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JUN 21 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 357074

**IN THE COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON**

In re)	
)	COA No: 357074
BRIAN CONRADI,)	
)	Spokane Sup. Ct.
Petitioner/Appellant)	No. 15-3-02564-1
vs.)	
)	
TATUM WEBER,)	
)	
Respondent)	

RESPONDENT'S RESPONSIVE BRIEF

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I. STATEMENT OF FACTS

The Petitioner, Brian Conradi, and the Respondent, Tatum Weber, began a romantic relationship together in February, 2011. *RP 1120*. They began residing together later that same year in November, 2011 in Rancho Cordova, California. *RP 36 & 1122*. Their son, Ryland Conradi, was born in California on February 6, 2012. *RP 36 & 38*.

The parties and Ryland remained in California until October, 2012, when they relocated to Bellevue, Washington. *RP 663, 1130*. The Petitioner, Mr. Conradi, accepted a position as an energy trader with Energy Authority. *RP 682*. Ryland was 8 months old. The parties and Ryland remained in Western Washington, Bellevue/Kirkland Area, until October 31, 2014, when Ryland was two and a half years old. *RP 737-738*.

The parties and Ryland thereafter relocated to Spokane, Washington. *Id.* Mr. Conradi accepted a position as an energy trader with a new employer, Shell Energy. *RP 755*. In August, 2015, the parties separated. *RP 763*.

The Respondent, Ms. Weber, and Ryland returned to Chino Hills, California. *RP 31*. Ms. Weber and Ryland resided with Ms. Weber's

parents in Sacramento, California before Ms. Weber and Ryland discovered their own residence. *RP 35*. Mr. Conradi signed the lease in order that Ms. Weber and Ryland secure this residence in California. *Ex. R-108, Pg. 8-13; CP 4-65*.

Ms. Weber obtained employment in California beginning in September, and thereafter discovered her current position as a health advisory specialist with Maxim Company beginning in November/December. *RP 37*. She enrolled Ryland in the Montessori School located there. *RP 38*. She applied for child support through the Washington State Department of Social and Health Services on November 2, 2015. *Ex. 109, Pg. 9-27*.

Mr. Conradi began visiting Ryland in late August, 2015 within weeks of Ms. Weber returning to California. *RP 961-963*. He first visited with Ryland in Idaho in late August, 2015. *Id.* He returned Ryland to his Mother, Ms. Weber, in California and he thereafter regularly visited with Ryland in California and Washington. *RP 964-* He testified that he visited with Ryland in September, October, November, December, 2015 January, 2016 and February, 2016. *RP 964-977*.

On one such visit in October, 2015 Mr. Conradi returned Ryland to his California Montessori School, Mr. Conradi identified that Ms. Weber listed Stephen Baustista as an emergency contact on the school's

enrollment form. *RP 49*. Ms. Weber's mother and sister were also listed as emergency contacts. *RP 46*. Mr. Conradi was listed on the form as Ryland's biological father. *Id.*

Mr. Conradi filed his Petition to Establish a Residential Schedule and Child Support in Spokane County Court on November 13, 2015. *CP 1-10*. In it, he asserted that Ryland had resided with him in Spokane, Washington since "October 31, 2014 to Present," although the child had been residing in California with Ms. Weber since August, 2015. Petition, Pg. 5, Paragraph 1.7.

Mr. Conradi also submitted a Proposed Final Parenting Plan on that same November 13, 2015 date. *CP 120-128*. He requested that he be designated Ryland's custodian. *Id.* Mr. Conradi did not identify limitations or restrictions against Ms. Weber in the proposed parenting plan. *Id.* Mr. Conradi attached a "customized parenting plan and Brian's work schedule... with this filing." *Id.*

In it, he stated the following:

Situation – 1) "On August 8, 2015 Tatum moved with our son Ryland to Elk Grove, CA without prior consent or notification;"

2) Brian's rotating work has allowed him to play an active role in the day-to-day care for our son; the responsibilities such as feeding, bathing, transportation to and from school and extracurricular activities have been split equally between us."

CP 120-128; Emphasis Added.

Custody – 3) “Against Brian’s consent, Primary residence as of August 8, 2015 has been with mother Tatum Weber in California.”

CP 120-128; Emphasis Added.

Parenting Time Schedule – 4) Brian works rotating 12-hour shifts of days, nights, weekends, and holidays, and doesn’t have a set schedule from week to week. As a result, we need to have a flexible parenting schedule.”

CP 14-35; Emphasis Added.

Ms. Weber coordinated with the process server to receive and accept personal service of the Summons, Petition, and Proposed Parenting Plan Mr. Conradi filed in Spokane County Court on November 13, 2015. *RP 49. CP 1-10.* She never formally responded to the Petition in Spokane County. *RP 51.* She testified that Mr. Conradi informed her that he incorrectly designated himself “custodian,” that he would refile, and reserve her with an updated proposed parenting plan. *RP 51-52.*

Between October, 2015 through February, 2016, Ms. Weber and Mr. Conradi worked together towards an agreed schedule for Ryland. *Ex. R-171.* Emails and proposals were forwarded between the two parties. *Id.*

The Washington State Office of Administrative Hearings for the Department of Social and Health Services conducted its hearing for child support pursuant to Ms. Weber’s November, 2015 request to establish Mr. Conradi’s child support obligation. *Ex. 109, Pg. 9-27.* The hearing

occurred on January 27, 2016. *Id.* The Office of Administrative Hearings designed Ms. Weber Ryland's Custodial Parent. *Id.*

Thereafter, Mr. Conradi visited with Ryland in February, 2016. *RP 976.* His visit began on February 4th and concluded on February 8, 2016, when Mr. Conradi returned Ryland to the California Montessori School daycare/preschool facility on February 8, 2016. *RP 976-977.*

The following day, February 9, 2017, Mr. Conradi moved the Spokane County Court for, and obtained, an Order of Default against Ms. Weber. *CP 11-13.* Mr. Conradi entered a Final Parenting Plan on that same day in February, 2017 that designated him Ryland's custodial parent. *CP 14-35.* He did not communicate with Ms. Weber that he had obtained such an Order, or that he had obtained a Final Parenting Plan that was signed by the court which allocated him Ryland's custodial parent until March 3, 2016. *RP 983.*

Ms. Weber and Mr. Conradi were previously agreed that Ryland would visit with his Father in Spokane in March, 2017. *RP 914.* The parties agreed that Ryland would depart California for Spokane, Washington on March 2nd and return to California on March 12th, 2017. *Id.* Once in Spokane, Mr. Conradi informed Ms. Weber that Ryland would not be returning to California. *RP 913-914.* He obtained counsel, who sent correspondence to Ms. Weber informing her that her visitation

with Ryland could be established only if she consented and agreed to Mr. Conradi's final parenting plan that designated him the custodian parent. *RP 917-923*.

