

FILED  
Court of Appeals  
Division II  
State of Washington  
2/13/2019 12:07 PM

NO. 51407-9-II

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

---

SKIPPER W. KUZIOR, Appellant

and

ASHLEY L. KUZIOR, Respondent

---

**BRIEF OF RESPONDENT**

---

Jennifer A. Wing WSBA #27655  
Attorney for Respondent Ashley Kuzior

**LAW OFFICE OF JENNIFER A. WING, PLLC**  
4041 Ruston Way, Suite 200  
Tacoma, Washington 98402  
Telephone: (253) 627-1762

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....iii

I. RESPONSE TO ASSIGNMENTS OF ERROR.....1

    A. The trial court did not err in entering its  
    October 24, 2017 Order Denying Respondent’s  
    Motion for Clarification and Granting Petitioner’s  
    Motion to Enforce CR 2A.....1

    B. The trial court did not err in entering a Permanent  
    Domestic Violence Protection Order against Skipper  
    and ordering supervised residential time in the Final Parenting Plan.....1

    C. The trial court did not err in finding Skipper lacked credibility.  
    Skipper cannot show that the trial court demonstrated bias or  
    prejudice towards him.....1

    D. The Trial Court Did not Err in Scheduling Presentation  
    of Final Pleadings. Skipper attended Presentation  
    and was not Prejudiced.....1

    E. The Trial Court did not Err in “Not Helping” Ashley  
    with an Alleged Drug Problem.....1

II. RESPONDENT’S RESTATEMENT OF THE CASE.....2

    A. Identification of the Parties.....2

    B. Procedural History/Factual Background.....2

III. ARGUMENT.....8

    A. Standard of Review .....8

    B. Skipper’s Appellate Brief Fails to Conform to the  
    Rules of Appellate Procedure and Should Not be Considered .....10

    C. The Trial Court did not Err in Entering its Order Denying  
    Respondent’s Motion for Clarification and Granting  
    Petitioner’s Motion to Enforce CR 2(A).....11

|      |  |    |
|------|--|----|
| D.   | The Trial Court did not Abuse its Discretion in Entering a Parenting Plan providing for Supervised Visitation between Skipper and the Children.....  | 12 |
| i.   | The Trial Court’s credibility determinations should not be reassessed, or disturbed on appeal.....   | 12 |
| ii.  | Skipper cannot establish that the trial court was prejudiced against him.....  | 14 |
| iii. | The trial court entered a Parenting Plan in the Best Interest of the Children .....  | 15 |
| E.   | The Court Did not Err in Entering a Permanent Domestic Violence Protection Order Against Skipper Due to acts of Domestic Violence Against Ashley that he would likely resume upon Expiration of the Order..... | 19 |
| F.   | The Trial Court Did not Err in Scheduling Presentation of Final Pleadings. Skipper attended Presentation and was not Prejudiced.....   | 22 |
| G.   | The Trial Court did not Err in not Finding Evidence of Drug Use by Ashley.....   | 23 |
| H.   | The Trial Court did not Err in Awarding Ashley \$5,441.63 in Attorney’s Fees and Costs for Skipper’s Intransigence.....  | 23 |
| I.   | Ashley Should be Awarded Attorney’s Fees and Costs on Appeal for Skipper’s Intransigence .....   | 26 |
| IV.  | <b>CONCLUSION</b> .....  | 28 |

## TABLE OF AUTHORITIES

### Cases

|  |        |
|--|--------|
| <i>Bay v. Jensen</i> , 147 Wn. App. 641, 196 P.3d 753 (2008).....  | 8      |
| <i>Camer v. Seattle Post-Intelligencer</i> , 45 Wn.App. 29, 723 P.2d 1195<br>(1986) <i>rev. denied</i> , 107 Wn.2d 1020, <i>cert. denied</i> , 482 U.S.<br>916, 107 S.Ct. 3189, 96 L.Ed.2d 677 (1987)..... | 10     |
| <i>Hecker v. Cortinas</i> , 110 Wn.App. 865, 43 P.3d 50 (2002).....  | 9, 21  |
| <i>In re Disciplinary Proceeding Against King</i> , 168 Wn.2d 888,<br>232 P.3d 1095 (2010).....  | 9      |
| <i>Jacobson v. Jacobson</i> , 90 Wn. App. 738, 954 P.2d 297 (1998).....  | 16     |
| <i>Jones v. Allstate Ins. Co.</i> , 146 Wn.2d 291, 45 P.3d 1068 (2002).....  | 10     |
| <i>Jones v. National Bank of Commerce</i> , 66 Wn.2d 341,<br>402 P.2d 673 (1965).....  | 21     |
| <i>Joy v. Dept. of Labor and Industries</i> , 170 Wn. App. 614,<br>285 P.3d 187 (2012), <i>review denied</i> , 176 Wn.2d 1021,<br>297 P.3d 708 (overturned on other grounds).....                          | 20     |
| <i>Kemmer v. Kesinski</i> , 116 Wn. App. 924, 68 P.3d 1138 (2003).....   | 12     |
| <i>Marriage of Brown</i> , 159 Wn. App. 931, 247 P.3d 466 (2011).....  | 25     |
| <i>Marriage of Crosetto</i> , 82 Wn. App. 545, 918 P.2d 954 (1996).....  | 24, 26 |
| <i>Marriage of Greenlee</i> , 65 Wn. App. 703, 829 P.2d 1120 (1992).....   | 24, 26 |
| <i>Marriage of Horner</i> , 151 Wash.2d 884, 93 P.3d 124 (2004).....   | 8      |
| <i>Marriage of Katare</i> , 175 Wn.2d 23, 283 P.3d 546 (2012).....   | 15     |
| <i>Marriage of Kim</i> , 179 Wn. App. 232, 317 P.3d 555 (2014).....  | 15     |
| <i>Marriage of Kovacs</i> , 121 Wn.2d 795, 854 P.2d 629 (1993).....  | 16     |
| <i>Marriage of Landry</i> , 103 Wn.2d 807, 699 P.2d 214 (1985).....  | 16     |
| <i>Marriage of Littlefield</i> , 133 Wash.2d 39, 940 P.2d 1362 (1997).....   | 9      |

