

E. John with help of his counsel and Ms Hurt fabricated

evidence and bad faith interfered relationship between Tatyana and her children.....	14
F. In the 2013 trial, Judge Hirsch found Mr. Hurt, GAL Mr. Smith and John not credible and removed them from the case.....	16
G. Coaching and Inappropriate communication with the children seems to be clearly linked to behavior by John.....	17
H. Judge Hirsch’s 2013 and 2017 orders undermined Immigration law and marital contract, enforced Tatyana to violate INA 245(c) and 274a law by blamed Tatyana for not able to afford expensive parenting evaluation and high cost for re-unification with the children.....	18
I. 45835-7-II appeal.....	19
J. On February 27, 2015 USCIS directed lower court to vacate the 2013 orders.....	20
K. The 2016 trial court found the 2013 court’s orders fundamentally wrong and unjust.....	21
Judge Wickham did not enforced I-864 but only considered.....	22
L. CR 11(a) Sanction imposed on John and his counsel for Frivolous pleadings, misstatements of facts and bad faith.....	23
G. 49839-1-II John’s appeal.....	25
H. The January 25, 2017 hearing in front of judge Hirsch.....	26
VI. ARGUMENT.....	27
A. TRIAL COURT’S DUTY TO EXERCISE ITS DISCRETION AND FIX THE AMOUNT OF THE BOND TO STAY. A SUPERSEDEAS BOND AMOUNT DETERMINATION IS REVIEWED FOR ABUSE OF DISCRETION.....	27

B. JUDGE HIRSCH'S MODEFIED PARENTING PLAN ORDERS UNREASNABLE; VIOLATED FUNDAMENTAL RIGHT TO A PARENT AND SHOULD BE VACATED.....	32
C. JUDGE HIRSCH'S ORDERS ENFORCING TATYANA TO VIOLATE THE LAW 8 C.F.R.274A; 245(C) AND 216.....	39
D. JUDGE HIRSHC FAILED TO CONSIDER THE TOTAL FINANCIAL CIRCOMSTANCES OF BOTH PARTIES.....	43
E. JUDGE HIRSXCH'S UNRESNABLE ORDERS SHOULD BE VACATED.....	44
F. JUDGE WHICKHAM HAS AUTHORITY TO PRESIDE OVER THIS CASE AS PRO-TEMPORE AFTER HIS RETIREMENT.....	47
VII. CONCLUSION.....	50

APPENDIX:

Appendix A -----	USCIS letter dated February 27, 2015 found as Authentic and admitted as Ex 37 at the 2016 trial court and NWIRP letter .
Appendix B -----	Expert witness on immigration law Mr. Gairson's report admitted as Ex 36 at the 2016 trial court and his wetness fees approved by this court.
Appendix C-----	DOMESTIC VIOLENCE PROTECTION ORDER RCW 26.50.060 imposed against John Mason
Appendix D-----	RP 12/09/16 oral ruling on imposed CR 11 Sanction against the opposed party.
Appendix E-----	Forensic Investigative Report
Appendix F-----	Judge Wickham's oral ruling made on 11/02/16

TABLE OF AUTHORITIES:

CASES:

<u>Arzola v. Name Intelligence, Inc</u> , 188 Wash.App. 588, 595, 355 P.3d 286 (2015).....	29
<u>Citizens for Financially Responsible Gov't v. Spokane</u> , 99 Wn.2d 339, 346, 662 P.2d 845 (1983).....	49
<u>Erier v. Eriler</u> 824F.3d 1173 1777 (9 th Cir 2016).....	42;45
<u>Gander v. Yeager</u> , 167 Wash.App. 638, 647, 282 P.3d 1100 (2012).....	29
<u>Henry v. Bitar</u> , 102 Wash.App. 137, 140, 5 P.3d 1277 (2000), review denied ,142 Wash.2d 1029, 21 P.3d 1150 (2001).....	28
<u>IBEW Health & Welfare Trust of Sw. Wash. v. Rutherford</u> 381 P.3d 1221 (Wash. Ct. App. 2016).....	29
<u>Just Dirt, Inc. v. Knight Excavating, Inc.</u> , 138 Wn. App. 409, 417, 157 P.3d 431 (2007).....	36
<u>Liu v. Mund</u> , 686 F3d 418, 419-20 (7 th Cir 2012).....	6;42; 43;44;45
<u>Miller v. Badgley</u> , 51 Wn.App. 285, 300-01, 753 P.2d 530 (1988).....	23;44
<u>In re the marriage of Jennings</u> 138 Was 2d 612, 625-26, 980 P.2d 1248 (1999).....	46
<u>National Bank of Wash. v. McCrillis</u> . 15 Wn.2d 345, 356, 130 P.2d 901, 144 A.L.R. 1197 (1942).....	47;48
<u>Khan v. Khan</u> 182 Wash.App. 795, 332 P.3d (2014).....	22
<u>Santoshy v. Kramer</u> 455 U.S. 745, 753 102 S. Ct 1388, 71 L. Ed 2d 599 (1982).....	1;27;32
<u>State v. Benson</u> , 21 Wash. 580, 582, 59 P. 501 (1899).....	1;27;28

<i>State ex rel. Cougill v. Sachs</i> , 3 Wn. 691, 29 P. 446 (1892).....	48
In the <i>State v. Keller</i> , 32 Wash. App 135, 140, 647 P. 2d 35 (1982).....	46
<i>Tacoma v. Taxpayers of Tacoma</i> , 108 Wn.2d 679, 687, 743 P.2d 793 (1987). S.....	48
<i>Wenfang Liu v. Mund</i> , 686 F. 3d 418, 422 (7 th Cir 2012).....	43
<i>Zachman v. Whirlpool Financial Corp.</i> 123 Wn. 2d 667 (Wash. 1994).....	48

STATUES

Article 4 §7 of Washington State Constitution	3
The 1987 adopted amendment 80 to the Washington Constitution, adding the following sentence to Const. art 4 section 7.....	4
<i>Senate Joint Resolution 8207</i> , 50th Legislature; <i>Laws of 1987</i> , 1st Ex. Sess., p. 2815. 3.....	48
<i>1987 Voters' Pamphlet, at 8; 9</i>	48
RCW 19.52.010.....	9
RCW 26.50.060.....	1;13;25;34
RAP 8.1.....	27;29
RAP 7.2.....	27;28
RAP 7.2(e).....	33;36.
CR 11(a) sanction	23;24;25

IMMIGRATION LAW AND STATUES

8 C.F.R § 274(a) 12.....	40;45
8 C.F.R (INA) §245(c).....	25;40;41;45

8 U.S.C. § 216.....7;
8;2540

8 U.S.C. 1182(a)(4)(B)..... 3;2433;44

8 C.F.R. § 213(a)2(e).....7;24;33;44

INTRODUCTION:

This appeal requests to vacate the 01/25/17 order and remand for re-trial the 2013 unreasonably modified parenting plan of two children (now ages 16 & 19 years old) which interfered and destroyed a relationship between mother and her children for the past 8 years through a high financial barrier -unconstitutionally infringes upon her fundamental right to parent. Santoshy v. Kramer 455 U.S. 745, 753 102 S. Ct 1388, 71 L. Ed 2d 599 (1982). The Appellant pro-se Tatyana Mason (herein after Tatyana) discovered new evidence, several extraordinary circumstances and the trial's errors under CR 60(b) justified relief from the 01/25/17 and 11/25/13 unreasonable orders.

At the 2016 three day trial, Judge Wickham found that (1). Defendant John refused to remove conditions from Tatyana's temporary green card required him by the law; (2) the 2013 orders precluded Tatyana from removing the conditions from her temporary green card and precluded her from legal work authorization; (3) the USCIS department directed lower court to vacate the 2013 orders; (4) the 2013 orders violated 8 C.F.R §216; §274a 12 and §245(c) when imputed income to an alien without proper work authorization; (5) the 2013 orders abused its discretion by failing to consider the total financial circumstances of both parties; (6) Defendant-John breached the I-864 contract, where he promised to the U.S. government to support the beneficiary immigrant Tatyana and that she will

not be on public charge (the I-864 contract was not enforced but only considered at the 2016 trial). (7) John and the 2013 orders forced Tatyana to live below poverty level on her school loan, \$197 per month DSHS food stamps in SafePlace in order to survive, (8) John and his counsel had been sanction under CR 11(a) for frivolous pleadings, multiple misstatements of facts and bad faith.

The record show that John has a long history of physical, financial and emotional abuse toward Tatyana by using her immigration status, minor children and the court system against her in the manner of which it was not design to continue his abuse. John and the Judge Hirsch's 11/25/13 and 01/25/17 orders completely destroyed a relationship between Tatyana and her children for the past 8 years through high financial barrier which violate constitutional rights to be a parent. Previously, Defendant John Mason (herein after John) had a Domestic Violence Protection order RCW 26.50.060 imposed against him where he was found "*not credible, controlling and coaching the children in bad faith*".

On January 25, 2017 hearing, Judge Hirsch refused to (1) vacate her fundamentally wrong orders; (2) refused her duty "to exercise her discretion and fix the amount of John's supersedeas bond to stay" under John's appeal 49839-1-II case. State v. Benson, 21 Wash. 580, 582, 59 P. 501 (1899). (*emphasis added*). (3) Judge Hirsch refused to order John to pay cost for removal of conditions on Tatyana's temporary green card, that

she will receive legal work authorization. Therefore, Tatyana asked Hirsch for *recusal* from the case, which Hirsch agreed and signed off.

Because Judge Wickham was the 2016 three day trial court and knows this pending case well, Judge Wickham has an authority as pro-tempore to preside over this above issues after his retirement and re-trial, based on Article 4, §7 of the Washington State Constitution.

II. THIS COURT SHOULD DETERMINE:

1. This court must determine whether the record and substantial evidence supports the proposition that prohibiting Tatyana from all contact with her children for full 8 years through unreasonably high financial barrier, which she cannot afford is reasonably necessary to protect them from the harm of witnessing John's domestic violence toward Tatyana?

2. This Court should determine whether the State has failed to demonstrate that this severe condition was reasonably necessary to prevent the children to seen their mother for full 8 years because Tatyana is an immigrant and pro-se, lived on her \$197 per month DSHS food stamps and her school loan and because John breached his I-864 marital contract obligation where he promised to the U.S. government to support Tatyana that she will not be on public charge. 8 U.S.C. 1182(a)(4)(B).

3. Whether a trial court's duty "to exercise its discretion and fix the amount of supersedeas bond to stay"?

4. Whether John who is a financial sponsor to Tatyana and who failed to pay his obligations since 1999, has responsibility to cover cost for reunification between Tatyana and her children?

5. Whether a case in superior court may be tried by a **judge pro tempore** based on *The 1987 adopted amendment 80 to the Washington Constitution, adding the following sentence to Const. art. 4, § 7*

III. ASSIGNMENTS OF ERROR:

1. Is Judge Hirsch erred by denying Tatyana's objection to the amount in John's supersedeas bond, when the law said: a notice of appeal is filed and a bond is sought to stay proceedings, it is a trial court's duty "to exercise its discretion and fix the amount of supersedeas bond to stay"?
2. Is Judge Hirsch erred in denying Tatyana's objection to the amount in John's bond, when Tatyana timely and properly filed her objecting to the bond?
3. Is Judge Hirsch erred by relying on Ms. Robertson's faulty citation to the RAP 8.1, when she knows that Ms. Robertson has a long history of misstatements, misapplying the case law and bad faith in violation of Rule of Professional Conduct RPC 3.3?
4. Is Judge Hirsch erred when she denied Tatyana's motion to vacate the 2013 unreasonably modified parenting plan which interfered and destroyed a relationship between mother and her children for the past 8

years through a high financial barrier -unconstitutionally infringes upon her fundamental right to parent?

5. Is Judge Hirsch erred when she failed to consider both parties financial circumstances before issued the 2013 fundamentally wrong orders, which cause damage and harm?
6. Is Judge Hirsch erred when she imputed income to an alien who does not have proper work authorization, when the law said that if a person works without proper work authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident. INA 245(c).
7. Is Judge Hirsch erred when without substantial evidence she stated that “Tatyana is voluntarily unemployed”, when the law say: A noncitizen may not seek or obtain employment in the United States without proper work authorization. INA 274(a)(A).
8. Is Judge Hirsch erred when she denied Tatyana’s motion requesting John, who is her financial sponsor under I-864 contract to cover cost for removing her conditions from her temporary greed card required him by law?

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Judge Hirsch err when she refused to acknowledge that Tatyana’s immigration status damaged by John and by the 2013 orders , which

precluded Tatyana from removing conditions from her green card and have legal work authorization?

2. Did Judge Hirsch err when she denied Tatyana's objection to the amount on John's supersedeas bond under RAP 8.1 for case 49839-1?
3. Did Judge Hirsch err when she denied Tatyana's motion to vacate unreasonably modified parenting plan when this plan interfered and destroyed a relationship between Tatyana and her children for 8 years?
4. Did judge Hirsch err when she refused to enforce John who is Tatyana's financial sponsor to cover cost for re-unification with her children, when Tatyana has not legal work authorization and lived on DSHS food stamps in order to survive, and when John failed his obligation to Tatyana?
5. Did Judge Hirsch err when she stated that Tatyana's counsel agreed to impute income to Tatyana, when the law said: Tatyana's rights to not work without proper work authorization could not and cannot waived by any agreement *Liu v. Mund*.

V. STATEMENTS OF THE CASE

- A. **Mr. Gairson's 2016 expert witness report provides all necessary factual background on Tatyana's immigration damaged status which is directly contradicts to oppose party's falsehoods in the 49839-1-II and 45835-7-II cases.**

1. The 2016 trial court found the Expert Witness in Immigration Law Mr. Garison's testimony and his report – **Credible**. RP12/09/16 at 15-16

Mr. Gairson's report was filed on October 12, 2016 and admitted under **Exhibit 36**. This court approved the award of expert witness fees under 49839-1-II case 07/31/18 Op. at 18. Mr. Garison testified at the 2016 trial court and in his report that:

"7. Tatyana's FOIA/PA request, it is mailer, its CD and the files located on it **are authentic**". *See* Ex 36 at page 2.

"8. The affidavit of support located in Tatyana's FOIA/PA response is authentic" *See* Ex 36 at page 2.

"9. Based on record, John owes Tatyana a substantial financial support obligation due to the Form I-864, he signed in collateral for her not being found inadmissible and being allowed to adjust her status to conditional permanent resident" *See* Ex 36 at page 2.

"11. **Tatyana's conditional permanent residence expired over a decade ago and she will have a difficult time acquiring a waiver to remove those conditions**, but the expiration of her residency does not eliminate John's financial obligations" Ex 36 at page 2;17.

2. John brought Tatyana to the U.S. on K-1 visa:

"The FOIA/PA record shows that John brought the Appellant Tatyana to the US on K-1 visa; married her on August 19, 1999".

"On September 2, 1999 John **adjusted her status to a family based immigrant** by signing the I-864 contract with the US Government, where John promised to support the beneficiary immigrant Tatyana and **that she will not be on public charge**. 8.C.F.R.213 (a) 2 (d); 8 U.S.C. 1183(a)(1)(B)"

See Ex 36 (Gairson's report at p 8-10).

3. John abused Tatyana through her Immigration Status during their marriage and after divorce:

Based on immigration law 8 C.F.R §216.4;§216.5 John had requirement to remove conditions from Tatyana's temporary green card within two years:

“89...because Tatyana entered the US on a K-1 visa, she would not have qualified to obtain her permanent resident status through any other normal means as only through John removing the conditions from her temporary permanent resident card”

See Ex 36 Gairson’s report at p 13 # 80 and 89

The FOIA/PA record shows that John refused to remove conditions from Tatyana’s green card and also breached the I-864 contract:

“81. Failure to file a petition to remove conditions in a timely manner results in “automatic termination of the alien’s permanent residence and the initiation of proceedings to remove the alien from the United States 8 C.F.R 216.4(a)(6).

See Ex 36 Gairson’s report at p.12 # 81

At the 2016 trial, Judge Wickham found that:

“Now, it is indicated that the conditions from Tatyana’s temporary green card were not removed by John required him by the law” *See* RP 11/02/16 at 470-1 court’s ruling.

Mr. Giarson testified and wrote in his report for the 2016 trial

“88. A conditional permanent resident whose card has expired may have a very difficult time proving permanent residency and work authorization”

See Ex 36 Gairson’s report at p 13 # 88).

On February 27, 2015, USCIS letter directed lover court to vacate the 2013 Order of Child support:

“to be eligible for receiving permanent resident card and legal work authorization- [Tatyana] must submit the following information, documents, and forms: **Certified copy of arrangement, or dismissal of the 2013 child support order from appropriate state office and court.**

See (Ex 37 USCIS letter dated February 27, 2015) case 49839-1-II.

Mr. Gairson testified that the USCIS letter dated February 27, 2015

is authentic and admitted as **Exhibit 37** at the 2016 trial court.

“79. According to the February 27, 2015, USCIS Decision on her application for a replacement lawful permanent resident card, it appears she was principally denied because John failed to petition for her removal of conditions”

See Ex 36 Gairson’s report at page 12 # 79

“85. A form I-90, Application to Replace Permanent Resident Card, should always deny when the alien has failed to remove conditions. I know of no exception to this”.

See Ex 36 (Gairson’s report at p 12 # 85)

“86. Many aliens make the mistake of filing a Form I-90 to replace a conditional permanent resident card, rather than filing a Form I-751 to remove conditions. USCIS does not always adequately inform them of this error or how to correct it”.

See Ex 36 (Gairson’s report at p 12 # 86)

“87. Tatyana was correctly denied the replacement of her conditional resident card I-90, because her conditions have not been removed by her sponsor John”.

See Ex 36 (Gairson’s report at p 12 # 87)

“161. John also has failed to pay Tatyana the mandatory support since 2007. As a breach of contract, where the rate of interest for a loan or failure to pay has not been stated bearer (John) shall bear an interest rate of twelve (12) percent per annum RCW 19.52.010”.

See Ex 36 at page 23-4.

At the 2016 trial court Mary Pontorollo- an executive director of **Safe-Place** for 35 years in Olympia WA State **found credible**.

“We have record that since 2001 Tatyana was our client. We have record that **John abused Tatyana and her children physically and financially throughout their marriage and**

after divorce. We have record that John used Tatyana's limited English proficiency and her immigration status against her, threaten her to take the children away if she divorced him."

See Ex 14; RP 11/02/16 at 380-8 Ms. Pontorollo's testimony:

Judge Wickham found at the 2016 trial and ruled:

"John had no real incentive to continue to work with Tatyana to maintain her permanent status in the United States early on in the marriage".

See RP11/02/16 at 470-1; CP 123 (E).

Marry Pontorollo- an executive director of **SafePlace**- DV organization for 35 years testified at the 11/02/16 trial:

"It's very often a technique used to have control over a victim of domestic violence. There are a number of techniques that are used by perpetrators. Wherever control can be gained, it's utilized. **Immigration status is a -- it is a very vulnerable thing for our clients to experience, for survivors of domestic violence like Tatyana"**

See RP 11/02/16 at 383 (Pontorollo's testimony); *See* also CP 971.

B. During the majority of the marriage and after divorce, Tatyana and her children were not supported by John and she lived on her school loan, DSHS food stamps in order to survive:

In the beginning, Tatyana was not comfortable telling anyone about John's abuse toward her, because she did not speak English, she feared that John would retaliate, take her children away, and have her removed from the United States to never see her children again. Ex 14; CP 235-8; RP11/02/16 at 379-95 (Pontorollo testimony). When things got bad enough, Tatyana would go to **Safe-Place** for refuge from John's abuse since July 2001. Ex 14. At **Safe-Place**, one of the many people who

helped her was residential services director-Trisha Smith. Ex 14; RP 11/02/16 at 379-95. One of the few people, Tatyana ever felt comfortable enough to tell about John's abuse was Soon Lee. CP 235-8. Soon was a close friend of Tatyana she met shortly after coming to the U.S. Soon also witnessed John's abused Tatyana on many occasions. During Tatyana's divorce from John, Soon wrote a declaration to the court:

"John controlled the money so tightly that Tatyana has no spending money for herself, she was unable to even buy decent looking clothes. I remember how John intentionally slammed a pickup door on her hand while she was pregnant. After the 2nd child was born she was going to school and nursing as well as keeping their house sparkling clean. While her child was under 1 year old her milk stopped running. Tatyana asked John buy baby formula but John told her buy 2% milk because I was cheaper. My memory of entire Tatyana's marriage to John, she was being emotionally and physically abused and she lived in fear" CP 235-8. Soon Lee's testimony found credible.

Vanessa Stewart - a witness confirmed John's physical abuse toward Tatyana and her children during their marriage. CP 744-46.

