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No. 54116-5-II

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION TWO

LEWIS COUNTY SUPERIOR COURT NO. 19-2-00595-21

MANUEL EDWARD BOLIVAR

Appellant

v.

STACY LEE JONES

Respondent

APPELLANT'S REPLY BRIEF

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I. Introduction

Appellant Manuel Bolivar seeks a ruling overturning the trial court's denial of his motion to change venue, the denial of his motion to continue trial, the court's denial of his motion to exclude his domestic violence evaluation under ER 408,, and the entry of the Domestic Violence Protective Order and Order to Surrender Weapons.

The Appellant brought his Motion to Change Venue or Appoint a Visiting Officer when his attorney discovered that 1) a picture of the Appellant was conspicuously posted in the Lewis County Superior Court administration office and 2) a public records request for Lewis County Superior Court emails revealed that all sitting judicial officers had prior knowledge of the case or the Appellant being an alleged safety risk to the County and a recused judicial officer had further email communication regarding the case with the sitting judicial officer two months after her recusal. After hearing argument in front of the Hon. Joely O'Rourke, the Court denied this motion but the Court allowed for an affidavit of prejudice to be filed against Judge O'Rourke.

The Hon. Andrew Toynbee then recused himself.

The Case then proceeded to a hearing in front of a Lewis County District Court Judge, the Hon. R.W. Buzzard where a the Petition for a Domestic Violence Protection Order was granted. This Appeal follows.

The trial court's ruling should be overturned because there was sufficient evidence warranting a change of venue and this resulted in a deprivation of the Appellant's due process rights and the court abused its discretion in denying the Appellant's Motion to Continue on account of his absence.

II. Assignments of Error

1. The trial court erred and deprived the Appellant of his due process rights in denying the Appellant's Motion to Change Venue or Appoint a Visiting Judicial Officer when the trial court was presented with strong evidence that a fair trial was not possible given the photograph of Appellant being posted in court administration, every judicial officer in the Court having prior knowledge of the case and Appellant, and Court Commissioner Mitchell having email communication with Judge O'Rourke about the case two months after Commissioner Mitchell refused herself.

2. The trial court erred in denying the Appellant's motion to continue the hearing on November 25th, 2019 when the Appellant's flight to Washington from New Mexico was cancelled and he could not personally appear and aid in defending Petition against him.

3. The trial court erred in allowing the admission of the Appellant's domestic violence evaluation in the Respondent's second declaration when it was the product of settlement negotiations and shielded by ER 408.

III. Argument

1. **This Case Should Be Heard As The Appellant's Brief Complied with RAP 10.3(A)(4) And The Rules of Appellate Procedure Are Construed Liberally**

The Respondent argues that this case should not be considered by this Court and that this court should not be considering the Appellant's Opening Brief. She relies on *Harbord v. Safeway, Inc.*, (unpublished) 199 Wn. App. 1022, 2017 WL 2539461 at 6* (June 12, 2017) (sic). The Appellant cedes that an unpublished case may serve to illustrate a principle pursuant to GR 14.1, but this case is readily distinguishable from the case at bar. In *Harbord*, the court wrote: "Harbord's briefing on appeal is essentially incomprehensible. In violation of the Rules of Appellate Procedure, she has failed to provide discernible assignments of error or

any coherent legal argument supported by citations to authority or references to the record. Many of her factual allegations involve inadmissible hearsay.” *Id.* at 3.

Here, this is hardly the case. The Appellant’s Assignments of Error clearly indicate each issue that is being appealed and the evidence in the record that the appeal is based on. Appellant’s Brief at 2. Three specific assignments of error were given. *Id.* The analysis of these errors were then supported by both citations to authority and references to the record. Appellant’s Brief at 6-17. Eighteen cases, one statute, and two court rules were cited. *Id.* There were nine citations to the record. *Id.* Further, unlike in *Harbord*, there were no factual allegations based on inadmissible evidence. Rather, the evidence that was before the trial court and excerpts of the trial court’s reasoning at the time of its decisions were clearly cited by the Appellant’s Brief. *Id.* at 8-9, 11, 12, 14, 16.