|  |        |
|--|--------|
| <i>Marriage of Murray</i> , 28 Wn. App. 187, 622 P.2d 1288 (1981).....                                   | 15     |
| <i>Marriage of Raskob</i> , 183 Wn. App. 503, 334 P.3d 30 (2014).....                                    | 9      |
| <i>Marriage of Rockwell</i> , 141 Wn. App. 235, 170 P.3d 572 (2007).....                                 | 21     |
| <i>Marriage of Wallace</i> , 111 Wn. App. 697, 45 P.3d 1131 (2002).....                                  | 24, 26 |
| <i>Marriage of Zigler</i> , 154 Wn. App. 803, 226 P.3d 202 (2010).....                                   | 8      |
| <i>Matter of Marriage of Kaplan</i> , 4 Wn. App. 466, 421 P.3d 1046 (2018).....                          | 12, 20 |
| <i>Matter of Marriage of Rounds</i> , 4 Wn. App. 2d 801, 423 P.3d 895 (2018).....                        | 14     |
| <i>Mattson v. Mattson</i> , 95 Wn. App. 592, 976 P.2d 157 (1999).....                                    | 25, 27 |
| <i>Mitchell v. Washington State Dept. of Corrections</i> , 164 Wn. App. 597,<br>277 P.3d 670 (2011)..... | 26     |
| <i>Rhinehart v. Seattle Times Co.</i> , 51 Wn.App. 561,<br>754 P.2d 1243 (1988).....                     | 27     |
| <i>Santos v. Dean</i> , 96 Wn. App. 849, 982 P.2d 632 (1999).....  | 9      |
| <i>Sorensen v. Pyeatt</i> , 158 Wn.2d 523, 146 P.3d 1172 (2006).....                                     | 10     |
| <i>State v. Chamberlin</i> , 161 Wn.2d 30, 162 P.3d 389 (2007).....                                      | 14     |
| <i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971).....                           | 9, 21  |
| <i>West v. Thurston County</i> , 168 Wn. App. 162, 275 P.3d 1200 (2012).....                             | 10     |
| <i>Wendle v. Farrow</i> , 102 Wn.2d 380, 686 P.2d 480 (1984).....  | 10     |
| <i>Wixom v. Wixom</i> , 190 Wn. App. 719, 360 P.3d 960 (2015).....                                       | 24     |

**Statutes**

RCW § 7.04A.230.....11

RCW § 26.09.140.....24

RCW § 26.09.184.....16

RCW § 26.09.191.....7, 16

RCW § 26.50.010(1).....7

**Regulations and Rules**

CR 2(A).....3, 4, 11, 12, 25

RAP 10.3(a)(4).....10

RAP 10.3(a)(5).....10

RAP 10.3(a)(6).....10

RAP 18.1.....26

RAP 18.9.....26

## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

Appellant, Skipper W. Kuzior, appeals several aspects of the Honorable Kitty-Ann van Doorninck's entry of a Parenting Plan, Final Divorce Order, and Permanent Domestic Violence Protection Order following the parties' December 7, 2017 dissolution trial. Ms. Ashley Kuzior responds to Skipper's Assignment of Errors as follows.

A. The trial court did not err in entering its October 24, 2017 Order Denying Respondent's Motion for Clarification and Granting Petitioner's Motion to Enforce CR 2A. Skipper is unable to demonstrate that the trial court, or that its decision, was not impartial or was unfair.

B. The trial court did not err in entering a Permanent Domestic Violence Protection Order against Skipper and ordering supervised residential time in the Final Parenting Plan.

C. The trial court did not err in finding Skipper lacked credibility. Skipper cannot show that the trial court demonstrated bias or prejudice towards him.

D. The trial court did not err in scheduling the hearing date for presentation of final orders. Skipper was present for the hearing and was not prejudiced in any manner by the trial court's entry of final pleadings on December 21, 2017.

E. The trial court did not err in failing to find that Ashley engaged in illegal drug use. Skipper cannot demonstrate any facts or evidence supporting his claim.

## **II. RESTATEMENT OF THE CASE**

### **A. Identification of the Parties**

This case arises from the trial court's entry of a Decree of Dissolution, Findings of Fact and Conclusions of Law, Final Parenting Plan, Order of Child Support, and Permanent Domestic Violence Protection Order following a one-day trial in Pierce County Superior Court before the Honorable Kitty-Ann van Doorninck. Skipper is the Appellant and Ashley is the Respondent.<sup>1</sup>

### **B. Procedural History/Factual Background**

Skipper and Ashley married on June 4, 2006. CP 41; CP 170. Ashley filed a Petition for Legal Separation on June 2, 2016. CP 41. Subsequently, Ashley filed an Amended Petition for Dissolution and on May 26, 2017, Skipper accepted service of the Amended Petition for Dissolution. CP 175. The parties have two children, Nancy (age eleven at the time of trial) and Deborah (age eight at the time of trial). CP 175. The parties engaged in extensive litigation from the date of Ashley's initial filing to the trial, most of which was caused by Skipper's filing of baseless

---

<sup>1</sup> Mr. Kuzior is referred to as "Skipper" and Ms. Kuzior is referred to as "Ashley" throughout the Brief of Respondent. This is for ease of reference and no disrespect is intended by this informal reference.

motions and other actions. CP \_\_<sup>2</sup> (Ex. 32; Motion for GAL; Motion to Enforce CR 2A).