John always restricted Tatyana's access to money. He would not help her pay for school, which forced her to take out student loans and made him mad at her. CP 239-40. Also due to his restrictions, Tatyana did not have enough money to buy food to feed herself or her children. She had to get basic food assistance and cash assistance to support herself and her children. Judge Wickham found it credible and stated at the 2016 trial:

"John did no support Tatyana. While living with John, she used her school loan and DSHS food stamps in order to survive to pay for the basic needs of her children".

RP 11/02/16 at 475.

The Washington DSHS office provided Tatyana with a copy of her **aces.online assistance records**. Washington DSHS records Cash Assistance, Food Assistance for Tatyana and her two children.

“From September 2001 to March 2011, client Tatyana Mason had been on benefits with the State of Washington. The attached document shows the benefit amount the client has received every month. **Our record shows that Tatyana and her 2 children exposed to violence in the house are also victims of physical and financial abuse from her husband.** According to what our crosshatches have shown she has met the income requirements to be eligible for our program” (DSHS statement).

Alejandra Walker is an old friend of Tatyana testified under oath:

“John would refuse to take care of the children and wouldn’t give Tatyana enough money for childcare, which would force her to skip classes”. CP 741-43

In 2007, Tatyana started to visit Diane K. Borden, a mental health counselor, in order to understand how to deal with John’s abuse. Diane helped Tatyana realize that things would not get better with John and the only way Tatyana could get freedom was through divorce. CP 239-40
Based on DSHS record, and many witnesses, John has never provided Tatyana the level of support required under the I-864 affidavit of support. The 2016 trial found that John breached the I-864 contract since 1999.

“During the majority of the marriage, Tatyana was not supported by John. Granted, she lived in the house with him that he was paying the mortgage on in order for her to survive. She was taking out loans”.

See RP 11/02/16 – 475.

C. Domestic Violence Protection Order RCW 26.50.060 issued against John earlier in the case for the reasons:

During the legal separation, while Tatyana was at her school learning English, John took Tatyana’s children from the daycare and drove away. **He was gone with the children for several days and would not return the children until the police requested him to do so.** In 2007, Judge Schaller found that a domestic violence had been committed and a Domestic Violence Protection Order under RCW 26.50.060. John was found “not credible, controlling and coaching the children in bad faith to take his side during divorce” RP 11/02/16 at 470

“Court’s Ruling: The Court finds that Domestic Violence against [Tatyana and her children] **has been committed.** The Court finds that there **have been acts of control by John.** Tatyana is a disadvantaged spouse. **John Mason’s testimony was not credible. The Court stated concern about John Mason is coaching the children in bad faith.** The Court finds that John Mason should be restrained from contacting Tatyana. The Court restrained him from going within a mile of Tatyana.” CP 232-4

See CP 232-4 DV Protection Order dated 08/03/07.

D. After 2008 divorced, Tatyana has struggled to provide for herself and children-- required declaring bankruptcy. John highlights the ways of his manipulation and control Tatyana financially and emotionally by harassing her in court:

After 2008 divorce and based on John’s forcing mediation decreasing child support and spouse support maintains **-Tatyana’s income dropped from \$2,000 to \$200 per month.** CP 251-264. Right after final

divorce in 2009 John brought lawsuit regarding the KIA van, which showed that the court ordered possession of the van to Tatyana and her children along with responsibility for all debt due on it. Tatyana had substantial student loans, which John had forced her to take out to take care of her and the kids and to pay for her school.

“Obviously, Tatyana could not transfer the KIA van loan to herself, because of her student loans, being a full-time student, single mother and being unemployed”.
CP 1815-6 (Ms. Borden)

While Tatyana made payments on the loan using her school loan, the result was that she had to give the van back to John because she could not transfer the title or loan to herself. John did not care how his own children will be without transpiration. CP 1815-6. However, John cares regarding the differences in payments for the van, which he immediately took out of the spousal maintenance that John paid Tatyana for 5 months. CP 759.

In the end, Tatyana had to return to her vehicle to John because debts she had incurred during the marriage forced her into **bankruptcy**, and her bankruptcy made it impossible for her to get a separate loan to replace the loan with his name on it. (CP 1815-6). CP 759. Where it not for John’s financial abuse, Tatyana would not be in this situation right now. CP 759. But this also did not stop John to continue his abuse.

E. John with help of his counsel and his crime friend Ms. Hurt fabricated evidence and bad faith interfered relationship between Tatyana and her children for full 8 years.

In February 2010 John organized conspiracy and change Dr. Wilson child therapist (who was daily worked with children for 3.5 years) to Ms. Hurt M.A. (who has no licenses work with the children), CP 760

Based on John's petition, a commissioner signed an order: "the minor children shall be enroll with Sandra Hurt M.A.". Order dated March 2, 2010. CP 760-1.

After Tatyana's children had a few suspicious sessions with Ms. Hurt- there Ms. Hurt used her vulgar aggressive language talking with Tatyana's children. Tatyana asked Ms. Hurt to show her child therapist's licenses, which Hurt refused. Next, **Ms. Hurt's called Tatyana "Ukrainian prostitute" in front of the children.** On October 10, 2010 Tatyana served Ms. Hurt with a letter where she addressed Ms. Hurt's bad behavior and other things and stopped bringing her children to Ms. Hurt. Ms. Hurt lost money for sessions and it made her mad

In February 2011 John and Ms. Hurt contacted CPS department with allegations of child abuse and farced the minor children to take John's side. In the CPS report it written that both 5 and 10 years old children were sitting on John's knees and Ms. Hurt faced them. Ms. Hurt was telling to CPS worker the allegations and children were nodding their heads. CPS worker wrote in the report that English is Tatyana's native language and Tatyana was born in Washington State. Ms. Hurt's allegations against Tatyana required Tatyana to pay for surprised visitation which Tatyana was not able to afford. As a result of this, John's obligation

to Tatyana dropped from \$200 to ZERO. Tatyana become homeless with no income. CP 560-6. Tatyana had not other chance as to continue her full time education to have school loan in order to survive.

F. In the 2013 trial, Judge Hirsch found Ms. Hurt and GAL Mr. Smith unprofessional, not credible and removed them from the case:

“Tatyana had raised concerns in her letter to Ms. Hurt about Ms. Hurt’s behavior and couple of other things. It is clear that from the beginning Ms. Hurt has completely aligned herself with John. Ms. Hurt was clear that she does not like Tatyana. Ms. Hurt’s vulgar language and tone she exhibited the statements and the terms she used to describe Tatyana was shockingly vulgar and unprofessional: “Ukrainian prostitute” and other improper terms Ms. Hurt used in front of children and in this court were completely shocking, unprofessional. I too was surprised of Ms. Hurt’s vulgar language in the Court, which I removed her from the case.

RP 12/04/12 at 8-10.

Judge Hirsch said: **“During Ms. Hurt’s testimony she believed that there were allegations of child pornography on the John’s computer, but Ms. Hurt did not investigate it and did not make a report against John and she is a mandated reporter”**

RP 12/04/12 at 8-10.

Judge Hirsch said: **“I was surprised that Ms. Hurt was improperly stalking Tatyana at Tatyana’s home and school, because Ms. Hurt was suspicious of Tatyana’s comments about John’s child abuse. So based on her suspicious believes, Ms. Hurt organized a campaign against Tatyana, met with the school teachers for her personal investigation, just to check on Tatyana’s credibility”.**

RP 10/17/12 at 8-10.

“Ms. Hurt was upset with Tatyana because a “Ukrainian Prostitutes” is correcting Ms. Hurt’s vulgar language”.

RP 12/04/12 at 8-10.

Judge Hirsch said: "What struck me about GAL Ms. Smith's testimony is **that he failed to do any investigation**, but he used all the same words that Ms. Hurt used in describing Tatyana. **John's domestic violence issue has been discounted by the GAL. I found Mr. Smith not credible and removed him from the case.**

RP 12/04/12 at 10.

G. "Coaching and inappropriate communication with children seems to be clearly linked to behavior by John.

The 2012 Forensic Investigative Report of Dr. Rybeki stated:

"John's coaching and external influence which seem to have been neglected by the both GALs especially when the oldest son Graham Mason said: **"My mom never hits us; my dad and Ms. Hurt told us to say this"** CP 278-9

"There are other indications of possible coaching and external influence which seem to have been neglected by the two Guardian ad Litem in their investigations. For instance, Mr. Smith cited supervision notes from sessions as recent as April 2011 (see p.6, line 11-14) which include comments **from 5 years old David directed to Tatyana which blame her for lying about John's domestic violence, not getting a suitable job, and reporting that his father told him these sorts of adult-themed issues"**.

CP 278-9

"Coaching and inappropriate communication with this child seems to be clearly linked to behavior by John. This pattern has a long history, as reported earlier by Dr. Wilson. He held individual sessions with Graham and David during which **Graham reported that his "mother is just a gold digger."** Dr. Wilson concluded that Graham expressed anger and used terms that would reflect that the boy had been influenced by an adult to say such things. Mr. Wilson also opined that Graham had learned "how to split his parents' affections and discipline styles." CP 278-9

See CP 265- 332 Rybecki Forensic Report.

H. Judge Hirsch's 2013 and 2017 orders undermined Immigration law and Marital Contract, enforced Tatyana to violate INA §245(c); §274a 12 law and blamed Tatyana for not able to afford

expensive parenting evaluation and cost for re-unification with her children to prove Ms. Hurt and John's false allegations:

The allegations that Tatyana was abusing her 11 years old son were based on Ms. Hurt and John's statements. RP 12/04/12 at 8-10. In the 2013 trial, Judge Hirsch found Ms. Hurt unprofessional, not credible and removed her from the case. RP 12/04/12 at 8-10. GAL Mr. Smith was found unprofessional, lazy and not credible and was removed from the case. RP 12/04/12 at 8-10. John was found abusive toward Tatyana, John's testimony found not credible. RP 12/4/12.

However, Judge Hirsch was so obsessed with money by ordering to Tatyana (1) to pay for overly pricy parenting evaluation **\$15,000** to prove Ms. Hurt and John's false allegation; (2) to pay high cost re-unification with her children **\$144,000 for 6 months**; (3) to pay **\$412 per month child support**; and other high court's cost. **Judge Hirsch completely ignored that Tatyana is an alien without legal work authorization and status** and that John, who is her sponsor, refused to pay his I-864 obligation and support Tatyana as he promised to the U.S. government.

Judge Hirsch also ignored that Tatyana was living on her school loan, \$197 per month DSHS food Stamps and was already homeless living at a friend's house in order to survive. RP 11/02/16 at 470; 475-6. Because Judge Hirsch is not familiar with immigration law, the 2013 orders precluded Tatyana from legal work authorization and precluded her from

removal of the conditions from her temporary green card. Judge Hirsch violated immigration law 8 C.F.R. § 274(a)(a), §245(c) and 8. §213(a) the 2013 trial imputed income \$2,080 per month to Tatyana and stated that “she is voluntarily unemployed”

Mr. Gairson wrote in his report Ex 36 at p. 22:

“146. I assisted Tatyana in acquiring her **Social Security Statement** in order to evaluate the number of qualifying quarters that has earned under the Social Security Act”

“147. Her greatest yearly income was **\$ 8,915 only** based on her 3 months school internship and she lived on DSHS food stamps \$197 per month. In 2013 the 125% poverty guideline was \$11, 962.50 per year. Tatyana lived below 125% of poverty level”.

See Ex 36 at page 22 #146-7; RP 11/02/16 at 477.

Because Tatyana was not able afford expensive parenting evaluation to prove John’s false allegations of child abuse, the 2013 order of parenting plan required Tatyana to pay high cost for re-unification with her children in progressive way, which Tatyana was not able to. CP 762-770. Tatyana filed her appeal under 45835-7-II.

I. The 45835-7-II appeal:

In 2014, Tatyana filed an appeal under **45835-7-II** where she was pro-se with limited English Proficiency. *Id.* Tatyana was not able to afford a counsel due to her damaged immigration status by John and next by the 2013 orders and because John’s failure to pay his obligation to support her as he promised to the U.S. government that Tatyana will not be on public

charge. Tatyana is not an attorney has not received formal training as an attorney and does not speak English as her native language. As a result of her initial appeal 45835-7 opening brief- did not properly state a claim against the 2013 trial court orders of parenting plan and John Mason's domestic abuse, or request a specific relief to be granted.

This court denied Tatyana's review by relying on perpetrator John, a vulgar Ms. Hurt and GAL Mr. Smith's falsehoods as if they were credible, when the 2013 Judge Hirsch **specifically** found John, Ms. Hurt and Mr. Smith not credible, unprofessional and removed them from the case. However, in 07/15/15 Op. case 45835-7 this court stated:

Tatyana was generally uncooperative when asked about her finances or her living arrangement at the time of the hearing. She admitted that she was living in a person's house but refused to tell to the court the person's income and that person's address she is living with".

"Tatyana also failed to pay for the recommended parenting evaluation, instead filing a motion asking the trial court to order an evaluation for both parents, Tatyana and John agreed that Dr. McCollom would conduct the evaluation, but Tatyana failed to pay her part, Dr. McCollom suspended the evaluation process".

07/15/15 Opinion 45835-7 Case.

J. On February 27, 2015 USCIS directed lower family court to vacate the 2013 Orders:

After graduation from the college in 2013, Tatyana was not able to find any job, she could not understand why. Employing denied her resumes without explanation. Ex 20; RP 10/27/16 at (Stacy Simpson's

testimony). In 2014 she filed online the application I-90 for replacement of her green card. In March 2015, Tatyana received the USCIS letter decision dated February 27, 2015. Ex 37. The USCIS letter admitted as **Exhibit 37** at the 2016 trial court. The USCIS directed Tatyana to vacate the 2013 Order of Child support. Ex 37.

K. The 2016 trial court found the 2013 trial court orders fundamentally wrong and unjust, vacated the order of child support under CR 60(b)(11) on the bases below:

“Now, it's true this matter got to my courtroom through a very circuitous path” RP 11/02/16 at 471.

“Tatyana was brought over here on a fiancée visa, that she received a conditional residency status upon the application of John. John promised to the US government upon the I-864 contract to support Tatyana that she will not be on public charge 8 U.S.C. 1182(a)(4)(B)”. RP 11/02/16 at 469-70

“There was a two-year period during which the conditions attached to that conditional permanent residence status could be removed”. RP 11/02/16 at 470

“I've heard testimony and seen evidence that, there was conflict ultimately resulting in a **D.V. protection order RCW 26.50.060** being filed, resulting in Tatyana going to SafePlace to get advice as to how to proceed and so on” RP 11/02/16 at 470

“The parties separated on July 18th, 2007. The divorce was final June 24th, 2008. There was a modification proceeding which ultimately resulted in a child support order being entered November 25th, 2013”. RP 11/02/16 at 470-1

“Now, it is indicated that the conditions from Tatyana’s temporary green card were not removed within two years from the marriage by John required by the law under 8 C.F.R. §216”

RP 11/02/16 at 471 ruling; *See also* Ex 36 (Gairson’s report at page 12-13 ## 87-9);

The 2013 trial court violated immigration law 8 C.F.R 274(A)12; 245(C) by imputing income to alien without proper work authorization” Ex 36 Gairson report at p 12-13; 22.

“Tatyana lived on her school loan and DSHS in order to survive”
See RP11/02/16 at 475.

“Ms. Mason, through her own testimony and through the testimony of her expert, however, **has presented compelling evidence** that she is now in a disfavored status as someone who has significant unpaid child support and that the immigration authorities have the discretion to deny her permanent residency at this point, so she is in the awkward position of being in this country but having no ability to obtain permanent status. And with the focus on legal status that currently exists in this country, it's not hard to believe that most employers will not hire her, because she is not able to show proof of legal status. **And were she to go back to immigration, she would most likely be denied because of the 2013 child support order**”.
See RP11/02/16 at 471.

The USCIS letter dated February 27, 2015 also directs Tatyana to vacate the 2013 child support in order to remove her conditions from her temporary green card and get work authorization” *See* Ex 37

“to be eligible for receiving permanent resident card and legal work authorization- [Tatyana] must submit the following information, documents, and forms: **Certified copy of arrangement, or dismissal 2013 child support order from appropriate state office and court**”. Ex 37

See (Ex 37 USCIS letter dated February 27, 2015) case 49839-1-II.

Judge Wickham did not enforced I-864 contract but only considered:

In the *Khan v. Khan* case as saying did not reverse Judge Hogan for considering it or stating that I-864 is not relevant.
RP 11/02/16 at 472.

“So the various provisions that allow for the termination of the I-864 support obligation, none of those have come to pass, so the obligation is still alive”. *See* RP 11/02/16 at 475.

“Based on all of this, I am prepared to vacate the 2013 and 2015 child support orders, which I believe will have **the effect of allowing Tatyana to apply for her green card and remove the conditions that were placed on her conditional permanent residence status**, which I think in the long run is going to be beneficial to both parties, because it will ultimately allow her to obtain citizenship, which will terminate the I-864 obligation. That's one of the grounds to do that. **It also will allow her to obtain employment, which is another basis for terminating the obligation.** Otherwise, I see no way for either party to get out of this box that you are both in” *See* RP 11/02/16 at 475-6.

L. CR 11(a) sanction imposed on John and his counsels for frivolous pleadings, misstatements of facts and bad faith

“Ms. Robertson misapplied *Davis v. Davis* case. The *Davis* case stands for the proposition that a spouse's quarters are credited to the quarters of the person being sponsored during the marriage, even after a decree of separation. In this case, however, **we don't have a decree of separation. We have a decree of divorce.** *See* RP 11/02/16 at 474.

On July 7, 2016, Mrs. Robertson filed Ms. Seifert's declaration:

Ms. Seifert, falsely stated in her declaration- “...[I]n my experience, the immigration department (CIS) **never** places such a stamp on any document. . . . **I have never seen any kind of circular stamp from CIS or the Department of Homeland Security.** Finally, if the document actually came from an immigration file (from CIS), any stamp would be from the relevant agency which is not Department of Justice, but Department of Homeland Security. I believe the stamps are a very bad fake of a government stamp.”

See Ms. Seifert Declaration (July 7, 2016) Ex 49.

During the trial court, Ms. Seifert testified that: “**a single trip for two weeks to Tatyana’s mother's funeral in 2001, she said it**

terminated John's obligation to remove the conditions from her temporary green card and to support Tatyana”

Ms. Seifert **refused to mention** in court, if Tatyana would depart **permanently** only then John has no responsibility to remove conditions from her temporary green card and has no obligation to support her under I-864.

See RP 11/02/16 at 474 Seifert's testimony; *See* also Mr. Gairson's report at page 10 under ## 67 and INA §216.

On July 6th, 2016. Ms. Robertson filed John Mason's declaration

where John openly perjures in his multiple statements Ex 80; 82

It's a statement of Mr. Mason in pertinent part of his declaration,

(1). "She claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth."

(2). "I believe the I-864 was a document I may have started to complete, but it was not what I was required to file and so I did not complete or file the document."

(3). "Respondent claims that I would have had to complete I-864 as it required by 8 U.S.C. § 1182(a)(4)(B), but that is not true."

(4) "Respondent's representation that I had to have filed the I-864 form after marry her-- is simply not true."

At the 2016 trial, John falsely testified:

(5). He has no obligation to file necessary documents on Tatyana's behalf and remove conditions from her temporary green card within two years after he marry her and it is not required him by law 8 U.S.C. § 216.

(6). He did not bring Tatyana on family based immigration.

(7). He did not abuse Tatyana through her immigration status and did not prevent her from legal work authorization.

(8). a Domestic Violence Protection Order RCW 26.50.060 never had been issued against him.
See Ex 80; 82 RP11/02/16 John's testimony; RP 12/09/16 at 17-20.

G. On 49839-1-II John's Appeal: this court approved Mr. Giarson expert witness in immigration law report Ex 36 approved Mr. Gairson's fees.

But because John and his counsel's multiple times misstated facts in the 49839-1 case; and because this court do not like pro-se litigants, this court misunderstood the case and failed to review the 2016 trial's several extraordinary circumstances. RP 11/02/16 475-6; this court failed to review Mr. Gairson's statements in the report admitted under Ex 36; In a result, this court limited the 2016 trial extraordinary circumstances to I-864 only; ignored major issues re: Tatyana's damaged immigration status; ignored the USCIS direction to the lower court to vacate the 2013 orders Ex 37; Precluded Tatyana from removing conditions from her temporary green card and from earning income, because of re-instatements of the 2013 child support order, now the 2013 order precluded Tatyana from removing conditions from her green card and enforced I-864. Ex 36; Ex 37. This court re-imputed income of \$2,080 to an alien without legal work authorization and stated that she is voluntarily unemployed **by enforcing Tatyana to violate 8 C.F.R §216; §274a 12; §245(c) law**; This court applied *de-novo*, substituted Judge Wickham credibility findings with its own judgment and promoted John's abuse

toward Tatyana and her children; approved John and his counsel's multiple perjuries and bad faith, stated: 07/31/18 Op. at p. 1.