The main issue before this Court is the trial court’s denial of the Appellant’s motion to change venue. However, when the trial court’s ruling on this is reviewed, it shows that no legal standard was even considered by the trial court aside from the guidelines of GR 36. Transcript of Proceedings at 18-22. The trial court’s ruling did not apply

the applicable RCW or caselaw. It just denied the motion. If the Appellant's assignment of error lacks specificity as to where the Court erred, this is due to the trial court's failure to articulate why the motion to change venue was denied.

The Respondent also argues that the standard of review is not stated or analyzed in the Appellant's Brief. RAP 10.3(a)(6) does not require a statement of the applicable standard of review for each issue, but merely notes that the Court "encourages" its inclusion. Here, the standard of review for each issue was stated by the Appellant. Appellant's Brief, at 6, 12, 14. Further, the abuse of discretion standard was fully defined by the Appellant. *Id.* at 6. The Appellant asks this Court to depart from the abuse of discretion standard and to review the denial of the motion to change venue de novo given the strong evidence of the prejudice that existed against the defendant in Lewis County Superior Court, but the Appellant is unaware of any caselaw requiring his ceding of the standard of review.

Last, RAP 1.2.a. states: "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or

noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).” The Respondent asks the Court to engage in a hyper-technical analysis of form over substance. The Appellant’s Opening Brief substantially complied with the mandates of RAP 10 and this case should proceed to a determination on the merits.

2. The Trial Court Erred in Denying the Appellant’s Motion to Change Venue or Appoint a Visiting Judge

a. The Trial Court’s Denial of The Appellant’s Motion to Change Venue Should Be Reviewed De Novo

As was acknowledged in the Appellant’s Opening Brief, a trial court’s decision on a motion to change venue is reviewed for an abuse of discretion. *West v. Osborne*, 108 Wn. App. 764, 770, 34 P.3d 816, 819 (2001). However, the Appellant is asking the Court to determine whether or not the trial court properly applied and interpreted the law in its decision because 1) the Court’s decision was made despite overwhelming evidence of bias against the Appellant and 2) the ruling was devoid of any analysis of both RCW 4.12.030 and the factors discussed in *Unger v. Cauchon* 118 Wn. App. 165, 73 P.3d 1005, 1008 (2003).

Contrary to the Respondent's position that this case involves a motion to change venue like any other in the caselaw, this case is distinguishable. *State v. Jackson* involved community bias and jury venire bias against the defendant. *State v. Jackson* 150 Wn.2d 251, 269, 76 P.3d 217(2003). Similarly, *State v. Rupe* involved community bias and publicity regarding the defendant. *State v. Rupe* 108 Wn.2d 734, 750, 743 P.2d 210 (1987). *State v. Stearman* involved a question of whether venue was appropriate under CrR 5.1 given where the crime was committed. *State v. Stearman*, 187 Wn. App. 257, 264, 348 P. 3d 394 (2015).

Unlike in the cases cited by the Respondent, the motion to change venue here based on a perceived bias and problem with the trial court itself. There was evidence that the court had prior knowledge of and internal communication about the Appellant, a recused judicial officer had emailed the judge presiding over the case about the defendant two months after her recusal, and that there was a picture of the defendant displayed in Court administration. Transcript of Proceedings pg. 4-7; CP 42, 228-29. The Appellant is asking this Court to review this denial of the Motion to Change venue de novo and posing the question of whether or not it was appropriate for the motion to be heard by any judicial officer of the trial

court.