Prior to trial, the parties participated in mediation with private family law attorney, Norman Margullis. CP \_\_; (Ex. 31). At mediation, Skipper was represented by attorney Howard Comfort and Ashley was represented by attorney Jennifer Wing. *Id.* The parties reached a full and final agreement regarding, in relevant part, the award of assets and payment of liabilities, spousal maintenance, and attorney's fees. *Id.* The terms of the parties' agreement were memorialized in a fully executed Civil Rule 2(A) ("CR 2(A)") Agreement. *Id.* Both parties, their respective attorneys, and Mr. Margullis, reviewed and signed the CR 2(A) Agreement. *Id.*

On September 18, 2017, Skipper filed a Motion to Clarify the CR 2(A) Agreement. *Id.* On October 12, 2017, Ashely filed a Motion to Enforce CR 2(A) and Legal Memorandum in Support Thereof and Response to Respondent's Motion for Clarification. *Id.* On October 24, 2017, after reviewing the parties' briefing and conducting a full hearing on

---

<sup>2</sup> At the time filing the Brief of Respondent, Respondent files Respondent's Supplemental Designation of Clerk's Papers. Accordingly, at the time of filing, Respondent is unable to provide a specific citation to this reference. Throughout this Brief, Respondent references "CP \_\_" when referring to documents included in the Supplemental Designation of Clerk's Paper's.

the motions, reviewed the declarations filed in support of and in opposition to the motions, and heard oral argument of the parties. *Id.* The trial court entered an Order Denying the Motion to Clarify the CR 2(A) Agreement and Granting the Motion to Enforce the CR 2(A) Agreement. *Id.*

Thereafter, on December 7, 2017, trial was held before the Honorable Kitty-Ann van Doorninck. CP 170. Skipper was pro se and Ashley was represented by attorney, Jennifer Wing. *Id.* The issues pertinent to trial included the parenting plan, child support, and a domestic violence protection order against Skipper in favor of Ashley. *Id.*

At trial, Ashley testified as to her bond with the children, her parenting of the children, their personalities, her historical role in their daily lives, her schedule and other matters relating to parenting. RP (12/7/17) at pp. 46:20-25; 47:1-25; 48:1-25; 49:1-25; 50:1-3.

Skipper had difficulty testifying about the children and was fixated on financial matters. RP (12/7/17) at pp. 109:19-23; 123:14-25. The trial court repeatedly attempted to re-focus Skipper as to the children and parenting plan issues. RP (12/7/17) at pp. 106:13-14, 19-20, 22-24; 107:1-2; 109:19-23; 113:3-6; 116:1-2; 123:14-25; 124:1. Ashley testified as to Skipper's frequent absences from the family home, often several weeks in length, to go fishing or clamming. RP (12/7/17) at pp. 57:22-25; 58:1-9.

Ashley testified as to Skipper's acts of violence against her including one incident when Skipper hit her with a closed fist while driving in their car and another incident when Skipper was threatening her in a hostile manner by throwing dishes in the kitchen. RP (12/7/17) at pp. 72:9-25; 76:7-25; 77:1-6. She testified about her fear of Skipper arising from these actions. RP (12/7/17) at pp. 72:9-11; 73:20-25; 74:1-25; 75:1-25; 76:1-25; 77:1-6. Ashley testified as to Skipper's erratic behavior including digging a hole in the wall of the parties' home to find the devil. RP (12/7/17) at pp. 77:20-25; 78:1-25; 79:1-9.

Psychological evaluations relating to Skipper's long-term mental health issues including a 2007 Forensic Mental Health Report, a 2008 Forensic Psychological Report, and a November 18, 2017 Psychological Evaluation were admitted into evidence. Exs. 18,19, 39. Dr. David Moore, Ph.D. performed Skipper's November 18, 2017 Psychological Evaluation. He diagnosed Skipper with Schizoaffective Disorder, Manic Type, and recommended medication management, ongoing psychotherapy case management, and additional group counseling. Ex. 39.

On December 14, 2017, the trial court announced its oral ruling. RP (12/14/17). At the end of the trial court's oral ruling, the trial court set a date for presentation of final pleadings, namely, December 21, 2017. RP (12/14/17) at pp. 14:13-25; 15:1-25. Skipper objected to that date because

his father was dying. *Id.* Skipper did not object to the presentation date because he desired to retain legal counsel. *Id.* The trial court set the presentation date for December 21, 2017, over Skipper's objection, but noted that Skipper could inform her Judicial Assistant if there was a problem with the presentation date. RP (12/14/17) at p. 16:2-9.

On December 21, 2017, the trial court entered, in relevant part, the parties' Final Divorce Order, Final Parenting Plan, Findings of Fact and Conclusions of Law, and Permanent Domestic Violence Protection Order. CP 177-183; CP 153-163; CP 164-169; CP 170-176. Skipper and Ms. Wing were present at the presentation of final pleadings before the Honorable Kitty-Ann van Doorninck. Skipper refused to sign the final pleadings. CP 162; CP 169; CP 176; CP 183.