Ms. Weber moved the Spokane County Court to Vacate Mr. Conradi's Final Parenting Plan on April 1, 2016. *CP 66-72*. The Spokane County Court vacated Mr. Conradi's Final Parenting Plan on April 26th, 2016. *CP 108-109*. Mr. Conradi denied Ms. Weber contact with Ryland for a period of 40 consecutive days. *RP 923*.

Mr. Conradi moved for temporary orders on May 13th, 2016. *CP 129-145*. Ms. Weber responded. Both Mr. Conradi and Ms. Weber alleged that they were Ryland's primary parent. *CP 146-228*; *CP 129-145*. Ms. Weber filed her countermotion on May 20th, 2016, where she requested a bonding assessment to clarify which parent was primary to Ryland. *CP 243*. At hearing on May 31, 2016, the Honorable Tami M. Chavez found that Ms. Weber's "unilateral move to California [on August 8th, 2015] was not in the child's best interests." *CP 249-250*. Despite Respondent's Counsel's presentation/argument that Mr. Conradi lacked jurisdiction for temporary orders because he never sought to modify the Washington State Department of Social and Health Services, Office of Administrative Hearings designation that Ms. Weber had already been designated Ryland's custodial parent, [RP], the court found there was no

requirement to file a modification under *In re the Parentage of CMF*. CP 249-250.

The Temporary Hearings Court ordered that Ryland would be placed primary with Mr. Conradi and adopted his proposed parenting plan and ordered that his proposed summer schedule, which alternated Ryland between Washington State and California every two weeks, began the following day, June 1, 2016. CP 249-250. The court also denied Ms. Weber's motion for a bonding assessment. *Id.*

Ms. Weber filed her Motion to Revise Commissioner's Ruling on June 2, 2016. CP 260-261. In relevant part, she sought to revise the designation that Mr. Conradi was Ryland's primary parent, the court's temporary parenting plan, and its decision to deny her a bonding assessment. *Id.* The revision hearing occurred on June 16, 2016. CP 274-275.

There, the Honorable Julie M. McKay revised Commissioner Chavez' ruling. *Id.* The court found that it could not determine which parent was primary in this matter. CP 274-275. She ordered that Ryland's residential time with each parent remain on as equal schedule as possible until kindergarten started for Ryland in August, 2017. *Id.* Judge McKay adopted the Father's proposed summer schedule and ordered Ryland alternate between Washington State and California every two

weeks. The court also ordered a bonding assessment by a Spokane therapist, who was agreed between counsel. *Id.*

Ms. Weber did move the court for a parenting assessment in September, 2016. She filed her motion and declaration on September 6, 2016. *CP 288-293 (The Petitioner's Designation of Clerk's Papers/Exhibits filed January 30, 2018 designates "motion and affidavit/declaration for temporary orders dated September 6, 2016, although Ms. Weber's Declaration in Support of this motion is not included in the Index to Court Papers filed February 28, 2018. The Petitioner, however, cites to Ms. Weber's declaration dated September 6, 2016 and references CP 288-293, which is only the motion.)*

Ms. Weber expressed concern for the 2-week rotating schedule between Washington and California that had been in effect since June 1, 2016, the physical effect she believed it had on Ryland, and the stress associated with being separated from his primary parent. *CP 288-293.* She specifically stated,

[w]hile I understand Brian has a different take on all this, my point is that we have different positions about Ryland's schedule, the primary parent, as well as what is and will be best for Ryland moving forward. With our trial now scheduled in January, [2017] I request the court appoint a child psychologist to complete a parenting assessment in our case and recommend a final parenting plan after meeting with Brian and I as well as Ryland.

CP 288-293.

Ms. Weber never sought a parenting assessment “instead” of a bonding assessment as Mr. Conradi alleged in his Opening Brief, Pg. 9. when she filed her motion in September, 2016. *CP 288-293.* She requested a parenting assessment in addition to the bonding assessment already ordered. *Id.* The parenting assessment included a bonding assessment. *Id.*

Mr. Conradi did oppose the motion. *CP 305-310.* He stated, “I am not even sure what a parenting assessment is.” *CP 305-310, 308.* “Tatum appears to be requesting a GAL-type appointment.” *Id.* “[Mr. Conradi had] no problem working with a qualified professional like Carol Thomas. I fully support a bonding assessment, **done by a qualified provider**, being provided to the Court for trial.” *Id.*

The temporary orders court, the Honorable Tami M. Chavez, heard argument on the parenting assessment issue on September 20, 2016. *CP 311-313.* She denied Ms. Weber’s motion for a parenting assessment. *Id.* She inexplicably modified Judge McKay’s Order on Revision dated June 16, 2016 (*CP 274-275*) and held, “[a]s parties have not agreed, no bonding

assessment is ordered.” *CP 311-313*. She also held, “[a] parenting assessment is not appropriate for this case and is denied.” *Id.*

Ms. Weber filed her Motion to Revise Commissioner’s Ruling on September 23, 2016. *CP 321-323*. In relevant part, she sought to revise whether a health professional should be appointed to conduct a parenting assessment. *CP 321-323*. Judge McKay heard this argument on revision on October 14, 2016. *CP 395*. Judge McKay did not revise Commissioner Chavez’s decision to deny the parenting assessment. *CP 395*. She did revise Commissioner Chavez’s decision to deny a bonding assessment: “The court has not changed its prior order on a bonding assessment.” *CP 395*. (The court also ordered a bonding assessment by a Spokane therapist, who was agreed between counsel. *CP 274-275*.)

