

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

RICHARD ATZROTT
APPELLANT

Vs.

Court of Appeals 34456-8

BECKY MYERS
DEFENDANT

FILED

BRIEF OF APPELLANT

MAR 27 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

RICHARD C. ATZROTT
APPELLANT - PRO SE

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Washington State Constitution

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SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property without due process of law. **Pg. # 8, 9, 10, 11**

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. **Pg. # 6**

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. **Pg. # 9, 10, 11**
- 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. **Pg. # 6**
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I. Introduction

Most notably the Lower Court willfully argued the entire case for the respondent with literally no argument or objections from the respondent's attorney of record. The Lower Court even went so far as to cover its procedural, civil and constitutional errors. In the case of **Atzrott vs. Myers**, the Appellant motioned the Lower Court to register in Washington State a New York Child Support Order under UIFSA; and Petitioned the Court to Modify a Child Support Order. In this case the Lower Court committed perjury, made numerous procedural errors, denied the Appellant a fair and impartial hearing, denied due process of law, denied freedom of speech, denied access to the Court, denied cross examination, denied witness testimony and denied right to be heard. Primarily, the legal argument "made by the judge" documented within the Court order was done totally ex parte and does not exist anywhere in the Record of Proceedings (**RF**). Additionally, as the appellant was speaking freely and openly, ready to cross examine a witness called by the Judge, the Lower Court ordered the appellant to shut up, preventing the appellant from participating in the Court procedures under Washington State Law. Furthermore, motions were brought before the Lower Court where the respondents made no objections at all while the Lower Court completely and willfully ignored fair and impartial protocol.

This case was NOT **Atzrott vs. Myers** where the respondent's attorney sat virtually "**USELESS**" making no objections or arguments to your appellant's motions while **Judge Gallina "in totality" represented** the respondent and denied your appellant's procedural due process of law violating your appellant's civil and constitutional rights.

Without any response from the opposing party, the Lower Court further took

it upon itself to argue (ex parte), rule (ex parte) and issue a Court order (ex parte). Additionally, the Order of Lower Court dated April 28th, 2016 contains unquestionable documented errors, arguments and allegations not supported by the Record of Proceedings.

II. Assignments of Errors

1. The Lower Court erred by documenting a Court order in contrast with the Record of Proceedings.
2. The Lower Court erred by asserting that the respondent “had proof of the child’s continuing enrollment attached”. **(CP Pg # 031)** This proof alleged by the Lower Court order is contradicted by the evidence submitted by the respondent. **(CP Pg. # 026, 027, 028)** showing a child named “OWEN B. MYERS.”
3. The Lower Court erred by ordering the Appellant to **“Shut Up”**, thereby prevented the appellant from freely and openly participating in the Court process, or voicing objections, cross examine testimony, calling witnesses and arguing the issues. **(RP Pg. # 10, Lines 14,15)**
4. The Lower Court Support Order Dated April 5th, 2016, contains statutes and legal argument not argued in the presence of your Appellant. **(CP Pg. # 030)**
5. The Lower Court erred by arguing Washington and New York State Law in the absence of your appellant. **(CP Pg. # 030, 031)**
6. The Lower Court erred when alleging contempt in the Court order. The Report of Proceedings in this case show that the appellant was NOT “very agitated”, “demeaning”, “and increasingly exercised”. **(CP Pg. # 032)**
7. The Lower Court erred by ignored Appellant’s Motion for Genetic DNA Testing as the respondent did not object and may have actually preferred the test and the child in question is Emancipated.

