

FILED
Court of Appeals
Division II
State of Washington
11/6/2019 8:00 AM

Washington State Court of Appeals Division II

Stephanie Lynne Moffett

Appellee

v.

David B.D. James

Appellant

On Appeal from Pierce County Superior Courts, Washington State

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

REPLY BRIEF OF APPELLANT

David B.D. James

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Respondent/Appellant

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RULES AND REGULATIONS

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INTRODUCTION

The Appellee's Response Brief is a near copy of the Appellee's Motion to Affirm/Dismiss this case which was denied by Commissioner Schmidt on September 10, 2019. It is predominantly focused on attempting to have the ruling retained based on the legal formatting errors and procedural ignorance of James, the self represented Appellant. This court should also review and consider both the Appellee's Motion to Affirm as well as the Appellant's Objection/Response declaration as many of the issues in this response have been raised in the Motion to Affirm and have been denied by Commissioner Schmidt.

The cases cited by Moffett critically damage her position while further reinforcing James' arguments that the lesser Courts decision should be overturned and RCW 26.09.187 was not correctly applied.

In regards to Moffett's request for Attorney fees, it is the findings of Commissioner Schmidt that this case is not frivolous, and should once again be dismissed without prejudice. Should this court desire to award Moffett attorney fees, it is without jurisdiction to do so as the 7th Amendment reserves controversies in access of \$20 to a Trial by Jury, and a Trial by Jury has previously and repeatedly been demanded for this case.

The ignorance of James in regards to legal procedures and formatting may make this case undesirable to take on, however it is the high duty of this Court to abide by their Oaths and pursue justice in this matter. Should the Courts find the content of this

matter to be too difficult to comprehend, James will accept that this case be remanded to the Pierce County Superior Courts and retried by a Trial By Jury of peers.

It was by the finding of Commissioner Schmidt that:

“The Respondent’s motion to dismiss the appeal is denied. The Appellant is not required to arrange for a verbatim report of proceedings, although in its absence, this court will not consider challenges to the sufficiency of the evidence. The Respondent’s request for attorney fees is denied without prejudice. The Respondent’s brief is due within 30 days.”

ARGUMENT

Moffett's Complaints and Relevant Facts(In Chronological Order):

A. Moffitt's Argument, "Mr. James's factual arguments should be denied and trial court rulings affirmed because of Mr. James's failure to provide a verbatim report of proceedings."

a. Has been addressed by Commissioner Schmidt of the Court of Appeals Division II. See above Ruling in the Introduction.

1. "Mr. James had refused to sign a paternity acknowledgment for their son, Dresden. CP6, 109-110."

A. This is Moffett's/Moffitt's 1st falsity in this document. As evidenced and pointed out by Moffitt on CP 55, it is clearly shown that James signed the document 2 months before Moffett. Moffett was withholding their son Dresden at the time to gain a leg up in RCW 26.09.187. This fact, being presented before this court by Attorney Jonathon Moffitt is in clear violation of his Oath of Attorney in the language of #5 "I will never seek to mislead the judge or jury by any artifice or false statement." This was pointed out in the Appellee's Motion to Affirm and it's inclusion here compounds the argument that Attorney Jonathon Moffitt is in contempt without concern.

2. Mr. James's factual argument should be denied because of Mr. James's failure to provide a verbatim report of proceedings.

A. See Commissioner Schmidt's ruling quoted above herein.

B. James's factual arguments must be accepted because of the overwhelming evidence supporting them and the absence of any evidence in objection.

3. "Mr. James failed to provide a verbatim report of proceedings. As such, the findings of fact are verities and binding upon this Court".

A. See Commissioner Schmidt's ruling quoted above herein.

B. There are no findings of facts supported by evidence against James. And if such a technicality did exist, what would be the purpose of having an Appellate Court?

4. "Shortly before trial, Mr. James filed frivolous motion to dismiss that contained several arguments similar to those he presents in his Brief. His motion was denied at attorney fees were reserved. CP 160-61".

A. Jonathon Moffitt contests that James' Motion to Dismiss was frivolous and yet the honorable Commissioner Henderson Jr. found quite the opposite and instead identified his lack of jurisdiction. This lack of jurisdiction was based on the term "Coram non-judice" before a person not a judge and was supported by Virginia v. Rives

100 U.S. 313 (1880) and later *Burnham v. Superior Courts of California* 110 S. Ct. 2105 (1990).

- B. Commissioner Henderson Jr.'s actions, alongside of the term "Coram non-judice" validate the argument of a lack of Jurisdiction amongst Commissioners as they are People, not Judges.
- C. This argument is the 2nd example of Jonathon Moffitt's contempt of court and violation of his Oath of Attorney as he seeks to manipulate the presiding Judge into believing James's arguments are frivolous when in fact multiple Commissioners from both Pierce County Superior Court and the WA State Court of Appeals find substantial merit to them.