Further, the trial court's ruling was devoid of any consideration of either RCW 4.12.030 or the *Unger* factors. The trial court ruled,

“...the motion for a change of venue is denied. The motion to request a visiting judge is denied. The steps that were taken in this case, as Ms. Laz pointed out, were standard safety protocol. Commissioner Mitchell is not named as a party in this case, nor is Lewis County Superior Court. Commissioner Mitchell did the appropriate thing and disqualified herself from this case based on this alleged threat...” (Transcript of Proceedings at 18-22)

The ruling was devoid of any analysis except for what appeared to be a brief discussion of GR 36. The facts that were presented by the Appellant at the hearing were not contested by the Respondent. The issue that was before the trial court was whether a change of venue was appropriate under either RCW 4.12.030 or under the *Unger* factors. The trial court declined to apply the law. Therefore, it is appropriate for this Court to review the denial of the Motion to Change Venue de novo for this reason as well.

b. The Trial Court Erred in Denying the Appellant's Motion to Change Venue

The Respondent's position as to why Appellant did not address the *Unger* factors is misplaced. As explained in the Appellant's Opening Brief, the caselaw that employs these factors deals with garden variety publicity by the media when this case clearly deals with the trial court's intentional and deliberate targeting of a party. Appellant's Brief at 10-11. The media is not engaging in publication. Rather, a trial court is targeting and communicating regarding a party. Pursuant to RCW 4.12.030 alone, there was reason to believe that a fair trial could not be had in Lewis County and a change of venue was appropriate.

However, even if the *Unger* factors are addressed, a change of venue is still appropriate. First, the nature of the publicity in this case was both inflammatory and negative. Communications between judicial officers that included a security warning, an email from a recused officer months after her disqualification, and posting of the Appellant's picture in Court administration all have the effect of prejudicing minds against the Appellant regardless of what intent they were published with. CP 42, 228-29. Second, though the publicity was "confined to the court building,"

it was communicated to all the judicial officers in Lewis County Superior Court and clearly displayed in Court administration. *Id.* This confinement makes this second factor particularly more important as even if the Appellant were to have moved to disqualify Judge O'Rourke from hearing his Motion to Change Venue, he still would have been before judicial officers that received the communications concerning the Appellant. Third, the length of time between the communications being disseminated was very short. The most recent communication regarding the Appellant preceding his motion to change venue (November 14th, 2019) and the hearing on the DVPO (November 25th, 2019) was on September 9th, 2019. CP 42, 228-245. This was a mere one-month difference.

The Respondent is incorrect that factors five and six are not relevant here. Here, the trier of fact is a judicial officer and not a jury. Obviously, factor four is out of play as a judicial officer cannot be selected. However, the fifth factor of "the familiarity of prospective or trial jurors with the publicity and the resultant effect upon them" is pertinent. The communications that the Appellant takes issue with were emails directed specifically to all judicial officers, an email from recused Commissioner Mitchell to Judge O'Rourke, and the publication of the

Appellant's photo in the main judicial administration office. All judicial officers were familiar with the Appellant and the allegations concerning the safety concern. Further, every judicial officer and person in court administration saw the Appellant's picture on the walls of court administration as it was in plain view. Though Judge O'Rourke discussed how she "didn't even know that that picture was there until I read your motion," the Appellant submits that the presence of the picture is evidence that staff and judicial officers were all at least exposed to the Appellant's likeness on a daily basis. Transcript of Proceedings, at 19. The resultant effect of being told that the Appellant is a threat to the Court's safety is essentially to upend any chance he has of a fair trial in that court.

Sixth, the respondent could not exercise any challenges, or affidavits of prejudice in this case, and have been effective in doing this because he was only allowed one affidavit of prejudice pursuant to RCW 3.20.100. As argued above, even if the Appellant exercised an affidavit of prejudice, he would not be able to obtain a judicial officer from outside of those exposed to communications about him. He would have either been in front of Judge Lauler or Judge Toynebee and both of these judicial officers received communications regarding the Appellant. Further, he

would not have been able to disqualify Judge O'Rourke for the potential conflict she disclosed before the motion to change venue was heard by the trial court as this disclosure was made after the court ruled on the motion. Transcript of Proceedings at 20.