Ms. Weber, through counsel, began communicating with Mr. Conradi’s attorney August 8, 2016 in order to reach agreement on a bonding assessor. *CP 403-422, Exhibit C*. She proposed an assessor in this August 8th correspondence. *Id.* Mr. Conradi did not agree to Ms. Weber’s proposal for a bonding assessor in his return correspondence dated August 12, 2016. *Id.* He did not suggest or recommend any suitable bonding assessor either. *Id.*

Mr. Conradi proposed Ms. Carol Thomas as the bonding assessor for the first time in his responsive declaration to Ms. Weber's motion for a parenting assessment dated September 16, 2016. *CP 403-422; CP 305-310.*

Commissioner Chavez denied the bonding assessment in her order dated September 20, 2016. *CP 311-313.* Judge McKay revised this decision (reinstating the bonding assessment requirement) on October 14, 2016. *CP 395.*

On October 21, 2016, Ms. Weber, through counsel, corresponded with Mr. Conradi's counsel on the issue of a bonding assessment again on October 21, 2016. *CP 403-422.* She communicated that Ms. Carol Thomas is no longer completing bonding assessments, but Ms. Thomas recommended three other professionals who do. *Id.* She requested Mr. Conradi select a bonding assessor from one of the three Ms. Thomas recommended and respond with his preferred bonding assessor in 5 days. *Id.* Mr. Conradi nor his counsel responded to Ms. Weber's letter dated October 21, 2016. *Id.*

Ms. Weber, through counsel, corresponded through subsequent letter dated November 3, 2016. *CP 403-422.* She advised that all three bonding assessors, who she recommended in

her October 21, 2016 Correspondence were now unavailable (to complete the assessment prior to the then January 9, 2016 trial date). *Id.* Ms. Weber now recommended Ms. Soriano, who shared an office with Ms. Carol Thomas and could complete the assessment prior to trial. *Id.* She requested a response from Mr. Conradi by November 7th, 4 days from the date of the Letter. *CP 403-422.*

Mr. Conradi, through counsel, responded via his correspondence dated November 8, 2016. *CP 403-422.* He accused Ms. Weber of waiting to the last minute to request this bonding assessment, blamed her for Ms. Clemons unavailability despite not responding to Ms. Weber's October 21, 2016 Letter, and communicated that he would interview Ms. Soriano, but that "[a]t this point, pending my due diligence, we are not in agreement with any other expert." *Id.*

On December 5, 2016 Ms. Weber, through counsel, returned correspondence. *CP 427-434.* In it, she stated, "Now, nearly one month to the day [of Mr. Conradi's Letter dated November 8, 2016: *CP 403-422*], I understand you simply do not want to subject your client to this bonding assessment." *CP 427-434.* Ms. Weber outlined some of the challenges she experienced

in attempting to reach agreement on the selection of a bonding assessor. *Id.* She informed Mr. Conradi that she was proceeding with a bonding assessment through Ms. Soraino on December 10, 2016 (an exchange date per the temporary residential schedule) and that Ms. Weber would still have the child available for Mr. Conradi that same day. *Id.*

Although Mr. Conradi stated in his Opening Brief, Pg. 9, that the “mother filed a motion for an ex parte order...,” this is not accurate. Mr. Conradi filed his Motion for an Immediate Restraining Order the day following receipt of Ms. Weber’s Letter. *CP 403-422.* Mr. Conradi filed this Motion on December 6, 2016. *Id.*

He sought and successfully obtained an ex parte restraining order that prevented Ms. Weber from completing the assessment with Ms. Soriano on December 10, 2016. *CP 423-426.* He asserted irreparable harm and injury would result to his pre-planned vacation to Lake Tahoe with Ryland. *CP 403-422.* The ex parte court granted Mr. Conradi’s motion. *CP 423-426.* It ordered that Mr. Conradi may proceed with his trip to Lake Tahoe and shortened time for Ms. Weber to address the Soriano bonding

assessment with Commissioner Chavez, on 12/13/16 – 3 days after Ms. Weber’s scheduled bonding assessment. *CP 423-426.*

Ms. Weber filed her Motion for an Emergency Revision the next day, December 7, 2016. *CP 435-436.* Judge McKay heard argument on the Emergency Revision on December 8, 2016. *CP 480-480.* She found, “[t]he court is mandating compliance with its prior bonding assessment order.” *CP 480.* She ordered, “[p]er the court’s directive, parties agree to either Amanda Clemons or Renee Brecht to perform a bonding assessment.” *CP 480.* Amanda Clemons was chosen by the parties. *Appellant’s Opening Brief, Pg. 10.*

Judge McKay also continued the trial then scheduled January 9, 2017. *CP 480.*

Ms. Clemons completed her bonding assessment on February 11, 2017. *CP 513-522; Ex.t R-157; CP 1242.* She did a phone interview with Ms. Weber on January 11, 2017 to complete an intake. *Id.* She met personally with Mr. Conradi for his intake on January 18, 2017 and conducted his bonding assessment with Ryland on January 23, 2017. *Id.* She conducted her bonding assessment between Ms. Weber and Ryland on January 30, 2017. *Id.* Ms. Clemons identified the background information she

considered for both Ms. Weber and Mr. Conradi in addition to each parent/child interaction, the collateral information reviewed, and submitted her conclusions and recommendations. *CP 513-522*. She identified Ms. Weber as Ryland's primary parent. *Id.*

Mr. Conradi then filed his motion to Strike the Bonding Assessment, Other Relief on February 21, 2017. *CP 484-486*. He filed his motion to continue the trial date the next day, on February 22, 2017. *CP 489-495*. In each, Mr. Conradi alleged that Ms. Weber through counsel provided the bonding assessment provider secret, ex parte materials; Mr. Conradi did not have the opportunity to review or respond to any allegations therein, and Ms. Weber actively attempted to bias Ms. Clemons. *CP 484-486; CP 489-495*.

Ms. Weber submitted her Objections and Motion to Strike, objecting in part to hearsay and lack of personal knowledge concerning Mr. Conradi's allegations of bias on the part of Ms. Clemons. *CP 503-504*. Ms. Weber also submitted a Responsive Memorandum, Motion to Strike Petitioners Motions, and Order Fees and Sanctions. *CP 497-502*. Ms. Weber's Counsel also submitted a Responsive Declaration of Counsel. *CP 505-512*.