8. The Lower Court erred by not addressing the Respondent's written request for a one year extension (**CP Pg. # 025**), not the 3 years argued ex parte and granted by the Lower Court.
9. The Lower Court procedurally erred by preventing the Appellant to cross examine respondent testimony when the court ordered your appellant to "Shut Up". (**RP Pg. # 10, Lines 14,15**)
10. The Lower Court procedurally erred by preventing the Appellant to call witnesses. (**RP Pg. # 10, Lines 14,15**)
11. The Lower Court procedurally erred by disallowing the Appellant's verbal evidence, while allowing the respondent's verbal testimony. (**RP Pg. # 10, Lines 14,15**)
12. Without stating any statute of law, the Lower Court specifically argued for the respondent that Washington State in contested paternity applies a "that ship done sailed" doctrine. (**RP Pg. # 6, Lines 8, 9**)
13. Without stating any statute of law, the Lower Court specifically stated for the respondent that Washington State in contested paternity enforces a "Buyer's Remorse" clause. (**RP Pg. # 8, Lines 2, 3**)
14. The Lower Court also erred by allowing a school record of a child with the last name of Myers, a child NOT identified with in the original child support order. (**RP Pg. # 6, Lines 10 - 18**)
15. The Lower Court erred by denying the Appellant from speaking freely, openly as protected by "Freedom of Speech" as the Appellant was "Ordered By Judge Gallina" not to say another word. (**RP Pg. # 10, Lines 14,15**)
16. The Lower Court erred as the State of Washington has "Exclusive, Continuing Jurisdiction" over the issues in this instance. This argument was NOT part of the

record, as the Appellant was not present. **(RP Pg. # 10, Lines 14,15)**

17. The Lower Court erred as the State of Washington Asotin County has a “significant connection” with the child and thereby makes Washington the “Home State”. This argument was not part of the record, as the Appellant was not present. **(RP Pg. # 10, Lines 14,15)**
18. The Lower Court erred in arguing ex parte that New York State Law prevails even though New York State is an “inconvenient forum” for all parties to alter child support. This argument was not part of the record, as the Appellant was not present. **(RP Pg. # 10, Lines 14,15)**
19. The Lower Court erred in arguing ex parte that New York State Law prevails. New York State has lost its “Exclusive, Continuing Jurisdiction” since none of the parties have lived in New York for over 18 years. This argument was not part of the record, as the Appellant was not present. **(RP Pg. # 10, Lines 14,15)**
20. The Lower Court erred by NOT enforcing an “Accurate” Report of Proceedings. **(EX #1)**

Issues Pertaining to Assignment of Errors

1. The Lower Court Order contains unquestionable **errors** as there was no contempt and no warnings of contempt in this Report of Proceedings. **(CP Pg. # 032.)** In contrast the Court record reflects that the *Lower Court* became verbally aggressive and escalated to “disrespectful”. **(RP Pg. # 10, Lines 14,15)** The record supports that the Lower Court erred upon your appellant’s Civil and Constitutional rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Is it also documented that the Lower Court violated its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2

- Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. **Assigned Error 1.**
2. The Lower Court denied the appellant Freedom of Speech and Due process for no apparent reason by verbally on record Ordering your Appellant to Shut Up This Order prevented your appellant from participating in the Court Proceedings, unconstitutionally denying your Appellant's Civil and Constitutional right of due process. The record supports that the Lower Court erred upon your appellant's Civil and Constitutional rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. RCW 34.05.455 - Ex parte communications. **Assigned Error 2.**
3. The Lower Court took it upon itself to research and quote Washington State and New York State legal arguments in the Court's Order, arguments that are NOT and never were part of the actual Court proceedings. This Washington and New York State legal argument was done in the absence of your appellant, ex parte. **Assigned Error 3 & 4. (See CP Pg. # 030)**
4. The Lower Court order alleging the appellant was "very agitated", "demeaning", "and increasingly exercised...despite several directives" and a warning of contempt is in error! **(See CP Pg. # 030)** And not supported by the Court record in the least. In contrast the Court record reflects that the Lower Court in fact became verbally aggressive and escalated to "disrespectful". **The Judge admitted on record that he was being disrespectful. (RP Pg. # 10, Lines 14,15)**

5. Did the Court violate appellant's due process due process rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. **Assigned Error 1 & 5.**

6. The Lower Court was **not fair and impartial** by ignoring the Appellant's Motion for DNA Testing and Modification. There were no objections from the respondent! In other words, the respondent did not object to your appellant's motion, yet the Lower Court, even in light of new prima facie evidence, prejudicially ignored the appellant's motions anyway. Did the Court error upon your appellant's due process rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. **Assigned Error 6 & 7.**