Seventh, the connection of government officials with the release of the publicity in this case is obvious. All the members of the bench hold a governmental position. Contrary to the Respondent's position that the record does not support the Appellant being "targeted," it is obvious that he was. GR 36 governs the safety protocol of the Superior Court and the trial court should have complied with this rule. However, a neutral judge is one of the most basic due process protections. *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1075 (9th Cir. 2005); U.S.C.A. Const.Amends. 5, 14. Even parties who may be a safety concern must be afforded the opportunity to have their case heard by a judicial officer that is impartial and is free of any preconceptions about a party. *Id.*; Code of Judicial Conduct, §4.7 Canon 1. The internal dissemination of emails about the Appellant and the posting of his picture, without any notice to his attorney, was entirely inappropriate, unacceptable, and created a tremendous probability of prejudice.

Eighth, the severity of the charge also turns in the Appellant's favor. The nature of the proceeding has implications on his fundamental right to parent. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"). Given the nature of this right, the trial court should have considered this case as carefully as possible. Though the Respondent raises several cases where "charges of the highest severity" have been denied a change of venue, the Appellant's Opening Brief distinguished these cases from the one at bar. Appellant's Opening Brief at 10. *Unger, Crudup, and Jackson* all involved media coverage of the cases. *Hoffman*, cited by the Respondent, is of the same ilk. *State v. Hoffman*, 116 Wn.2d 51, 71, 804 P.2d 577, 588 (1991)(discussing motion to change venue based on media attention). Again, the trial court should have been more careful in its weight of this factor given the rights at stake.

The Respondent contends that the Appellant is engaging in speculation when positing that "verbal conversations concerning the Appellant" may have been had by judicial officers at Lewis County Superior Court. Respondent's Brief at 13. This is hardly a leap. When

examined, the email from Commissioner Mitchell to Judge O'Rourke was simply a forwarded message regarding the Appellant with no text or explanation as to why it was being forwarded. (CP 42 at 240). As common experience tells us, not all communication between those who share an office is by email. Often, we forward emails after a verbal conversation with the eventual recipient. The Appellant's position is not "pure speculation."

Last, the Petition for a DVPO being heard by District Court Judge R.W. Buzzard does not render concerns regarding the dissemination moot. The case was still heard in Lewis County Superior Court where there were internal communications concerning the Appellant and where his picture was hanging in the Administrative office. Judge Buzzard had full access to the case file and was fully appraised of the pleadings and issues in the case. This was an insufficient firewall as the matter was heard in the same venue by a presiding judicial officer.

c. *Hillman* is persuasive authority

In the Respondent's own words, *Hillman* is still valid law. Respondent's Brief at 15. Reliance on *Hillman* is appropriate. The *Hillman* Court recognized that when local prejudice poisons the ability for

a person to be granted a fair trial, then a change of venue is appropriate. *State v. Hillman*, 42 Wash. 615, 85 P. 63 (1906). The facts at bar are equally as extraordinary as they were in *Hillman*. There, newspapers published stories that targeted at the defendants and an association of citizens were purposely building sentiment against the defendants. *Id.* Here, we have all judicial officers, that serve as the trier of fact in bench trials, engaging in off the record communication concerning the Appellant and no notice of this was either given to the Appellant or his attorney. Further, there was the involvement of a recused judicial officer in communication about the Appellant two months after her disqualification. Furthermore, the Judge O'Rourke did not disclose the information that served as the basis for the Appellant to disqualify her until after she had ruled on his Motion to Change Venue. Transcript of Proceedings at 20. This case is very analogous to the facts of *Hillman*.