In these Responsive Materials, Ms. Weber, through counsel, argued that there was no evidence or substantiation to Mr. Conradi's hearsay statement that Ms. Clemons was biased. *CP 505-512*. Ms. Clemons made no reference to the collateral materials (the alleged secret, ex parte materials) in her Conclusions and Recommendations, only her observations from the parent child interaction. *CP 505-512*. Both parties designated Ms. Clemons to complete the bonding assessment and as such, she did not fall into the category of an expert, which would preclude any such alleged ex-parte contact. *Id.* Furthermore, short of the declarations written by Ms. Weber's family members (Baylee, Sharon, Laney, and Laura Weber – Sister, Sister, Sister, & Mother – as well as Devion Basham – Brother-in-law), all materials had been provided to Mr. Conradi previously. *Id.*

The Temporary Orders Court, Commissioner Chavez, found that there was nothing improper about Mr. DiNenna's (Ms. Weber's Counsel) submission to Ms. Clemons. *CP 526-527*. Commissioner Chavez ordered the Respondent provide Petitioner's Counsel with the declarations she submitted to Ms. Clemons, denied Mr. Conradi's request to strike Ms. Clemons' bonding

assessment, and ordered a new bonding assessment with no collateral information provided. *Id.*

Ms. Weber moved to revise Commissioner Chavez's decision on March 17, 2017. *CP 540-541*. In relevant part, she sought to revise Commissioner Chavez's decision to order a new bonding assessment. Judge McKay heard the revision on March 30, 2017. *CP 548-550*. Judge McKay revised: The Petitioner's request for a new bonding assessment is denied. *CP 548-550*. She ordered that there be no new bonding assessment. *Id.*

The Petitioner's Motion to Continue the March trial date was heard before Judge McKay on March 17, 2017. *CP 542-543*. Judge McKay continued the trial. *Id.* She found good cause to grant a trial continuance in order to allow preparation time. *Id.* She ordered, no further discovery except that each side may contact Ms. Clemons and all the lay witnesses. *CP 542-543*. *Emphasis Added.*

The Conradi/Weber trial began September 5th and concluded September 12, 2017. *RP 1-1290*. The following individuals testified during the course of trial: Tatum Weber, Brian Conradi, Amanda Clemons, Bert Johnson, M.S., Lauren Banghart, Annette Clark, Elizabeth Quear, Alysha Gamble, and

Kari Papst. *CP 618-621*. The Court weighed all the statutory factors with regard to placement of Ryland. *CP 618-621*. Final Orders were entered in court on October 27, 2017. *CP 597-605; 606-610; 611-617; and 618-621*.

Mr. Conradi's appeal was filed November 27, 2017.

II. ARGUMENT

A. THE COURT OF APPEALS SHOULD NOT CONSIDER THE MARCH 30, 2017 ORDER ON REVISION– NO APPEAL WAS FILED PURSUANT TO RAP 5.2(a).

The Petitioner's Notice of Appeal requests the Court of Appeals, Division III, review the final order and findings, final parenting plan, order of child support, and child support worksheets of the Honorable Julie McKay entered on October 27, 2017. Mr. Conradi also requested review of the order on revision entered by Judge McKay on March 30, 2017.

Mr. Conradi, however, did not seek discretionary review nor did he appeal the Order on Revision entered in Spokane County Court on March 30, 2017. Pursuant to RAP 5.2(a), a notice of appeal must be filed in the trial court within the longer of (1) 30 days after entry of the decision of the trial court that the party filing notice wants reviewed, or (2) the time provided in section (e), except as provided in rules 3.2(e) and 5.2(d) and (f). Please See RAP 5.2.

RAP 3.2(e) is not applicable, given it applies to time limits for filing an appeal when there is a substitution of parties. RAP 5.2(d) is not applicable either since it applies to arrest judgments, motion for a new trial under CrR 7.5, motion for judgment as a matter of law under CR 50(b), a motion to amend findings under CR 52(b), a motion for reconsideration or new trial under CR 59, or a motion for amendment of judgment under CR 59, none of which applies to this appeal. RAP 5.2(f) concerns subsequent notice by other parties, which is also inapplicable here.

Mr. Conradi filed his Notice of Appeal nearly 7 full months after the Order on Revision was filed on March 30, 2017. He does not provide a legal or factual argument why he did not timely appeal this decision pursuant to RAP 5.2(a), nor provide a legal or statutory basis to exceed the time limit identified in RAP 5.2(a). Respectfully, the Court of Appeals, Division III, should not consider this issue on appeal.

B. A BONDING ASSESSOR IS NOT A QUAI-JUDICIAL OFFICER WHO IS PROTECTED FROM EX PARTE CONTACT.

Ex parte means “communication made by or to a judge, during a proceeding, regarding that proceeding, without notice to a party.” *State v. Watson*, 155 Wn. 2d 574, 579, 122 P.3d 903 (2005) (footnotes omitted). “A written communication to a judicial officer with a copy sent timely to

opposing parties or their lawyers is not ex parte.” *RESTATEMENT (Third) of the Law Governing Lawyers § 113 cmt. c.*

Mr. Conradi’s analysis, where he alleges improper ex parte communication with the bonding assessor – contact he also alleges biased her in favor of finding that Ms. Weber was the primary parent – is centered on his analysis of the Reddy case. *Reddy v. Karr*, 102 Wn. App. 741, 9 P.3d 927 (Wash. Ct. App., Div. 1 2000. Mr. Conradi specifically states, “[t]he Court in Reddy, held that the court appointed expert functioned in a quasi-judicial role, and therefore the ex parte contact between the father and the expert was improper because a court-appointed expert functions as an arm of the Court.” *Opening Brief, Pg. 15. Emphasis Added.* This analysis is in no way accurate or correct.

The *Reddy* Court (Court of Appeals, Division I), ruled “family court investigators performing court-ordered parenting evaluations act as an arm of the court and accordingly are entitled to quasi-judicial immunity from civil liability for acts undertaken in performing such parenting evaluations.” *Reddy at 743*, 9 P.3d 927 at 982. *Emphasis Added.* The issue in Reddy was whether an investigator of the King County Family Court Services – a division of the social services department of the King County Superior Court - who was appointed by the court to investigate and evaluate which parent in a dissolution was the primary parent, was

entitled to quasi-judicial immunity from the lawsuit initiated by the appellant mother, alleging a negligent parenting evaluation. The trial court held that the investigator was entitled to quasi-judicial immunity and dismissed the suit: The Appellate Court, Division I, affirmed.

The *Reddy* case does not analyze ex parte contact, nor does it state, suggest, or infer that ex parte contact with a court-appointed expert who functions as an arm of the court is improper. The *Reddy* case does, instead, help clarify the role that Ms. Clemons served as the agreed bonding assessor in the Conradi/Weber matter: "...evaluators assist the court to develop such orders as the court deems necessary to resolve parenting controversies between divorcing parents. RCW 26.12.190(2)."
Reddy at 749, 9 P.3d 927 at 930.