In its findings, the Court found that Skipper was not credible. CP 176 ("The Court finds that Respondent is not credible"). The trial court found concerning Skipper's behavior at trial, his litigious behavior throughout the case, and his history of not taking prescribed medications in a consistent manner. CP 176. Further, the trial court found that Skipper's behavior is potentially detrimental to the emotional well-being of the children. *Id.*

The Parenting Plan designated Ashely as the children's primary parent, and provided that Skipper would have professionally supervised

residential time every Sunday from 10:00 a.m. to 2:00 p.m., and every week on a mutually agreeable night from 4:00 p.m. to 6:00 p.m. CP 157. The trial court found Skipper had a history of domestic violence, as defined in RCW 26.50.010(1). CP 153; 175. Further, the trial court entered a finding that Skipper “has significant mental health issues which affect his behavior and his ability to parent his children.” CP 154; 176. Accordingly, the trial court ordered professional supervision of Skipper’s residential time with an opportunity to bring a motion before the trial court no sooner than twelve (12) months after entry of the Final Parenting Plan to review the supervision requirement. CP 154-55; 157. Review and possible modification of the supervision requirement contemplated that Skipper would provide proof of his engagement in regular, ongoing psychiatric treatment with a board certified, licensed psychologist, and that he followed the treatment recommendations of such provider. CP 154-55; 157.

The trial court found Skipper’s behavior potentially detrimental to the emotional well-being of the children, and found RCW 26.09.191 factors dispositive with regard to Skipper’s parenting time and decision making. CP 176.

On December 28, 2017, Skipper filed his Notice of Appeal. Skipper’s Opening Brief was due on July 9, 2018. As reflected in this

Court's record, Skipper failed to timely file his Opening Brief. Ultimately, Skipper filed his Opening Brief on August 27, 2018, however, this Court rejected his Opening Brief. From August 2018 through November 2018, Skipper filed several briefs, which were rejected by the appellate court for failure to adhere to the Rules of Appellate Procedure. Finally, Skipper's November 19, 2018 Opening Brief was accepted by this Court.

On December 10, 2018, Ashley filed a motion for an extension of time to file her Brief of Respondent. On December 11, 2018, this Court granted Ashley's motion to extend the filing deadline to February 11, 2019. Due to inclement weather, Ashley filed her Brief of Respondent on February 13, 2019, two days after the filing deadline. *See Motion for Extension of Time and Declaration of Jennifer A. Wing filed herewith.*

### **III. ARGUMENT**

#### **A. Standard of Review**

The Court of Appeals reviews a trial court's entry of a parenting plan for abuse of discretion. *In re Marriage of Zigler*, 154 Wn. App. 803, 808, 226 P.3d 202 (2010). The reviewing court will only overturn a ruling under the abuse of discretion standard if it is manifestly unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard. *In re Marriage of Horner*, 151 Wash.2d 884, 893, 93 P.3d 124 (2004); *Bay v. Jensen*, 147 Wn. App. 641, 651, 196 P.3d 753 (2008). A trial court's decision is manifestly unreasonable if it is outside

the range of acceptable choices, given the facts and applicable legal standard. *In re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997). Further, a trial court's decision is based on untenable grounds if the factual findings are unsupported by the record, it is based on an incorrect standard, or the facts do not meet the requirements of the correct standard. *Id.* at 39.

Additionally, allegations of violations of the appearance of fairness doctrine are reviewed de novo. *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 899, 232 P.3d 1095 (2010). It is presumed that a judge is impartial and the burden is on the appellant as the moving party to provide the court with proof of the judge's actual or perceived bias. *Santos v. Dean*, 96 Wn. App. 849, 857, 982 P.2d 632 (1999).

Further, the issuance of a domestic violence protection order is reviewed for an abuse of discretion. *See Hecker*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002) *citing State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (appellate court will not overturn the trial court's decision to enter a lifetime protection order absent a clear showing of abuse of discretion).

The appellate court reviews de novo whether a trial court's conclusions of law flow from its findings of fact. *In re Marriage of Raskob*, 183 Wn. App. 503, 510, 334 P.3d 30 (2014). The appellate court upholds the trial court's findings of fact where substantial evidence supports the finding from which a trial court draws a conclusion of law. *Id.* at 510. The appellate court may affirm the trial court's judgment upon

any theory established by the pleadings and supported by the evidence before the court. *Wendle v. Farrow*, 102 Wn.2d 380, 382, 686 P.2d 480 (1984). Finally, unchallenged factual findings are verities on appeal. *Sorensen v. Pyeatt*, 158 Wn.2d 523, 528, 146 P.3d 1172 (2006).

Rule of Appellate Procedure (“RAP”) 10.3(a)(6) requires that the appellant state the argument in support of the issues for review, with citations to legal authority and references to relevant sections of the record. On appellate review, contentions that are unsupported by argument or citation of legal authority will not be considered. *Camer v. Seattle Post-Intelligencer*, 45 Wn. App. 29, 36, 723 P.2d 1195 (1986), *rev. denied*, 107 Wn.2d 1020, *cert. denied*, 482 U.S. 916, 107 S.Ct. 3189, 96 L.Ed.2d 677 (1987). Additionally, when an appellant fails to comply with RAP 10.3(a)(6) by providing only passing treatment and inadequate argument of issues, the appellate court will not review such issues. *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012).

Finally, self-represented litigants are held to the same standards on appeal and must comply with all procedural rules. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 308, 45 P.3d 1068 (2002).

**B. Skipper’s Appellate Brief Fails to Conform to the Rules of Appellate Procedure and Should Not be Considered.**

Skipper’s Opening Brief does not comply with applicable Rules of Appellate Procedure, specifically RAP 10.3(a)(4), (5) and (6), as he neither provides proper assignments of error nor citation to relevant

legal authority relating to his assignments of error and assertions throughout his Brief. Further, he fails to provide reasoned argument to support his assertions. Thus, this Court should not consider Skipper's appeal. *Assuming arguendo*, that this Court considers Skipper's arguments, where Skipper does not challenge the trial court's findings of facts and conclusions of law, these findings are verities on appeal and the conclusions of law drawn from these findings should be affirmed. Each and every one of the trial court's conclusions of law and decision flowing therefrom should be affirmed as Skipper fails to assign error to specific findings of fact.