Further, there is no prohibition on citation to or reliance on a case due to its age. The worst treatment *Hillman* has received in Washington's caselaw is the *Lincoln* Court's distinguishing the facts of that case from it's own and refusal to apply it. *Lincoln v. Transamerica Inv. Corp.*, 89 Wn.2d 571, 578, 573 P.2d 1316, 1320 (1978). *Hillman* is persuasive

authority.

d. The Appellant was prejudiced by the denial of his motion to change venue and should be granted a new hearing on the petition

The Respondent correctly indicates that the Supreme Court “has encouraged discretionary review of venue decisions” to preserve judicial economy. *Id.* However, the language of “encouraged” is certainly short of a statement that the Supreme Court has ruled that it is required that such matters must be raised on an interlocutory basis. Given then the fundamental rights at stake in this case, this Court should consider this appeal as being properly before the Court and engage in a full analysis of the issues at bar.

If the Court is inclined to just consider whether the Respondent was prejudiced by the denial of a change of venue, the evidence of prejudice is abundant. As argued above, the Judicial Officer that denied his motion to change venue disclosed that she had a potential conflict after she made her ruling. Transcript of Proceeding at 20. Had the Appellant had that information before the motion was heard, he would have likely exercised an affidavit of prejudice against Judge O’Rourke. In *Hillman*, the Court ruled that the defendant’s could not have received a fair trial

because they had been prejudiced by adverse publicity. *State v. Hillman*, 42 Wash. 615, 619, 85 P. 63, 65 (1906) The law contemplates and guaranties to every defendant a fair and impartial trial according to the usual and ordinary forms of law; and it is incumbent upon the courts to see that this purpose and guaranty are made effectual. *Id.* Here, the court did not accomplish this as they not only disseminated internal communications about the Appellant but also abstained from telling the Appellant or his attorney about this. No record was made.

The Appellant was prejudiced by the denial of the motion because he remained in a Court that had a history of inappropriate communications regarding him. There was a bias. Again, the case file ultimately reviewed by District Court Judge Buzzard in Superior Court contained all the communications that the Appellant was concerned about. The *Lincoln* Court recognized that there are exceptions to the presumption that justice is applied equally across the State. *Lincoln*, 89 Wn.2d at 578 (“that, except in rare instances, the mills of justice grind with equal fineness in every county of the state.”) (citing *Russell v. Marenakos Logging Co.*, 61 Wash.2d at 765, 380 P.2d at 747). This case poses these one of these “rare instances” as the trial court itself was demonstrated to have been biased

against the Appellant instead of a pool of jurors or the community in general. Justice may be presumed to be equal across all venues, but the extraordinary facts of this case show that Lewis County Superior did not conduct this case appropriately.

The Respondent's contention that the Appellant has offered no argument that he was prejudiced is misplaced. The entirety of his appeal is based on the fact that he could not have received a fair trial as he was subjected to venue in a County where all Judicial Officers had prior knowledge of him and were alerted to an email indicating that the Appellant was specifically concerned with Lewis County, that it was "corrupt" and that "he implied that he would fix that." (CP 42 at 235-36). A trial in another county would not bear the prejudice that the Appellant was subjected to in this case. He would have had access to a judicial officer that was not part of Lewis County's judiciary and would not have the same possible concerns about his or her own safety.

Last, error will not be considered prejudicial unless it affects, or presumptively affects, the outcome of the trial. *Saleemi v. Doctor's Associates, Inc.*, 176 Wn.2d 368, 380, 292 P.3d 108, 114 (2013). This case is one where the error in denying the motion to change venue was

prejudicial and it affected the outcome of the trial. The Appellant was stuck in a Court where the judicial officers were told to fear him and where his likeness front and center in their administrative office. He was subjected to a venue in which the opposing party could argue directly that he had made threats against the very trial court where the hearing was held. Transcript of Proceedings at 114. The Appellant was portrayed as an antagonist of both the Respondent and the trial court. This affected the outcome of the trial as it went as evidence to the Respondent's argument that the Appellant was crazy, unhinged, and violent. Transcript of Proceedings at 113-16.