“We hold that the trial court erred in vacating the 2013 child support order because the failure of the parties to inform the court of the I-864 affidavit was not an extraordinary circumstance. See case 49839-1-II opinion dated 07/31/18 at 1.

WHICH THE 2016 TRIAL COURT MAJOR PROCEEDINGS WERE NOT ABOUT THIS.

In the 09/24/18 Order denying motion for reconsideration, this court gave bad advice to Tatyana in purpose of continue abuse her though the court system and to unnecessary increase cost of litigation and her debt:

“This court's 07/31/18 opinion and this court 09/24/18 order do not preclude [Tatyana] from filing the [second identical] motion for relief from child support order or [the second identical] motion to modify ongoing child support based on these factors, if allowed by applicable law” See 09/24/18 Order in case 49839-1-II.

This court directly contradicts to the record of the case; to the 2016 trial court credibility and extraordinary circumstances findings RP 11/02/16 at 475-6; to the expert witness Mr. Gairson's report on immigration law Ex 36; to the expert witness on Domestic Violence Ms. Pontarollo's testimony RP 11/02/16 at 375-87.

H. The January 25, 2017 Court” Hearing in front of Judge Hirsch:

Judge Hirsch stated: “I want to say, that when I read the Court of Appeals 45835-7-II decision dated 07/15/15, it **didn't really speak of the credibility findings that the court made in 2013. Frankly, I was very bothered by John, therapist' Ms. Hurt and GAL Mr.Smith's testimonies which is why I removed them from the case”.**

(RP 01/25/17 at 34)

At the 01/25/17 hearing, Judge Hirsch refused to (1) vacate her fundamentally wrong 2013 orders contradicts to the case law Santoshy v. Kramer; (2) Hirsch refused her duty “to exercise her discretion and fix the amount of John’s supersedeas bond to stay” under John’s appeal 49839-1-II case. State v. Benson, 21 Wash. 580, 582, 59 P. 501 (1899). (*emphasis added*). (3) Hirsch refused to order John to pay cost for removal of conditions on Tatyana’s temporary green card, that she will receive legal work authorization. Therefore, Tatyana asked Hirsch for **recusal** from the case based on her prejudice and outrageous judicial malpractice, which Hirsch agreed and stepped down from the case.

ARGUMENT:

**A. A TRIAL COURT’S DUTY “TO EXERCISE ITS DISCRETION AND FIX THE AMOUNT OF THE BOND TO STAY”
A SUPERSEDEAS BOND AMOUNT DETERMINATION IS REVIEWED FOR ABUSE OF DISCRETION.**

1. STANDARD OF REVIEW: RAP 8.1 provides for supersedeas as a means for delaying the enforcement of money judgments and sets forth the procedure for obtaining a supersedeas bond on appeal. A party may stay enforcement of a money judgment by filing a supersedeas bond in the trial court. RAP 8.1(b) (1), RAP 7.2(h). To stay a money judgment, the trial court must set the bond in the amount of “the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, costs,

and expenses likely to be awarded on appeal.” RAP 8.1(c)(1) (emphasis added). *Henry v. Bitar*, 102 Wash.App. 137, 140, 5 P.3d 1277 (2000), review denied, 142 Wash.2d 1029, 21 P.3d 1150 (2001). A party may object to the supersedeas decision of the trial court by motion in the trial court. RAP 8.1(h).

RAP 7.2(h) authorizes the trial court to act on matters of supersedeas, stays, and bonds, as provided for in RAP 8.1, RAP 8.4 ; CR 62(a), (b), and (h) ; and RCW 6.17.040. Although Rutherford cited RCW 6.17.040 and CR 62 in their motion to stay proceedings in the trial court, at the hearing on their motion, they asserted that RAP 8.1 controlled. RAP 8.1 controls this proceeding.

When a notice of appeal is filed and a bond is sought to stay proceedings, a trial court's duty is “to exercise its discretion and fix the amount of the bond to stay.” *State v. Benson*, 21 Wash. 580, 582, 59 P. 501 (1899) (*emphasis added*). Thus, the amount of the bond is a discretionary determination by the trial court.

Here, when John Mason and his counsel Ms. Robertson moved to stay the enforcement of the judgment, the amount of the judgment had been established, but the remaining RAP 8.1(c) factors for consideration—interest, attorney fees, costs, and expenses likely to accrue during the pendency of the appeal—were **uncertain**. Determination of these other factors necessarily required the trial court to exercise its discretion in estimating not only the amount likely to accrue but to estimate the length of the appeal. Indeed, a trial court's determination of interest and attorney

fees, without the added estimate of the cost of additional legal work and the length of appeal, is reviewed for an abuse of discretion. See Arzola v. Name Intelligence, Inc., 188 Wash.App. 588, 595, 355 P.3d 286 (2015); Gander v. Yeager , 167 Wash.App. 638, 647, 282 P.3d 1100 (2012).

Thus, this court should hold that a trial court's supersedeas bond amount determination is reviewed for an abuse of discretion.

Here, Judge Hirsch apparently error by relying on Ms. Robertson's repeated misconduct and faulty citation to the RAP 8.1, therefore, Judge Hirsch abused its discretion when she denied Tatyana's Objection to the amount on John's supersedeas bond under RAP 8.1. CP 785.

"With respect to financial issues, under the rules of appellate Procedure, Ms. Robertson is correct, and while I do continued concerns about Tatyana's inability to have access to finances, under RAP 8.1, that decision is up to the Court of Appeals. So I am going to deny Tatyana's objection to amount on John's bond" RP 01/25/17 at 36.

2. SUPERSEDEAS BOND AMOUNT: In the case IBEW Health & Welfare Trust of Sw. Wash. v. Rutherford 381 P.3d 1221 (Wash. Ct. App. 2016) the court determine whether the trial court abused its discretion in setting the supersedeas bond amount at \$100,000. The trial court was presented with estimates from both parties. IBEW estimated the amount necessary to be \$96,874.39. This estimate included the judgment of \$57,141.69; post-judgment interest to the time of the trial court hearing of \$11,854.16; an additional year of post-judgment interest until the appellate

decision of \$6,875.79; post-judgment attorney fees, costs and, expenses of \$11,002.75; and attorney fees, costs, and expenses likely to accrue on appeal of \$10,000.00. IBEW suggested that the trial court round up to \$100,000, leaving the exact amount to the trial court's discretion. In that case Rutherford proposed a supersedeas amount \$58,643.18. They argued that IBEW had garnished \$7,444.08, so that amount must be subtracted from the judgment amount. Rutherford calculated interest that was likely to accrue to be \$8,945.57. They also argued that post-judgment attorney fees, costs, and expenses, and appellate attorney fees and costs were not recoverable. The court in IBEW holds that the trial court did not abuse its discretion by accounting for the possibility of post-judgment and appellate attorney fees and costs. *Id.* And the estimated amount of post judgment interest and attorney fees and costs likely to accrue pending appeal necessarily are subjective. Based on the amounts at issue, the trial court did not abuse its discretion in setting the supersedeas bond \$100,000.

Here, at the 2016 trial court, Judge Wickham imposed judgment and CR 11 sanction on John and his counsel Ms. Robertson in the amount of \$12,800 and **retired** at the end of 2016. Tatyana calculated additional year of post-judgment interest until the appellate decision of \$6,144; post-judgment attorney fees, costs and, expenses of \$18,202.75; Tatyana estimated the amount necessary to be \$40,000. Because Judge Wickham retired, Tatyana presented her motion in front of Judge Hirsch on January

25, 2017. CP 785-9. Tatyana argued that she has right to retain appellant attorney and that post-judgment attorney fees, costs, and expenses, and appellate attorney fees and costs are not recoverable. But, John requested to stay judgment and placed bond in the amount of \$15,000 only which is below even the year of post-judgment interest amount until the appellate decision. CP 785-9

Here, compare to the IBEW case, in our case, Judge Hirsch abuse her discretion when she refused to **increase** John's bond amount from \$15,000 to \$40,000, especially when she was concerned about Tatyana's financial inability to retain appellant counsel to respond on the 49839-1-II appeal. RP 01/25/17 at 36. As a result, Judge Hirsch's abuse her discretion in denying motion. CP 934-5To professionally responding to John's appeal 49839-1, Tatyana had to hire an appellant attorney Sharon Blackford and get into \$20,000 extreme debt even more. CP560-6.

Tatyana does not have legal work authorization and does not have income, she is homeless and lives on DSHS food stamps \$197 per month. CP 560-6 John breached his I-864 contract and does not support Tatyana as he promised to the US government. Ex 36 (Gairson's report) Tatyana already in \$550,000 debt because of the 2013 fundamentally wrong orders precluded Tatyana from work authorization and 11 years cost of litigation placed Tatyana in a high financial hardship, destroyed a relationship between Tatyana and her children through a financial barrier. CP 762-70.

This court should overturn Judge Hirsch's decision dated 01/25/17 on this issue and increase John's supersedeas bond from \$15,000 to \$40,000 that Tatyana can pay to Sharon Blackford for her work to respond to John's appeal 49839-1-II.

B. JUDGE HIRSCH'S MODIFIED PARENTING PLAN ORDERS UNREASONABLE; VIOLATED FUNDAMENTAL RIGHT TO A PARENT AND SHOULD BE VACATED.

Abuse of discretion occurs when the decision is manifestly unreasonable or exercised on untenable ground or for untenable reasons. *State v. Hays* 55 Wn App 12,16, 776 P.2d 718 (1993). Tatyana argues that the 2013 trial court orders prevented her from all contact with her children for full 8 years through a high financial barrier unconstitutionally infringes upon her fundamental right to parent. "Parents have a fundamental liberty interest in care, custody and control of their children". *Santoshy v. Kramer* 455 U.S. 745, 753 102 S. Ct 1388, 71 L. Ed 2d 599 (1982). Limitations on fundamental rights are constitutional only if they are "reasonably necessary to accomplish the essential needs of the state."

Therefore, this court must determine whether the record and substantial evidence supports the proposition that prohibiting Tatyana from all contact with her children for full 8 years through unreasonably high financial barrier, which she cannot afford is reasonably necessary to protect them from the harm of witnessing John's domestic violence toward

Tatyana” CP 772; CP 956-6; Ex 14; RP 11/02/16 at 470-1; 475. RP 11/02/16 Ms. Pontorollo’s testimony.

This Court should determine whether the State has failed to demonstrate that this severe condition was reasonably necessary to prevent the children to see their mother for full 8 years because Tatyana is an immigrant and pro-se, lived on her \$197 per month DSHS food stamps and her school loan and because John breached his I-864 marital contract obligation and failed to financially support her that she will not be on “public charge”. 8 U.S.C. 1182(a)(4)(B). CP 560-6; 878-9;875.

Because Tatyana was not able to pay high price for re-unification with her children; the State placed the children into a perpetrator’s household on the basis that John has more income than Tatyana. CP 862

There can be no doubt that witnessing John’s domestic violence toward Tatyana in the past is very harmful to children and affected them physically and emotionally. CP 864-5. “In the Impact of Parental Alienation report” Dr. Kruk said:

“Forcing the child to reject the other parent creating the impression that the other person is dangerous”; “For a child, parental alienation is a serious mental esteem and self hatred, lack of trust, depression and other forms of addiction. Children who are being alienated from the other parent are highly subject to post-traumatic. Reunification should be proceeding carefully and with sensitivity”

CP 865.

In fact the children could more physically and emotionally damaged because of the significant separation with their mother for full 8 years.

There is no doubt that if John physically and financially abused Tatyana during the marriage, John did not stop his abuse toward the children. Ex 14; CP 235-8; 277-9; 11/02/16 at 375-90

There is many substantial evidence in the record that Tatyana was a good caring mother, who just did not want live with the abusive John. the court re-victimized her and separated from her children by harassing her through the legal system and unnecessary increasing cost of litigation. Ex 14; CP 265-33; 239-40; 265-332; 733-40; 741-43.

In fact, John was multiple times found “not credible, controlling, coaching the children” and had RCW 26.50.060 a D.V. protection order issued against him. At the 2016 John was found abusive toward Tatyana and her children. RP 11/02/16 at 470-75 and at December 9, 2016 CR 11(a) sanction imposed on John and his counsel for frivolous pleadings, multiple misstatements and bad faith CP 1367-8; RP 12/09/16 at 17-20.

In March 2010 John petitioned to change Dr. Wilson (a child psychologist who found John is abusing the children)- to Ms. Hurt M.A. CP760-1. Because Tatyana noticed Ms. Hurt’s misbehaviors in front of the small children, Tatyana served Ms. Hurt with the letter and on October 18, 2010 Tatyana stopped all sessions with Ms. Hurt. RP 12/04/12 at 8-10. In March 2011 John’s petition to modify final parenting plan was based on his crime friend a vulgar Ms. Hurt’s declaration, who called Tatyana- “**Ukrainian prostitute**” and used other improper words” in front of

Tatyana's minor children and in the open 2013 trial court to accomplish her revenge and John's bad faith goals, separate Tatyana from her children. Ms. Hurt contacted CPS and promoted her false allegations against Tatyana. Stacy Simpson filed her declaration to the court on 01/30/17 where she is witnessing of John's multiple perjuries CP 956-61. She declare that she witnessed John's abuse toward Tatyana and also she read the CPS report where John falsely stated to the CPS worker Ms. White that Tatyana has a long history of physically abuse toward John during the marriage when the record shows the other way around" CP 957

This is shows how John is manipulating with the authority and the court. John retained Ms. Robertson Ms. Hurt, Mr. Smith, Ms. Seifert, Mr. Master- these people found not credible unprofessional who were aggressively promoted false information to the court and bad faith in violation of CR 11. See RP 12/04/12; RP 12/09/16;

"Now, clearly client John Mason is entitled to aggressive advocacy, but I believe these advocacy in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11"

See CP 26-7 of the 12/09/16 oral rulings.

On September 5, 2017 and February 5, 2018 John filed his low quality briefs written by Mr. Masters full of misstatements to muddle the case. As a result, this court misunderstood the case and created unreasonable impossible to compel order. CR 11 and RAP 18.9 protect not only injured

Tatyana, but also integrity of this Court. Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wn. App. 409, 417, 157 P.3d 431 (2007).

At the 2013 trial court, Ms. Hurt was found not credible, bias and was removed from the case. RP 01/25/17 at 34.

“Ms. Hurt has not seen Tatyana since December of 2010. It is clear that Ms. Hurt completely aligned herself with John (father of the children). Ms. Hurt was very clear that she does not like Tatyana. This court found that Ms. Hurt improperly teaches small children to disrespect their mother. This court found that Ms. Hurt used improper vulgar terms to described Tatyana in the court room and in front of minor children. Ms. Hurt found a bias toward Tatyana and was removed from the case” (RP10/27/12 at 8-9)

At the 2013 trial, John was found not credible and abusive toward Tatyana. Judge Hirsch removed GAL Mr. Smith from the case as well:

“frankly, I was very bothered during trial by John’s testimony including by the Ms. Hurt therapist and GAL Mr. Smith at that time, who seems provided untrue information and misbehaved in court and which is why I removed Ms. Hurt and Mr. Smith from the case at the 2013 trial” (RP 01/25/17 at 34)

The 2013 modification of parenting plan was placed ONLY because Tatyana was not able to afford overly pricy parenting evaluation which cost \$15,000 and because she was not able to pay \$144,000 per 6 months for reunification service with her children to prove John’s false allegation of child abuse. CP 772.

“Tatyana should cover cost of the full parenting evaluation of Dr.McCollem \$15,000” Because Tatyana’s lack of

payment to Dr. McCollum the trial was continued twice. The 2013 trial court finally concluded almost one year after it initially started, the court still did not have Dr. McCollum's report, because Tatyana still did not made arrangement to pay her share. Tatyana still did not complied with this court's direction and pay for the McCollum's report to properly address the concerned allegations of child abuse" CP 772.

Further, Judge Hirsch stated: Even through John engaged in inappropriate behaviors to Tatyana in front of her children, John still have stable income to raise the boys. CP 773.

Here, Judge Hirsch was so obsessed with money and high cost services by unreasonably ordering to Immigrant Tatyana to pay high cost in purpose to prove John's false allegations. But, Judge Hirsch completely ignored that Tatyana-is an alien immigrant was homeless, lives on \$197 per month DSHS food stamps and her school loan in order to survive, and BECAUSE her conditions were not removed by John, which required him by law 8 C.F.R. §216 and due to his abuse toward Tatyana, she has no legal work authorization. Ex 37; Ex 36 at 12-13. BECAUSE John breached the I-864 contract obligation where he promised to the U.S government that he will financially support Tatyana that she will not be on publish charge. Mr. Gairson wrote in his report Ex 36 at page 12:

"79. According to the USCIS letter dated February 27, 2015, Decision on her application for replacement lawful permanent resident card denied because John failed to petition for her removal of conditions"

See Ex 36. Gairson's report at p. 12 # 79.

“88. A conditional permanent resident whose card has expired may have a very difficult time proving permanent residency and work authorization”

See Ex 36 Gairson’s report at p 13 # 88).

“146. I assisted Tatyana in acquiring her **Social Security Statement** in order to evaluate the number of qualifying quarters that has earned under the Social Security Act”

“147. her greatest yearly income was in 2013 **\$ 8,915 only** based on her 3 months school internship and she lived on DSHS food stamps \$197 per month after. In 2013 the 125% poverty guideline was \$11, 962.50 per year. Tatyana income in 2013 was below 125% of poverty level”.

See Ex 36 at page 22 #146-7; RP 11/02/16 at 477.

Even for American people who are working, no one would be able to afford and compel the Judge Hirsch’s order to pay \$144,000 for reunification with their children and to pay \$15,000 for parenting evaluation. Because Judge Hirsch is not familiar with the immigration law she did not know that John has an obligation to support Tatyana and that divorce does not end his financial obligation. 8.U.S.C 1182(a)(4)(B). Judge Wickham stated at the 2016 trial that:

“During the majority of the marriage and after divorce, Tatyana and her children were not supported by John and she lived on her school loan, DSHS in order to survive”

See ruling or RP 11/02/16 at 475-6

Contrary to the State's view, these broad assertions, standing alone, do not form a sufficient basis for this extreme degree of interference with fundamental parental rights. State v. Letourneau is instructive. In that case,

the defendant was sentenced for second degree rape of a child. The court held that a condition prohibiting the defendant from unsupervised in-person contact with her biological minor children was **not reasonably necessary** to prevent her from sexually molesting them, where there was no evidence that she was a pedophile or posed a danger of molesting her children.

Here, there is no evidence that prohibiting Tatyana from all contact with his children for a lengthy period full 8 years by re-victimized her through a financial barrier, simply because she does not want to live with the abusive John and because she cannot afford to pay overly pricy reunification with her children \$144,000 per 6 months-- is reasonably necessary to prevent the children from the harm of witnessing John's domestic violence toward Tatyana? The record of the case does not supported John's false allegations. Nor does the record support the total prohibition of indirect contact with the children by telephone, mail, email, etc. The State has not explained why prohibiting Tatyana from contacting her children for 8 years and re-victimized her through a high financial barrier which she cannot afford to pay, would not protect the children from the harm of witnessing domestic violence between their parents. The 2013 modified parenting plan is unreasonable and should be vacated.

C. JUDGE HIRSHCH's ORDERS ENFORCING TATYANA TO VIOLATE THE LAW 8 C.F.R. §274(a) 12; §245(c) and §216(c).

Mr. Gairson testified at the 2016 trial court that:

“89...because Tatyana entered the US on a K-1 visa, she would **not have** qualified to obtain her permanent resident status through any other normal means as **only through John** removing the conditions from her temporary permanent resident card” *See* Ex 36 Gairson’s report at p 13 # 80 and 89

“79. According to the USCIS letter dated February 27, 2015, Decision on her application for replacement lawful permanent resident card denied because John failed to petition for her removal of conditions”
See Ex 36. Gairson’s report at p. 12 # 79.

The USCIS directed Tatyana to vacate the 2013 Order of Child support:

“to be eligible for receiving permanent resident card and legal work authorization- [Tatyana] must submit the following information, documents, and forms: **Certified copy of arrangement, or dismissal 2013 child support order from appropriate state office and court.**

“Now, it is indicated that the conditions from Tatyana’s temporary green card were not removed by John required by the law”*See* RP 11/02/16 at 470-1 ruling; Ex 36 (Gairson’s report at page 12-13 ## 87-9);

A noncitizen may not seek or obtain employment in the United States without proper work authorization. INA§274(a)(A).

