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**Washington State Court of Appeals Division II**

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Stephanie Lynne Moffett

*Plaintiff/Petitioner - Appellee*

V.

David B.D. James

*Defendant/Respondent - Appellant*

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On Appeal from Pierce County Superior Courts, Washington State

No.18-3-01265-1, Honorable Timothy Ashcraft, Presiding

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**BRIEF FOR APPELLANT**

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David B.D. James

1517 8th ave ct se

Puyallup, WA 98372

(253) 287-6150

Respondent/Appellant

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## **JURISDICTIONAL STATEMENT**

David James ("James") appeals from the March 22, 2019 Ruling and Order(s) Judgment & Order Establishing Residential Schedule/Parenting Plan/Child Support; and/or Alternatively the April 12th Order Denying Motion, which sought the reconsideration of the Court's March 22, 2019 decision. Both Rulings and Orders were entered by the Honorable Judge Timothy Ashcraft ("Ashcraft") of Pierce County Superior Courts.

James timely filed a Notice of Appeal dated April 22, 2019. This court has jurisdiction over the appeal.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the court err in its application and understanding of *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054(2000)?
2. Did the court deprive James of substantive due process by denying his right to a Trial by Jury under the 7th Amendment of the U.S. Constitution as well as Article 1 Section 21 of the Washington State Constitution?
3. Did the court err in its finding that a single random UA with high ETG Scores is sufficient evidence to determine a "Long term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent."?
4. Did the court fail to apply adjudicated fact *Virginia v. Rives*, 100 US 313 Supreme Court that proceedings held "Coram non Judice" are absolutely void?
5. Did the court err in its decision to apply State Title IV-D Child Support Enforcement?

## STATEMENT OF THE CASE

This case arises out of the February 2018 separation of David James ("James") and Stephanie Moffett ("Moffett"). Following the separation Moffett was defined by 42 U.S.C 11302 as "homeless", while James maintained permanent residence in a home under his ownership at 1517 8th Ave CT SE Puyallup WA, 98372.

Immediately following the separation Moffett began this case with an onslaught of false allegations against James including but not limited to, rape, domestic violence, substance abuse, child neglect, and child abandonment.

Each allegation brought to light by Moffett has been systematically proven as Perjury. The most serious of the Allegations, Rape - never made it passed Puyallup Police Department. No arrests were made, nor physical police contact. Lesser allegations made by Moffett were loosely "ignored" as Moffett provided no such evidence to support her claims, despite her testimony that she had been gathering evidence against James for the previous 10 years. The courts seemingly viewed them as "mudslinging". The allegation of Substance Abuse will be addressed later.

As previously stated Moffett is homeless as defined by 42. U.S.C 11302. At the time, and for nearly 2 years now after separation Moffett remains unemployed and free of all adult responsibility. Moffett currently takes residence under the support of her parent's and is fully dependant upon them alongside State Aid, and Child Support. Moffett's irresponsibility as an adult and inability to support herself is a direct reflection

of her inability to provide, make decisions for, and rear children. Moffett was only awarded decision making because of her heightened residential time with the children.

In the early stages of this case, Moffett's false allegations rewarded her with majority residential time with the Children, despite having a 7 year old (at the time) Parenting Plan in place. See 90-173 Exhibit 10. Both children immediately rebelled after losing their "primary parent." You can see the sealed Personal Health Care record (P 50-59) That Dresden E.A. Moffet-James was so distraught by losing time with his father, that he rebelled against his mother to a point where he was forced into behavioral therapy by his mother where he outright struck her repeatedly and publicly. Aria A. James' dismay can be found in Sealed Confidential reports (P39-49) where you can see a dramatic drop in scholastic performance with teacher comments including insubordination, and her attitude being detrimental to peer work.

Later in this case Moffett confessed to child abuse as defined by RCW 26.44.020. Her confession was acknowledged by Judge Timothy Ashcraft in the "Court's Decision" with no repercussions for her actions. Although the depths of Moffett's child abuse extend far beyond her withholding and alienation as evidenced by Dresden's surname and Moffett's refusal to sign his paternity affidavit, a judges decision to acknowledge and ignore such actions is bewildering. See P90-173 Exhibit 11. In addition to such oddities, Ashcraft took it upon himself to order James to submit evidence of being compliant in regards to treatment for an alleged Depression diagnosis in which the court has no credible evidence of, nor testimony from Moffett stating such interferes with his ability to parent, which is a violation of HIPAA law.

The Court's decision to force the children to spend a majority of their residential time in poverty should be of paramount concern and re-evaluated. Cases involving the residential schedule of children are at face value a determination of the “best interests” of a child. The current ruling of this case is clearly not in the best interest of either child and further violates the language of RCW 13.34.020.