C. **The Trial Court did not Err in Entering its Order Denying Respondent's Motion for Clarification and Granting Petitioner's Motion to Enforce CR 2(A).**

Skipper assigns error to the trial court's refusal to vacate the arbitration award pursuant to RCW 7.04A.230 arguing that the trial court failed to make a just and equitable division of assets when it enforced the CR 2A Agreement. Significantly, the parties never arbitrated any matter in this case and no arbitration award was entered. Skipper's assertion is misplaced and unsupported by the record. That being said, the trial court enforced the parties' CR 2(A) Agreement, which is supported in fact and law as reflected by the record in the trial court supporting the trial court's Order Denying Motion to Clarify the CR 2(A) Agreement and Granting

the Motion to Enforce the CR 2(A) Agreement. CP \_\_ (Order Denying Respondent's Motion for Clarification and Granting Petitioner's Motion to Enforce CR2A). Skipper provides no reasoned argument or legal authority supporting his claim that the trial court erred in not addressing the division of the parties' assets at trial.<sup>3</sup> The trial court should be affirmed.

**D. The Trial Court did not Abuse its Discretion in entering a Parenting Plan providing for Supervised Visitation between Skipper and the Children.**

- i. The Trial Court's credibility determinations should not be reassessed, or disturbed on appeal.*

Skipper effectively requests that the appellate court reassess Ashley's credibility as a witness, an issue outside of the scope of review. The trial court did not err in determining Ashley's credibility and its decision should be affirmed. As noted above, the appellate court will not reassess the trial court's finding regarding a lack of witness credibility. *Matter of Marriage of Kaplan*, 4 Wn. App. at 466, 479, 421 P.3d 1046 (2018).

On December 14, 2017, during the trial court's oral decision following trial, the Honorable Kitty-Ann van Doorninck stated, "[a]nd just

---

<sup>3</sup> Skipper cites to *Kemmer v. Kesinski*, 116 Wn. App. 924, 933, 68 P.3d 1138 (2003) as legal authority permitting a court to consider a motion to clarify a prior ruling at any time. *Kemmer* is not relevant or legally on point, and should not be considered by this court.

for the record, I'll make a specific finding that I did not find Mr. Kuzior credible." CP 176; Verbatim Report of Proceedings (RP)(12/7/17) at p. 7:17-18. This finding was entered after the trial court observed and assessed Skipper's disposition, demeanor, and testimony.

Further, with respect to Skipper's ability to provide testimony as to his parenting of the children, the trial court continually repeated instructions for Skipper to focus on his children and the parenting plan throughout trial. For example, the court stated,

But again, we're just focusing on the Parenting Plan. All right? That's what the trial is about. We're not going to talk about any of the finances or any of the other stuff that's happened. We are only focusing on your daughters.

RP (12/7/17) at p. 9:1-5.

The court continued to re-direct Skipper's focus from financial aspects, which were not before the court, to the children. The Court asked, "Can you focus on the children?" RP (12/7/17) at p. 109:19. The Court subsequently stated, "You keep talking about money and I am really interested in the children." RP (12/7/17) at p. 109:22-23.

On another occasion, the trial court stated, "Mr. Kuzior, this doesn't have anything to do with your Parenting Plan." RP (12/7/17) at p. 116:1-2. The trial court's finding that Skipper was not credible should not be disturbed on appeal.

ii. *Skipper cannot establish that the trial court was prejudiced against him.*

Skipper alleges that the trial court was biased or prejudiced against him, resulting in an unfair parenting plan that “restricted his rights.” In the present case, the court made a specific finding that Skipper was not credible. A court’s finding that a party lacks credibility is not sufficient to establish judicial bias. *Matter of Marriage of Rounds*, 4 Wn. App. 2d 801, 808, 423 P.3d 895 (2018). Evidence of a judge’s actual or potential bias must be shown before an appearance of fairness claim will succeed. *State v. Chamberlin*, 161 Wn.2d 30, 37, 162 P.3d 389 (2007).

Skipper fails to demonstrate that the court’s order was adopted and entered as a result of bias or prejudice against him. He cannot and does not present any evidence or reasoned argument whatsoever supporting his assertion. Under the circumstances, that is, where there is no evidence supporting actual or potential bias, a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial and neutral hearing. Thus, the trial court’s entry of the Parenting Plan requiring supervised residential time (or any other action taken by the trial court) does not constitute error based upon an assertion of bias or prejudice. Skipper’s assertions lack support in the record.

iii. *The trial court entered a Parenting Plan in the best interest of the children.*

Next, Skipper alleges the trial court erred in ordering supervised visitation with his daughters, inferring that his mental health evaluation supported unsupervised visitation (“I have proven myself with a great evaluation done by Dr. Moore”). Brief of Appellant at page 12.

However, there is substantial evidence supporting the trial court’s findings as to Skipper’s mental health diagnosis, ongoing concerns about his mental health, his ability to consistently manage his mental health issues and take his prescriptions, and his ability to parent the children in light of his long history and present circumstances regarding his mental health.

As set forth above, trial courts have broad discretion when determining a final parenting plan and the appellate court reviews under the abuse of discretion standard. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). The trial court is in a unique position to personally observe the parties in determining the parenting plan, thus, the appellate court is hesitant to disturb the trial court’s decision on appeal. *In re Marriage of Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981). Therefore, the spouse that is challenging the trial court’s decisions in the final parenting plan bears the heavy burden of demonstrating abuse of discretion by the trial court. *In re Marriage of Kim*, 179 Wn. App. 232,

240, 317 P.3d 555 (2014); *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985).