"Courts have the grave obligation to serve the best interests of minor children of divorcing parents with respect to where the child shall primarily reside and other issues of great importance to the child, its parents and society as a whole. Courts do not ordinarily perform independent investigations; rather the adversary system of justice ordinarily requires that parties to litigation investigate and present evidence from which the court finds fact and applies legal principles in order to resolve controversies. But the unique obligation of courts to serve the best interests of minor children in cases of divorce often requires independent investigations of allegations between warring parents, professional evaluation of parenting abilities, determination of the degree of bonding between children and each parent –not to mention the wisdom of Solomon

when the most expedient solution might appear to be to ‘saw the baby in half.’ Judges cannot personally perform these independent investigations and evaluations, due not only to the volume of cases but also to the impropriety of ex parte contact between judges, parties, and witnesses.

Accordingly, a surrogate is necessary. Family court investigators and evaluators performing court-ordered services do so as surrogates for the court.”

Reddy at 749-750, 9 P.3d 927 at 930-931.

Distinctions are applicable between the *Reddy case* and Ms. Clemons. Ms. Clemons was not a court appointed evaluator or assessor. She was not an employee of any such Spokane County Family Court Services or any similar division or agency of the social services department associated with the Spokane County Court like the investigator in the *Reddy* case (the investigator there was an employee of the King County Family Court Services). Ms. Clemons was self-employed as “a licensed mental health counselor in Washington.” *RP 1241, Line 8.*

Ms. Clemons was also not appointed to this case. Ms. Weber moved for a bonding assessment in May, 2016. *CP 243.* Judge McKay ordered “a bonding assessment by a Spokane therapist, who was agreed between counsel” at hearing on revision June 16, 2016. *CP 274-275.* She affirmed this decision numerous times. Yet, Ms. Clemons was never appointed by the court/Judge McKay, only selected by Mr. Conradi and Ms. Weber to conduct a bonding assessment. *CP 480. RP 1242, lines 15-*

16. Mr. Conradi also acknowledged specifically, “Amanda Clemons was chosen by the parties.” *Appellant’s Brief, Pg. 10.*

While Mr. Conradi argues that investigators and evaluators function as an arm of the court and ex parte contact is improper as a result, investigators and evaluators, like Ms. Clemons, are still not the court. “Courts routinely utilize family court investigators but nevertheless retain and exercise sole decision-making authority in matters relating to the best interests of minor children of divorcing parents.” *Reddy at 751, 9 P.3d 927 at 931.* Like the investigator in *Reddy*, Ms. Clemons did not have any independent decision-making authority over the parties. *Reddy at 751, 9 P.3d 927 at 931.* She did not serve, nor was it her responsibility, to decide the case. *Id.* She had no capacity to effect her recommendation. *Id.* As in *Reddy*, the sole responsibility for the court’s orders lie with the court. *Id.*

Here, the *Reddy* case is not analogous: It is a case about quasi-judicial immunity, not improper ex parte contact as alleged. *Reddy* may help identify Ms. Clemons’ role in assisting the court in developing its orders necessary to resolve the parenting controversy between Mr. Conradi and Ms. Weber. *Reddy at 749, 9 P.3d 927 at 930.* However, Mr. Clemons was not an employee of the court, was not court appointed, and had no decision-making authority in matters related to the best interest of

the child in this case. *Reddy* does not stand for the proposition that ex parte contact with a bonding assessor selected by both parties to conduct a bonding assessment is improper. In fact, Mr. Conradi provides no legal authority to support this position.

Finally, as *State v. Watson* identifies, ex parte communication is communication made by or to a judge without notice to the other party. *State v. Watson*, 155 Wn. 2d 574, 579, 122 P.3d 903, 905 (2005) (*footnotes omitted*). Ms. Clemons is and was not the judicial officer. Mr. Conradi did not allege improper ex parte contact with any judicial officer involved in this matter. Ms. Clemons is not a quasi-judicial officer protected from ex parte contact.

C. MS. CLEMONS IS NOT AN EXPERT AFFORDED CR 26 EX PARTE PROTECTION.

Mr. Conradi next contends that “Washington case law is replete with examples of prohibited contact that extends well beyond the judge.” *Opening Brief*, pg. 13. He cites to *In re the Matter of Firestorm*. *In re Firestorm*, 129 Wn. 2d 130, 137, 916 P.2d 411, 415 (1996).

The Washington State Supreme Court held, “[b]ased on the plain language of CR 26(b)(5), we hold as a general principle ex parte contact with an opposing party’s expert witness is prohibited by CR 26. *See Campbell Indus. V. M/VGemini*, 619 F. 2d 24 (9th Cir. 1980) (upholding

district court's sanction for flagrant violation of Fed.R.Civ.P. 26(b)(4) when attorney had ex parte contact with opposing party's expert witness.)" *In re Firestorm*, 129 Wn.2d at 137-138, 916 P.2d at 415. "Discovery of expert witnesses retained by a party to the litigation may only be done within the strictures of CR 26." *Id.*, 916 P.2d at 415.

CR 26(b)(5) states, "[d]iscovery of facts known and opinions held by experts...and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows...." *CR 26(b)(5): Firestorm* at 137, 916 P.2d at 415. The Washington State Supreme Court in *Firestorm* clarified that an expert witness is one who is retained by one party for the specific purpose of preparing for litigation or trial. *Id.*, 916 P.2d at 415.

In *Peters v. Ballard*, the Court of Appeals, Division I, held that a party's designation of an expert witness alone is insufficient to qualify the witness as an expert for purposes of CR 26. *Peters v. Ballard*, 58 Wn. App 921, 930, 795 P.2d 1158, 1163 (Wash. App. Div. 1 1990). At issue was whether the appellant's expert witness, a medical doctor who subsequently treated the plaintiff and who was only called to testify to his factual observations as the plaintiff's subsequent treating physician, could offer his opinion on the negligence of the Respondent, the appellant's former medical doctor, subject to the petitioner's medical negligence claim. The appellant argued that the trial court erred in allowing defense

counsel to expand his inquiry to include the appellant witness' opinion on the negligence issue and in doing so, effectively enabled the defense to call the petitioner's witness as his own expert contrary to the dictates of CR 26. *Peters* at 925, 795 P.2d at 1160. The trial court allowed the petitioner/appellant's expert to testify to his opinion on the defendant/respondent's negligence: Division I affirmed. The court ruled that the petitioner/appellant's witness, regardless of his designation of an expert, "should be treated as any other witness." *Peters* at 930, 795 P.2d at 1163. The Court of Appeals, Division I, reasoned that the expert witness' knowledge and opinions were derived from his role as the appellant's subsequent treating physician, not in anticipation of litigation or for trial. *Id.*, 795 P.2d at 1163.