7. The Lower Court Order is inconsistent with the respondent's counter claim where the respondent is requesting a one year extension to child support. **(See CP Pg. # 025)** The Lower Court failed to address the respondent for a response to the child custody modification and took it upon itself to argue and rule on the motion. Did the Court ignore the appellant's due process rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule

2.9. Assigned Error 7. (CP Pg. # 2)

8. The Lower Court erroneously accepted as testimony from the respondent with no identification that a child named "Myers" was enrolled in school. However, that school schedule presents *prima facie evidence* before the Court ***may be a child of the respondent's previous husband.*** (See CP Pg. # 026). Your appellant in light of this new evidence made a verbal motion for DNA testing and without any objections the Judge ignored the motion and further called and questioned a witness, the respondent, without allowing your appellant the opportunity to cross examine. (RP Pg. # 6 Lines 14 - 18). Did the Court ignore the appellant's due process rights under the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and under article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. **Assigned Error 8.**
9. The Lower Court refused to enforce an accurate Report of Proceedings although your appellant motioned the court to do so with recorded evidence.. Did the Court ignore the appellant's due process rights of the 1st, 5th, 6th and 14th amendments to the Constitution of the United States and article 1, section 3 of the Constitution of the State of Washington? Did the Court violate its Canons of Office? CANON 1 Rule 1.1, Rule 1.2. CANON 2 Rules 2.2, Rule 2.3, Rule 2.5, Rule 2.6, Rule 2.8, Rule 2.9. **Assigned Error 20.**

III. STATEMENT OF THE CASE

Judge Gallina's prejudice and bias in this case has erred procedurally and upon the judicial canons of his office as well as the civil and constitutional rights of your appellant.

IV. SUMMARY OF ARGUMENT

There is no recorded evidence to support the Lower Court's findings which was done ex parte as the appellant was not present. The Lower Court admitted on record that they will terminate the phone call and the Court order DOES contain arguments done ex parte. It is obvious from the Court recording, the Court Order, the moving papers and the numerous outright contradictions in this case that the Lower Court erred to adjudicate this matter in accordance with Judicial Canons and due process of law under the Constitution of the United States and the Constitution of the State of Washington.

Ordering the Appellant to "Shut up" alone prevented the Appellant from any objections, argument, cross examinations or due process and is clearly ordering the Appellant into an ex parte status. Furthermore, assuming the role of the respondent's attorney is a clear violation of Due Process and lacks all fairness and impartiality. Additionally, accusations of contempt in the Court order are blatantly not supported by the record of these proceedings. In contrast the Court record reflects that the Lower Court became verbally aggressive and escalated to "disrespectful". Any order to uphold such constitutional abuses undermines the judiciary process and are significant signs of a judicial disability, a vast departure from current constitutional protections.

V. ARGUMENT

- Is the Lower Court Fair, Impartial, Biased or Prejudice when the Court totally represents the respondent's defense?
- Is the Lower Court Fair, Impartial, Biased or Prejudice when the Court cultivates an environment that precludes any responses from opposing parties to the Appellant's Motions?

- Is the Lower Court Fair, Impartial, Biased or Prejudice when the Court orders the appellant to “Shut Up”, preventing the appellant from Court procedures, voicing any objections, cross examinations, legal issues or arguments, etc?
- Did the Lower Court error when it based the Court order on an argument made by the judge in the absence of the appellant?
- Is the Lower Court erring when the Court Order states “The Court terminated the phone call in lieu of Contempt” when in fact the recording of proceedings herein makes no mention of contempt?
- Is the Lower Court committing errors when the Court Order states “the respondent ”had proof of the child’s enrollment” when this is clearly contradicted by the evidence on record of a child with a different last name and with no state proof of identity ? The child is emancipated at 18 in WA.
- Is the Lower Court biased when it allows evidence from the respondent and denies your appellant the same type of evidence?
- Is the Lower Court Fair, Impartial, Biased or Prejudice when it allows evidence that clearly contradicts paternity? i.e., a school schedule with the child’s last name identifying the respondent’s previous husband.
- Is the Lower Court Prejudice or a mind reader when it “assumes” the appellant has “Buyer’s remorse” and asserts that the appellant feels “bamboozled”? **(RP Pg #7 Line 23)**
- Did the Lower Court err by enforcing a New York Child Support Order when all parties to this action have not lived in New York for over 18 years?
- Did the Lower Court attempt to deny your appellant the right to appeal by failing to enforce an Accurate Report of Proceedings in this case? **(EX #1)**

