

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

JUL 20 2017

RICHARD ATZROTT
APPELLANT

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Vs.

Court of Appeals 34456-8

BECKY MYERS
DEFENDANT

RESPONSE TO RESPONDENT'S BRIEF

**RICHARD C. ATZROTT
APPELLANT - PRO SE**

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TABLE OF AUTHORITIES

Washington State Constitution

Article 1

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property without due process of law.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

United States Constitution

- US title 28 section 455a and Title 42 section 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress.

- Freedom of speech in the United States is protected by the First Amendment to the United States Constitution and by many state constitutions and state and federal laws.
- 5th & 14th Amendment The Supreme Court of the United States interprets the clauses more broadly because these clauses provide four protections: procedural due process (in civil and criminal proceedings), substantive due process, a prohibition against vague laws...

Statutes

- RCW 34.05.455 - Ex parte communications.
- RCW 5.40.010 - Pleadings do not constitute proof.
- RCW 26.21A.550 - Modification of child support order of another state.
- RCW 26.27.221 - Jurisdiction to modify determination.
- RCW 26.28.010 - Washington State Age of majority. 18 Years of Age.
- 18 (Dom. Rel §2) - New York State Age of Majority.
- RCW 26.27.221(1)(2) - Exclusive, continuing jurisdiction.

OTHER AUTHORITIES

CANON 1

Rule 1.1- A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2- Promoting Confidence in the Judiciary.

CANON 2

Rule 2.2 - Impartiality and Fairness

Rule 2.3 - Bias, Prejudice, and Harassment

Rule 2.5 - Competence, Diligence, and Cooperation

Rule 2.6 - Ensuring the Right to Be Heard

Rule 2.8 - Decorum, Demeanor, and Communication with Jurors.

Rule 2.9 - Ex Parte Communications.

INTRODUCTION

As your Appellant, I am conducting this appeal pro se. Your Appellant has been paying child support in this matter for over 19 years without ever seeing or knowing this now "emancipated child" and without any missed payments or challenges to the underlying support order. Your Appellant moved the support order from New York to Washington State in an attempt to remedy a final dissolution now that the child is an adult and has lived his whole life in **Washington State which is the most convenient forum.**

The original custody order in this matter was ill conceived in New York as a result of the respondent's deceiving the court system with lies, false charges and manipulating child support services (CPS) that caused your Appellant's 4 year old son (Derric) to be placed in foster care for months. The respondent maintained her lies without checks or balances by the lower courts until your Appellant was forced to relinquish custody and allow the respondent to move back to Washington State in order to get his other 4 year old son back home and out of foster care.

But in this instance, 19 years later, even after your Appellant has upheld his legal obligation, your appellant is faced with even more injustice handed down by a lower court process ordering your Appellant to continue child support payments for a child portrayed to be the son of another man. And then to have the Lower Court tell your Appellant to "Shut Up", "You have been Bamboozled" and you will continue to pay support for this child named "Myers" no matter who the father is or what his last name is. This is a total abomination of decency, undermines the meaning of family, morality

and mocks the judicial process.

STATEMENT OF FACTS

- The Verbatim Recording before this Court is Inaccurate and Misleading.
- Your Appellant has been paying child support in this instance for the last 19 years without missing a payment.
- Both opposing counsel and Judge Gilardi knowingly defended and upheld a support order **KNOWINGLY** based on an unlawful name change. **(RP Pg. # 6, Lines 10 - 18)**
- The Lower Court Judge and court personnel verbally joked about the hearing on record after the hearing was over, signifying great bias in this matter.
- Junior Counsel and the Respondent both spoke openly in court to the Judge about this case **"AFTER"** Judge Gilardi **ACTING AS** Lead Attorney terminated your Appellant's phone call participation in this case.
- The Lower Court Judge was abusive, far from impartial, totally lacked fairness and took over the role as lead attorney to rescue junior counsel (Kate Hawkins) from her embarrassing incompetence whereupon she sat silently ineffective for the remainder of the hearing. **(RP Pg. # 10, Lines 14,15)**
- The Lower Court Judge made **"EVERY"** assertion on record in defense of the respondent and showed his bias by knowingly failed to question the legality of the name change.
- The Lower Court Judge again showed bias by omitting that the child is emancipated and conducted his defense as though the child was a minor.
- The Lower Court Order alleges that the hearing was terminated **"In lieu of contempt"** when there is no record of contempt.