In determining a final parenting plan the court must provide for the residential schedule of the children. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). When entering a final parenting plan the court considers the best interests of the children. *Id.* at 801. The court's objectives include: providing for the child's physical care, maintaining the child's emotional stability, providing for the child's changing needs in a way that minimizes for future modifications to the permanent parenting plan, and to minimize the child's exposure to harmful parental conflict. RCW 26.09.184. The trial court is given broad discretion in developing a parenting plan based upon the child's best interests. *Jacobson v. Jacobson*, 90 Wn. App. 738, 743, 954 P.2d 297 (1998); *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

Additionally, the trial court must define the authority and responsibilities of each parent with respect to the children, if necessary, under RCW 26.09.191. A parent's time with the children will be limited if the parent has a history of domestic violence. RCW 26.09.191. Where a court finds RCW 26.09.191 factors exist, a trial court may enter additional restrictions. In this case, the trial court found and entered RCW 26.09.191 factors, specifically in regards to Skipper's history of domestic violence

and history of mental health issues, which were dispositive as to the issue of joint decision making. CP 153-54.

The evidence at trial supports that Ashley has been the consistent parent providing care for the children. At trial, she testified as to her role in their lives as their primary caregiver including her role in day-to-day care (reading, dining out, movies, playing) as well as her role in their education and activities. RP (12/7/17) at pp. 46:20-25; 47:1-25; 48:1-25; 56:10-25. She is President of the PTA at Harvard Elementary and is involved in their Scouts' group. RP (12/7/17) at p. 48:17-25. Ashley is actively involved in managing care for Deborah's special, medical needs including her awareness as to Deborah's educational needs and scheduling doctor's appointments as needed. RP (12/7/17) at pp. 51:8-25; 52:1-25; 53:1-25; 54:1-25; 55:1-18. Further, Ashley proactively completed a parenting class so she could learn different approaches to parenting RP (12/7/17) at p. 50:4-14. Ashley testified as to her observation that Skipper's bond with the girls was just "o.k.". RP (12/7/17) at pp. 58:20-25; 59:1. Moreover, Ashley testified as to her observations and experiences relating to Skipper's mental health and instability including periods when he is incoherent and does not "make any sense" as well as her concerns as to his parenting. RP (12/7/17) at pp. 63:19-25; 64:1-25, 68:19-25, 69:1-25; 70:1-25; 71:1-9; 80:12-25; *See also* Ex. 24.

The evidence before the trial court also included the Guardian ad Litem's (GAL) report, identifying Ashley as the parent most involved in the children's daily lives with Skipper frequently absent for periods of time either fishing or clamming. CP 29, 30. The GAL report included a findings "summary" and recommendations incorporating concerns as to Skipper's mental health and how his mental health impacts the children. CP 35-40. The GAL report notes that on one occasion of supervised visitation, Skipper brought to visitation the children's skinned rabbit, which had died. CP 19. The GAL's report also incorporates the visitation supervisor's observations as to Skipper including that he appears unstable ("super kooky"; "was crazy at his intake") when he is not on his lithium and evidencing more stable behavior when he is taking his lithium. CP 21-22.

Further, the evidence before the trial court included Dr. David Moore, Ph.D.'s November 18, 2017 Psychological Evaluation of Skipper, which Skipper introduced at trial and was admitted into evidence. Ex 39. Specifically, Dr. Moore determined that Skipper suffers from Schizoaffective Disorder, Maniac Type. Ex. 39. Dr. Moore's Psychological Evaluation supports the trial court's findings that "Skipper Kuzior has significant mental health issues which affect his behavior and his ability to parent his children" and that "Skipper Kuzior has been

diagnosed with schizoaffective disorder, manic type (normal health evaluation dated November 18, 2017), by Dr. David Moore, and is sporadic in use of his prescribed medication.” CP 154.

Finally, the record supports that Skipper engaged in domestic violence by hitting Ashley and in engaging in threatening behavior towards Ashley. RP (12/7/17) at pp. 72:8-77:19. Nancy observed this act of violence. CP 18; RP (12/7/17) at p. 73:11-19.

In sum, there is substantial evidence in the record supporting the trial court’s findings as to Skipper’s mental health diagnosis, mental health issues, and the impact of his mental health on his parenting of the children as well as his history of domestic violence towards Ashley. The Parenting Plan is in the children’s best interest. Thus, the trial court’s conclusions and parenting plan provisions are supported and should be affirmed.

E. **The Court Did not Err in Entering a Permanent Domestic Violence Protection Order Against Skipper due to acts of domestic violence against Ashley that he would likely resume upon Expiration of the Order.**

Skipper assigns error to the trial court’s entry of a Permanent Domestic Violence Protection Order (“DVPO”) against him, which protects Ashley. He claims that the DVPO was based upon “lies and an ever changing story”. Brief of Appellant at p. 7. Additionally, he argues that the Court abused its discretion in entering the DVPO, but does not

assert that the acts do not meet the statutory standards for acts of domestic violence or meet other requirements for a permanent DVPO. Skipper's challenge relates solely to the trial court's credibility determinations.

First, where Skipper fails to provide specific assignments of error to the trial court's findings of fact, they are verities on appeal. Where the trial court's findings support its conclusions, which they do in this case, the trial court's decision should be affirmed. Further, where Skipper fails to provide relevant legal authority, reasoned argument, or citation to the record supporting his passing reference to "trial court error", this Court should not consider his argument. *Joy v. Dept. of Labor and Industries*, 170 Wn. App. 614, 629, 285 P.3d 187 (2012), *review denied*, 176 Wn.2d 1021, 297 P.3d 708 (*overturned on other grounds*)(recognizing when appellant's argument is not supported by a citation to authority and lacks a reasoned argument, insufficient to allow judicial consideration). If this Court considers Skipper's argument, this Court should affirm the trial court's entry of the Permanent DVPO.