*“In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter..”*

Moffett’s inability to provide a permanent home for the children and dependency on her parents who have moved yet again, places both children, especially Aria A. James (the eldest child) in a difficult situation where she would now be potentially forced to attend a 3rd different school inside of 2 years. Alternatively - had the father prevailed, Aria would be back in her home school with all her friends and community where she thrived both socially and academically. See 39-49.

To present day, both children remain in suffering. The litigant’s son Dresden E.A. Moffett-James has yet to be “Potty trained” and exhibits symptoms of emotional distress, and their daughter Aria A. James continues to struggle in her Academic and Social development while exhibiting symptoms of emotional distress as well. Moffett continues

to ignore her parental duty to provide for both children and remains willfully unemployed surviving only on the charity of her family, child support, and the welfare of the state.

## **SUMMARY OF THE ARGUMENT**

Equality has been a major trend among the American populus today, and the equality between a biological Mother and Father involving the Residential time spent with their children is the argument here today.

In today's world our goal as a society has been to focus on and to create equality and equal rights. Our movements are focused on equality including Women's rights, same sex partner rights, "Black Live's Matter", and "Blue live's matter". Understandably, the in-equality among genders in the courtroom hasn't received nearly the publicity of the previously mentioned movements, but remains as equally important. Additionally, more often - Cases involving Residential time with children are reaching the U.S. Supreme Courts, and Justices are voicing their opinions of equality, relentlessly citing previous U.S. Supreme court rulings to affirm the equal rights among biological Mothers and Fathers.

In this Argument, you will see a multitude of U.S.Codes, Case citings, US Supreme Court Rulings, and RCW's that all promote the equality among genders in the courtroom. Unfortunately this case is without a ruling to corroborate these state laws, federal laws, adjudicated facts, and constitutional rights.

James is seeking to correct this error in a pursuit of equality among genders supported by state law, federal law, adjudicated facts, and supreme court rulings. At no time was there a finding that James was an "unfit" parent, nor at any time was there a

finding that James was incapable of providing a nurturing environment for his children to thrive upon. And yet, the Courts ruled in favor of a homeless mother who refuses to seek employment and provide for her children while being dependant on the charity of others.

In this Appeal the father, James is contesting that his Constitutional rights as a natural biological father to his offspring Aria A. James and Dresden E.A. Moffett-James has been violated without due process of law. In addition to the violation of Constitutional rights, this court must also consider the local state laws/ RCW's that support the rights of the children involved. James is also contesting the application of Title IV-D Child Support Enforcement based on the Federal Rules and regulations set forth.

A multitude of false allegations have plagued this case since it's birth including but not limited to: Substance abuse, rape, domestic violence, child abuse, child neglect, and child abandonment which have all lead this case astray from facts and evidence into an emotional response of inferences built upon inferences. Despite the necessity of Judges having to focus on truth and facts, they are after-all human, and their human error provoked by irrational emotional responses have lead them astray from their oaths and responsibilities to our State and Country Constitutions. Ultimately leading to a decision based on irrational human/emotional response, as opposed to their logical and responsible fact and evidence based rulings.

Ultimately, James is focused on his State and Country Constitutional rights to seek justice in a case previously ruled by what appears bias and presumptions. In a

pursuit of equality among natural Biological mothers and father's, this court must answer the question, Why was the natural biological father's rights ignored while the Mother who is clearly incapable of providing for her children awarded majority custody despite a 7 year old parenting plan with no change in situation, and a means to provide for them.

## ARGUMENT

### 1. The court erred in its application and understanding of *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054(2000).

The *Troxel* case originated from Skagit County and this court should be intimately familiar with it as it was appealed to these Appellates previously. Although it is true that *Troxel* was a non-parental visitation case, the findings and ruling of the U.S. Supreme Court are not explicit to non-parental visitation and it was pointed out by several Justices that,

*"It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a 'better' decision." Ibid., 969 P. 2d, at 31.*

This statement made by Justice O'Connor joined by Justice Breyer, and Chief Justice Ginsburg was also supported separately by Justice Souter in his concurrence. Later Justice O'Connor in the support of Justice Ginsburg and Chief Justice Ginsburg also stated,

*"We explained in Pierce that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled*

*with the high duty, to recognize and prepare him for additional obligations.” Id., at 535. We returned to the subject in Prince v. Massachusetts, 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” Id., at 166.*

Justice Scalia dissenting also speaks to the constitutionality of this argument, stating,

*In my view, a right of parents to direct the upbringing of their children is among the “unalienable Rights” with which the Declaration of Independence proclaims “all Men . . . are endowed by their Creator.” And in my view that right is also among the “othe[r] [rights] retained by the people” which the Ninth Amendment says the Constitution’s enumeration of rights “shall not be construed to deny or disparage.”*

The full Opinion, Concurrence, and Dissent of these Justices can be found in James’ Motion to Vacate, (See 90-173 Exhibit 12).