- Telling your Appellant to “Shut Up” and **hanging up the phone on him to terminate the hearing is procedurally incorrect in lieu of contempt** and confirms that the lower court disregards contempt procedures to exact its own prejudice and bias. **(RP Pg. # 10, Lines 14,15)**
- In contrast, the court record supports that your Appellant was respectful and composed throughout and **Judge Gilardi’s allegation of contempt is totally false.**
- To hide the above abuses, the Lower Court knowingly refused to ensure an accurate Verbatim Report of the initial hearing in an attempt to protect court personnel and sideline this appeal.
- Your Appellant now alleges that Junior Counsel conversed with Judge Gilardi in private quarters or elsewhere (Ex Parte) after the hearing to formulate the defense mentioned in the final Court Order.
- Alternatively, if this was not a private ex parte meeting between Junior Counsel and Lead Counsel, Judge Gilardi, then it only stands to reason that the full defense presented in the Court Order was solely presented by Judge Gilardi ex parte as the argument dictated in the Court record is nowhere to be found in the Verbatim Report.

SUPPORTING COURT RECORDED FACTS

Opposing Counsel (Kate Hawkins) for the respondent submitted documents in response to the Appellant’s initial motion arguing that the child in question under the support order was still in school.

Thereupon, your Appellant pointed out on record that the school schedule submitted as proof listed a child with the last name of her previous husband. As soon as Judge Gilardi realized opposing counsel’s total **incompetence**, Judge Gilardi immediately took over as lead attorney for the respondent while Junior Counsel (Kate Hawkins) sat **silently ineffective** thereafter.

Judge Gilardi acting as Lead Attorney in defense of the respondent asked the respondent if this was the same child as in the support order where upon the respondent said "Yes". **Did Lead Attorney Judge Gilardi expect his witness to admit to fraud?**

As a result Lead Attorney (Judge Gilardi) prejudicially and with bias told your Appellant that he, the Appellant, is suffering from "Buyer's Remorse", then told your Appellant to "Shut Up" and lastly told your Appellant that he was "Bamboozled". Shortly thereafter, Lead Attorney (Judge Gilardi) hung up the phone on your Appellant as your Appellant was respectfully attempting to get the courts attention, thereby denying your Appellant from further due process, offering testimony, cross examination, etc.

Of primary concern, Junior Counsel (Kate Hawkins) and Lead Attorney (Judge Gilardi), willingly ignored the fact that the name used for the child in the school schedule was not a legal name and such name **contradicted the original support order**.

Additionally, the lower court failed to acknowledge the child named in the school schedule is **emancipated**. The child in question was 19 years old at the time of this hearing. In accordance with Washington State Law, the Mother had no legal right and made no legal motion "required" for changing the child's name raising significant doubt about the paternity of this child.

NOTE: There is no court Petition on record in any court of a legal name change for the child in question and no documentation supporting a legal name change was presented by either opposing counsel. (LCRLJ 65 CIVIL - NAME CHANGES)

(a) Separate Petitions Required. A separate petition shall be filed for each name a party wishes changed.

(b) Hearing. All hearings on petitions for name changes shall be in open court and on the record.

(c) Minors.

(1) Birth Certificate. A certified copy of any minor applicant's birth certificate or suitable identification must be presented to the clerk for verification and copying.

(2) Parental Notification.

(a) A person petitioning to change the name of a minor child or ward must establish that both parents consent to the change in writing, or that the nonpetitioning parent has been served at least ten days before the hearing with a notice that includes the hearing date, the minor's current name, the name the petitioner desires the minor to assume, and the reasons for requesting the change of name.