VI. CONCLUSION

The errors by the Lower Court listed herein undermine the integrity of the Washington State Judicial Process and Constitutional protection as it is mandated to uphold. The Appellant respectfully requests that the child support order be vacated until a DNA Paternity test proves otherwise, especially in light of documented prima facie evidence that raises serious questions of paternity. The Appellant further requests an award of Court cost and that the Judge be reeducated on ethics due to numerous improprieties, errors, contradictions, constitutional violations, breach of Canons and outright conflicting statements and for any and other further relief that this Court deems just and proper.

Respectfully submitted,

R.C. Atzrott 3-23-17

Richard C. Atzrott, Appellant Pro Se

FILED

2017 FEB 10 P 3:26

MCKENZIE KELLEY
COUNTY CLERK
ASOTIN COUNTY, WA

SUPERIOR COURT OF WASHINGTON FOR ASOTIN COUNTY

6	RICHARD ATZROTT)	CAUSE NO. 15-3-00156-5
7	Petitioner)	COURT OF APPEAL: 34456-8
8	and)	
9	BECKY MYERS)	RULING ON PETITIONER'S
10	Defendant.)	OBJECTIONS TO THE REPORT OF PROCEEDINGS

PROCEDURAL BACKGROUND

Petitioner filed an "Objection to Report of Proceedings" pursuant to RAP 9.5(c) and (d). The Objections were timely filed. The presiding judge, the Honorable Scott Gallina, assigned this matter to this court commissioner for review of Petitioner's Objections.

Petitioner alleges that the two court reporters failed to accurately transcribe the hearing that occurred on April 5, 2016 and that they did not include remarks made by the judge and his clerk after the hearing had recessed. Petitioner alleges that these remarks were ex-parte and infers that they should be part of the record as they are "legally relevant" to his appeal.

This Commissioner reviewed the court file, the audio recording of the April 5, 2016 hearing, and the relevant court rules.

FINDINGS

This Commissioner finds that Petitioner's Objections do not merit revisions to the Report of Proceedings. The minor discrepancies between the two transcripts (e.g. "yeah" and/or "Your Honor") are not material to Petitioner's appeal of the denial of his Petition to Terminate his child support obligation. The discrepancies are slight and do not undermine the integrity of the reporting.

Petitioner's claim that the court reporters "deliberately edited out ex-parte statements" is partially accurate. Court reporters are tasked with transcribing statements that occurred on the record. Here, the recording device continued to run after the April 5th hearing had been recessed by Judge Gallina. The remarks between the judge and the clerk were administrative in nature, not pertinent to the subject matter of the hearing, and not part of the record. Therefore, the court

COMMISSIONER'S RULING

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EX-1

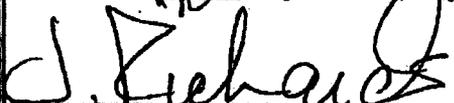
1 reporters, rightfully so, did not transcribe anything that was said after the matter was
2 recessed.

3 Petitioner asserts that the judge's remarks were ex-parte. Ex parte is defined
4 in Black's Law Dictionary as "on one side only; by or for one party." Judge Gallina's
5 comments, after the hearing was recessed, were not directed at nor on behalf of a
6 party. They were directed at the court clerk. The court clerk is not a party to the action
7 therefore the remarks were not ex-parte comments.

8 **CONCLUSION**

9 For the foregoing reasons, Petitioner's objections to the report of proceedings
10 are overruled and the transcripts will remain unchanged.

