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IN THE COURT OF APPEALS  
DIVISION III  
THE STATE OF WASHINGTON

Cause No. 36722-3

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NICHOLAS DENNIS, Petitioner/Appellant

v.

MEGAN YATES, Respondent

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RESPONDENT'S BRIEF

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## **I. OBJECTION**

On Apr 5, 2019, Mr. Dennis filed a Copy of Supplemental Argument Letter to Judge Re: Mediation and CR2A that bore the date of Feb 11, 2019, and purported to have been “Hand Delivered” to the Court. CP138. The unsworn letter from his attorney does not contain a copy received stamp from Spokane Superior Court Administration. CP 138. The Court’s Mar 6, 2019 Order contains no mention of receiving or considering a supplemental letter. CP 118-122. Mr. Dennis failed to file a motion to supplement the record. This document is not properly before this Court, as it does not appear to have been considered by the trial court.

## **II. ISSUE**

Whether the trial court erred by entering sanctions against the father.

## **III. BRIEF ANSWER**

The sanctions entered against the father were appropriate and justified based upon the father’s intransigence. The father’s intransigence included 1) forcing the mother to file a motion to enforce the CR2A Stipulation<sup>1</sup>; 2) misrepresenting facts; and 3) misapplying/misstating case law in support of his efforts to oppose enforcement of the CR2A Stipulation.

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<sup>1</sup> In his Appellate Brief at p. 13, Mr. Dennis inaccurately states “But for the father’s attorney’s intervention in this presentment . . .” This was not a presentment hearing. It was a Motion to Enforce CR2A.

#### **IV. STATEMENT OF FACTS**

On Aug 10, 2016, Ms. Yates, an unmarried and pregnant pro se, filed a petition for an order for protection (Cause No. 16-7-10428) against Nicholas Dennis based on significant allegations of domestic violence. CP 100, ln 18-19. Saffron Yates was born in September 2016. CP 17. The District Court Petition ended up being heard in Superior Court (Cause No. 16-2-03645-1). CP 100, ln 21. On Oct 6, 2016, the Superior Court denied the request for a protection order because “The domestic violence protection order petition does not list a specific incident and approximate date of domestic violence.” CP 100, ln 23-25.

On Sep 12, 2016, Mr. Dennis filed a Petition to Decide Parentage (16-5-00475-5). CP 101, ln 1. On Oct 4, 2016, Ms. Yates’ response to that petition confirmed her agreement with every paragraph in Mr. Dennis’ petition except she opposed his request to change the child’s last name and she asked for a protection order. CP 101, ln 2-7. On Nov 9, 2016, Mr. Dennis was confirmed to be the child’s biological father. CP 101, ln 8. Mr. Dennis did not file a motion requesting contact or visitation with his daughter under the Paternity Action and he had no contact with the child. CP 101, ln 3. On Feb 27, 2017, final orders on Parentage and Child Support were entered pursuant to a summary judgment motion filed by the State of Washington. CP 101, ln 10-11.

On June 1, 2017 (under the paternity cause number), Mr. Dennis served a written deposition notice on Ms. Yates' attorney requiring that Ms. Yates provide her employment address/information and residential address. CP 101, ln 12-14. On June 14, 2017, a discovery protective order was entered in the paternity case allowing Ms. Yates to keep her address confidential<sup>2</sup> and confirming Ms. Yates' attorney was authorized to accept service on Ms. Yates' behalf. CP 101, ln 16-18.

On Dec 14, 2017, Mr. Dennis filed a Summons and Petition to Change Parenting Plan under Spokane Superior Court Cause Number 17-3-02793-4 requesting a minor modification. CP 1-6. Mr. Dennis' proposed parenting plan asked that he receive three hours of residential time every Sunday, with the provision that his contact with the child increase to seven hours of residential time every Sunday after three months of satisfactory visits. CP 9, para 8(a).

Mr. Dennis did not serve his pleadings on Ms. Yates or the attorney who had represented Ms. Yates in the paternity action but, through counsel, verbally attempted to secure a trial date with Judge Ellen Clark at a status hearing on Feb 22, 2018. CP 101, ln 25-26. Judge Clark signed an order continuing the status conference date based on Mr. Dennis' failure to serve

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<sup>2</sup> Ms. Yates was not employed and therefore had no employment information to disclose.

the pleadings. CP 102, ln 1-2. Service was finally perfected on Feb 26, 2018, and Ms. Yates filed a Response to the Petition on March 7, 2018. CP 16-19.

At the second status conference on Mar 22, 2018, Mr. Dennis again attempted to obtain a trial date. CP 102. Based on Ms. Yates' agreement, Judge Ellen Clark signed an order granting adequate cause for a minor modification and assigned to the parties an Aug 6, 2018 trial date. CP 102, ln 9-12.

On Mar 27, 2018, having never had any contact with his daughter and having never before motioned for time with his daughter, Mr. Dennis filed a motion for temporary orders in which he requested a two-hour visit once per week, and asserted Ms. Yates' allegations of DV had been "found to not be true", and that Ms. Yates "fought to not have our child take DNA tests." CP 102, ln 15-17.