If a person works without proper work authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident. INA §245(c).

Under Immigration and Nationality Act (INA) certain class of immigrants are eligible to obtain employment authorization the list can be found in 8 C.F.R 274a 12.

Judge Wickham ruled at the 2016 trial court:

“I am prepared to vacate the 2013 child support order, **which will have the effect of allowing Tatyana to apply for her green card and remove the conditions that were placed on**

her conditional permanent resident status. It also will allow her to obtain employment”

See RP 11/02/16 at 475-6

“Vacating 2013 trial court’s child support would beneficial for both parties it will ultimately allow Tatyana to obtain green card and later citizenship, which eventually will terminate the I-864 obligation. It also will allow Tatyana to obtain employment”

See RP11/02/16 at 475-6; Ex 37.

In the 2013 trial and on January 25, 2017 hearing, Judge Hirsch refused to vacate her fundamentally wrong 2013 orders, when she improperly imputed to Tatyana income of \$2,080 per month and enforced Tatyana to violated immigration law INA 245(c) by stating that she is voluntarily unemployed”, when the law clearly said, “a noncitizen may not seek or obtain employment in the United States without proper work authorization. INA§274(a)(A) and that the court cannot impute income to the aliens who has no proper work authorization and who came to the US based on family based immigration visa. Only a sponsor who brought the beneficiary immigrant to the U.S. has obligation to support the immigrant. 8U.S.C 1182(a)(4)(B). Judge Hirsch places high financial barrier and improperly enforced Tatyana to be in trouble with the USCIS and work without proper work authorization when the said: If a person works without proper work authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident”. INA §245(c).

Judge Hirsch and this court in case 45838-7-II 07/15/15 opinion were obsessed that Tatyana had to provide the address and the income of a person, she was temporary rosined when the law said:“When measuring the immigrant’s income, the court must disregard the income of anyone in the household who is not a sponsored immigrant” Erier v. Eriler 824F.3d 1173 1777 (9th Cir 2016). Furthermore, Judge Hirsch and this court violated the law when said that Tatyana’s counsel agreed to impute to her income of \$2,080 per month, when the immigration law said that Tatyana’s rights to not work without proper work authorization could not and cannot waived by any agreement and that John’s obligation even exist wholly and apart from any rights John and Tatyana may have under state matrimonial law. Liu v. Mund, 686 F3d 418, 419-20 (7th Cir 2012).

Therefore, the 2013 orders are fundamentally wrong and unjust and must be vacated because these orders are extremely unreasonable, made in bad faith and not for the best interest of the children. These orders violate immigration law, precluded Tatyana from removing conditions from her temporary green card and earn income. These orders unreasonably destroyed a relationship between Tatyana and her children through a high financial barrier for full eight years- which cause psychological and emotional harm to the children and their mother and violate constitution rights to be a parent.

D. JUDGE HIRSCH FAILED TO CONSIDER THE TOTAL FINANCIAL CIRCUMSTANCES OF BOTH PARTIES.

Judge Hirsch failed to consider both parties the total financial circumstances. CP 553-9; 560-66. In the 2013 trial and 2017 hearings Judge Hirsch refused to consider that Tatyana is an immigrant without proper work authorization and without income lived on DSHS food stamps and school loan in order to survive, because John refused to remove conditions from her temporary green card and the 2013 trial court orders precluded Tatyana to remove the conditions from her green card. Ex 36; 37 RP 11/02/16 at 475-6. Judge Hirsch and this court under 45838-7 and 49839-1 violated the law when said that Tatyana's counsel agreed to impute to her income of \$2,080 per month, when the immigration law said that Tatyana's rights to not work without proper work authorization could not and cannot waived by any agreement Liu v. Mund, 686 F3d 418, 419-20 (7th Cir 2012).

On the other hand John who is a financial sponsor breached his I-864 contract obligation and failed to support Tatyana since 1999 by abusing her through her immigration status. Ex 36 Gairson; RP 11/02/16 at 475-6. The purpose of the I-864 is to ensure the immigrant does not become a "public charge" Wenfang Liu v. Mund, 686 F. 3d 418, 422 (7th Cir 2012). The I-864 accomplished its goal by ensuring the sponsor's continued support for the immigrant, by not including a duty to mitigate in

its exceptions. In fact, where the court to allow John to offset what he owes Tatyana by any amount whether it be due to maintenance already paid, amounts owed by Tatyana to him, other than income money she received from third parties, or any other reason, it would undermine the purpose of the affidavit of support to “prevent the admission to the United States of any alien who is likely at any time to become a public charge” Id (quoting 8 U.S.C. §1182(a)(4)(A) and *Liu v. Mund*).

Here, the 2013 order of parenting plan required to pay \$144,000 per 6 months for Tatyana’s re-unification with her children. John as a sponsor has obligation to provide this cost and to re-unite Tatyana and her children.

E. JUDGE HIRSCH’S UNREASNABLE ORDERS SHOULD BE VACATED:

Tatyana brought her this appeal within a year of the entry of the January 25, 2017 order. She raised the point well. The order is not final until the last appeal has been completed.

Under CR 60(b) (1) Error and Mistakes of Judge Hirsch in 2017 and 2013 trial court orders: (1) did not consider the both parties financial circumstances; (2) did not consider Tatyana’s damaged immigration status; (3) did not consider that Tatyana’s status was damaged by the 2013 trial court orders and prevented her from removing the conditions; (4) Judge Hirsch made error when she ignored the USCIS letter directing her

to vacate her orders Ex 37; (5) Judge Hirsch made error when she enforced Tatyana to work without proper work authorization by stating that “Tatyana is voluntarily unemployed” when “a noncitizen may not seek or obtain employment in the United States without proper work authorization. INA 274(a)(A); If a person works without proper work authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident. INA 245(c). (6) Tatyana’s rights to not work without proper work authorization could not and cannot waived by any agreement Liu v. Mund . (7) Judge Hirsch failed to consider that John is a financial sponsor for Tatyana who failed to pay his marital contract obligation. Judge Hirsch error when she demands the address and the income of people Tatyana was temporary resigned: “When measuring the immigrant’s income, the court must disregard the income of anyone in the household who is not a sponsored immigrant” Erier v. Eriker 824F.3d 1173 1777 (9th Cir 2016).

Under CR 60(b) (3) newly discovered evidence: the USCIS letter Ex 37; Ex 36 Gairson’s expert witness in immigration law report dated 10/12/16 and the RP 11/02/16 at 470; 475-6 trial court findings regarding that John refused to remove conditions from Tatyana’s temporary green card and the 2013 orders prevented Tatyana from legal work authorization, earn income and pay for re-unification with her children INA 216; 245(c). Tatyana did not know that John is a financial sponsor

for her who breached I-864 contract and failed to support Tatyana 8.USC 1182(a)(4)(b);

Under CR 60(b)(4) Misrepresentation- the attorney who represented Tatyana at the 2013 trial court does not know immigration law and does not know that the law **precluded** any court to impute income to an alien who does not have proper work authorization, INA 274a 12; INA 245(c) that Tatyana's rights to not work without proper work authorization could not and cannot waived by any agreement and that John's obligation even exist wholly and apart from any rights John and Tatyana may have under state matrimonial law. *Liu v. Mund*, 686 F3d 418, 419-20 (7th Cir 2012).

Under CR 60(b)(11) extraordinary circumstances, as Judge Wickham found at the 2016 three day trial court, because John refused to remove conditions from Tatyana's temporary green card, and the 2013 trial orders precluded her from removing these conditions, the USCIS Department directed lower court vacate the 2013 orders. Ex 27; 36 RP 11/02/16 at 475-6. The 2013 and 2017 orders are fundamentally wrong and unjust- cause to Tatyana outrageous economic hardship, lost of income and separation with her children through a financial barrier for 8 years, by causing extreme psychological harm and emotional distress to the children and Tatyana. To overcome a manifest injustice See *In re the marriage of Jennings* 138 Was 2d 612, 625-26, 980 P.2d 1248 (1999). In the State v. Keller, 32 Wash. App 135, 140, 647 P. 2d 35 (1982). The

operation of CR 60(b)(11) is “confined to situations involving extraordinary circumstances not covered by any other section of the rule.

Tatyana’s resident card expired long time ago. To fix this card the 2013 trial court orders must be vacated. It is also very expensive. John as a sponsor has obligation to pay this cost \$20,000. The 2013 and 2017 orders **precluded** Tatyana from seeing her children, earn income and to pay for –re-unification, because she has no legal work authorization.

**F. JUDGE WICKHAM HAS AUTHORITY TO
PRESIDE OVER THIS CASE AS PRO-
TEMPORE AFTER HIS RETIREMENT.**

“The authority of a superior court judge to continue to function under Const. art. 4, § 7 (amend. 80) as a judge pro tempore on a pending case upon retirement is the consent of the parties as demonstrated by their failure to file affidavits of prejudice at the beginning of the case”.

Previously, the Washington Supreme Court ruled: “A case in superior court may be tried by a judge pro tempore”. Const. art. 4, § 7 (amend. 80); RCW 2.08.180. *National Bank of Wash. v. McCrillis*, 15 Wn.2d 345, 356, 130 P.2d 901, 144 A.L.R. 1197 (1942). The term of all superior court judges is 4 years and expires on the second Monday in January. Const. art. 4, § 5. Judge Wickham’s term expired on January 9, 2017 due to his retirement. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, clerical mistakes and other errors, the judge is entitled to hear the pending case as a judge pro tempore without any

written agreement. Zachman v. Whirlpool Financial Corp. 123 Wn. 2d 667 (Wash. 1994) Copy Cite Senate Joint Resolution 8207, 50th Legislature; Laws of 1987, 1st Ex. Sess., p. 2815. 3 The same Legislature amended RCW 2.08.180 to incorporate the language of amendment 80. Amended RCW 2.08.180 took effect on January 1, 1988. See Laws of 1987, ch. 73, § 1. The language of amendment 80 indicates that once a judge has been elected to the superior court, upon his or her retirement, no written agreement is required for the judge to hear pending cases in which he or she has made discretionary rulings. Thus, **amendment 80** did not eliminate the rule that written or oral consent in open court is necessary to appoint a judge pro tempore, see National Bank of Wash. v. McCrillis, 15 Wn.2d 345, 360, 130 P.2d 901, 144 A.L.R. 1197 (1942); State ex rel. Cougill v. Sachs, 3 Wn. 691, 29 P. 446 (1892). Rather, amendment 80 created a new means for appointing a **judge pro tempore** in a very limited set of circumstances. This conclusion is reinforced by the legislative history and materials in the official voters' pamphlet.

The official ballot title for amendment 80 stated: In interpreting a constitutional amendment, this court examines the legislative history and materials in the official voters' pamphlet. Tacoma v. Taxpayers of Tacoma, 108 Wn.2d 679, 687, 743 P.2d 793 (1987). Shall the constitution empower superior court judges, after retirement, to complete pending cases in which they had made discretionary rulings? 1987 Voters' Pamphlet, at 8. The

ballot title plainly indicates that the purpose of the amendment was only to permit elected judges to complete their State v. Belgarde 837 P.2d 599 (Wash. 1992) pending cases after they retired without any agreement by the parties that the retired judge be appointed a judge pro tempore. See 1987 Voters' Pamphlet, at 9. A constitutional provision should be construed to give effect to the manifest purpose for which it was adopted. Citizens for Financially Responsible Gov't v. Spokane, 99 Wn.2d 339, 346, 662 P.2d 845 (1983). Because, Judge Wickham was an elected judge who retired after have made discretionary rulings in the Marriage of Masons' pending case, the Supreme Court conclude retired judge is authorized to preside over the case's issue and authorized to correct clerical mistakes, clarify written orders entering the findings, etc without the parties' written or oral consent and affirming from the Court of Appeals. That this was the purpose of Const. art. 4, § 7 (amend. 80).

Here, because Judge Hirsch recusal from this case in 2017, and Judge Wickham preside this case in the 2016 three day trial, because Judge Wickham handled these type of cases previously, it would be proper to re-trial this case in front of Judge Wickham as he said:

“ I've been doing this work for 25 years, and yet I've only had maybe four of these cases. And the only reason why this issue appeared to me is because I was educated by a self-represented party, a spouse, roughly three years ago in a trial. State court judges do not get training on these family based immigration or their impact, and, as counsel has pointed out,

there's very little case law on it. And so everyone is doing the best they can without a lot of guidance”
RP 11/02/16 at 478.

This court should remand this case to the lower court for re-trial in front of pro-tempore Judge Wickham.

CONCLUSION:

Based on all these reasons above, this court should overturn Judge Hirsch’s unreasonable order dated January 25, 2017 and remand this case for re-trial in front of pro-tempore Judge Wickham.

DATED: December 12, 2019

RESPECTFULLY SUBMITTED BY _____
Tatyana Mason Appellant pro-se

A handwritten signature in blue ink, appearing to be 'T. Mason', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

**USCIS LETTER DATED
FEBRUARY 27, 2015
ADMITTED AS EXHIBIT 37 AT
THE 2016 TRIAL**

EXHIBIT 37 TRANSWERED TO THIS COURT UNDER 49839-1-II

**THIS COURT FAILED TO REVIEW THIS SUBSTANTIAL
EVIDENCE UNDER 49839-1-II CASE.**

APPENDIX A

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Seattle Field Office
12500 Tukwila International Blvd
Seattle, WA 98168-2506



U.S. Citizenship
and Immigration
Services

February 27, 2015

Tatyana Mason

DECISION

Dear Tatyana Mason:

Thank you for submitting Form I-90 to replace Permanent Resident Card, to U.S. Citizenship and Immigration Services (USCIS) under section of the Immigration and Nationality Act (INA).

We review your information provided in your application for replacement Permanent Resident Card, the documents supporting your application, USCIS has determined that you are not eligible for replacement Permanent Resident Card. USCIS must deny your I-90 application.

Statement of Facts and Analyses Including Ground(s) for Denial.

On October 28, 1999, you obtained conditional permanent resident status through your spouse in immigrant classification CF1. Your spouse did not file Form I-751, Petition to Remove Conditions on Residence. Your conditional permanent resident status and your conditions were not removed since March 2001.

USCIS received your Form I-90 on November 30, 2014 to replace Permanent Resident Card, and on January 13, 2015 you appeared for an interview to determine your eligibility for replacement. The record reflects that from March 2001 to November 30, 2014 your conditions were not removed by your spouse; on November 25, 2013 protection order placed against Tatyana Mason and you own child support.

Consideration has been given to your statements in connection with your convictions. Although you went through an abusive marriage and difficult divorce that was finalized in 2008, this does not excuse you from conditional permanent resident status: protection order against you on November 25, 2013. Also, you must contact and make appropriate arrangements with the relevant state child support agency and court. After you have made these arrangements, you must notify our office in writing.

Please submit the following information, documents, and forms:

Certified copy of termination of protection order against Tatyana Mason
Certified copy of arrangement or dismissal from appropriate state child support office and court.

To be eligible for receiving permanent resident card you must demonstrate that you are a person of good moral character. USCIS finds that the unlawful acts for which you have been convicted adversely reflect upon your moral character.

IMMIGRANT RIGHTS

Northwest Washington Office
1515 Second Avenue
Suite 400
Foster, Washington 98104

PHONE: 206-587-4009 TOLL-FREE: 800-445-5771 FAX: 206-587-4025 WEB: WWW.NWIRP.ORG

Thurston County Family and Juvenile Court
2801 32nd Ave SW
Tumwater, WA 98501

October 21, 2015

RE: Tatyana Mason—Case #: 07-3008480

Dear Commissioner,

My name is Mozhddeh Oskouian and I am an attorney with the Northwest Immigrant Rights Project. I have practiced immigration law for the past 10 years. I write this note per Ms. Mason's request. Ms. Mason requested clarification of two issues: first, is a person who does not have employment authorization or lawful permanent residency eligible to work in the United States; second, whether being in default of child support payment may adversely affect an application for adjustment of status.

A noncitizen may not seek or obtain employment in the United States without proper work authorization. INA § 274A(a). If a person works without proper authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident. INA § 245(c). Under the Immigration and Nationality Act ("INA") certain classes of immigrants are eligible to obtain employment authorization. The list can be found in 8 C.F.R. 274a.12. Eligibility to be legally employed extends to lawful permanent residents as well. Therefore, if Ms. Mason is not a lawful permanent resident and does not have basis to apply for employment authorization she may not legally work in the United States.

Additionally, grant of applications for adjustment of status is within the discretion of the Attorney General. INA 245. An applicant for adjustment of status must establish that s/he has good moral character if order for AG to exercise its discretion favorably. A noncitizen's failure to support dependents by paying child support is a negative discretionary factor in establishing good moral character. See *In re Malaszenko*, 204 F.Supp. 744 (D.N.J. 1962).

Please feel free to contact me if you have any questions or concerns. My contact information is below.

Sincerely,

Mozhddeh Oskouian
Attorney
(206) 957-8623
mozhddeh@Nwirp.org

**GAIRSON'S EXPERT WITNESS
REPORT ADMITTED AS
EXHIBIT 36 AT THE 2016
TRIAL**

**THIS REPORT ANSWERED TO THIS COURT
UNDER 49839-1-II**

**THIS COURT GRANTED GAIRSON'S EXPERT WITNESS FEES
UNDER 49839-1-II CASE.**

APPENDIX B

1 3. In my time as an attorney I have filed over 900 family-based immigration matters and
2 hundreds of Freedom of Information Act (FOIA) and Privacy Act (PA) requests for
3 immigration materials. I am very familiar with the laws and procedures governing such
4 matters.

5 SUMMARY OF REPORT

- 6 4. For clarity, Mr. Mason (John Mason) and Ms. Mason (Tatyana Mason) are referred to by
7 their first names, John and Tatyana respectively, throughout this report.
- 8 5. The terms beneficiary, foreign beneficiary, alien beneficiary, and applicant are used as
9 appropriate, but all refer to Tatyana.
- 10 6. The terms sponsor and petitioner are used as appropriate, but both refer to John.
- 11 7. In my opinion, based upon my experience and review of the relevant records, Tatyana's
12 FOIA/PA request, its mailer, its CD, and the files located on it are authentic.
- 13 8. In my opinion, based upon my experience and review of the relevant records, the affidavit
14 of support located in Tatyana's FOIA/PA response is authentic.
- 15 9. In my opinion, based on my experience and review of the relevant records, John owes
16 Tatyana a substantial financial support obligation due to the Form I-864 that he signed in
17 collateral for her not being found inadmissible and being allowed to adjust her status to
18 conditional permanent resident.
- 19 10. In my opinion, based on my experience and review of the relevant records, Tatyana has not
20 earned 40 qualifying social security credit hours and John's qualifying quarters cannot be
21 added to Tatyana's because they are divorced.
- 22 11. In my opinion, based on my experience and review of the relevant records, Tatyana's
23 conditional permanent residence expired over a decade ago and she will have a difficult
24 time acquiring a waiver to remove those conditions, but the expiration of her residency
25 does not eliminate John's financial obligations.

26 [The remainder of this page is intentionally left blank]

27

1 79. According to the February 27, 2015, Decision on her application for a replacement law ful
2 permanent resident card that Tatyana showed me, it appears she was principally denied
3 because she and John failed to petition for her removal of conditions.

4 80. A conditional permanent resident must apply for removal of conditions in a timely manner.
5 Typically, that petition must be filed jointly with the U.S. Citizen spouse. However, in
6 limited circumstances, when a conditional permanent resident misses the deadline of
7 application or has divorced, he or she may request a waiver due to "good cause" for a late
8 filing and may also request a waiver to file without the U.S. Citizen spouse based on
9 evidence of a bona fide marriage. 8 CFR § 216.4 and 216.5.

10 81. Failure to file a petition to remove conditions in a timely manner results in "automatic
11 termination of the alien's permanent residence and the initiation of proceedings to remove
12 the alien from the United States." 8 CFR § 216.4(a)(6).

13 82. In practice, USCIS and ICE rarely initiate proceedings due to an expired conditional
14 permanent resident card. Extenuating circumstances, such as a criminal history or other
15 grounds of potential inadmissibility, usually have to exist before proceedings to place the
16 individual before an immigration judge will be initiated.

17 83. At any time prior to the initiation of proceedings due to the expiration of a conditional
18 permanent resident card, a joint petition to remove conditions may be filed and upon
19 approval permanent residence shall be restored. 8 CFR § 216.4(a)(6).

20 84. The law does not directly state that a late petition may be filed when not applying jointly,
21 but in practice it is typically allowed and given additional scrutiny.

22 85. A Form I-90, Application to Replace Permanent Resident Card, should always be denied
23 when the alien has failed to remove conditions. I know of no exception to this.