3. The Trial Court Erred in Denying the Request for A Continuance

The Respondent mischaracterizes what was told to the trial about the Appellant's status when the continuance was requested. The Appellant's flight from Hobbs New Mexico to Denver was canceled and thus he missed his connection flight from Denver. *Id* at 23. He could not have physically attended the hearing. As previously argued, "ordinarily the court will not go into trial when one of the parties, on account of sickness or other unavoidable cause, is unable to be present" but that this rule has limits. *Chamberlin v. Chamberlin*, 44 Wn.2d 270 P.2d 689, 698,

270 P.2d 464, 469 (1954). Further, fault of the absence is critical in making this determination. Here, the Appellant could not have physically been on a plane to his connection in Denver from Hobbs. He was denied his day in court, his opportunity to assist in defending the petition, and to testify on his own behalf if he was given the opportunity.

Further, the Appellant fails to understand what principle the Respondent cites *In Re Marriage of Daley*, 77 Wn. App. 29, 32, 888 P.2d 1194 (1994) for.

Here, the court abused its discretion because its decision was solely based on “the number of times I’ve reviewed the file, and it has been continued...” Transcript of Proceedings at 26. The Court did not weigh all the other appearances by the Appellant throughout the proceeding, his appearance just two weeks prior, and that no prejudice would amount to the Respondent as she already had a temporary order of protection in place. CP 58. Instead, the trial court summarily denied the motion to continue. This amounted to an abuse of discretion because the trial court denied the continuance solely based on how many times it had been continued despite that almost all prior continuances having been by the agreement of the parties. This was not a careful and reasoned decision

that took the rights of both parties into consideration. An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court. *State v. Nelson*, 108 Wn.2d 491, 505, 740 P.2d 835, 843. Here, this is such a case because the reasoning for the denial of the continuance was so hollow.

4. The Trial Court Erred in Admitting Evidence Regarding the 2019 Domestic Violence Evaluation

The Respondent is mistaken that the evaluation referenced by her in her declaration dated November 21, 2019 was not the product of settlement negotiations. The protection order entered in case number 11-2-01109-5 produced the evaluation that the Appellant testified regarding as have occurred in 2012. CP at 30-35; CP at 189. There is no other reason that a subsequent evaluation such as the one referenced in the November 21, 2019 declaration would have been drafted and been given to the Respondent except through the agreement of the parties in connection with settlement negotiations. Like the prior agreement between the parties that existed in *Finley v. Curley*, an agreement existed in this case for the exchange of the evaluation. *Finley v. Curley*, 54 Wn. App. 548, 774 542 (1989).

Further, the inclusion of the evaluation in evidence was not harmless error. As stated, an error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred. *State v. Thomas*, 150 Wn.2d 821, 871 83 P.3d 970 (2004). The Respondent was allowed to admit evidence of the evaluation stating that the Appellant was “in the highest risk level (level 4) to commit further acts of domestic violence.” CP at 451. The Appellant also testified that “his most recent evaluation from Alternatives to see what they rated him as a level to be an extreme danger to me and my children, that really — I’m already scared...” CP 40. Part of the outcome in this matter was a protective order being granted in favor of the Respondent for life. Though all the evidence outlined by the Respondent in pages 29-34 of her Brief was also before the trial court, a high level of prejudice amounts from the statement that the Appellant was rated as an “extreme danger” to the Respondent and her children by a DV evaluator. Not only was the issue of granting a protective order before the trial court, but also the duration of this protective order was before the trial court. This evaluation implicated both issues. This evaluation materially affected the outcome of the hearing.

5. Sanctions Are Inappropriate in This Case

When determining whether an appeal is frivolous, justifying the imposition of terms and compensatory damages, the court will consider: (1) that a civil appellant has a right to appeal under RAP 2.2, (2) that all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant, (3) that the record should be considered as a whole, (4) that an appeal that is affirmed simply because the arguments are rejected is not frivolous, and (5) that an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there is no reasonable possibility of reversal. *Public Employees Mut. Ins. Co. v. Rash*, 48 Wash. App. 701, 740 P.2d 370 (Div. 1 1987). When a party raises reasonable arguments, an appeal will not be regarded as frivolous. *In re Marriage of Foley*, 84 Wn. App. 839, 847, 930 P.2d 929, 933 (1997).