With respect to Skipper's assertion that the DVPO was entered based upon Ashley's "lies" and "ever changing story", it is well established that the appellate court does not substitute its judgment for the trial court's and will not weigh evidence or assess witness's credibility. *Matter of Marriage of Kaplan, supra*, citing *In re Marriage of*

*Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). At trial, the court had the opportunity to consider testimony from Ashley and Skipper as to alleged incidents of domestic violence. The trial court observed the witnesses' demeanor and made credibility determinations.

Specifically, Ashley testified as to several incidents of domestic violence by Skipper. RP (12/7/17) at pp. 72:9-25; 74:1-25; 75:1-22; 76:7-25; 77:1-6. Further, there is substantial evidence in the record to support a domestic violence finding and a permanent order given Skipper's criminal history, mental health issues, sporadic management of his medication, violation of the temporary restraining order, and his vindictive nature. CP 174. RP (12/7/17) at pp. 69:1-19; 80:2-25; 82:4-21; 83:5-12; Exs. 12, 18, 19, 21, 39. *See Hecker*, 110 Wn. App. at 869, *citing State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (appellate court will not overturn the trial court's decision to enter a lifetime protection order absent a clear showing of abuse of discretion).

Finally, the "Conclusion" section of Skipper's brief includes a passing reference to "Lifetime No Contact Order improper served." Brief of Appellant at p. 17. First, this Court should not consider Skipper's passing comment in his "Conclusion" section as he fails to identify any "service" issue in his Assignment of Error section. *See Jones v. National Bank of Commerce*, 66 Wn.2d 341, 346, 402 P.2d 673 (1965)(appellant

has burden to draft a proper assignment of error; the appellate court will not redraft an assignment of error in the manner that appellant may have intended). Neither does Skipper provide any reasoned argument or citation to legal authority relating to this issue and this Court should not consider any “service” issue on appeal. If the Court considers the “service” issue, Skipper was served with the DVPO at the December 21, 2017 presentation hearing, but this is not relevant to this Court’s review as the issue of service of the DVPO does not relate to the propriety of the trial court’s entry of the Permanent DVPO.

**F. The Trial Court Did not Err in Scheduling Presentation of Final Pleadings. Skipper attended Presentation and was not Prejudiced.**

Next, Skipper argues that the trial court erred by scheduling presentation of final pleadings on a date that he was unavailable. Skipper seems to take issue with the trial court’s statement that he need not need to be present for the presentation. RP (12/14/17) at p. 15:19-21. First, Skipper was given adequate notice of the hearing date and appeared on that date of presentation of final pleadings. CP 169 (noting that he was “present but refused to sign”). Thus, Skipper was not prejudiced by the December 21, 2017 presentation hearing. Further, while Skipper references the desire to retain an attorney to be present at the presentation of final pleadings, he presents no evidence that he requested an

opportunity to retain counsel for the hearing. In fact, Skipper never requested time to retain an attorney for the presentation hearing. RP (12/14/17) at pp. 14:13-25; 15:1-25; 16:1-9. Thus, Skipper's argument has no merit. The trial court's ruling and final pleadings should be affirmed.

**G. The Trial Court did not Err in Not Finding Evidence of Drug Use by Ashley.**

Skipper assigns error to the trial court's failure to "help" Ashley with an alleged drug problem. Brief of Appellant at p. 8. However, Skipper fails to present any reasoned argument or cite to any evidence before the trial court as to any drug use by Ashley. In fact, there is no credible evidence in the record supporting Skipper's inference or allegation that Ashley has a drug problem. At most, the record reflects that Skipper claimed that Ashley had a drug problem and the trial court did not find his assertion credible. RP (12/7/17) at p. 107:4-8; RP (12/14/17) at p. 11:7-11; CP 176. For these reasons, the appellate court should disregard Skipper's assignment of error and assertion as to this issue.

**H. The Trial Court did not Err in Awarding Ashley \$5,441.63 in Attorney's Fees and Costs for Skipper's Intransigence.**

Skipper fails to assign error to the trial court's award of \$5,441.63 in attorney's fees and costs awarded to Ashley for Skipper's intransigence from August 2017 through trial. Skipper merely references Ashley's

attorney's fees award in his "Statement of the Case" and provides no assignment of error, citation to authority or reasoned argument as to his assertion that "[t]he \$5,800.00 in undocumented legal fees Jennifer Wing acquired in final orders shall be summarily dismissed with prejudice." Brief of Appellant at p. 13. Where Skipper provides only a passing reference to this issue, this Court should not consider this issue. If, however, this Court reviews the trial court's award of attorney's fees and costs, this Court should affirm the trial court's award.

Attorney's fees may be awarded in a dissolution proceeding based on the financial need of a party, or for intransigence. RCW 26.09.140; *In re Marriage of Crosetto*, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). Intransigence can be shown by "litigious behavior, bringing excessive motions, or discovery abuses." *In re Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002). Intransigence can also be shown by one party refusing to cooperate with the other party or engaging in conduct that unnecessarily makes the proceeding unduly difficult or costly. *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992).

An award of attorney's fees is reviewed for abuse of discretion. *Wixom v. Wixom*, 190 Wn. App. 719, 725, 360 P.3d 960 (2015). The appellant must show that the trial court acted outside of the range of acceptable choices or made a decision that was untenable or manifestly

unreasonable manner. *Id.* at 725. If a party in a dissolution proceeding demonstrates intransigence, the financial well-being of the other party is not relevant in a trial court's decision to award attorney's fees. *Mattson v. Mattson*, 95 Wn. App. 592, 606, 976 P.2d 157 (1999).