5. "Mr. James further failed to cite to the Clerk's Papers in his Brief."

- A. See Commissioner Schmidt's Ruling.
- B. This is the 2nd major falsity presented by Jonathon Moffitt in his Response Brief and is a violation of his Oath of Attorney as he once again attempts to manipulate the court into believing an obvious lie. James relentlessly cited the Clerk's Paper's but without the proper formatting. A majority of the Citations were made as "See P XX-XX" IE: See P39-49. No educated person could confuse this format when the citation should have been CP39-49.

6. "Further compounding the above problem is Mr. James' attempt to smuggle in evidence that the trial court refused to admit under the Rules of Evidence."

- A. This disturbing quote in the Response Brief is clear evidence that Moffett's primary plan of defense is to exploit the gap between normal citizens and the legal systems formatting and procedures.
- B. There is no argument towards the authenticity of any documents or evidence filed, the only argument is that the evidence should be ignored because of James' lack of procedural knowledge and formatting.
- C. Let this Court remember that James is/was the Respondent in this matter. For a Court to ignore any authentic evidence in any person(s), man, or woman's defense is an abomination.
- D. Let this Court again evaluate Jonathon Moffitt's Oath of an Attorney as this is the 4th time he violates his Oath.

7. "These errors and omissions make it difficult for the Court to review and Ms. Moffett to respond..."

- a. If an educated man is incapable of defending themselves in a Court of law because of formatting errors and complex court regulations; our Judicial System has FAILED.

- i. Nearly the entirety of this argument rests upon the fact that even though James is college educated, his inability to legally format papers and have both credible and vital evidence admitted into court is grounds for dismissal.
- ii. According to our U.S. Supreme Court; *Washington v. Glucksberg* 521 US 702 (1997) - Due process "*guarantees more than fair process.*" Which makes this argument both frivolous and defiant of the Due Process Clause of the 14th Amendment.
- iii. Additionally, the Doctrine of Habeas Corpus protects American's from the "procedural maze" of our Judicial system. Although Habeas Corpus is predominantly used by in-mates/prisoners, this "Great writ" applies to anyone having their liberties restrained by "lawless state action." As the case is here.
- iv. This is yet again another attempt of Moffitt to manipulate the presiding Judge to side with procedural formality in opposition to justice.

8. Concerning the alleged Substance Abuse Disorder.

- a. The opposing counsel's dependence on a single UA with high ETG scores in the face of 15 others at 0.00 and a Chemical Dependency Evaluation proving James does NOT have a substance abuse disorder is evidence of their desperation and perjury and once again, Jonathon Moffitt's violation of his Oath.
 - i. Moffett alleged that James would binge drink on Holidays, and yet despite James taking random observed UA's only two days after Memorial Day, 4th of July, and Labor Day, the results remain at 0.00.
- b. James is contesting this point specifically because no such evidence exists suggesting he has any "Long Term" substance abuse problem, only that he consumed alcohol during a bachelor's party. All of the evidence instead suggest his innocence, and Moffett's perjury.
 - i. This point specifically is, and must remain contested until evidence is brought forth showing any sort of "Long Term" substance abuse disorder. By the 5th, 7th, and 14th Amendment rights, American's are "innocent until proven guilty".
- c. By the opposing counsel's own language in the Motion to Affirm, "An abuse of discretion is present only if there is a clear showing

that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.”

- i. Convicting a person of a “Long Term” substance abuse disorder with no evidence, and instead only a single UA positive for alcohol consumption isn’t just “manifestly unreasonable”, it’s blatant partiality or bias. This is assuming of course, that the Chemical Dependency Evaluation, alongside the other fifteen random and observed UA’s are ignored.
- ii. The Fact that James scored 4310 ng/ml is evidence only that James had up to 3 drinks (12oz beer, 5oz wine, or 1.5oz 80 proof liquor) in the last 48 hours. According to studies by Universities, each drink will raise ETG by up to 2000 ng/ml each.

8. Concerning *Troxel v. Granville* 530 U.S. 57 (2000)

- a. Moffitt’s lack of experience in law limits his scope to a very narrow field. Although RCW 26.09.187 is the common method for a Judge in this state to establish a Parenting Plan, the U.S. Supreme Court rulings as well as Constitutional rights prevail over it.
- b. *Troxel v. Granville* set the standard for Parenting Plans in 2000 as it included a multitude of previous U.S. Supreme Court rulings

preventing the state(s) from interfering with a fit parents ability to rear and make decisions concerning the upbringing of their children. (See Appellant's Brief and *Troxel v Granville*)

- c. *Troxel v. Granville* also identifies the 9th Amendment as protection from state interference and includes the Opinions, Concurrence, and Dissent of many Justices who have all reached the same conclusion,

"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.