11 Dated this 10th day of February 2017.

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13 Commissioner Jane E. Richards

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RICHARD ATZROTT

Petitioner

Vs.

Superior Case No. 15-3-00156-5
Court of Appeals 34456-8

BECKY MYERS

Defendant

Objections to Report of Proceedings

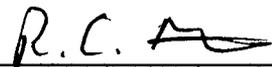
RAP 9.5 (C)

1. Your Petitioner Request that this "Objection to the Report of Proceedings" be reviewed pursuant to RAP 9.5(d) to eliminate conflicts of interest as your Petitioner is arguing on appeal Ex Parte Communications by the lower court.
2. Your Petitioner has ordered a Verbatim Report of Proceedings and paid both Bridges Reporting & Legal Video and Central Court Reporting. Central Court Reporting is listed on the Statement of Arrangements. See Attached Paid Receipt.
3. Your Petitioner firmly asserts with documented proof that both Court Reporters have actually edited out audio and transcribed TWO entirely different Verbatim Report of Proceedings in violation of WAC 308-14-130(6).
4. Both Bridges Report of Proceedings and Central Court Reporting, although notified, failed to fully and accurately transcribe the entire audio per WAC 308-14-130(6) by willfully eliminating "Ex Parte Statements" on the court recorded audio that are legally relevant to your Petitioner's Appeal, Case # 34456-8.
5. **As documented and Certified** in NOTE "A", Bridges Reporting transcribed your Petitioner objections on record as, "Your Honor..." (See NOTE "A", Certified Transcript, Pg 9, Line 21).

6. **MOST NOTABLY** Bridges Reporting in writing refused to transcribe full audio of the court recording. See NOTE "C".
7. In Contrast, **as documented and Certified** by NOTE "B", Central Court Reporting inaccurately and incorrectly transcribed your Petitioner's same response differently on record as, "Yeah", and not "Your Honor". (See NOTE "B", Certified Transcript, Pg 11, Line 1)
8. **IN MAJOR CONFLICT**, Where Bridges Reporting transcribed your Petitioner as saying "Your Honor", based on the court provided audio, Central Court Reporting incorrectly transcribed your Petitioner as saying, "Yeah". (See NOTE "B", Certified Transcript, Pg 11, Line 1)
9. **ADDITIONALLY**, although "CERTIFIED" as accurate per WAC 308-14-130(6), both Court Reporters have "deliberately" edited out "Ex Parte" statements relevant to your Petitioner's Appeal.

WHEREFORE, YOUR PETITIONER respectfully requests that this court appoint judicial review in this matter per RAP 9.5(d) to correct the inaccuracies in the Verbatim Report of Proceedings by Central Court Reporting and **FURTHER ORDER** Central Court Reporting to FULLY transcribe the audio to include the full audio. (To Wit Verbatim: The court clerk commented about this case on the record saying "that was a fun one" and Judge Gallina responded "RUN" at the end of the audio AND it is **FURTHER** requested that this Court ORDER Central Court Reporting at no cost to your Petitioner to review and transcribe the entire audio for accuracy and to replace "Yeah" on Page 11, Line 1 with "Your Honor" as is clearly heard in the court audio of the proceedings.

Richard C. Atzrott, Pro Se



- RICHARD C. ATZROTT 3021 Oak Forest drive, Parkville MD 21234 for Petitioner 443-416-3169
- KATE A. HAWKINS WSBA #49191 The Train Station – Suite 201 1229 Main St. PO Drawer 285 Lewiston ID 83501 for Defendant 208-743-9516

CERTIFICATE OF SERVICE

SUPERIOR COURT OF WASHINGTON
COUNTY OF ASOTIN

RICHARD ATZROTT

Petitioner

Vs.

BECKY MYERS

Defendant

Court of Appeals 34456-8

I certify that I mailed an original and emailed a copy of the foregoing Appellant Brief dated March 23, 2017, 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:

March 23, 2017
Baltimore County, Maryland

 3-23-17

Richard C. Atzrott