(b) A person petitioning to change the name of a minor child may move the court for an order authorizing notice to a parent by publication. The requesting parent must certify under penalty of perjury that the whereabouts of the other parent are unknown. If authorized by the court, notice by publication one time in a newspaper of general circulation in the county of the nonpetitioning parent's last known address shall be deemed sufficient if it satisfied the requirements of LCRLJ 65(c)(2)(a).

(d) Contents of Petition. A petition for change of name must be sworn under oath and state the following:

(1) The Petitioner's full present name and the full name the petitioner wishes to assume;

(2) The Petitioner's date of birth;

(3) That the Petitioner resides in Asotin County;

(4) The reason for the request;

(5) The application is not made for any illegal or fraudulent purpose;

(6) The name change will not be detrimental to the interests of any other person;

(7) The name of the Petitioner's father and mother, or, if brought on behalf of a minor, the name of the minor's father and mother.

This raises a significant question: If Owen Myers is the child's "legal" name absent any Legal Name Change then the child appears to have the last name of his paternal father, the respondent's ex-husband and thus provides prima fascia evidence of a fraud.

CLOSING FACTS

- This appeal is the consequence of Junior Counsel's incompetence by submitting an unlawfully named child and the the Lower Courts willful disregard for this State's Law on Legal Name Changes (LCRLJ 65, Supra). To wit: Junior Counsel actually uses the unlawful name of this child (Owen Myers) in submitted court documents. **See Junior Counsel's Response to your Appellant's Brief.**

- Judge Gilardi based his decision to deny your Appellant's motions upon an unlawfully named child pursuant to State of Washington Procedure (supra) without any legally required procedures.
- The child is emancipated and only he can change his last name, not his mother.
- The child is emancipated and only he at age 19 can make a DNA testing decision.
- There is no documentation supporting a finding there was a legal name change in the State of Washington or in any other state.
- There is no evidence of contempt whatsoever.
- The record reflects prejudice, bias, judicial misconduct, a failure to ensure accurate verbatim reporting, conspiracy, mocking the Appellant ex parte and other ex parte communications by counsel and court personnel, and a blatant refusal to uphold the laws of Washington State concerning paternity, emancipation, name changes, legal identification, due process and just plain common law.
- The Lower Court did ignore, promote and cover up the ignorance of Junior Counsel and did act on the deceit of the respondent without further evidence of a legal name change.
- The respondent was and has been allowed to walk thru the court system while she knowingly abused a 4 year old child, knowingly abused this child herein by denying him the true identity of paternity and continues to lie to the child herein, my family, her family and all involved. And the most egregious of all: the path of her deceit to this day seems unhindered by a legal process without any checks or balances to ensure basic constitutional rights, protections or plain decency for the children, families and innocent involved.

WHEREFORE, after 19 years of paying child support, it is your Appellant's wish to have this Appeals Court reverse the lower courts findings and for any other justified and proper relief that this court may find in lieu of your Appellant's pro se inexperience in this matter. Thank you in advance for your attention in these regards.

Respectfully submitted,

R. C.  7-17-17

Richard C. Atzrott, Appellant Pro Se

CERTIFICATE OF SERVICE

COURT OF APPEALS - DIV III
STATE OF WASHINGTON

RICHARD ATZROTT

Petitioner

Vs.

BECKY MYERS

Defendant

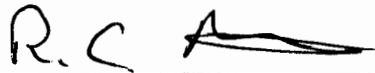
Court of Appeals 34456-8

I certify that I mailed an original copy of the attached Appellant's Response to Respondent's Brief to the following:

- 1) Kate Hawkins - Attorney for Defendant
The Train Station #201
1229 Main St. PO Drawer 285
Lewiston ID 83501.
khawkins@clarkandfeeney.com

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct:

July 17, 2017
Baltimore County, Maryland



Richard C. Atzrott