"A witness who would otherwise qualify as an expert witness, but who was not retained in anticipation of litigation and instead will be testifying on the basis of personal involvement in the case at hand, is often termed a fact expert or an occurrence expert." *Washington Handbook on Civil Procedure* § 39.5 (2007 Edition). "For the most part, CR 26 treats fact experts as ordinary, lay witnesses, without the protections otherwise afforded by CR 26." *Id.* "Under CR 26(b)(4), the distinction between an expert who is testifying as a fact witness and an expert witness who is testifying as a CR 26(b)(4) expert is whether the facts or opinions

possessed by the expert were obtained for the specific purpose of preparing for litigation.” *Peters* at 927, 795 P.2d at 1161.

In the Conradi/Weber matter, Ms. Clemons was not retained for the specific purpose of preparing for litigation, nor was she retained by only one party for trial. Ms. Clemons was selected and retained by both Ms. Weber and Mr. Conradi to help resolve a parenting controversy, specifically to resolve the controversy surrounding which parent was primary in this case. Ms. Clemons may best be defined as a fact expert since she testified to her personal involvement in the case, her bonding assessment. Since she is not an expert witness of a party retained in preparation for litigation or trial, and not Mr. Conradi’s expert, she is not entitled to CR 26 protections against ex parte communication. She is more appropriately considered a lay witness and as such, Mr. Conradi’s allegation of improper ex parte communication between Ms. Weber’s attorney and Ms. Clemons are not proper.

D. JUDGE MCKAY WAS IMPARTIAL AND FAIR: AMANDA CLEMONS WAS NOT BIASED.

Mr. Conradi appears to argue that he was denied a fair trial because Judge McKay, on revision, denied his February 21, 2017 motion to strike Ms. Clemons’ bonding assessment as well as denied his request for a new bonding assessment on March 30, 2017. *Appellant’s Opening*

Brief, Pg. 17: CP 484-486; CP 548-550. Furthermore, Mr. Conradi argues that Ms. Clemons' bonding assessment was tainted by impermissible ex parte contacts. *Opening Brief, Pg. 18.*

“Washington’s appearance of fairness doctrine not only required a judge to be impartial, it also requires that the judge appear to be impartial.” *Tatham v. Rogers*, 170 Wn. App. 76, 80, 283 P.3d 583, 587 (2012). Washington courts “presume that judicial hearings and judges are fair.” *In re the Disciplinary Proceeding Against Peterson*, 180 Wn.2d. 768, 787, 329 P.3d 853, 862 (2014). “A judicial proceeding satisfies the appearance of fairness doctrine only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.” *Tatham*, at 96, 283 P.3d at 595. The test is “objective” and “assumes that ‘a reasonable person knows and understands all the relevant facts’.” *State v. Gentry*, 183 Wn.2d 749, 762, 356 P.3d 714, 721 (2015) (internal quotation marks omitted) (*quoting Sherman v. State*, 128 Wn.2d 164, 206 905 P.2d 355 (1995)).

1. JUDGE MCKAY WAS IMPARTIAL

To be clear, Mr. Conradi does not allege that the trial court, Judge McKay, was partial to Ms. Weber or unfair, only that she relied on a tainted bonding assessment. Judge McKay denied Mr. Conradi’s motion for a new bonding assessment on March 30, 2017 when she revised

Commissioner Chavez's Order. *CP 548-550; CP 526-527*. Mr. Conradi, however, did not seek discretionary review or appeal of Judge McKay's March Order on Revision. *CP 548-550*. Mr. Conradi does not now have the opportunity to request the Court of Appeals, Division III, consider this issue pursuant to RAP 5.2(a).

Should the Appellate Court consider this issue, it is then important to note that, subsequent to Mr. Conradi's motion to continue trial that he filed on February 22, 2017 [*CP 489-495*], Judge McKay ordered, "...each side may contact Ms. Clemons and all the lay witnesses." *CP 548-550*. As illustrated in his February Motion to Continue Trial [*CP 489-495*], Mr. Conradi alleged that Ms. Weber, through counsel, provided Ms. Clemons "secret, ex parte materials", that "Ms. Weber actively attempted to bias Ms. Clemons," and that, "he was currently contacting counselors Bert Johnson... to see if they are available to review the reports and declarations and provide testimony to the court." *CP 489-495*. Mr. Conradi requested an "IC" judge, or independent calendar, stating that the "trial will last 8 days and could go 10 days" depending on the number of witnesses." *Id.*

Judge McKay granted Mr. Conradi's request to continue, docketed trial for an IC judge if the trial exceeded 4 days, afforded Mr. Conradi the opportunity to contact Ms. Clemons, and call the lay witnesses he wanted.

CP 548-550. Commissioner Chavez previously ordered Ms. Weber to provide Mr. Conradi and his counsel with the declarations he alleged were secretly provided to Ms. Clemons, which occurred in March, 2017 pursuant to this Order. *CP 526-527*. Judge McKay, furthermore, allowed Bert Johnson to testify at trial. *RP 227-336*.

Judge McKay afforded Mr. Conradi additional time to prepare for trial, the opportunity to call each and every witness he wished for an extended trial (IC calendar), and afforded him the opportunity to call Bert Johnson, Mr. Conradi's witness called specifically to raise issue with Ms. Clemons' report. Although Mr. Conradi does not specifically state or allege that Judge McKay was impartial, he argues that he was denied a fair trial. Yet, no evidence, much less an allegation of partiality exists: Judge McKay, as evidenced from the procedural history and her rulings, was fair, impartial, and neutral. *Tatham v. Rogers, 170 Wn. App. 76, 283 P.3d 583*. A reasonably prudent and disinterested person, who is aware of the facts and circumstances of the case, would conclude that both parties received a fair trial. *Id, 283 P.3d 583*.

2. *AMANDA CLEMONS WAS NOT BIASED*

The claimant "must submit proof of actual or perceived bias to support an appearance of impartiality claim." *GMAC v. Everett Chevrolet, Inc., 179 Wn. App. 126, 154, 317 P.3d 1074, 1087 (quoting Magana v.*

Hyundai Motor Am., 141 Wn. App. 495, 523, 170 P.3d 1165 (2007), *rev'd on other grounds*, 167 Wn.2d 570, 220 P.3d 191 (2009)), *review denied*, 181 Wn.2d 1008 (2014). “Mere speculation is not enough.” *In re Estate of Haves*, 185 Wn. App. 567, 607, 342 P.3d 1161, 1182 (2015).

Furthermore, “[e]x parte communication, alone, is not enough to establish judicial bias or prejudice.” *State v. Davis*, 175 Wn. 2d 287, 307, 290 P.3d 43, 50 (2012). If ex parte contact occurs, the question still remains “whether a reasonable person who knew all relevant facts would conclude that [the judge] was actually prejudiced or appeared prejudiced.” *Id.*, 290 P.3d at 50.