Ms. Yates filed medical records in support of her claims of domestic violence, submitted a declaration describing the paternity action litigation timeline, and conclusively demonstrated she had submitted to DNA testing without any delays, resistance, or opposition<sup>3</sup>. CP 102, ln 18-20.

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<sup>3</sup> On Oct 4, 2016, Ms. Yates filed her response to petition. On Oct 28, 2016, Mr. Dennis submitted to DNA testing. On Oct 31, 2016, Ms. Yates and the child submitted to DNA testing.

On April 26, 2018, a temporary order was entered that, in relevant part, allowed Mr. Dennis to have professionally supervised contact with his daughter. CP 20-21. In a July 19, 2018 order the court found “The Court’s Apr 26, 2018 (order) was designed to address the emotional and physical safety of the child, which requires a provider sufficiently skilled to address this.” CP 22.

On June 11, 2018, Ms. Yates filed a motion for a review hearing because of the difficulties associated with securing a unification professional. CP 102, ln 24-25.

On July 19, 2018, the Court entered an order stating, in relevant part, that Ms. Yates had “not delayed or frustrated the unification process,” allowing supervised visitation to begin at Fulcrum, and allowing Mr. Dennis to participate in “family counseling with a provider to determine if supervision is necessary.” CP 22-23. The Court’s July 19, 2018 order also found that “Mr. Dennis’ representation about being enrolled in a parenting class at the time of the last hearing was not accurate.” CP 22.

Mr. Dennis’ contact with Saffron remained supervised by Fulcrum for one visit per week from July 2018 through Dec 31, 2018. CP 103, ln 5-6.

Trial was continued to Jan 22, 2019. CP 103, ln 7.

In Nov 2018, Mr. Dennis began making repeated requests through Fulcrum Dispute Resolution to schedule mediation. CP 103, ln 9-11. The requests conveyed by Fulcrum to Ms. Yates' attorney indicated Mr. Dennis intended to mediate without his attorney. CP 89 and 108. Mr. Dennis confirmed in a Feb 1, 2019 pleading that "The Fulrum [sic] mediation was set up mediation through Mr. Dennis first as a none [sic] attorney mediation. Ms. Yates obviously communicated this through her attorney ..." CP 82.

On Dec 11, 2018, Ms. Yates' attorney sent a letter to Mr. Dennis' attorney about Mr. Dennis' repeated requests to schedule mediation that stated, in relevant part:

*Fulcrum has contacted my office several times regarding your client's requests to set up mediation on this case. Your client has apparently indicated to Fulcrum he will be unrepresented during the mediation.*

*My office has repeatedly advised Fulcrum we require something in writing from you confirming mediation can occur without your presence before Ms. Yates will participate in mediation with Mr. Dennis. Tina and Karen from Fulcrum have indicated they have conveyed this to Mr. Dennis.*

*Ms. Yates is willing to participate in mediation but if it is your intent that Mr. Dennis be unrepresented during mediation, we require written authorization from you confirming Mr. Dennis has the ability and authority to mediate and potentially resolve all aspects of this litigation during mediation ... CP 89.*

On Dec 11, 2018, Mr. Dennis' attorney wrote: "I have no intention of participating in the mediation and will not be attending mediation with my client Nicholas Dennis. Please accept this letter as "proof" that I will not be attending, and allow them to try to resolve these issues through mediation."<sup>4</sup> CP 91.

On Dec 31, 2018, Ms. Yates was present with her attorney and Mr. Dennis was present with his brother, an MSW, to participate in mediation through Fulcrum. CP 103. After a two-hour mediation session, a CR2A Stipulation and a final parenting plan were signed by both parties and by Ms. Yates' attorney. CP 24-38 and CP 104.

The CR2A Stipulation stated:

- *Pursuant to their Agreement to Mediate and by their signatures below, the parties have agreed to be bound by the agreement as indicated herein.*
- *Additionally, the parties certify that they each fully understand the settlement agreement knowingly and voluntarily, free of coercion or undue influence.*
- *Neither party was under the influence of any alcoholic substances and/or prescription or non-prescription drugs that would interfere with his or her ability to understand accept the settlement.*
- *Both parties were present throughout the mediation and had an opportunity to consult with an attorney prior to or during the mediation, and elected to proceed with the mediation and to sign this agreement.* CP 24.

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<sup>4</sup> The Dec 11, 2018 letter was attached as an Exhibit to Mr. Dennis' Feb 1, 2019 pleadings. In his pleading, Mr. Dennis acknowledges the exhibit contains an underline under the word "them" that was not reflected in the original letter. CP 83, ln 7.