Each of the U.S. Supreme Court rulings and Justices albeit Concurrence, opinion, or dissent share the same view that unless the child is in imminent danger, it is not within the jurisdiction of a state to contest the decision of a “fit” biological father or mother concerning the rearing of their children unless the child is in imminent danger. Therefore; in cases involving the separation of the biological mother and father the state is without jurisdiction to deny their equal time with the children without making a finding that the involved child(ren) are in danger.

It could be argued that RCW 26.09 is unconstitutional on its face as it directly allows the Court to make "significant decisions concerning the custody of the children merely because it could make a better decision." Ashcraft's decision to grant Moffett majority residential time with the children was both unconstitutional and immoral.

**2. The court deprived James of procedural and substantive due process by denying his right to a Trial by Jury under the 7th Amendment of the U.S. Constitution as well as Article 1 Section 21 of the Washington State Constitution.**

The Washington State Constitution Article 1 Section 21 holds that,

*"The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by 9 or more jurors in civil cases in any court of record,*

*and for waiving of the jury in civil cases where the consent of the parties is given thereto."*

It is a fact that the Judgment in this case outright violates Federal Rule 60(B)(4).

It is an adjudicated fact by the Supreme Court of the United States in Matter *Murray's Lessee v. Hoboken Land & Improvement Co. (1856)* that a man cannot be deprived of life, liberty, or property unless by a judgment by peers arising from a trial by peers under common law as secured by the Bill of Rights 7th Amendment.

It is a fact that every Man and Woman is secured the right of a Trial by Jury in any controversy of \$20 or more.

It is an adjudicated fact by the Supreme Court of the United States in Matter *Duncan v. Louisiana, 391 US 145 - Supreme Court 1968* that

*"The Fourteenth Amendment denies the states power to 'deprive any person of life, liberty, or property, without due process of law'."*

Trial by Jury has been a staple in the American Court systems for hundreds of years and was both appropriate and repeatedly demanded by James in this case. It is the earnest belief of James, that no jury would grant an irresponsible and unemployed parent incapable of providing for their children majority custody in lieu of a proven and responsible parent that has the desire and resources necessary to provide for their

offspring. The involvement of Child Support and Attorney Fees requested in this case immediately requires a Trial by Jury unless both litigants had previously waived that right which did not come to pass.

In regards to Due Process,

*The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” We have long recognized that the Amendment’s Due Process Clause, like its Fifth Amendment counterpart, “guarantees more than fair process.” Washington v. Glucksberg, 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests.” Id., at 720; see also Reno v. Flores, 507 U. S. 292, 301–302 (1993).*

As stated in the motion to Vacate(see p90-173), due process was clearly not followed procedurally or substantively. No jury was present despite James' demand for one, violating Procedural due process, and the Court erred in the substantive due process in its decision to deny a fit parent's decision making ability with no "Imminent danger" present to either child. Lastly, Due process was violated in the language

"guarantees more than fair process" Washington v. Glucksberg, 521 U.S. 702,719(1997). Also explained in the Motion to Vacate as the respondent in this case James, was only able to get 1 exhibit admitted into court. The opposing counsel was able to exploit the procedural ignorance of James and effectively obstruct justice by keeping critical evidence from being admitted into trial.

**3. The court erred in its finding that a single random UA with high ETG Scores is sufficient evidence to determine a "Long term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent."**

It was the finding of the Court that a single UA collected on May 2nd 2018 is sufficient to declare that James has a "Long term problem with drugs, alcohol, or other substances that gets in the way of his/her ability to parent." It was stated repeatedly each time without contest that this random UA took place shortly after James' own bachelor party as he was married to Aleah A. James (previously Canvess) only 9 days later.

Following the May 23rd hearing held before Commissioner Barbara McInville, James voluntarily enrolled in a weekly observed Random UA Program with 2 Watch Monitoring to include ETG. After 5 months of these observed random UA's taken each week James never tested positive for alcohol or any drug consumption and each week resulted in a 0.00 ETG. See 4-38. These findings corroborate James' testimony that he

does not suffer from a long term problem with drugs, alcohol, or other substance that gets in the way of his/her ability to parent.

To further compound the argument that James does not have a long term problem with any substance, he was ordered and voluntarily took a Chemical Dependency Evaluation at a place of Moffett's choosing Al'ta Counseling: where he was evaluated by Jeremy M. Wekell SAP, CDP. See 1-3. Wekell's diagnostic statement is as follows,

*"I was unable to render a diagnosis of substance use disorder. I conducted a complete "Bio-Psycho-Social" assessment and I administered the Substance Abuse Subtle Screening Inventory (Sassi-4) that concurred with my finding of: Insufficient Evidence of a Substance Use Disorder."*

With weekly random observed UA's alongside the opinions and evaluations of medical professionals supporting James' testimony, the Court clearly erred in its findings concerning substance abuse. Despite all evidence both in the random UA's and evaluations of medical professionals Ashcraft too contradicts himself; in his findings he states that neither parent is unfit.