Mr. Conradi’s allegation has been that Ms. Weber, through counsel, provided “secret, ex parte” declarations to Ms. Clemons, despite the fact that Ms. Weber’s declarations were from her family members, that these declarations biased her, and thus, her report was tainted. *CP 484-486: CP 489-495*. In support of his position, Mr. Conradi relies on the facts in the Reddy case. *Reddy v. Karr*, 102 Wn. App. 742, 9 P.3d 927.

Factually in Reddy, amid a parenting controversy and investigation into the primary parent, the father secretly taped a conversation between the mother and son, where the Mother became upset when she discovered the son had been spending time with the father’s new significant other. *Reddy*, at 746, 9 P.3d at 929. The son responded, telling the mother that

she hurt his feelings. *Id.*, 9 P.3d at 929. The court appointed parenting investigator identified this conversation in her report, stated that the mother was being “emotionally abusive” towards the son, and stated that, “[the conversation between mother and son] influenced her recommendation, finding that the father was the primary parent. *Id.*, 9 P.3d at 929. In response, the party’s mediator submitted a declaration contrasting the investigator’s findings with that of her own after several months and numerous in-person meetings and phone calls with the parties, opining that the investigator was biased in favor of the father. *Id.*, 9 P.3d at 929.

In the Conradi/Weber matter, Ms. Clemons was asked specifically whether the collateral information she reviewed, the declarations from both Mr. Conradi and Ms. Weber (the secret, ex parte declarations), influenced her decision.

“Q. [Mr. DiNenna] Gonna ask you to turn to the next page, final page of your assessment with Ms. Weber [R156]. And I’ll note that there’s much of this - - there’s a lot of collateral information that you reviewed, correct?

A. [Ms. Clemons]. Yes. Probably more than I’ve reviewed in any other case.

Q. [Mr. DiNenna] All right. Now, I’m gonna ask you, how influential is this information in arriving a[t] your conclusion?

A. [Ms. Clemons]. I would say it’s not influential at all. I mean, I’m a human being so it’s very, very important to me that when I do

assessment I go in blindly and meet families independently of any collateral information. But in reviewing that, unless there are patterns in the declarations or in the collateral information, it really is not – it does not influence my observations. By the time that I have read collateral information, I've already made a professional judgment regarding the parent-child relationship and the attachment and primary relationships. It is - - it's helpful at times but I will tell you that overall it is minimally impactful.”

RP 1262, Line 12 – 1263, Line 6.

The Conradi/Weber bonding assessment is distinct from the investigation in *Reddy*. First, the *Reddy* investigator identified that the mother/son recording influenced her decision (she called it emotional abuse). Ms. Clemons, on the other hand, didn't even review the collateral information until after she formulated her professional opinion about the bonding assessment. *Id.* Second, Mr. Conradi was the only party to suggest or infer that Ms. Clemons was biased. No one else.

Ms. Clemons reported that Ryland has a secure attachment to both Mr. Conradi and Ms. Weber. However, Ms. Clemons reported that Ms. Weber is the primary parent. Ms. Clemons concluded Ms. Weber is the primary parent based on what she observed, the anxiety the child demonstrated in her absence:

“[Ms. Clemons] And I think that's the one piece that's noted here was the anxiety that Ryland demonstrated in terms of access to his mom and that was about past separation and reunification with her.”

RP 1288, lines 21-24.

“[Ms. Clemons] Primary is only important in terms of separation from that primary caregiver.”

RP 1289, Lines 4-5.

Mr. Conradi never submitted “proof of actual or perceived bias to support his impartiality claim” for either Ms. Clemons or Judge McKay. *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 317 P.3d 1074. He only speculated that Ms. Clemons was biased because she found Ms. Weber to be the primary parent and Judge McKay granted Ms. Weber custody. *CP 513-522/R156; CP 597-605*. “Mere speculation is not enough.” *In re Estate of Haves*, 185 Wn. App. 567, 607, 342 P.3d 1161, 1182.

There was no ex parte communication with Ms. Clemons. If the Appellate Court, however, considers Ms. Weber’s family declarations that were submitted to Ms. Clemons to be ex parte contact, then it is more than reasonable to conclude that no reasonable person, familiar with all the facts of this case, would conclude that Ms. Clemons or Judge McKay were biased. *State v. Davis*, 175 Wn. 2d 287, 307, 290 P.3d 43, 50.

E. EVIDENCE AND TESTIMONY WEIGHED IN FAVOR OF MS. WEBER.

Mr. Conradi states that the court erred by allocating Ms. Weber the primary, custodial parent because he put on more witnesses than she did.

Mr. Conradi's Opening Brief references many witness statements although he provides zero references to the record or transcripts pursuant to RAP 10.4(f). Without reference to the record, these statements contained in the Appellant's Opening Brief, pages 22-25, should be struck for hearsay and lack of authentication pursuant to ER 801-802/901.

If the court's findings of fact are supported by substantial evidence in the record, we accept the findings as verities on appeal. *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227, 1228 (1991). Evidence is substantial when there is a sufficient quantum of evidence "to persuade a fair-minded person of the truth of the declared premise." *In re Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993, 995 (2002). "So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it." *Burrill*, at 868, 56 P.3d at 995. Unchallenged findings are also verities on appeal. *In re Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102, 108 (1999). This court does not review the trial court's credibility determinations, nor can it weigh conflicting evidence. *In re Marriage of Meredith*, 148 Wn. App. 887, 891 n.1, 201 P.3d 1056, 1058 (2009); *In re Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234, 1237 (1996).

Judge McKay heard testimony in the course of a 6-day trial. In addition to final orders, the trial court entered its Final Order and Findings

for a Parenting Plan and Child Support. *CP 618-621*. In it, Judge McKay found the following:

1. After Ryland was born, the mother was undisputably the primary caretaker as she stayed home and Mr. Conradi worked full time, on a variable schedule;
2. The Mother did not return to work until approximately September 2013, after the parties moved to Seattle;
3. The mother was also off of work for several months when the parties moved from Seattle to Spokane in approximately October 2014, returning to work in February 2015;
5. Both parents performed parenting functions related to Ryland's daily needs and care, but Ms. Weber performed the majority of the care;
6. A bonding assessment was performed in this case by Amanda Clemons;
7. The bonding assessment demonstrated that the primary attachment for Ryland was with his mother and Mr. Conradi conceded to this designation; (Emphasis Added)
8. The mother historically performed the majority of care for Ryland as evidenced by Mr. Conradi's trust in Ms. Weber's personal judgment related to the discovery of the child's doctors, dentists, enrollment in extracurricular activities, and daycare, including Harvard Park which the father continued to utilize post-separation;
9. The statute [RCW 26.09.187(3)] directs the court to give the greatest weight to the strength, nature, and stability of the child's relationship with each parent. This factor weighed in favor of Ms. Weber;
10. The Court has weighed all of the statutory factors with regard to placement of Ryland;

14. The child should be primarily placed with his mother.

CP 618-621.