24 86. Many aliens make the mistake of filing a Form I-90 to replace a conditional permanent
25 resident card, rather than filing a Form I-751 to remove conditions. USCIS does not
26 always adequately inform them of this error or how to correct it.

27 87. In my opinion, Tatyana was correctly denied the replacement of her conditional resident
card, because her conditions have not been removed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

88. A conditional permanent resident whose card has expired may have a very difficult time proving permanent residency and work authorization.

89. Finally, because Tatyana entered the United States on a K-1 visa, she was required to file for adjustment of status through John after marrying him. She would not have qualified to obtain her permanent resident status through any other normal means of adjustment (asylum and potentially a Form I-360 VAWA petition are often the only options).

Furthermore, because she adjusted her status in the conditional resident category, she could not have qualified for the second, third, or fourth categories of applicants exempt from producing a Form I-864, as described above. A visa applicant in one of those other categories would have received a different visa. The only exemption category that a conditional resident may qualify for is having earned or having been credited with 40 quarters of work under the Social Security Act, which is evaluated in another section below.

90. Tatyana states that she neither earned, nor can be credited with earning, 40 quarters of work under the Social Security act prior to entering the United States. If accurate, this necessitates the conclusion that her I-129F petitioner submitted an I-864 on her behalf.

There is no other way her adjustment of status application would have been approved.

[The remainder of this page is intentionally left blank]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

bearer (John) shall bear an interest rate of twelve (12) percent per annum, RCW § 19.52.010.

162. Therefore, John's unpaid support obligation to Tatyana, with interest, may be as high as \$138,925 in principal plus \$72,688.50 in interest for a total of \$211,613.50.

CONCLUSION

163. In my opinion, John owes Tatyana a substantial support obligation, even after mitigation for income she may have earned or debts she may have owed John.

164. Finally, because Tatyana is a pro se litigant, I humbly remind the court that it has the authority to enforce the affidavit of support per federal law and the decision in *Khan*, No. 44819-9-II, as explained earlier. It is my opinion that such an order would be the most expedient method to settle this case and allow Tatyana to pursue the correction of her immigration status in order to end her dependence upon John.

I affirm under penalty of perjury of the laws of Washington State that the foregoing is true and correct.

DATED this 12 day of October, 2016,

By: 
Jay Gairson

**DOMESTIC VIOLENCE
PROTECTION ORDER ISSUED
AGAINST JOHN MASON
ADMITTED AT THE 2016 TRIAL**

THIS ORDER TRANSFERRED TO THIS COURT UNDER 49839-1.

THIS COURT FAILED TO REVIEW UNDER 49839-1-II CASE.

APPENDIX C

THURSTON COUNTY SUPERIOR COURT

FRIDAY, AUGUST 3, 2007
DOMESTIC VIOLENCE CALENDAR 9:00 A.M.

COURT COMMISSIONER LYNN HAYES
ROXANNE MOULTON, CLERK
DIGITAL RECORDING DEVICE

Underlined Parties Present at Hearing

07-2-30509-0

11.

07-3-00848-0

MASON, TATYANA ET AL

KRATZ, PHILIP L

VS

MASON, JOHN A

ROBERTSON, LAURIE

PROTECTION ORDER

The parties were duly sworn by the Court to tell the truth.

Mr. Kratz informed the Court that this would be a contested hearing.

Tatyana Mason was duly sworn by the Court to tell the truth and testified under the direct examination of Mr. Kratz.

Ms. Robertson conducted her cross-examination.

John Arthur Mason, respondent, assumed the witness stand. The Court reminded him that he is still under oath. Ms. Robertson conducted direct examination.

Mr. Kratz conducted his cross-examination.

Ms. Robertson conducted her re-direct examination.

Witness stepped down.

Respondent rested.

Mr. Kratz waived his closing argument.

Ms. Robertson presented her closing argument to the Court.

THURSTON COUNTY SUPERIOR COURT

FRIDAY, AUGUST 3, 2007
DOMESTIC VIOLENCE CALENDAR 9:00 A.M.

COURT COMMISSIONER LYNN HAYES
ROXANNE MOULTON, CLERK
DIGITAL RECORDING DEVICE

Underlined Parties Present at Hearing

07-2-30509-0 (CONTINUED 2 OF 2)
07-3-00848-0

11.

MASON, TATYANA ET AL
VS

KRATZ, PHILIP L

MASON, JOHN A

ROBERTSON, LAURIE

PROTECTION ORDER

Court's Ruling: The Court finds that the petitioner's testimony was credible. The Court finds that Domestic Violence has been committed. The Court finds that there have been acts of control by Mr. Mason. Ms. Mason is a disadvantaged spouse. Mr. Mason's testimony was not credible. The Court stated concern about secreting the children. There is a family law matter scheduled, so the Court would not address the issue of a Parenting Plan at this time. The Court finds that Mr. Mason should be restrained from contacting the petitioner. The Court restrained him from going within a mile of the petitioner. The house is his separate property, so he is restrained until there is ruling in the domestic case.

Court signed: "Order for Protection"

STATE OF WASHINGTON

County of Thurston

I, Betty J. Gould, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the following is a true and correct copy of the original as the same appears on file and of record in my office containing -- 4 -- pages.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court

DATED: _____

BETTY J. GOULD
County Clerk, Thurston County, State of Washington
by _____ Deputy

FILED
SUPERIOR COURT
THURSTON COUNTY WA

2007 AUG -3 AM 11:52

BETTY J. GOULD, CLERK
BY _____
DEPUTY

Superior Court of Washington For Thurston County	Order for Protection No. 07-2-30509-0
TATYANA MASON, 2/11/67 Petitioner	Court Address: 2801 32 nd Avenue SW Tumwater, WA 98512
vs.	Telephone Number: (360) 709-3275
JOHN A MASON, 5/16/59 Respondent	(Clerk's Action Required) (ORPRT)

Names of Minors: No Minors Involved

First, Middle, Last	Age
DAVID MASON	3
GRAHAM MASON	7

Respondent Identifiers

Sex	Race	Hair
Male	White	XXX
Height	Weight	Eyes
6-2	185	BRO

Respondent's Distinguishing Features: Respondent has unknown distinguishing features.

Caution: Access to weapons:

yes no unknown

The Court Finds:

The court has jurisdiction over the parties, the minors, and the subject matter and the respondent has been provided with reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by personal service service by mail pursuant to court order service by publication pursuant to court order other

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

Based upon the case record, the court finds that the respondent's relationship to the petitioner is:

- spouse or former spouse current or former dating relationship in-law parent or child
- parent of a common child stepparent or stepchild blood relation other than parent or child
- current or former cohabitant as intimate partner current or former cohabitant as roommate

Additional findings of this order are set forth below.

The Court Orders:

- That the respondent is restrained from committing acts of abuse as listed in restraint 1, on page 2.
- No-contact provisions apply as set forth on the following pages.

The terms of this order shall be effective for one year from today's date,

unless stated otherwise here (date): _____

FAXED/COPY TO TCSO
 (Law Enforcement Agency where Petitioner resides
 for input into statewide computer system)

The court further finds that the respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner, and **It is Ordered:**

1. Respondent is **Restrained** from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking petitioner the minors named in the table above these minors only:

(If the respondent's relationship to the petitioner is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, then effective immediately, and continuing as long as this protection order is in effect, the respondent may not possess a firearm or ammunition. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

2. Respondent is **Restrained** from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with petitioner the minors named in the table above these minors only:

If both parties are in the same location, respondent shall leave.

3. Respondent is **Excluded** from petitioner's residence workplace school; the day care or school of the minors named in the table above these minors only:
 Other: *unless modified in the Dissolution*
 Petitioner's address is confidential. Petitioner waives confidentiality of the address which is:

4. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately **Vacate** the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.

This address is confidential. Petitioner waives confidentiality of this address which is:

5. Respondent is **Prohibited** from knowingly coming within, or knowingly remaining within 1 mile (distance) of: petitioner's residence workplace school; the day care or school of the minors named in the table on page one these minors only:

Other: *Unless modified in Dissolution Case*

6. Petitioner shall have possession of essential personal belongings, including the following:

Reserved to Dissolution

7. Petitioner is granted use of the following vehicle:

Year, Make & Model License No.

Reserved to Dissolution Case

8. Other:

<input type="checkbox"/> 9. Respondent shall participate in treatment and counseling as follows: <input type="checkbox"/> domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: <input type="checkbox"/> parenting classes at: <input type="checkbox"/> drug/alcohol treatment at: <input type="checkbox"/> other:
<input type="checkbox"/> 10. Petitioner is granted judgment against respondent for \$ _____ fees and costs.
<input type="checkbox"/> 11. Parties shall return to court on _____, at _____, AM / PM for review.
Complete only if the protection ordered involves minors: This state <input type="checkbox"/> has exclusive continuing jurisdiction; <input type="checkbox"/> is the home state; <input type="checkbox"/> no other state has exclusive continuing jurisdiction; <input type="checkbox"/> other:
<input type="checkbox"/> 12. Petitioner is Granted the temporary care, custody, and control of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 13. Respondent is Restrained from interfering with petitioner's physical or legal custody of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 14. Respondent is Restrained from removing from the state <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
<input type="checkbox"/> 15. The respondent will be allowed visitations as follows: Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.
If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.
Warnings to the Respondent: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262. Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if the respondent has at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW. If the respondent is convicted of an offense of domestic violence, the respondent will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040. You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

**COURT'S TRANSCRIPT OF
DECEMBER 9, 2016 HEARING ON CR
11 A SANCTION.**

THIS ORDER TRANSFERRED TO THIS COURT UNDER 49839-1.

**THIS COURT DIRECTED LOWER COURT TO CORRECT
CLERICAL MISTAKES AND ENTER FINDINGS INTO WRITTEN
ORDER.**

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
FAMILY AND JUVENILE COURT

In re the Matter of:)	
JOHN MASON,)	
	)	COURT OF APPEALS
	)	NO. 49839-1-II
Petitioner,)	
	)	THURSTON COUNTY
vs.	)	NO. 07-3-00848-0
)	
TATYANA MASON,)	
)	
Respondent.)	

TRANSCRIPTION OF AUDIO RECORDING

BE IT REMEMBERED that on December 9, 2016,
the above-entitled matter came on for hearing before the
HONORABLE CHRIS WICKHAM, Judge of Thurston County
Superior Court.

Reported by: Aurora Shackell, RMR CRR
Official Court Reporter, CCR# 2439
2000 Lakeridge Drive SW, Bldg No. 2
Olympia, WA 98502
(360) 786-5570
shackea@co.thurston.wa.us

APPEARANCES

For the Petitioner: LAURIE GAIL ROBERTSON
Law Offices of Jason S. Newcombe
10700 Meridian Ave. N, Ste. 107
Seattle, WA 98133-9008

For the Respondent: TATYANA MASON
(Appearing Pro Se)

1 (After hearing trial, the court ruled as follows)

2 --o0o--

3 THE COURT: We're next going to go to the
4 motion calendar, and the first matter is Mason and
5 Mason. This seems to be a day for electronic
6 challenges. I'm waiting for the record to be called
7 up here. I have my notes, so maybe I'll just begin.

8 I noted -- as you know, I issued a written
9 decision, an actual order, and when I was looking at
10 it the other day, I noticed it was on Ms. Robertson's
11 pleading paper, because she sent me the -- her
12 associate sent me the electronic order, and that's
13 what I worked from. And so I apologize, it looks
14 like the order that you created. I know that it
15 wasn't the order you created, just so it's clear that
16 that was an order that the court created on your
17 pleading paper.

18 And that order was entered on November 23rd, and
19 it set another hearing, which is today, to take up
20 the issue of attorney's fees and costs. And I
21 have -- the motion is, I believe, from Ms. Mason. I
22 don't believe that Mr. Mason has a similar motion,
23 does he?

24 MS. ROBERTSON: Correct. No.

25 THE COURT: Okay. So, Ms. Mason, this is your

1 motion. Go ahead.

2 MS. MASON: Yes. Thank you. Your Honor, I am
3 requesting to grant me fees under CR 11, \$82,000,
4 including 45,000 for my own time preparing for this
5 trial. I am requesting -- as you know, Your Honor,
6 CR 11(b) covered my conduct as a pro se, and I have
7 done my best to do this job, and I have prevailed due
8 to my diligent work and passion.

9 In contrast, Mrs. Robinson had ignored her duties
10 under CR 11(a) as an attorney. Under CR 11(a)(1),
11 Mrs. Robinson has made many misrepresentations that
12 were not grounded in facts. On July 7, 2016, Mrs.
13 Robertson filed Ms. Seifert's declaration, who failed
14 to acknowledge the existence of Department of Justice
15 before Department of Homeland Security. Ms. Seifert,
16 who claimed herself as an immigrational expert for
17 27 years does not know immigrational law and does not
18 know what's the year I-864 was enforced.

19 So single trip to my mother's funeral in 2004,
20 they said, terminated obligation under I-864,
21 Mr. Mason, but, however, she refused to mentioned, if
22 I depart permanently. And other issues there. Is
23 this because Ms. Robertson instructed Ms. Seifert to
24 falsely testify in every aspect of law in this case?

25 John has consistently prejudiced himself by

1 stating in several of his declarations signed under
2 oath that he never signed affidavit of support. Even
3 the physical fact was presented at the trial. John
4 still denied it. On April 29th, 2016, this court
5 directed both parties to request I-864 from FOIA,
6 Freedom of Information Act, and John decide to trick
7 this case -- this court again. Instead of I-864, he
8 request I-129, which is fiancee visa, and which was
9 valid only for 90 days, and so it was expired before
10 August 1999. So, of course, FOIA denied his request.

11 Next, Ms. Robertson helped John to continue his
12 control, continue his abuse and prejudice in this
13 court so many times by writing for him and on his
14 behalf -- on his behalf submitted to the court all
15 information what is just manipulating declarations
16 signed under oath -- under oath with, "John does not
17 sign affidavit of support."

18 Under CR 11(a)(2), Ms. Robertson made many
19 unwarranted and bad faith arguments. Ms. Robinson
20 shows a lack of competence before this trial. Ms.
21 Robertson misled this court on several cases during
22 the trial, as *Davis v. Davis* case, which -- she's
23 supporting her argument with *Davis v. Davis* case,
24 where couple were just separated, but they're still
25 married. In our case, we're divorced. This case

1 does not apply to our case.

2 So another one, she misquoted case *Liu vs. Mund*
3 where it's basically sponsor. A sponsor cannot
4 mitigate I-864, but Ms. Robertson stated everything
5 around backward. Ms. Robertson was wrong on the
6 *Shumye vs. Felleke* case again during the trial and
7 tried to enforce the income, which does not apply to
8 both for me.

9 So is Ms. Robinson doing this because -- on
10 purpose or is it because of the lack of competence of
11 the law?

12 Ms. Robertson failed to understand and follow the
13 law in this case and it's done in bad faith or it's
14 through the gross incompetence as shown by use of the
15 argument that is not warranted by the existing law CR
16 11 A(3). Many of Ms. Robertson's tactics in this
17 case were done to increase my costs and put me even
18 more in deeper economic hardship, to unnecessarily
19 delay justice, to purposefully harass me for -- and
20 for other inappropriate purposes.

21 So Ms. Robinson is not for the first time actually
22 ambushed me at this court since 2007. For example,
23 before the trial, it's five minutes before trial, she
24 actually served me with the trial brief. When I
25 served her -- which she knows was on October 13th, it

1 was exchanged the documents between parties. So she
2 didn't do that. I filed in the court my paperwork,
3 and on Friday, I submit to her, but she refused to
4 give it to me. So it's okay for Ms. Robertson to
5 serve her legal documents through e-mail when she
6 wanted them, but she does not accept from me any
7 legal documents through the e-mail. She wants
8 priority mail, which costs 6.45 for each time.

9 THE COURT: You have three minutes left. Do
10 you want to save some time to respond to her?

11 MS. MASON: Sure.

12 THE COURT: Your request, as I understand it,
13 is for --

14 MS. MASON: Attorney's fees and several --

15 THE COURT: I have \$81,751 for your costs.

16 MS. MASON: Right. This is including --

17 THE COURT: And that includes the CR 11.

18 MS. MASON: Well, this is basically, I present
19 the information about my covering my time, because I
20 believe why my time has less value than Ms.
21 Robertson's time. And this because I didn't want to
22 go the trial. Ms. Robertson presented her
23 declaration which basically falsely represent the
24 facts of the laws.

25 THE COURT: I have a document that you

1 submitted that shows a total of \$81,751. Is that the
2 number?

3 MS. MASON: Yes. Correct.

4 THE COURT: All right. Ms. Robertson, go
5 ahead.

6 MS. ROBERTSON: First of all, we provided this
7 per my client's declaration as well as a memoranda of
8 law that clearly outlines the law on the request that
9 has been made by the respondent. First and foremost,
10 under the law, a pro se litigant cannot be awarded
11 attorney's fees. They are not an attorney. They
12 have not incurred attorney's fees. And multiple
13 cases have ruled on that. We have those cases
14 outlined in our brief, including *In re Marriage of*
15 *Brown, West vs. Thurston County, Mitchell vs.*
16 *Washington State Department of Corrections*. All of
17 those are in our briefs. In fact, to award a pro se
18 litigant attorney's fees would be contributing to
19 them practicing without a license, which violates the
20 law.

21 So Ms. Mason coming in here and requesting \$45,000
22 in attorney's fees for herself, as well as an
23 additional \$15,000 to allegedly correct her
24 immigration, are not proper for this motion. When
25 the court set this motion at the end of the hearing,

1 it was set specifically to address expert fees.
2 Those fees had been testified and addressed to you at
3 the trial with regards to Mr. Gairson. That's what
4 this court set the motion for. That's what was
5 anticipated what would be argued. For Ms. Mason to
6 come before this court and request attorney's fees
7 for herself, a non-attorney, is completely improper.
8 For her to request \$15,000, as she says, to have her
9 immigration corrected, is completely outside the
10 scope of this matter.

11 So what the court needs to look at, really, are
12 Mr. Gairson's fees versus Ms. Seifert's fees, and
13 we've argued that, again, in the memo as well as in
14 my client's declaration.

15 Under the law, this court needs to really look at
16 the reasonableness of Mr. Gairson's fees. Even he
17 testified at trial that his fees were unreasonable,
18 that they were excessive, that he had spent over
19 20 hours just meeting with Ms. Mason. Really, he
20 came into this court allegedly as an expert. He was
21 admitted as an expert in immigration law to explain
22 parts of immigration law to this court. He
23 testified -- excuse me -- he testified that he did
24 not know the history of this case. He testified that
25 he was not representing Ms. Mason. He testified that

1 he didn't even know the nature of the motion before
2 the court, that his role was to come in and talk
3 about immigration law where he said he was an expert
4 in. And yet, he charged 41 hours of his time and is
5 seeking roughly \$15,000 in fees.

6 Those fees don't apply to this case. If the court
7 wants to make a reasonable comparison, we provided
8 Ms. Seifert's bill. Ms. Seifert's bill is roughly
9 \$2,500 for doing exactly the same thing, for coming
10 to this court and providing expert opinion on
11 immigration law.

12 Now, those were the experts on immigration law,
13 and if the court recalls, when the trial started, the
14 court itself said that this was not an area the court
15 had a lot of knowledge in, that this was not an area
16 of law that comes before the family court, and that's
17 why this court was looking at those two people to
18 come in and offer their testimony and offer their
19 information. There was never any bad faith. There
20 was never any finding of bad faith by this court or
21 that anything was manipulated.

22 My client provided responsive materials because we
23 got Mr. Gairson's report the day before trial,
24 something that we never even anticipated, because
25 this was a motion to vacate a 2013 order. This

1 wasn't a motion for this court to decide what my
2 client owed under the affidavit. And if the court
3 looks back at the report that was provided by
4 Mr. Gairson, a large part of that report, that's what
5 that's all about. It was at that point that my
6 client was required to provide responsive materials
7 and to bring in Ms. Seifert. Prior to that, it was
8 never his intention to do that, because that's not
9 what the motion was about.

10 On the day of trial, we provided full copies to
11 the court, to opposing party, of our exhibits. Our
12 exhibits consisted of orders that had previously been
13 entered before this court. There was nothing
14 surprising about it. There was nothing new about it.
15 We never got copies of Ms. Mason's exhibits, and the
16 court can recall as we went through the trial, every
17 time she presented an exhibit, we had to look at it
18 because, previously, we had never received a copy of
19 it.

20 So for her to make claims that there was any bad
21 faith in this action, which my client wasn't the one
22 who filed three years after the order was entered, is
23 completely unreasonable. And, again, the case law is
24 clear, she doesn't get attorney fees. So, really,
25 what the court is looking at are the expert fees that

1 should be awarded to either party for their experts.
2 Mr. Mason's position is that they both brought in
3 experts, they should both be responsible for the
4 experts that they provided to this court without an
5 award of fees to either party.