- d. *Troxel* has already lead the U.S. Supreme Court to scrutinize this state because of the unconstitutionality of RCW 26.10, in James' argument, RCW 26.09 is also unconstitutional on its face. The principles of this case and RCW 26.10 and 26.09 are undeniably similar.

- a. Moffett is incorrect in their argument that James suggests, "so long as neither parent is unfit and there is no imminent danger to the child-the trial court cannot do anything but order equal residential time for each parent." The fact of this matter is that the State (by ruling of a Judge) can NOT order residential time/parenting plans at

all, unless consented by both parties. In this case specifically, James consents to have the previous mutually agreed upon parenting plan(see exhibit 10 CP135-145) reinstated, awarding the children 50% residential time with both Mother and Father.

- b. Only a Jury of peers retains the jurisdiction to contest and overrule a fit parent's decision.

9. Moffitt's allegation that RCW 26.09.187 was "correctly applied and analyzed" is both incorrect and its error is further evidenced by case laws involved by both parties. Case laws cited by Moffitt are extremely damaging to their cause and are in full support of the James, the Appellant.

- a. *In re Marriage of Kovacs*, 121 Wn.2d at 802-10 854 P.2d 629(1993)
- a. *In re Parentage of Schroeder*, 106 Wn. App. 343, 348, 22 P.3d 1280 (2001)
- b. *Pickler v. Pickler*, 5 Wn. App. 627, 628-29, 489 P.2d 932 (1971)
- c. *Horen v. Horen*, 73 Wn.2d 455, 459, 438 P.2d 857
- d. *Joslin v. Joslin*, 45 Wn.2d 357, 364, 274 P.2d 847 (1954)
 - i. Each of these case laws point to a common theme, The welfare and stability of the children, which is supported by RCW 13.34.020 and rightfully so, as pointed out in James' opening Brief. In its current state, Pierce County Superior Courts have effectively condemned 2 minor children to live in poverty with their mother 80% of the time. Whom is

under the care of her parents and both incapable and unwilling to provide for herself or children. Instead of with their father, who is in the middle class and is capable as well as willing to provide for the children both financially and emotionally.

ii. Moffett is and remains unwilling to provide for her children and their best interest.

1. Moffett refuses to seek employment.
2. Moffett can not provide a stable home.
3. Moffett is dependant upon her parents.
4. Moffett is dependant on the State's welfare system.
5. Moffett is dependant on the charity of others.
6. Moffett is unfit as a parent as she can not even provide for herself, let alone the 2 children.
7. Moffett has confessed to Child Abuse as defined by RCW 26.44.020, and acknowledged by Judge Aschraft.
8. Moffett was never the primary parent until she chose to withhold the children.
 - a. All of Moffett's exhibits are post separation where her counsel properly instructed her to gather evidence to identify her as a caring mother and to be used in court which is merely a fabrication.
 - i. Nothing comes from a time prior to Moffett's decision

to withhold the children, as no such evidence of her being a primary parent exists.

- iii. James is the only capable litigant based on the 5 cases cited in the Response Brief, as well as RCW 13.34.020 and RCW 26.09.187. This court is without reason and jurisdiction to restrain James' residential time with his children beyond 50%. As RCW 13.34.020 clearly states...

“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.”

1. James is a homeowner with a safe, stable and permanent home which satisfies RCW 13.34.020 as well as these case laws.
2. James has a stable work history.
3. James works from home a majority of the time.
4. James is historically the primary parent.
5. James and his Wife can comfortably and easily provide for the children without assistance nor dependency from State Welfare.
6. James has a great relationship with both children despite the damage caused by Moffett's withholding, child abuse, and continued alienation which is child abuse as identified by RCW 26.09.191 and also on the record via her confession and Judge Ashcraft's findings.

10. "Mr. James has no right to a trial by jury under the Federal or Washington State Constitutions."

- a. Attorney Jonathon Moffitt is in blatant defiance of his Oath of Attorney.
- b. Washington State Constitution Article 1 Section 2 defines the U.S. Constitution as "Supreme Law of the Land" therefore there is no argument nor ability to contest any Man, woman, or person(s) right to a trial by Jury.
- c. Attorney Jonathon Moffitt is bound by Oath to support the WA State and U.S. Constitution. This statement is at least the 5th time he breaches that Oath.
 - i. WA State Constitution Article 1 Section 21 holds that "the right of trial by Jury shall remain inviolate." Here Jonathon Moffitt very clearly speaks, and acts against the Constitution(s) he is sworn to support.