Here, the trial court awarded Ashley \$5,441.63 for her attorney's fees and costs for Skipper's intransigent actions from August 2017 through trial. CP 182. While each party was ordered to pay their own attorney's fees and costs as part of the CR 2(A) Agreement entered on August 3, 2017, from August 2017 through trial in December 2017, Skipper filed several frivolous motions, including his Motion to Clarify, which required two depositions, briefing and court time. Ex. 32. Further, Skipper filed a Motion for Appointment of Guardian ad Litem or Parenting Investigator even though a GAL had already been appointed and had filed a GAL report. CP 14-40. Finally, the trial court considered Ms. Wing's attorney's fee declaration and determined that the requested attorney's fees were reasonable. Ex. 32. The trial court's award of attorney's fees and costs should be affirmed.

Finally, Skipper requests the court attorney's fees associated with filing this appeal. As a pro se, Skipper is not entitled to attorney's fees and costs and he has not made any showing or provide a legal basis for an award of costs. *See In re Marriage of Brown*, 159 Wn. App. 931, 939,

247 P.3d 466 (2011) (pro se litigants not entitled to attorney fees for work in representing themselves); *Mitchell v. Washington State Dept. of Corrections*, 164 Wn. App. 597, 277 P.3d 670 (2011). Therefore, Skipper's relief associated with all attorney's fee and costs issues should be denied.

**I. Ashley Should be Awarded Attorney's Fees and Costs on Appeal for Skipper's Intransigence.**

Ashley respectfully requests that Skipper pay her attorney's fees and costs associated with responding to this appeal based on Skipper's intransigence. Pursuant established law, set forth below, as well as RAP 18.9 and RAP 18.1, Ashley requests an award of attorney's fees and costs for responding to Skipper's appeal (including the numerous motions filed, letters issued and other actions taken).

With respect to the Ashley's request for attorney's fees, the trial court has the authority in dissolution matters to award attorney's fees and costs when one party has been intransigent. *In re Marriage of Crosetto*, 82 Wn. App. 545, 564, 918 P.2d 954 (1996); *In re Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002); *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Further, intransigence is a basis for awarding attorney fees on appeal in a dissolution proceeding that

exists separate from a party's award of attorney's fees due to financial need. *Mattson v. Mattson*, 95 Wn. App. 592, 606, 976 P.2d 157 (1999).

Ashley also requests an award of attorney's fees and costs pursuant to RAP 18.9(a), which provides, in relevant part:

The appellate court . . . on motion of a party may order a party or counsel . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay . . . The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party.

RAP 18.9(a).

In *Rhinehart v. Seattle Times Co.*, 51 Wn.App. 561, 581, 754 P.2d 1243 (1988), the court of appeals awarded fees pursuant to RAP 18.9(a) where the appeal presented no debatable issues upon which reasonable minds might differ and was so devoid of merit that there was no reasonable possibility of reversal. *Id.* at 581.

In this case, where Ashley has incurred attorney's fees and costs in responding to Skipper's baseless appeal an award of attorney's fees and costs is proper. This request is compelling where Skipper fails to provide proper assignments of error, reasoned legal analysis, and/or relevant legal authority to support his assertions as to issues relating to the trial court's Parenting Plan, Final Divorce Order, Findings of Fact and Conclusions of

Law, and Permanent Domestic Violence Protection Order. Under these circumstances, an award of attorney's fees is appropriate.

**IV. CONCLUSION**

For the reasons set forth above, Ashley respectfully requests this Court affirm the trial court in all respects with regard to the Parenting Plan, Final Divorce Order, Findings of Fact and Conclusions of Law, and Permanent Domestic Violence Protection Order and order Skipper to pay Ashley's attorney's fees and costs associated with this appeal.

RESPECTFULLY SUBMITTED this 13 day of February, 2019.

LAW OFFICE OF JENNIFER A. WING, PLLC

By:   
Jennifer A. Wing, WSBA #27655  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of February, 2019, Appellant was served with a true and correct copy of the foregoing Respondent's Brief by electronic delivery and mailing to the following address:

Skipper W. Kuzior  
26327 60<sup>th</sup> Ave. E.  
Graham, WA 98338  
Kuziorkrush@gmail.com

I arranged for the original of the foregoing document to be filed with the Court of Appeals, Division II by electronic delivery to the following address:

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

DATED this 13<sup>th</sup> day of February, 2019.



\_\_\_\_\_  
Julie M. Lawless  
Paralegal for Jennifer A. Wing, WSBA #27655

**LAW OFFICE OF JENNIFER A. WING, PLLC**

**February 13, 2019 - 12:07 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51407-9  
**Appellate Court Case Title:** In re the Marriage of: Skipper W. Kuzior, Appellant v. Ashley L. Kuzior, Respondent  
**Superior Court Case Number:** 16-3-02079-7

**The following documents have been uploaded:**

- 514079\_Briefs\_20190213120355D2715354\_5984.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Kuzior Respondent Brief.pdf*
- 514079\_Designation\_of\_Clerks\_Papers\_20190213120355D2715354\_8806.pdf  
This File Contains:  
Designation of Clerks Papers - Modifier: Supplemental  
*The Original File Name was Kuzior Supplemental Clerks Papers.pdf*
- 514079\_Motion\_20190213120355D2715354\_3194.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Kuzior Motion to Extend.pdf*

**A copy of the uploaded files will be sent to:**

- julie@jwinglaw.com
- kuziorkrush@gmail.com

**Comments:**

Motion: Respondent's Motion to Extend Filing of Respondent's Brief

---

Sender Name: Julie Papen - Email: jpapen@jwinglaw.com

**Filing on Behalf of:** Jennifer Ann Wing - Email: jennifer@jwinglaw.com (Alternate Email: )

**Address:**

Law Office of Jennifer A. Wing, PLLC  
4041 Ruston Way, Suite 200  
Tacoma, WA, 98402  
Phone: (253) 627-1762

**Note: The Filing Id is 20190213120355D2715354**