6 Also, under 26.09.140, the court does have to look
7 at ability to pay. My client solely supports the two
8 children of these parties and now has lost a judgment
9 for child support, support that should have gone to
10 these children. He has incurred debt because of
11 that. He gets nothing. He gets zero from Ms. Mason
12 to support their children, and that needs to be a
13 consideration. This court said it was requesting
14 financial declarations from the party. We provided
15 financial declarations. We provided bank statements.
16 We provided pay records. We provided tax returns.
17 All we got from Ms. Mason was a financial
18 declaration.

19 So the court should look at the evidence before it
20 and make a determination that each party should be
21 responsible for their own expert fees, and there
22 should be no additional award of fees to either
23 party. Thank you.

24 THE COURT: All right. Ms. Mason, you have
25 three minutes.

1 MS. MASON: Yes. As you see, Your Honor,
2 Mr. Mason already contradicts himself by saying that
3 he has very little income. However, he still was
4 able to buy overly-aggressive attorney, and he still
5 was able to pay a second attorney, Ms. Seifert. So
6 two attorneys have been fighting me on the issues of
7 law and interpretation of facts, so I had no other
8 choice as to hire expert because I know the unethical
9 behavior of Ms. Robertson since 2007.

10 So they compare Lisa Seifert and Jay Gairson, but
11 it's absolutely incomparable because you can see --
12 you did see how Lisa Seifert's report. She does not
13 know the law or she was instructed by Ms. Robertson
14 to misrepresent every fact in this case and lost.
15 Mr. Gairson actually, he took time. He actually
16 looked at my old immigrational case. He had to view
17 all those documents, and he takes time to make sure
18 everything lies was not changed. So he did a very
19 good job. Instead of Lisa, who spent for two hours
20 and testified on every aspect of law is wrong. And
21 Mr. Gairson, who actually prepared the report and
22 spent time to explain everything, and in result, it
23 sounds like what Ms. Robertson completely or she is
24 incompetent in the law, or she did this on purpose in
25 the bad faith to mislead, misquote, misinterpret the

1 law. And I am really asking what Ms. Robertson has
2 to discipline by abuse of CR 11(a) as an attorney.
3 Because I was following the duty my conduct under CR
4 11(b) as a pro se, but Ms. Robertson decide to not
5 follow and ignore this conduct under CR 11(a) as an
6 attorney.

7 So, also, I submitted --

8 THE COURT: You've got 30 seconds left.

9 MS. MASON: Yes. I submitted my paperwork,
10 and based on equal justice, the litigant pro se can
11 actually have -- based on federal statutes, can
12 actually award at least attorney fees. And that's an
13 established in law, and I provided this declaration.
14 And, also, I complete -- I was basically calculated
15 how I got this 45,000 is basically from July 8th to
16 November 2nd is 15 weeks, multiply by five days a
17 week and six hours per day, is 450 hours. And I
18 multiplied by a hundred, because based on mean --

19 THE COURT: You're out of time.

20 MS. MASON: Yes.

21 THE COURT: I want to start by saying that I
22 know you have spent a great deal of time on this
23 case, and you ultimately prevailed in the hearing
24 that we had, and that was in no small part due to the
25 effort that you put into it. I've already

1 acknowledged the language barriers that you face, and
2 you were still able to marshal the information
3 together to present a strong case. However, this is
4 a request for fees, and Washington law does not
5 award -- does not compensate parties for the time
6 that they spend preparing their case. You're not an
7 attorney, as Ms. Robertson has said, and so your fees
8 cannot be awarded by this court. And so all of the
9 work that you did clearly was valuable, but I do not
10 have the authority to compensate -- to require
11 Mr. Mason to compensate you for it. That's the first
12 piece.

13 So if I go through your summary here, I believe
14 the only -- well, I can probably cover mail costs.
15 There is such a thing as statutory attorney's fees
16 which I can probably add on here. But I don't know
17 that I can cover any of these other costs, other than
18 Mr. Gairson. Mr. Gairson was a professional expert
19 that you retained for the purpose of proving your
20 case. He clearly presented good evidence for you,
21 and so he was competent at what he did. I understand
22 Ms. Robertson's point that even by his own admission,
23 he spent more time with you than he thought was
24 normal or customary under the circumstances, but I
25 believe that that time probably was necessary because

1 of, again, your language barriers and also the
2 complicated nature of this case. It's not as if he
3 was consulting with another attorney; he was
4 consulting with someone who he essentially had to
5 educate as to the law so that you could bring the
6 information yourself to the court.

7 And when I look at all of that, I look at his
8 total fee of \$12,800, in the scope of this case, with
9 the degree of adversity presented in this case, I
10 think that's a reasonable figure. So I will adopt
11 that figure as reasonable. So I will allow that as a
12 cost of litigation, along with your priority mail
13 costs, which you've listed as \$71, and I will add
14 something called statutory attorney's fees.

15 And Ms. Robertson, help me out here with the
16 number. It's a standard number in the statute. I
17 haven't looked at it for some time.

18 MS. ROBERTSON: She's -- she's not entitled to
19 that.

20 THE COURT: I think any party is.

21 MS. ROBERTSON: She's not an attorney.

22 THE COURT: I recognize that, but I think it
23 goes with judgment.

24 MS. ROBERTSON: I mean, if you're talking
25 about a contempt judgment, there's a \$100 addition.

1 THE COURT: No, I'm talking about -- that's
2 okay. I'm not going to order something that I don't
3 have the authority in front of me. If you want to
4 find the authority for this, Ms. Mason, I'll add it
5 on to what I'm going to award. I will award you
6 two-thirds of Mr. Gairson's costs on the financial --
7 relative financial positions of each of you. You are
8 essentially unemployed and homeless. Mr. Mason earns
9 roughly \$4,500 a month net. And so it's reasonable
10 to me that he pay two-thirds of that cost and you pay
11 one-third.

12 As to the remaining one-third, I will impose the
13 additional one-third under Civil Rule 11, and I'm
14 doing that based on a declaration that was filed by
15 Ms. Robertson July 6th. It's a statement of
16 Mr. Mason, and I'm going to read in pertinent part.
17 This is from the first page of that declaration, "She
18 claimed in part that I have filed an I-864 support
19 affidavit when she came to this country, and,
20 therefore, I should have been supporting her, and she
21 never should have been required to pay child support.
22 Nothing could be further from the truth." That's his
23 statement.

24 Then on the second page, "I believe the I-864 was
25 a document I may have started to complete, but it was

1 not what I was required to file and so I did not
2 complete or file the document." And then later on
3 that page, "Respondent claims that I would have had
4 to complete I-864 as part of the fiancee visa
5 application, but that is not true." And then on page
6 three, "Respondent's representation that I had to
7 have filed the I-864 form is simply not true."

8 Those statements raise the issue of the existence
9 of the I-864, which is what required this court to
10 have a three-day trial over whether or not that
11 document existed. Now, clearly clients are entitled
12 to aggressive advocacy, but I believe the advocacy in
13 this case presented an untrue presentation to the
14 court which created unnecessary litigation. And I
15 believe that that is a violation of the portion of CR
16 11 which says that the signature of a party or of an
17 attorney constitutes a certificate by the party or
18 attorney that the party or attorney has read the
19 pleading, motion or legal memorandum and that, to the
20 best of the party's or attorney's knowledge,
21 information and belief, formed after an inquiry
22 reasonable under the circumstances, (1), it is well
23 grounded in fact; (2), it is warranted by existing
24 law or a good faith argument; (3), it is not
25 interposed for any improper purpose such as to harass

1 or to cause unnecessary delay or needless increase in
2 the cost of litigation." I believe those statements
3 were made for that purpose, and, therefore, I believe
4 CR 11 does apply here.

5 The remaining one-third of Mr. Gairson's fee, I
6 will assess to Mr. Mason because of CR 11 violations.
7 So I will grant a judgment for the entire cost of
8 Mr. Gairson's services.

9 MS. ROBERTSON: And there's no consideration
10 that she forged U.S. documents? And we provided
11 proof that she forged --

12 THE COURT: Ms. Robertson, be careful here.
13 You have already pushed this issue farther than you
14 ever should have. Your client and, by extension, you
15 should have known there was an I-864 regardless of
16 what you were looking at, and you put this court and
17 Ms. Mason through three days of trial on that issue.

18 MS. ROBERTSON: For the record, my client was
19 never going to ask for the trial, and when this court
20 asked us at the beginning of the trial why we
21 couldn't submit this on affidavits, my client agreed
22 it should have been something that was submitted on
23 affidavits, and it was Ms. Mason who requested that
24 the court go forward with trial --

25 THE COURT: This court set the trial itself,

1 if you'll recall, because I was concerned about the
2 issues that you and your client had raised, and I
3 felt there was no way that I could resolve those
4 issues without a trial with witnesses in person.
5 That trial was unnecessary, and it was raised solely
6 because of the allegations that were made that were
7 baseless.

8 This is the end of this hearing. Ms. Mason, if
9 you have an order to present, I will sign it this
10 morning after Ms. Robertson takes a look at it.

11 MS. MASON: Yes, I do.

12 THE COURT: You need to show it to Ms.
13 Robertson first.

14

15 --o0o--

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official
Reporter of the Superior Court of the State of Washington
in and for the County of Thurston do hereby certify:

1. I received the electronic recording from the trial
court conducting the hearing;
2. This transcript is a true and correct record of the
proceedings to the best of my ability, except for any
changes made by the trial judge reviewing the transcript;
3. I am in no way related to or employed by any party in
this matter, nor any counsel in the matter; and
4. I have no financial interest in the litigation.

Dated this 18th day of March, 2017.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

**ORDER IMPOSED CR 11(A)
SANCTION DATED
DECEMBER 13, 2016**

THIS ORDER TRANSFERRED TO THIS COURT UNDER 49839-1.

THIS COURT DIRECTED LOWER COURT TO CORRECT
CLERICAL MISTAKES AND ENTER FINDINGS INTO WRITTEN
ORDER.

APPENDIX E

**SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY
FAMILY & JUVENILE COURT**

JOHN A MASON

Petitioner,

and

TATYANA IVANOVNA MASON

Respondent.

NO. 07-3-00848-0

**ORDER GRANTING ATTORNEY FEES
AND IMPOSING CR 11 SANCTIONS**

CLERK'S ACTION REQUIRED

I. JUDGMENT SUMMARY

- No money judgment is ordered.
- Summarize any money judgments from section 3 in the table below.

Judgment for	Debtor's name <i>(person who must pay money)</i>	Creditor's name <i>(person who must be paid)</i>	Amount	Interest
Money Judgment			\$	\$
Fees and Costs	John Mason	Tatyana Mason	\$8,533	\$
Other amounts <i>(describe)</i> : CR11 Sanctions	John Mason	Tatyana Mason	\$4,267	\$
Yearly Interest Rate: ____% <i>(12% unless otherwise listed)</i>				
Lawyer <i>(name)</i> : LAURIE ROBERTSON		represents <i>(name)</i> : JOHN MASON		
Lawyer <i>(name)</i> :		represents <i>(name)</i> :		

**THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT**
Mail: 2000 Lakeridge Dr SW Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
Phone: (360) 709-3201 - Fax: (360) 709-3256
CLERK'S OFFICE: (360) 709-3260

II. BASIS

THIS MATTER having come before the Court this date on the Respondent's Motion for Attorney's Fees and Costs and for Sanctions under Civil Rule 11, the Court having heard the argument of counsel and Ms. Mason, having reviewed the records and files herein, and being otherwise fully advised, NOW, THEREFORE, it is hereby

III. ORDER

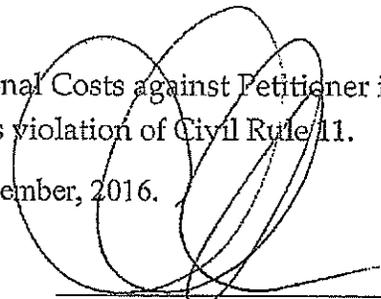
IT IS ORDERED that:

The Respondent is awarded Attorney's Fees and Costs against Petitioner in the amount of \$8,533 based on the respective financial circumstances of the parties and in accordance with RCW 26.09.140; and

IT IS FURTHER ORDERED

That Respondent is awarded additional Costs against Petitioner in the amount of \$4,267 based on Petitioner and his counsel's violation of Civil Rule 11.

DATED this on this the 13th day of December, 2016.



JUDGE CHRIS WICKHAM

COURT TRANSCRIPT DATED 11/02/16

THIS ORDER TRANSFERRED TO THIS COURT UNDER 49839-1.

**THIS COURT FAILED TO REVIEW THIS TRANSCRIPT OF
ORAL RULING UNDER 49839-1-II CASE**

APPENDIX F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
FAMILY AND JUVENILE COURT

In re the Matter of:)	
JOHN MASON,	)	THURSTON COUNTY
	)	NO. 07-3-00848-0
Petitioner,	)	<u>COA 49839-1-II</u>
vs.)	
TATYANA MASON,)	
)	
Respondent.)	

VERBATIM REPORT OF PROCEEDINGS
(Court's Ruling)

BE IT REMEMBERED that on November 2, the
above-entitled matter came on for trial before the
HONORABLE CHRIS WICKHAM, Judge of Thurston County
Superior Court.

Reported by: Aurora Shackell, RMR CRR
Official Court Reporter, CCR# 2439
2000 Lakeridge Drive SW, Bldg No. 2
Olympia, WA 98502
(360) 786-5570
shackea@co.thurston.wa.us

APPEARANCES

For the Petitioner: LAURIE GAIL ROBERTSON
Law Offices of Jason S. Newcombe
10700 Meridian Ave. N, Ste. 107
Seattle, WA 98133-9008

For the Respondent: TATYANA MASON
(Appearing Pro Se)

1 November 2, 2016

2 THE HONORABLE CHRIS WICKHAM, PRESIDING

3 * * * * *

4 (After hearing trial, the court ruled as follows)

5 THE COURT: Thank you. In a perfect world,
6 I'd spend a couple days, I'd write up a very complete
7 and detailed analysis of this case, and I'd send it
8 out to everybody. But I don't live in a perfect
9 world, and so I'm going to do the best I can right
10 now to summarize what I have heard and seen over the
11 last few days of trial. And if I misstate something,
12 I apologize. I think there's value in my
13 communicating this while it's relatively fresh in my
14 mind. Granted, it's been a couple weeks here since
15 we started, but it's reasonably fresh in my mind.

16 So the record shows that John and Tatyana -- I'm
17 going to call you by your first names, I hope that's
18 okay -- were married on August 19th, 1999. That
19 Tatyana was brought over here on a fiancée visa, that
20 she received a conditional residency status upon the
21 application of John. And upon his signing of an
22 I-864 in 1999, which is an affidavit in which the
23 sponsoring individual promises to the U.S. government
24 to support the person who is being brought into this
25 country, there was a two-year period during which the

1 conditions attached to that conditional permanent
2 residence status could be removed.

3 I've heard testimony and seen evidence that,
4 fairly early on in the relationship, there was
5 conflict ultimately resulting in a protection order
6 being filed, resulting in Ms. Mason going to
7 SafePlace to get advice as to how to proceed and so
8 on.

9 So it's not surprising that the couple did not
10 file the necessary form to remove the conditions on
11 the conditional residence status within the two-year
12 period. How well either one of them understood what
13 their obligation was, I'm not sure. I'm not
14 persuaded that they were clearly aware of it.
15 However, it's also apparent from what I've heard and
16 seen that John had no real incentive to continue to
17 work with Ms. Mason to maintain her permanent status
18 in the United States early on in the marriage.

19 The parties separated on July 18th, 2007. The
20 divorce was final June 24th, 2008. There was a
21 modification proceeding which ultimately resulted in
22 a child support order being entered November 25th,
23 2013. Now, I indicated that the conditions on the
24 conditional permanent residence were not removed
25 within the two years as required under the law.

1 However, I heard testimony that it is possible to
2 file a Form I-751 to remove the conditions even after
3 the two years have passed.

4 Ms. Mason, through her own testimony and through
5 the testimony of her expert, however, has presented
6 compelling evidence that she is now in a disfavored
7 status as someone who has significant unpaid child
8 support and that the immigration authorities have the
9 discretion to deny her permanent residency at this
10 point, so she is in the awkward position of being in
11 this country but having no ability to obtain
12 permanent status. And with the focus on legal status
13 that currently exists in this country, it's not hard
14 to believe that most employers will not hire her,
15 because she is not able to show proof of legal
16 status. And were she to go back to immigration, she
17 would most likely be denied because of the child
18 support order.

19 Now, it's true this matter got to my courtroom
20 through a very circuitous path, as Ms. Robertson
21 pointed out through John's testimony and through the
22 entry of various exhibits along the way. However,
23 based on my review of the record, I'm persuaded that
24 no court in the lengthy proceedings involving John
25 and Tatyana has ever considered the impact of the

1 I-864 on the obligations of John and Tatyana to each
2 other. Certainly, if a court was entering a child
3 support order, it would take into account whether or
4 not the person receiving child support was also
5 paying spousal maintenance to the person paying it.
6 I mean, I think that goes without saying that that
7 would be considered both in the calculation of the
8 child support and as to offsets.

9 I understand the *Khan* case. I've reread it, and I
10 understand that it stands for the proposition that a
11 family law court is not required to enforce the I-864
12 obligation. The court was very clear to say that
13 because the family court does not have to enforce the
14 affidavit, that preserves the remedy to the
15 beneficiary of the I-864 affidavit to pursue relief
16 separately. But I don't read the *Khan* case as saying
17 that the I-864 affidavit is not relevant. They did
18 not reverse Judge Hogan for even considering it. And
19 so I don't believe that the *Khan* case directs this
20 court or any other court to disregard it.

21 In my mind, it is the elephant in the room in this
22 case. I indicated to Ms. Mason that my understanding
23 of Civil Rule 60(b)(1), (2) and (3) is that a motion
24 under those paragraphs has to be brought within a
25 year of the entry of the order. And she raised the

1 . point, well, the year doesn't begin until the Court
2 of Appeals speaks. That may be true. I've never
3 seen that raised before, but there is some support
4 for the idea that an order is not final until the
5 last appeal has been completed.

6 But I think rather than rely on (1), (2) and (3),
7 I think the court has to go to subsection (b)(11),
8 which is, "any other reason justifying relief from
9 the operation of the judgment." And in doing that, I
10 will say that I do not believe, in 25 years of being
11 a court commissioner and a trial judge, that I have
12 ever found a basis to vacate a court order under
13 (b)(11). My understanding of the case law is that
14 (b)(11) is disfavored; that the appellate decisions
15 encourage for us to use (1) through (10), and, if
16 they are not available, to deny the motion.

17 However, (b)(11) does exist, and, as I say, in
18 this case, it seems to me the I-864 affidavit is the
19 elephant in the room. And for an order to stand that
20 involves the financial relationship of the parties,
21 without considering the obligation of one to support
22 the other makes no sense to me, and so I think it has
23 to be considered.

24 Now, there was some question raised by Ms. Seifert
25 and by John that the I-864 affidavit was no longer

1 operable. And as we heard, it terminates on the
2 death of the sponsor, which is not applicable here;
3 if the sponsor becomes a U.S. citizen, which has not
4 happened here; or if the sponsored immigrant is
5 credited with 40 quarters of gainful employment in
6 excess of 125 percent of the poverty level.

7 The *Davis vs. Davis* case stands for the
8 proposition that a spouse's quarters are credited to
9 the quarters of the person being sponsored during the
10 marriage, even after a decree of separation. In this
11 case, however, we don't have a decree of separation.
12 We have a decree of divorce, and the section that
13 speaks to crediting spousal quarters requires the
14 parties to be married at the time the determination
15 of 40 quarters is made.

16 In this case, according to my calculation, I have
17 to believe it comes to 29 quarters, and the social
18 security record of Tatyana shows essentially she had
19 one quarter earnings during the marriage. She's had
20 a number of quarters of earnings since, but, during
21 the marriage, she had one. Even crediting John's
22 quarters to her during the marriage, she does not
23 reach 40 quarters by the end of the marriage, and so
24 that provision does not apply.

25 Another basis for termination of the support

1 obligation is if she departs the United States
2 permanently. As we heard from her testimony, she did
3 depart, but it was for two weeks for her mother's
4 funeral. It certainly wasn't permanent. And,
5 finally, if the sponsored immigrant dies, and that
6 hasn't happened either.

7 So the various provisions that allow for the
8 termination of the I-864 support obligation, none of
9 those have come to pass, so the obligation is still
10 alive.