Mr. Conradi does not contest these findings. “Unchallenged findings are verities on appeal.” *Burrill*, at 863, 868, 56 P.3d 993, 995. Without challenging these specific findings, which includes finding #7 – Mr. Conradi conceded to the designation that Ms. Weber was primary – these findings are now verities. *Id.*, 56 P.3d 995. As such, Ms. Weber meets the following statutory factors: RCW 26.09.187(3)(i), (iii), (iv), (v), and (vii).

There is substantial evidence that supports the trial court decision. *CP 618-621.* It does not matter that Mr. Conradi feels his unsubstantiated/hearsay witness statements contradict the court’s findings and orders. There should be no challenge to the trial court’s credibility determination for the witnesses, or the weight the trial court gave the evidence it considered. There was no abuse of discretion and no reason to overturn this decision, or remand for new trial.

F. COURT HAS DISCRETION TO DETERMINE
REASONABLENESS OF PROPORTIONATE LONG-DISTANCE
TRANSPORTATION EXPENSES.

“The court may exercise discretion to determine the necessity for and reasonableness of all amounts ordered in excess of the basic child support obligation.” *RCW 26.19.080(4)*.

In *In re Marriage of McNaught*, the Washington State Appellate Court, Division I, held “a trial court has discretion to decide what travel expenses are necessary and reasonable.” *In re Marriage of McNaught*, 189 Wn. App 545, at 567, 359 P.3d 811 at 821 (Wash. Ct. App. Div. I, 2015). In *McNaught*, the mother relocated from Washington to Texas. *Id at 549*, 359 P3. 811, 813. The father objected to the relocation, and after trial the mother was allowed to relocate to Texas. *Id at 551*, 359 P.3d 811, 814. In the final orders, the court ordered that each parent was responsible for their proportionate share of the airfare for the father to visit the children. *Id at 567*, 359 P.3d 811 at 821-2. The court found other expenses such as room and board were unreasonable as the father had family in the area the mother relocated to in Texas. *Id at 567-8*, 359 P.3d 811 at 822. The Appellate Court found “the trial court did not abuse its discretion when it ordered a proportional division of costs for airfare alone.” *Id*.

Further, in *In re Marriage of Casey*, the court stated “[w]e hold that in a proper case, this language permits the court to depart from the

usual practice of allocating special child rearing expenses, such as long-distance transportation costs, in the same proportion as the putative basic support.” *In re Marriage of Casey*, 88 Wn. App. 662, 667-8 (Wash. Ct. App. Div. II, 1997). In the Casey matter the father was awarded custody of all four children in Texas while the mother remained in Washington and was afforded visits every summer and Christmas time. *Id at 664*. The father was to provide child support and pay for all airfare for the children to visit the mother. *Id*. The father appealed arguing the trial court erred in ordered he be responsible for all airfare, inter alia. *Id at 667*.

The Appellate court found the statute allows for the trial court to deviate from the proportionate share of the basic child support obligation for long-distance travel expenses. *Id at 668*. The court further found there was no error in the trial court’s ruling and order allocating long-distance transportation expenses differently than proportionately. *Id*.

The Conradi Weber case is similar to both the *McNaught* and *Casey* cases, *supra*. Mr. Conradi has scheduled visits in Spokane each month of the year, for which Ms. Weber is proportionately responsible for. CP 597-605; CP 611-617 (Section 21). Mr. Conradi is also afforded optional visits in California with notice to the mother, if he chooses to travel to California. CP 597-605. Mr. Conradi has many family members in the state of California, specifically in the area where the child resides

with Ms. Weber. There was significant testimony regarding Mr. Conradi's family, where Mr. Conradi and Ms. Weber resided in California, and Mr. Conradi's multiple visits per year to the area. Not only does Mr. Conradi choose to travel to the area to visit family, he also travels there for recreation. *CP 403-422*. Mr. Conradi's optional visits are unpredictable and for Ms. Weber to be proportionately responsible would be unnecessary and unreasonable within the meaning of the statute.

Further, Mr. Conradi and Ms. Weber have a drastic difference in their incomes. *CP 606-610*. Ms. Weber is currently proportionately responsible for airfare once a month between California and Washington. Imposing a separate cost for Mr. Conradi's recreational visits is unreasonable. Mr. Conradi has enough income to bear the costs of his optional visits in California.

G. REQUEST FOR ATTORNEY FEES

“If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.” *RAP 18.1(a)*. RCW 26.09.140 states “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys’ fees in addition to

statutory costs.” *RCW 26.09.140*. Ms. Weber is hereby requesting attorney’s fees and costs associated with this appeal. A cost bill for Ms. Weber’s attorney’s fees shall be provided within 10 days after the court’s order pursuant to RAP 14.4.

Ms. Weber is further requesting attorney’s fees pursuant to RAP 18.9(a) which states in pertinent part: “The appellate court on its own initiative or on motion of a party may order a party or counsel ... who ... fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.” *RAP 18.9(a)*. Mr. Conradi’s brief contains pages of argument with no citation to exhibits, clerk’s papers, or the report of proceedings in his Opening Brief, specifically pages 22-25, in violation of RAP 10.4(f).

Respectfully submitted this 21st day of June, 2019 by:



Paul A. DiNenna, Jr., WSBA # 34927
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on June 21, 2019, I attempted personal service of a copy of Ms. Weber's Responsive Brief to Brian Conradi at Law, 601 W. 1st St. 17th Floor, Spokane, Washington, 99201. A copy was left at the front desk.



Phillip Cardwell, Paralegal

CERTIFICATE OF SERVICE

I certify that on June 21, 2019, I mailed a copy of Ms. Weber's Responsive brief to Brian Conradi at PO Box 18620, Spokane, WA 99228 pursuant to the address listed on the Notice of Intent to Withdraw as Attorney of Record filed by Mr. Conradi's previous counsel on April 5, 2019.



Phillip Cardwell, Paralegal