**4. The court failed to apply adjudicated fact Virginia v. Rives, 100 US 313 Supreme Court that proceedings held "Coram non JUDGE" are absolutely void.**

Perhaps the most simple question raised before this court is the previous Court's failure to apply Adjudicated Fact. The court erred in its decision to ignore the Adjudicated Fact VIRGINIA v. RIVES, 100 US 313-SUPREME COURT 1880 that judgments by persons not judges are absolutely void. See 64-66. Ashcraft's decision to ignore this Adjudicated Fact and to elevate a Commissioner of the Courts to a Judge's jurisdiction is a clear non ambiguous error.

Ashcraft's failure to abide to federal law and Adjudicated Fact relieved him of jurisdiction over this case prior to trial. Albeit inexperience as he only has one year experience as a judge, or ignorance of never hearing an argument of this nature previously is irrelevant. The opposing counsel also had no objection to the Adjudicated Fact, it was Ashcraft himself who presented the bias and inarguable partiality.

#### **5. The court erred in its decision to apply State Title IV-D Child Support Enforcement.**

It's a fact that any controversy involving \$20 or more is reserved to a trial by Jury.

It is a fact that James requested a Trial by Jury in this case.

It is a fact that James was denied a Trial by Jury in this case.

It is a fact that Pierce County Superior Courts violated Federal Rule 60(B)(4).

It is a fact that no "Injury of Fact" was presented by Moffett to oblige or otherwise subject James into Title IV-D Child Support Enforcement.

It is a fact that no Promissory Note exists between the litigants and therefore there is no obligation or debt for James to pay Child Support in accordance with Title IV-D Child Support Enforcement.

It is a Fact that James contested to the Courts that he is not subjected to State Title IV-D Child Support Enforcement.

It is a fact that opposing counsel presented no legal objection to James' claim that he was not subjected to Executive Order 12953. Opposing counsel merely stated verbatim, that they had never heard of this argument before.

It is a fact that under Executive order 12953 that State Title IV-D Child Support Enforcement is for Members of the United States Uniformed Services and Employees of Federal Agencies and therefor James is not subjected to Title IV-D Child Support Enforcement.

It is a fact that under the *Uniform Interstate Family Support Act* Respondents must submit to the jurisdiction of the court and waive consent. This response is proof that James is not submitting to the jurisdiction of this court, or previous courts and is not/has not ever waived consent.

It is a fact before the Court that James is not subjected to Mandatory Income Withholding under 42 USC 666(A)(1)(b). Because mandatory income withholding is for employees of the United States Uniformed Services and Employees of a Federal Agency under Executive order 12953 and 42 USC 659.

It is a fact that James is not subjected to Child Support Enforcement under section 203 of the Executive order 12953 and thereby this court must vacate the support order without terms to comply with the facts cited.

## **Conclusion**

For the foregoing reasons, James respectfully requests that this court:

- 1: Vacate all orders issued by Judge Timothy Ashcraft
  - a. Vacate the Child Support Orders held “Coram Non Judice”
  - b. Vacate the Parenting Plan
  - c. Vacate the Child Support Order Final
  - d. Vacate all language involving James and substance abuse
  - e. Vacate the Attorney Fees awarded to Moffett
  - f. Vacate Ashcraft’s language involving James’ alleged depression
- 2: Reconsider Moffett’s Perjury, Confession/evidence of Child Abuse, and ability to support, provide for, and rear children.
- 3: If this court fails to find Moffett as an “Unfit” parent, or that the children are not in “Imminent danger”. James seeks to have the March 2011 Parenting Plan reinstated and updated to today’s standards while including Dresden E.A. Moffett-James. And awarding James sole decision-making responsibility.

*Or Alternatively.*

Grant James a trial by Jury with a Jury of at least 9 peers, as protected by the 7th amendment of the United States Constitution and Article 1 Section 21 of the WA State Constitution.

/s/ David B. James

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## CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2019 an electronic copy of the foregoing brief was filed with the Clerk of the Court for Washington State Court of Appeals Division II using their online submission system, and through and by that the service will be sent electronically to Jonathon Moffitt (Attorney for Appellee).

I have also electronically served a copy of this document to Jonathon Moffitt via email to [j.moffitt@envisionfamilylaw.com](mailto:j.moffitt@envisionfamilylaw.com) as well as to his assistant Dian Rogers at [d.rogers@envisionfamilylaw.com](mailto:d.rogers@envisionfamilylaw.com).

**/s/ David B. James**

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**DAVID B JAMES**

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Address:  
1517 8th ave ct se  
Puyallup, WA, 98372  
Phone: (253) 287-6150

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