11 I also note with regards to credited quarters that
12 I find credible Tatyana's testimony that, during the
13 majority of the marriage, she was not supported by
14 John. Granted, she lived in the house with him that
15 he was paying the mortgage on in order for her to
16 survive. She was taking out loans and probably not
17 doing much of anything.

18 So based on all of this, I am prepared to vacate
19 the child support order, which I believe will have
20 the effect of allowing Tatyana to apply for her green
21 card and remove the conditions that were placed on
22 her conditional permanent residence status, which I
23 think in the long run is going to be beneficial to
24 both parties, because it will ultimately allow her to
25 obtain citizenship, which will terminate the I-864

1 obligation. That's one of the grounds to do that.
2 It also will allow her to obtain employment, which is
3 another basis for terminating the obligation.

4 Otherwise, I see no way for either party to get out
5 of this box that you are both in.

6 We've talked about setting a new support amount.
7 I'm going to leave it to John and his attorney as to
8 whether or not they wish to do that. I have heard
9 testimony from Ms. Gairson that John owed Tatyana a
10 certain amount of money under the I-864 affidavit. I
11 fully expected to hear an argument for that today. I
12 would not have granted that relief, because, again,
13 I'm only looking at the child support order, but I
14 would expect a court setting support to consider that
15 obligation and net out any child support. And I'm
16 assuming the I-864 obligation would probably surpass
17 any amount of support based upon Tatyana's difficulty
18 in obtaining substantial gainful employment.

19 So I don't know that it's going to be beneficial
20 to either side to enter that order, but I leave it up
21 to John. He has a right to request it, and so that
22 would be his choice.

23 For Tatyana, I would say that, from what I've
24 seen, you have a right to seek support under the
25 I-864 affidavit. You can file a claim for that in

1 state court or in federal court. My guess is if it
2 were filed in Thurston County Superior Court, we
3 would join it with this case, because the issues are
4 related. But, currently, it's not part of the case,
5 so unless and until that's filed, this court is not
6 going to be enforcing that obligation separate and
7 apart from an offset on child support.

8 I recognize that everyone here is operating at a
9 disadvantage. I should say I've had a chance to
10 observe Ms. Mason in court for three separate days
11 with two interpreters. And although she has a
12 reasonable ability to use English, her English is not
13 good, and her statements were more clear through the
14 interpreters than in her English. I know she is more
15 comfortable, perhaps, speaking in an English-speaking
16 situation with English than in Russian, and that's
17 understandable. But it's not hard for me to
18 understand why she might not have done well with an
19 English-speaking attorney or with an English-speaking
20 court prior to this proceeding.

21 I am aware of no proceedings prior to the last
22 three days in which interpretive services were
23 provided for her. I know that in the motion hearings
24 I had leading up to this, she did not have
25 interpreter services, and so I believe she's been

1 operating at a disadvantage. And although she has
2 had the benefit of communication with immigration and
3 more recently with Mr. Gairson, this is a complicated
4 field, even for people who work in it, and so it's
5 not hard for me to understand why she would not have
6 understood it fully.

7 As to John, I think, in some ways, the same thing
8 holds true. It's not surprising to me that he would
9 not have fully understood all of the obligations he
10 was undertaking and the requirements of the law. As
11 I say, I've been doing this work for 25 years, and
12 yet I've only had maybe four of these cases. And the
13 only reason why this issue appeared to me is because
14 I was educated by a self-represented party, a spouse,
15 roughly three years ago in a trial. State court
16 judges do not get training on these affidavits or
17 their impact, and, as counsel has pointed out,
18 there's very little case law on it.

19 And so everyone is doing the best they can without
20 a lot of guidance, but, as I say, it's hard for me to
21 understand why a court setting child support, if it
22 knew about the existence of the affidavit, would not
23 take that into account. I think it's a significant
24 issue.

25 Now, I agree with the *Khan* court that it's not

1 controlling, but it is such a big issue that I don't
2 think it can be ignored, and that's why I believe
3 it's the elephant in the room and why it is a basis
4 to vacate the prior child support order.

5 I'm going to set this matter on for my motion
6 calendar on November 21st at 1:30. It's a special
7 calendar, because we have some days that we won't
8 have calendars coming up. And, at that point, Ms.
9 Mason can present an order vacating the order of
10 child support. You're the prevailing party here, so
11 it's your responsibility to prepare the order. The
12 best way to do that is for you to prepare an order,
13 send a copy to Ms. Robertson, ask her if she agrees
14 with it, listen to her suggestions as to how it could
15 be better stated and, if you like, incorporate those
16 suggestions, redo the order, get her to sign off on
17 it, bring me an order with her signature. If that
18 doesn't work, then both of you can be here, and I'll
19 hear from you both as to what's right or what's wrong
20 with the order that Ms. Mason prepares.

21 All we're doing is vacating the child support
22 order. I anticipate a request for fees in this case.
23 I'm going to want a separate motion from each side
24 telling me exactly what you want, how much you're
25 asking for, what it's based on. You can refer to

1 exhibits in the trial record if you want, or you can
2 submit additional affidavits if you want. And I will
3 need some information as to the financial status of
4 both parties, so I'm going to ask that you both
5 submit a new financial declaration as of
6 November 2016, a court form which shows what your
7 financial situation is, and I will consider that to
8 determine financial situation. If you want to submit
9 more than that, you're welcome to, but you don't have
10 to. I'm fully prepared to determine an award of fees
11 on financial declarations alone.

12 And then, Mr. Mason, should you choose to seek a
13 new child support order retroactive to the date of
14 the one that's being vacated, you can schedule that
15 for another hearing. I only ask that you do that in
16 the month of December, so that I can be the one to
17 hear it. Because this case is so complicated, I
18 don't want to have to pass it off to someone else.

19 MS. MASON: Will we put that on your regular
20 motions calendar?

21 THE COURT: I have a special motion calendar
22 Monday the 21st at 1:30.

23 MS. MASON: I mean, if you want us to do the
24 other motion for December.

25 THE COURT: Oh, for support, yes. I have, I

1 believe, two calendars in the month of December. One
2 is December 9th, and one is December 23rd. Any
3 questions? Ms. Mason?

4 MS. MASON: So, basically, I understood with
5 the affidavit of support, I have to file in federal
6 court, right? That's what I understand.

7 THE COURT: If you are looking to receive
8 money as a result of that affidavit, you can file it
9 in state court or federal court, as far as I can
10 tell. And what I'm saying is, if you file it in
11 Thurston County Superior Court, it will get joined
12 with this case. I'm not saying you have to do that
13 or you should do that. I'm just explaining that
14 that's a separate claim, separate from what's going
15 on right now.

16 MS. MASON: Okay. And another question, it's
17 in December 9 or 23, Mr. Mason will propose new child
18 support order, right, motion?

19 THE COURT: He hasn't decided to do that. His
20 attorney asked when he could do that. I told her
21 those were the two calendars I have in December, so
22 I'm inviting him to schedule it for one of those
23 days. You'll get notice of this if he files.

24 MS. ROBERTSON: Okay.

25 THE COURT: Any other questions?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. ROBERTSON: No, that's fine.

THE COURT: Ms. Robertson? Thank you. Court
will be in recess.

--o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official
Reporter of the Superior Court of the State of Washington
in and for the County of Thurston do hereby certify:

1. I reported the proceedings stenographically;
2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
4. I have no financial interest in the litigation.

Dated this 17th day of November, 2016.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

APPENDIX G

Forensic Investigation
Report

Appendix G

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Daniel J. Rybicki, Psy.D., DABPS PY00003195
PMB #287
5114 Pt. Fosdick Dr. NW, #E
Gig Harbor, WA 98335
(253) 858-8850
(253) 858-7772 fax

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

In Re the Marriage of	)	Case No. 07-3-00848-0
JOHN ARTHUR MASON	)	DECLARATION OF DANIEL J.
Petitioner,	)	RYBICKI, PSY.D., D.A.B.P.S.
and	)	Date:
TATYANA IVONOVA MASON	)	Time:
Respondent	)	Dept.:

I, Daniel J. Rybicki, Psy.D., DABPS, hereby declare that I am over the age of eighteen (18) years and am in all respects competent to make this Declaration. I am not a party to this matter, have no personal relationship with any of the parties, and have no personal interest in the outcome of this case. I have professional expertise and personal knowledge of each of the facts and opinions stated herein and would and could competently testify to the following:

EXPERT QUALIFICATIONS

1. I am a psychologist who has been licensed to practice in the State of Washington since 2005. I am also licensed in the State of Illinois and have held that license since 1984. I am licensed in the State of Indiana where I have held that license since 1980. And, I am licensed in the State of California where I have held that license since 1994. All of my professional licenses have been continuously in force since they were first granted.

1 My primary practice location is at 3309 56th St. NW, Suite 101, Gig Harbor, Washington,
2 with a second office at 860 SW 143rd St., Burien, Washington. I have a third office in
3 California located at 200 E. Del Mar Blvd., Suite 122, Pasadena, although all my mail
4 correspondence goes to 5114 Pt. Fosdick Dr. NW, #E, PMB#287 in Gig Harbor,
5 Washington.

6
7 2. In my current work I perform child custody evaluations, psychological testing and
8 other forensic services, including consultation and reviews of work done by other
9 evaluators. I have extensive training and experience in the area of family assessment and
10 child custody evaluation and have professional publications and conducted seminars and
11 other professional presentations in this area. I routinely perform parenting evaluations
12 pursuant to WAC 246-924-445, and I have appeared in local jurisdictions as an expert in
13 family law matters. I also have special expertise in domestic violence and assessment of
14 alienation issues along with expertise in related evaluation and treatment modalities. I
15 have appeared as an expert in those issues in civil and criminal cases.

16
17 3. I have a Doctorate Degree in Clinical Psychology from the University of Illinois at
18 Champaign. Throughout my academic training I have had several advanced courses in
19 child and adolescent development, professional ethics and standards of care, personality
20 theory, chemical dependency and addictions, abnormal psychology, family therapy, and
21 psychological testing, to name only a few domains. I have in the past consulted with
22 Child Protective Services and I did my Doctoral Dissertation on child abuse. I have also
23 had the required courses on domestic violence and child abuse necessary for my
24 continued licensing in California and for serving as a custody evaluator pursuant to the
25 Rules of the Court (Section 3111 of the California Family Code and Section 5.230 of the
26 California Rules of Court). For the past fourteen years I have been included on the LA
27 County Superior Court private practice list for custody evaluators for Family Court, and I
28 have met all the training and professional requirements for being on that list, including

1 the 40 hours of training required by section 5.225 of the California Rules of Court. This
2 includes the specialty training in the assessment of child sexual abuse required under
3 Family Code Sections 3110.5(C)(2) and Section 3118. I am employed full time in my
4 forensic clinical private practice.

5
6 4. I am a Registered Custody Evaluator with PACE -- the Professional Association of
7 Custody Evaluators. I have served on their Advisory Board and I am a Fellow in this
8 organization. The Professional Association of Custody Evaluators is a national
9 organization of professional custody evaluators who have met training and experience
10 selection criteria to belong to this association. PACE publishes a newsletter with recent
11 advances in custody evaluation methods and related matters, as well as conducting
12 training and educational functions. I have previously published in this newsletter
13 regarding methods for conducting child custody evaluations.

14
15 5. I have conducted child custody evaluations and parenting evaluations in
16 Washington, California, Nevada and Illinois and have testified in a number of these cases
17 providing recommendations for the placement and best interests of the children. I am also
18 an active member of the Association of Family and Conciliation Courts (AFCC) and I am
19 familiar with published professional guidelines for conducting child custody evaluations
20 (e.g., Association of Family and Conciliation Courts; American Psychological
21 Association), and related research on child custody evaluations. I remain current in the
22 field with reading and attendance at professional seminars, often serving as a presenter. I
23 am also on the editorial board for one of the two primary professional journals in the
24 field, the Journal of Child Custody. I apply information from research and clinical studies
25 to work in my practice which includes using this information as part of my professional
26 critique and review services when I examine custody evaluations done by other
27 evaluators.

28

1 6. I hold a Diplomate in Forensic Psychology awarded by the American Board of
2 Psychological Specialties. The American Board of Psychological Specialties grants this
3 Diplomate to those professionals with at least five years post-doctoral experience who can
4 document the necessary additional specialty hours of supervised training in forensic work,
5 submit work samples, and pass a written test of proficiency and familiarity with forensic
6 psychological matters. I am also a member and a Fellow of the American College of
7 Forensic Examiners, an international organization which recognizes special expertise in
8 the forensic application of psychological skills and methods. I specialize in my private
9 practice in several forensic activities, including conducting child custody evaluations and
10 reviews of the work of my colleagues in the field. I also have been qualified as an expert
11 witness in several civil and criminal matters, testifying as an expert with regard to
12 criminal competency, mitigation, addictions, child abuse, family issues, child sexual
13 abuse, parental alienation, and neuropsychology, among other topics. I have served as an
14 expert witness in Washington, Illinois, Indiana, Idaho, Oregon, and several California
15 jurisdictions.

16
17 7. I have conducted child custody evaluations for approximately 25 years with expert
18 services rendered in Washington, Illinois and California in this regard. I have prepared
19 over 360 full child custody evaluation reports, and I have reviewed over 125+ evaluations
20 by other professionals, in addition to providing psychological assessments for other
21 evaluators (GALs, custody evaluators). I have recently completed a full parenting
22 evaluation in Washington (pursuant to WAC 246-924-445), and I am completing a full
23 EC730 child custody evaluation in California. In the past three years, I have completed
24 nearly 35 reviews and critiques of other evaluators reports, including some in family law
25 and dependency court cases in Washington, Oregon, California, and Arizona. Some of
26 those reviews have not required my appearance in court. In other instances I have been
27 called as a rebuttal witness and have assisted the Court in evaluating the quality of the
28 parenting evaluations submitted to the Court, in many cases prompting more complete

1 and more thorough re-evaluations.

2
3 8. I am very familiar with the variety of professional standards that govern the forensic
4 mental health practice associated with parenting evaluations and child custody
5 evaluations. In the state of Washington there are certain code sections (e.g., WAC 246-
6 924-445) which delineate elements to include in conducting a parenting evaluation.
7 Additional focused attention on criteria for permanent parenting plans (RCW 26.09.187)
8 and related limitations (RCW 26.09.191) are part of any properly developed parenting
9 assessment. The American Psychological Association (e.g., APA Guidelines for
10 Conducting Child Custody Evaluations, 2008), and the Association of Family and
11 Conciliation Courts (e.g., AFCC Model Guidelines for Child Custody Evaluations, 2006)
12 have published guidelines for conducting child custody and parenting evaluations.
13 Additional ethical guidelines (APA Ethical Standards for Psychologists, APA Specialty
14 Guidelines for Forensic Psychology) and professional practice standards (The Principles
15 of Medical Ethics with Annotations Especially Applicable to Psychiatry; Code of Ethics
16 of American Mental Health Counselors Association; National Association of Social
17 Workers Code of Ethics) set forth some of the parameters of proper practice in this field.
18 Additional guidance regarding proper professional boundaries and roles may be found in
19 publications by groups such as the American Academy of Psychiatry and the Law (2005)
20 and American Association of Marriage and Family Therapists (2001), to name only a few.

21
22 9. I have special expertise in the areas of child custody evaluation, design and
23 implementation of parenting plans, evaluation of child abuse issues, domestic violence
24 and substance abuse assessment, individual and family therapy, forensic practice,
25 professional ethics, and developmental psychology, among other related matters which
26 may be relevant to the current case. I am frequently called to serve as an expert on such
27 issues with declarations and testimony provided pertaining to specific case issues and
28 related hypothetical considerations.

1 10. I am a member of the Society for Personality Assessment, the Association of Family
2 and Conciliation Courts, and the California Association of Marriage and Family
3 Therapists. I am the founding President of the Washington State Chapter of the
4 Association of Family and Conciliation Courts, part of the international, interdisciplinary
5 organization that publishes the Family Court Review, one of the two primary journals in
6 the field of child custody. As mentioned before, I am on the editorial board of the other
7 primary journal in the field, the Journal of Child Custody.

8
9 11. I have provided more than twenty professional continuing education workshops on
10 child custody and forensic matters. I am completing a manuscript for a book on forensic
11 psychology which will be published in the near future. A portion of this book pertaining
12 to Parental Alienation and Enmeshment Issues in Child Custody Evaluations is available
13 on-line on the seminars page at my website (www.danielrybicki.com). I have presented
14 several annual update professional education workshops for attorneys, psychologists and
15 child custody evaluators on topics such as professional ethics, forensic practice standards,
16 substance abuse, domestic violence and high conflict custody cases. For the past four
17 years I have presented the Investigation section of training for the Title 26 GAL training
18 sponsored by the King County Bar Association. My full curriculum vitae is available on-
19 line at my website (www.danielrybicki.com) and a copy of the most current vita is
20 attached. It is herein incorporated by reference.

21
22 12. This Declaration outlines material that I would be prepared to testify to if called
23 upon to do so. I would hope that the comments which follow help to highlight some of
24 my concerns in the above captioned matter based on the materials that I have reviewed,
25 and I would offer this Declaration to the Court in lieu of my testimony. Given that I could
26 and would testify competently and fully to the opinions and analysis set forth herein, and
27 operating within the limits of these professional caveats, I request that the Court receive
28 this Declaration into evidence as my direct testimony, and that the Court permit further

1 offers of proof, other testimony and/or documentary evidence at the time of hearing
2 and/or otherwise as appropriate.

3
4 METHODOLOGY AND CONCLUSIONS

5
6 13. I was originally contacted by the Respondent, Tatyana Mason, to conduct a forensic
7 psychological assessment with her. I did not have any contact with her attorney until after
8 I had met with Tatyana and arrived at my initial conclusions as stated below. Consistent
9 with my forensic practice, I requested information about the nature of the referral and the
10 specific areas requiring evaluation. To this end, I was able to secure a release of
11 information from Tatyana and I obtained a copy of the GAL report from Mr. Ralph
12 Smith. I arranged to meet with Ms. Mason and began the process of conducting my
13 clinical interview with her. It became apparent from the outset that she had a great deal of
14 information to convey that went beyond the limited scope of the recommended
15 assessment per Mr. Smith (Recommendation #3 - "Mother should be examined by Dr.
16 Carla Vann Dam, limiting the scope...to an evaluation of Tatyana Mason's tendency for
17 violence."). I elected to terminate the assessment process and seek additional information
18 from Ms. Mason's counsel, Ms. Kristen Bishopp. I was able to obtain and review a copy
19 of the original GAL report completed on February 15, 2008 by Mr. Richard
20 Bartholomew. Other documents reviewed here include the following: Letter from Stephen
21 Wilson, MSW (03/27/09); Letter from Diane K. Borden, MA (04/20/11); Letter from the
22 Director of Residential Services at Safe Place (02/12/09); Letter of complaint by Tatyana
23 Mason re: Bartholomew GAL investigation (08/25/10); Letter from Alverta Damper,
24 MSW (03/07/11); and Partial copy Restraints/Temporary Order Hon.Com. Christine
25 Schaller (08/07/07).

26
27 14. After reviewing all of these documents and upon consideration of some of the
28 expressed concerns that Ms. Mason shared in the interview, I reached the conclusion that

1 there appeared to have been **several key issues and dynamics which were given**
2 **inadequate investigation in the course of two GAL evaluations.** While it seemed that
3 Mr. Bartholomew and Mr. Smith relied upon customary methods for conducting a
4 Guardian ad Litem investigation, there were important themes and **hypotheses that were**
5 **not given a systematic and objective assessment** (e.g., Austin and Kirkpatrick, 2004;
6 Gould and Martindale, 2007). As a result of those omissions, it appeared that the **Court**
7 **has operated in the absence of adequate data** in developing the parenting plan and
8 other interventions for this troubled family system. Inadvertent inadequacies in those
9 investigations combined with omission of data appear to have created conditions which
10 have **further entrenched elements of dysfunctional dynamics** in the parent-child
11 relationships. There remains a **significant risk of life-long damage** to these children if
12 these inadequacies are not given proper study and intervention.

13
14 15. Before addressing those issues and concerns, let me acknowledge from the start that
15 other than an initial meeting with Ms. Mason, I have not conducted a psychological
16 assessment with either parent or any significant others in this case. I have not met directly
17 with Mr. John Mason or with either minor child, Graham (age 11, DOB: 05/20/00) or
18 David (age 8, DOB: 02/09/04). I have not conducted the necessary steps for completing
19 my own child custody parenting evaluation in this matter (e.g., psychological testing,
20 home visits, observations, collateral contacts). **As a result of having a limited data base,**
21 **I cannot make a best interest custody or visitation recommendation regarding these**
22 **minor children.** However, I do have sufficient professional knowledge, training, and
23 expertise to **raise several critical elements** that should be considered by the Court.