11. In regards to Child Support

- a. This Court MUST vacate AB INITIO all Child Support orders.
 - i. It is a fact that Due Process has not been carried out.
 - ii. It is a fact that the lesser court was without jurisdiction to deprive a man of life, liberty, and/or property without Due Process.
 - iii. It is a fact that all controversies in excess of \$20 are reserved to a Trial by Jury.
 - iv. It is a fact that Moffett has not produced nor evidenced any Injury of Fact.
 - v. It is a fact supported by opposing counsel that James is not subjected to State Title IV-D Child Support Enforcement.

- vi. It is a fact supported by opposing counsel that James is not subject to Executive order 12953.
- vii. It is a fact that the opposing counsel has failed to produce any legal objection or evidence to James' demand to vacate Child Support.
- viii. It is a fact that the presiding Judge is bound by Oath and RCW 35.20.180 to "support the Constitution of the United States and the Constitution of the State of Washington".
- ix. It is a fact that under Executive Order 12953 that State Title IV-D Child Support Enforcement are for members of the U.S. Uniformed Services and Employees of Federal Agencies and thereby James is not subjected to either.
- x. It is a fact that all proceedings held Coram non Judice (Before a person not a Judge) are absolutely void by Adjudicated Fact Virginia v. Rives, 100 US 313-Supreme Court 1880.
- xi. It is a fact, this state is not within the geographical area of the definition of state under Subchapter XIX of 42 U.S. Code Chapter 7-Social Security as defined by 42 USC Section 1301 as the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, and American Samoa and therefore this state lacks the authority to enter into plan of Cooperation agreements under 42 usc section 654(7).

12. Moffett's Attorney Fees

This court simply lacks the jurisdiction to award Moffett her requested Attorney Fees and should rule in corroboration with Commissioner Schmidt denying such fees.

- a. Moffett's allegation that this case is frivolous has been found to be a falsity by Commissioner Schmidt of this Courthouse.
- b. The 7th Amendment of the United States Constitution preserves all controversy in excess of \$20 to a Trial by Jury.
- c. Moffett's own exhibits clearly demonstrate that she has substantially more resources than James' as she has paid in full over \$30,000 in Attorney fees in Case 18-3-01265-1 and over \$9,000 in full during this appeal process.
- d. James' lacks the funds to provide legal counsel for himself while fighting for constitutional rights.

SUMMARY

The Response Brief of Moffett is a nearcopy of the Motion to Affirm, previously denied by Commissioner Schmidt. This case is sensitive as James is exercising his constitutional rights to protect himself and children. The presiding Judge must carefully review all exhibits submitted into this case as they support the constitutional rights James seeks to retain, as well as provides vital evidence previously unconsidered/unrespected by the Pierce County Superior Courts.

RCW 26.09.187 was improperly implemented and the results of Ashcraft's ruling agitate other RCW's, case laws, constitutional rights, and previous U.S. Supreme court

rulings. Ashcraft also notes in his findings that the Mother has confessed to abusing her children, yet her actions go without recourse. Additionally *Troxel v Granville* alongside of the 9th Amendment denies the state Jurisdiction to limit a fit Biological Mother or Father's time with the children.

The legal formatting and procedural knowledge of James is not perfect. However, at no point does Attorney Jonathon Moffitt identify any legal reason to subject James to State Title IV-D Child Support, but instead supports James' claim in his client's brief, "Mr James's argument that 42 U.S.C. Sec. 651 et seq. Doesn't apply to him is technically correct." Based upon the foregoing, this court must overturn/vacate the trial court's rulings in all regards and once again deny Moffett's attempt to affirm the previous ruling.

Should jurisdictional issues be at hand, James once again states that he is willing and happy to have this case remanded to the Pierce County Superior Courts with retrial by Jury of peers, as protected by the Washington State and United States Constitutions.

Should this court affirm the decision of Judge Ashcraft, Jurisdiction requires Clarification and the following questions must be answered.

1. What gives the presiding Judge, jurisdiction to violate James' 7th, 9th, and 14th amendment rights?
2. What gives the presiding Judge the jurisdiction to ignore the WA. State Constitution Article 1 Section 2, 3, and 21?
3. What circumstances have changed to justify a change in the previously agreed upon and jointly signed parenting plan?

4. What evidence has Moffitt/Moffett provided subjecting James to State Title IV-D Child Support Enforcement, when both parties agree that he is not subjected to Executive Order 12953?
5. Why are the case laws submitted by both parties being ignored in this decision?

Dated this 5th day of November 2019.

Respectfully Submitted,

/s/ David B.D. James

David James Appellant Pro Se'

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I certify that on the 5th day of November 2019 an electronic copy of the foregoing Appellant's Reply 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 service will be sent electronically to Jonathon Moffitt (Attorney for Appellee) as well as his assistant Dian Rogers.

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

/s/ David B.D. James

DAVID B JAMES

November 05, 2019 - 8:29 PM

Transmittal Information

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