In this case, the notion that these are not debatable issues upon which reasonable minds might differ is absurd. Importantly, the standard of review for any issue on appeal should not be as crucial as the Respondent asks this Court to consider it as being. If this Court were to adopt such a position that an appeal of an issue reviewed for an abuse of

discretion should not be automatically suspect, then many litigant's appeals would be foreclosed as this standard pervades the vast majority of issues on appeal.

The appeal of the trial court's denial of the Appellant's motion to change venue is based not only strong evidence of bias against the Appellant, but also is well supported by the law allowing a party to preserve the issue of venue for appeal when he has been prejudiced by the venue where the trial took place. Further, this is an issue of tremendous public importance as it implicates the duty of the Superior Court to inform a defendant or party that there are communications regarding them occurring in chambers. Such information must be communicated to the defendant and a record must be made as soon as these communications are made.

Second, the Appellant's issue regarding the denial of his continuance should be heard by this Court. The trial court summarily denied the motion to continue solely based on how many times the case had been continued. No consideration was given to the fact that the majority of the continuances in the case had been by the agreement of the parties and that the Appellant had appeared at a hearing that had been

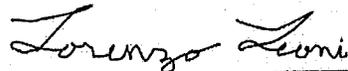
continued two weeks prior. Again, reasonable minds could certainly differ if this was an abuse of discretion, especially when *Chamberlin* seems to indicate that it was. Last, the ER 408 issue before this Court is also of merit. Reasonable minds may certainly differ as to whether ER 408 should preclude an evaluation obtained in the process of negotiation a resolution in a domestic litigation case from being used in evidence.

The Appellant's Brief is properly before the Court and is not frivolous. Any request for sanctions should be denied.

I. Conclusion

For the foregoing reasons, the trial court's denial of the Appellant's motion to change venue and the entry of the domestic violence protection order against the Appellant should be overturned and a new trial ordered in a neighboring county. In addition, any request for fees or sanctions should be denied.

Respectfully submitted this 12th day of August, 2020.



Lorenzo R. Leoni, WSBA #52659
MORGAN HILL, P.C.
Attorneys for Petitioner/Appellant

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

)	
)	
MANUEL E. BOLIVAR)	
Appellant,)	No. 54116-5-II
)	
vs.)	DECLARATION
)	OF ELECTRONIC
)	SIGNATURE
)	
STACY L. JONES)	Lewis County
Respondent.)	Superior Ct. No.
)	19-2-00595-21
_____)	

I declare under penalty of perjury under the laws of the State of Washington that the electronic signature on the Appellant's Reply Brief consisting of 30 pages, including this declaration page, is complete and legible and that I have examined it personally and it was received by me.

DATED this 12th day of August, 2020, at Olympia, Washington.



Name: Traci Amundson of
MORGAN HILL, P.C.

MORGAN HILL P.C.

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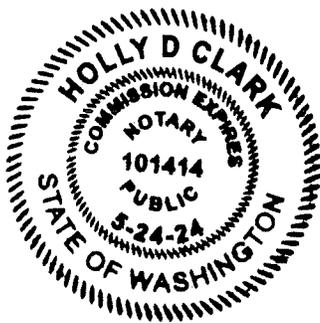
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DATED this 12th day of August, 2020, at Olympia, Washington.

Traci Amundson

Name: Traci Amundson of
MORGAN HILL, P.C.

SUBSCRIBED AND SWORN to before me this 12th day of August, 2020,
by Traci Amundson.



Holly D. Clark

Notary Public in and for the State of
Washington, residing at: *Tenino*

My commission expires *3/24/2024*

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