24
25 16. I have no vested interest in the outcome of this case, except to say that I would want
26 the Court to have the most complete set of information possible with which to address the
27 needs of this fractured family system. In that light, it would appear that **inadequate**
28 **assessment of key *psychological variables* may have created very caustic and**

1 **damaging conditions** for the overall best interests of these children. It would seem that
2 the only way to ensure more adequate assessment would be to order a full psychological
3 parenting evaluation conducted by a competent psychologist trained in the methods of
4 investigation consistent with professional guidelines (e.g., APA Guidelines for
5 Conducting Child Custody Evaluation; AFCC Model Standards for Child Custody
6 Evaluation). It may be that such an evaluation would determine that father is still the
7 person most suitable for primary custody of the children. However, there is a strong
8 likelihood that such an evaluation *would better identify and address disturbed dynamics*
9 related to such issues as *alienation* (e.g., Drozd and Olesen, 2004; Kelly and Johnson,
10 2001; Lampel, 1996; 2002; Sullivan and Kelly, 2001), *estrangement, coaching, visitation*
11 *resistance* (Garber, 2007; Stoltz and Ney, 2002), and *power-control family dynamics*.
12 Improved and more appropriate interventions would likely follow, and the overall
13 adjustment and needs of all the members of the family system (John Mason, Tatyana
14 Mason, and Graham and David Mason) would be addressed.

15
16 17. The two GAL investigations provide some useful information which sets the stage
17 for a more thorough evaluation process to begin. One primary topic deserving an in-depth
18 study involves **domestic violence** and violence in the home. Mr. Bartholomew reported
19 on Tatyana's arrest in 2002 for domestic violence (p.5, line17). It was noted that the
20 "sentence was deferred and eventually dismissed." The specific behaviors considered as
21 domestic violence are noted on page 17 as Tatyana "going to John's office and throwing
22 things around, including at John." There was no indication of this incident being a part of
23 a larger pattern or merely a singular incident of concern. Meanwhile, it was also reported
24 that in 2007 Tatyana obtained a "domestic violence restraining order against John" and
25 that the Court found that "acts of domestic violence had occurred and that there had been
26 acts of control by Mr. Mason." Once again, the details are omitted, but there were
27 multiple other pieces of data which point to John being labeled as controlling,
28 disrespectful toward Tatyana, and aggressive (see p.6, line 12-13; p.7, line 6 and 10; p.8,

1 lines 5-21; p.13, line 4-6 Bartholomew report).

2
3 18. If this matter had been investigated through a psychological parenting evaluation,
4 these two pieces of data would have called for a very detailed and systematic
5 investigation of family dynamics associated with domestic violence. A competent
6 psychologist would have considered a range of elements (interviewing both parents about
7 the first, last and worst instances of domestic violence both as victim and perpetrator;
8 defining domestic violence in broad terms to include physical abuse, emotional abuse,
9 psychological control and manipulation, financial control, isolation from others, and
10 elements of power and control; see APA, 1996; Austin, 2000, 2001; Dutton, 1995, 2005;
11 O'Leary, 1999; Pence and Paymar, 1986). A properly conducted psychological
12 investigation of domestic violence would also have considered evidence from
13 psychological testing and collateral sources which might coincide with patterns of
14 behavior and profiles of victims (e.g., Gellen et al., 1984; Gould et al., 2007; Walker,
15 1983) and perpetrators (e.g., Pitbull v. Cobra, Gottman et al., 1995; Jacobsen and
16 Gottman, 1995, 1998; Sociopathic, Antisocial and "typical" batterers, Gondolf, 1988;
17 Holtzworth-Monroe and Stuart, 1994; Kalichman, 1988; Roberts, 1987; Saunders, 1992;
18 Walker, 1983). Such an evaluation would also have considered and reported on patterns
19 and types of domestic violence such those identified in the research and clinical literature
20 (Gellen et al., 1984; Johnson and Ferraro, 2000; Kelly and Johnson, 2008). Among those
21 types studied would be *Common Couple Violence* (aka Situational Couple Violence),
22 *Intimate Terrorism* or *Classic Battering* (aka Coercive Control Violence), *Violent*
23 *Resistance*, *Mutual Violent Control*, and *Separation Instigated Violence*. And, with such
24 **details evaluated and described fully in the report**, the psychologist would then have
25 been able to develop a series of recommendations for possible counseling and create
26 some guidelines for a parenting plan which would minimize the risks of further overt
27 conflict and possible exposure of the children to such conflict or abuse (e.g., Austin,
28 2000; Doolittle and Deutsch, 1999; Jaffe et al., 2008; McGill et al., 1999; Sonkin and

1 Dutton, 2003). Finally, the psychologist would have considered the practical concerns that
2 might arise with trying to have high conflict parents or parents who have been engaged in
3 a family dynamic characterized as domestic violence to cooperatively coparent. In some
4 instances, this might lead to provisions for *parallel parenting* (rather than cooperative
5 coparenting), and it might lead to provisions for dividing parental authority for decision-
6 making or relying on the assistance of a special master or case manager for resolving
7 conflicts over decisions (cf., Aronsohn, 2009; Stahl, 2001; Rybicki & Kevetter, 2011a,
8 2011b). It should be evident from this cursory summary of what should be included in a
9 proper family system investigation of domestic violence concerns that none of these steps
10 were taken by either of the two attorneys who served as Guardian ad Litem in this case.
11 This may be a reflection of a lack of sophistication that seems inherent in a GAL system
12 which relies heavily on attorneys rather than mental health providers, or it may be purely
13 a matter of oversight with respect to the extant clinical and research literature utilized by
14 experts in the field of child custody and domestic violence. (See attached for brief
15 summaries of investigative methods).

16
17 19. Another crucial issue that has not been adequately investigated pertains to
18 allegations of alienation and/or coaching of the minor children. We can find some clues
19 about this in the original Bartholomew report (p.6, line 12 –“not respect her”; p.8, line 12
20 – “John tells Graham “don’t you ever have a girlfriend like your mother;” p.8, line 17-19
21 re: Graham overhearing argument on audio). Some evidence of visitation resistance
22 and/or possible alienation are particularly compelling in the original Bartholomew
23 report. The interview with Graham (p. 9, line 7-26) reveals features that would have
24 prompted a psychologist evaluating the case to begin a systematic and detailed
25 investigation of alienation themes. For instance, when Graham was interviewed, he
26 immediately said, “Mom calls me bad names.” It was astute of Mr. Bartholomew to note
27 that this comment “was out the blue with no context.” When the child was asked for
28 details, he could not provide any. The interviewer heard the child make very black and

1 white statements about his parents without any corresponding basis to support those
2 statements. "He said he liked nothing about his mom's house and everything about his
3 dad's house. He disliked everything about his mom's house and nothing about his dad's
4 house." The child went on to make allegations about his mother hitting him with a
5 wooden spoon (allegations which he later recanted and explained were done at the
6 direction of John and Charlotte; see letter from Ms. Borden, 04/20/11).

7
8 20. While Mr. Bartholomew offered some useful information in the report, and while he
9 was quite astute in detecting the spontaneous negative statement from the child about the
10 mother, it seems that these features got lost in the overall analysis. Other elements appear
11 to have become the focus. There were no indications that Mr. Bartholomew conducted the
12 kind of systematic and detailed investigation that would have been done by a psychologist
13 making a full psychological parenting evaluation. Those methods would draw upon
14 suggestions found in the research and clinical literature for considering dysfunctional
15 parent-child relations (e.g., Bricklin and Elliott, 2006; Brody, 2006; Burrill, 2006;
16 Cartwright, 1993; 2006; Dunne and Hedrick, 1994; Drozd and Olesen, 2004; 2010; Ellis,
17 2007; Gardner, 2002a; Jaffe et al., 2010; Lee and Olesen, 2001; Rybicki, 2001; Stoltz and
18 Ney, 2002). Proper consideration for the competing hypotheses associated with alienation
19 would be a *thorough psychological investigation* that considers features described by
20 Kelly and Johnston (2001) **regarding the alienated child**. And, even though there is
21 some dispute (e.g., Bruch, 2001; Darnell, 1999; Fidler and Bala, 2010; Lorandos, 2006;
22 Warshak, 2001) as to the validity of the **Parental Alienation** Syndrome proposed by
23 Richard Gardner (1998; 2002a; Gardner et al., 2006), there are a number of features or
24 dynamics which may be identified that provide the evaluator with some useful starting
25 point for analysis (See addendum materials on alienation). A complete assessment will
26 examine key questions about the child's degree of attachment and involvement with each
27 parent. A useful set of assessment criteria will look at whether or not the child is showing
28 a disturbed relationship with a parent due to problems such as *alienation, estrangement,*

1 *or abuse* (e.g., Drozd and Olesen, 2004; 2010; Ellis, 2007). Other conceptual models such
2 as *visitation resistance* provide additional factors to evaluate in such cases (Fidler and
3 Bala, 2010; Stoltz and Ney, 2002). If a competent psychologist were commissioned to
4 study these issues, then professional guidelines for assessment (e.g., APA Guidelines for
5 Conducting Child Custody Evaluations, 2009; Association of Family and Conciliation
6 Courts Model Standards for Child Custody Evaluations, 2006) would require the
7 psychologist to make a thorough and objective study, to provide sufficient basis for any
8 conclusions being made, and present sufficient summary of the data and findings in the
9 body of the report to justify the conclusions. Sadly, our reliance on attorney GALs to
10 examine such complex family dynamics does not require such detailed study or
11 commitment to objective data. It would seem, perhaps through no fault of their own, that
12 neither Mr. Bartholomew or Mr. Smith attempted to do the kind of detailed and through
13 assessment of these alienation topics using these systematic methods for evaluation. As a
14 result, the Court was left without sufficient information about what could be very
15 damaging features present in a troubled family system. A psychological parenting
16 evaluation properly structured might detect such issues, in which case, more appropriate
17 interventions might be suggested for the long-term benefit of all of the family members
18 (e.g., Everett, 2006; Jaffe et al., 2010; Johnston et al., 2001; Kelly, 2010; Lowenstein,
19 2006; Lund, 1995; Rybicki, 2001; Sullivan, 1997; Sullivan et al., 2001; 2010; Warshak
20 and Otis, 2010). Indeed, there are those in the mental health field that have expressed
21 concerns about how *failures in the judiciary* to grasp these issues and properly intervene
22 (failures which are often due to inadequate investigation of complex family dynamics)
23 can *serve to exacerbate family dysfunction* (e.g., Bala, et al., 2010; Barden, 2006;
24 Gardner, 2002b; Lorandos, 2006; Warshak, 2010). This concern cannot be eliminated
25 from any review of how this case has been addressed to date.

26
27 21. It would seem from a review of Mr. Bartholomew's GAL report that allegations
28 made by Graham about being hit with a wooden spoon and about Tatyana being a "mean"

1 mother were significant concerns that contributed greatly to the findings and
2 recommendations. There are indications that some collaterals (e.g., Ms. Lundgren,
3 counselor at Graham's school) confirm statements by the child about mother being mean
4 and hitting him with objects such as a metal spoon (p.17, line 24). When combined with
5 elements such as the contrasting statement by the child that his father never spansks him, it
6 would be easy to see how Mr. Bartholomew might tip the scales in favor of father as the
7 preferred parent (p.9, line 26). Unfortunately, it appears that important evidence about
8 possible coaching by the father may have contributed to the child offering what may be
9 false allegations. In fact, Ms. Borden reports clearly that Graham told her that, "There
10 was no spoon; Mom never hits us; My Dad and Charlotte told to say that." This
11 recantation of the allegations seems to have been lost in process.

12
13 22. There are other indications of possible *coaching and external influence* which seem
14 to have been neglected by the two Guardian ad Litem in their investigations. For instance,
15 Mr. Smith cited supervision notes from sessions as recent as April 2011 (see p.6, line 11-
16 14) which include comments from David directed to Tatyana which blame her for lying
17 about domestic violence, not getting a suitable job, and reporting that his father told him
18 these sorts of adult-themed issues. Coaching and inappropriate communication with this
19 child seems to be clearly linked to behavior by John. This pattern has a long history, as
20 reported earlier by Steven Wilson. Mr. Wilson held individual sessions with Graham and
21 David during which Graham reported that his "mother is just a gold digger." Mr. Wilson
22 concluded that Graham expressed anger and used terms that would reflect that the boy
23 had been influenced by an adult to say such things. Mr. Wilson also opined that Graham
24 had learned "how to split his parents' affections and discipline styles." It was his view
25 that some of Graham's aggressive behavior was displaced onto conflicts with his younger
26 brother. At the very least, Mr. Wilson seemed better attuned to family system dynamics
27 and offered clues which should have prompted a very thorough and detailed
28 psychological family assessment. Unfortunately, neither GAL had an advanced degree in

1 mental health domains, and there are no indications of their awareness of the crucial
2 research and clinical literature that pertain to such concerns.

3
4 23. It would be important to note in all fairness that Tatyana engaged in behavior during
5 the home visit which was not particularly helpful to her case (p.11). Her focus on
6 preparing the meal and her utilization of the television to occupy the children were
7 features which could readily be construed as demonstrating less effective parenting. One
8 element omitted from the report is the fact that Tatyana requested to have the home visit
9 later in the evening, after getting past the family routine of dinner after 4:00 p.m. Instead,
10 Tatyana had two hungry and very active boys that had just come home to contend with.
11 This time period for the evaluation might have had inherent problems for seeking to
12 obtain a suitable sample of Tatyana's parenting skills and degree of attachment with his
13 children (cf., Arrendondo and Edwards, 2000).

14
15 24. It would also be easy to see how collateral information from some sources (e.g., the
16 neighbor, Ms. Powell) could help build an argument that Tatyana may be "inconsistent,
17 sometimes seeming to have no rules and at other times overreacting to things that the
18 boys do (p.16, line 9-11)." Collateral sources such as Ms. Lundgren highlight the number
19 of unexcused tardies as further evidence of Tatyana taking a more lax approach toward
20 school punctuality (p.18, line 13). These features could combine to lead Mr. Bartholomew
21 to view John as the more competent parent. While that may be a valid conclusion, there is
22 no indication that certain cultural, situational, and systemic factors were given adequate
23 consideration by Mr. Bartholomew.

24
25 25. The home visit took place at the former family home. Mr. Bartholomew arrived at
26 4:00 p.m. and it would seem that Tatyana was aware in advance that the visit would take
27 place at that time. From our perspective it would seem that Tatyana had a misplaced focus
28 on the meal preparation rather than on demonstrating her parenting skills. What gets lost

1 in this impression is the hypothesis that Tatyana comes from a different cultural
2 background where women are valued for their ability to prepare meals, run a household,
3 and provide for the basic needs of the family. No one has yet to raise the question (let
4 alone study the issue) as to why Tatyana focused so heavily on the preparation of the
5 meal. Perhaps she was most eager to show her competence in providing for her children.
6 Perhaps she was unaware of the cultural bias we hold that favors an active, interactive,
7 empathic and devoted parent engaging children in play and learning tasks. Perhaps she
8 did not fully appreciate the significance of this singular observation period for
9 demonstrating her parenting excellence. None of these issues were explored at the time.

10
11 26. There is also an issue of possible **sampling error** and **diminished capacity** which
12 may be elements that confound the value and validity of the home visit with Tatyana and
13 the boys. In any home visit or observation session there is always the risk that the timing,
14 situational factors, and presence of the evaluator may add sources of error into the validity
15 of the observations that are made. Perhaps it was unwise to try to have a home visit late in
16 the day approaching meal time with a mother and with children prone to behavioral
17 challenges (see p.21, line 18-20; see also Smith p.4, line 20). One might question if
18 similar interactions would have been observed on a different day and at a different time.
19 And, there is the concern that any observations done with parents going through a
20 separation and divorce may be observations of parents “at their worst.” It becomes quite
21 likely that the evaluator will see a person whose parenting capacity is not at its best,
22 particularly in cases where there has been domestic violence, undermining of the value
23 and worth of the other parent, children being exposed to derogatory commentary about a
24 parent (see p.23, line 26). This issue of diminished capacity is well understood in the
25 psychological field amongst clinicians who evaluate parents coming out of high conflict,
26 alienation, and domestic violence dynamics (e.g., Jaffe, Wolfe, and Wilson, 1990).

27
28 27. It would appear that Mr. Smith lost track of the fact that the Court found credible

1 evidence of domestic violence and power and control issues with John Mason taking
2 place as recently as 2007. Mr. Smith fails to mention that finding and instead focused
3 only on Tatyana's DV charge from 2002-2003 (p. 7, line 17). Rather than approach these
4 domestic violence issues from the kind of comprehensive and in-depth approach
5 described above, Mr. Smith seems to have narrowed his focus only to issues of Tatyana's
6 anger. In fact, he artificially restricts the assessment to referring to one specific
7 psychologist (Dr. Carla Van Dam) and to only one isolated issue, Tatyana's anger. This
8 constricts the analysis in a manner which serves to entrench bias and distortion into the
9 case. Rather than examine the array of factors described above (see item 18), Mr. Smith
10 directs his attention only to Tatyana and fails to consider the full family system dynamics
11 and dysfunction which is readily apparent to the reader who reviews these documents
12 from a psychological perspective. Indeed, to proceed to only evaluate Tatyana, even in a
13 broadly defined thorough psychological evaluation, would be to align with a case
14 conceptualization that only examines one element of a family unit. If we assume that
15 there has been a history of domestic violence perpetrated by the father and elements of
16 power and control utilized by him (as reported elsewhere), then elements of alienation
17 and coaching can be an extension of such dynamics. And, if the legal system casts
18 Tatyana in the image of an inferior parent troubled by anger control concerns, then the
19 Court may inadvertently contribute to the ultimate form of power and control over the
20 victim. By singling out Tatyana for assessment and failing to properly evaluate the whole
21 family system, we have a *serious risk of creating an iatrogenic form of harm* by further
22 empowering the father and further demonizing and pathologizing the mother. The only
23 appropriate scientific, ethical and professional manner available to avoid that harm is to
24 conduct a more complete psychological parenting evaluation.

25
26 28. It is understood that a full psychological parenting evaluation can be an expensive
27 endeavor. And, it is acknowledged that not all parenting evaluators are skilled in the
28 complex domain of domestic violence, alienation, and cross-cultural factors. However,

1 the cost in terms of damage to the psychological adjustment of children who lose contact
2 with a parent and the potential long-term damage that can come from a parenting plan
3 established in the absence of an adequate understanding of complex family dynamics are
4 far greater costs than any monetary figure that might be involved in seeking a thorough
5 psychological parenting evaluation. In order to find a suitable provider of such service, I
6 would suggest that persons trained through the Parenting Evaluation Training Program
7 run by Andrew Benjamin, J.D., Ph.D. (see list of graduates at link:
8 <http://depts.washington.edu/petp/graduates.html>) or seasoned professionals such as
9 Marsha Hedrick, Ph.D., or Jennifer Wheeler, Ph.D. (both in Seattle) would be well-
10 equipped to properly evaluate this family system. A local graduate of the PETP program
11 who might be ideal is Dr. Loren McCollom in Tacoma (253-537-2574).

12
13 29. With all due respect to Mr. Bartholomew and Mr. Smith, it is hoped that this
14 somewhat brief summary will provide the Court with sufficient understanding of some
15 serious gaps in the data provided over the course of two attorney conducted Guardian ad
16 Litem studies. While these are well-respected GAL's, neither holds an advanced degree
17 on psychology and neither demonstrated the kind of comprehensive and research-driven
18 investigation that this case calls for. Such an investigative approach described in the
19 psychology custody literature by sources like Gould and Martindale (2007) and Austin
20 and Kirkpatrick (2004) represents the minimum level of analysis that this family requires
21 and that these children deserve.

22
23 I declare under penalty of perjury under the laws of the State of Washington that the
24 foregoing is true and correct. Executed this 21st day of March, 2012 at Gig Harbor,
25 Washington.

26 
27 _____
28 **Daniel J. Rybicki, Psy.D., DABPS**

PRO-SE

December 12, 2019 - 8:41 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50009-4
Appellate Court Case Title: John Mason, Respondent v Tatyana Mason, Appellant
Superior Court Case Number: 07-3-00848-0

The following documents have been uploaded:

- 500094_Briefs_20191212084012D2278843_1703.pdf
This File Contains:
Briefs - Appellants
The Original File Name was 50009-4 Opening brief.pdf

A copy of the uploaded files will be sent to:

- ken@appeal-law.com
- laurier@washingtonstateattorneys.com
- paralegal@appeal-law.com

Comments:

Sender Name: Tatyana Mason - Email: tatanam377@gmail.com
Address:
PoBox 6441
Olympia, WA, 98507
Phone: (206) 877-2619

Note: The Filing Id is 20191212084012D2278843