The agreed-upon parenting plan reserved on RCW 26.09.191 restrictions Ms. Yates had originally requested, removed the requirement that all visits be professionally supervised that the Court had previously ordered and instead permitted Mr. Dennis' family members to supervise, as well as significantly increased Mr. Dennis' residential time. CP 25-27. The agreed-upon parenting plan required Mr. Dennis to comply with a provision the court had imposed on July 19, 2018<sup>5</sup> if he wanted to "request to remove the supervision requirement." CP 27. The agreed-upon parenting plan required Ms. Yates to include "the father's name on daycare, school and medical records" and gave Mr. Dennis "access to all records related to Saffron." CP 37.

On Jan 8, 2019, Mr. Dennis, through counsel, indicated he would not agree to enter final orders. CP 104, ln 20-21

On Jan 9, 2019, Ms. Yates, through counsel, indicated she would request an award of attorney fees if she was required to file a motion to enforce. CP 104, ln 22-23.

On Jan 14, 2019, Ms. Yates filed a Motion to Enforce CR2A and for Attorney Fees. CP 39-46. An Amended Motion was filed on

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<sup>5</sup> The Court's July 19, 2018 order stated, in relevant part, "Mr. Dennis and Saffron may have family counseling with a provider to determine if supervision is necessary." CP 23.

Feb 5, 2019. CP 100-107. In both motions, Ms. Yates requested an award of attorney fees based on the intransigence of Mr. Dennis. CP 44, ln 13-14 and CP 45, ln 3-11; CP 105, ln 12-13 and CP 166, ln 3-11. Ms. Yates did not request attorney fees against Mr. Dennis under any other basis other than for intransigence.

On Feb 8, 2019, Judge Fennessy heard oral arguments. RP 19.

When describing the Fulcrum mediators, counsel for Mr. Dennis verbally advised the Court **“They’re not attorney mediators, just people that got trained by them. And I’m – I’ve never experienced them to be able to understand legal terms such as reserved ...”**

RP 19, p. 12, ln 1-4 (emphasis added). In response to queries from the Bench, Mr. Dennis’ counsel confirmed he had not personally communicated with Fulcrum. RP 19, p. 18, ln 22-25 to p. 19, ln 1-2. When given a rebuttal opportunity, counsel for Ms. Yates stated “To clarify, our mediator actually was an attorney<sup>6</sup>.” RP 19, p. 19, ln 10-11.

The Trial Court took the matter under advisement on Feb 8, 2019.

The Court did not explicitly or implicitly authorize or request any

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<sup>6</sup> In a letter filed nearly one month after the Superior Court Judge entered final orders, counsel for Mr. Dennis confirmed the Fulcrum mediator had been a licensed California attorney who had recently retired to Spokane, Washington from the State of California. CP 138.

additional information or pleadings from either party. RP 19, p. 22, ln 11-15; and p. 23, ln 7-10.

On Mar 6, 2019, the Court entered an Order Enforcing the CR2A and granting attorney fees. CP 118-122. In the Final Order and Findings on Petition, which had not been drafted during mediation, the Court included a beneficial provision to Mr. Dennis that stated “Petitioner may seek to change or modify this final order without the need to show adequate cause once he has accomplished the tasks set out by the commissioner in her 4/26/18 and 7/19/18 orders for services.” CP 134.

On Mar 15, 2019, the Court entered an Order re: Attorney Fees in the amount of \$1,600 against Nicholas Dennis on behalf of Megan Yates/Leavitt Law for the necessity of being “required to bring this motion and attend argument.” CP 135-136.

On April 5, 2019, Mr. Dennis, through counsel, filed a letter written to the judge that was dated Feb 11, 2019, contained significant hearsay, was not signed under penalty of perjury, and purportedly had been “hand delivered” to the court. CP 138-139. The court’s orders of March 6, 2019 and March 15, 2019 contained no information indicating the letter had been received, reviewed, or considered by the court. CP 118-122 and CP 135-136.

**V. INACCURACIES CONTAINED IN MR. DENNIS' STATEMENT OF FACTS**

1. Mr. Dennis' Appellate Brief repeatedly states the mother was forced to file a motion "for presentment". See, p. 5, 7, 9, 10, 13, 14, 16, and 17.

Ms. Yates was required to file a motion to enforce. Through counsel during the Jan 10, 2019 pretrial date, Mr. Dennis asserted there was not an enforceable CR2A Stipulation. CR 43, ln 25-26. On Jan 10, 2019, the trial date was continued to April 1, 2019, to allow Ms. Yates to file a "motion to enforce". CR 44, ln 1-2.

The trial court found "Petitioner's counsel has refused to sign the orders necessary to document the agreement contending that any "reservation" of issues renders the underlying agreement void and unenforceable." CP 120, ln 21-23

2. Mr. Dennis' Appellate Brief states "...the father was able to start the counseling, but that was also difficult, so he filed a motion for review ..."

In actuality, Ms. Yates is the one who filed the motion for a review hearing because of the difficulties associated with securing a unification professional. CP 102, ln 24-25.

3. Mr. Dennis' Appellate Brief states "At the hearing the mother's counsel indicated she did not deal with the alleged RPC violations, although father's counsel briefed that issue." See, p. 5.

Mr. Dennis failed to include the Ms. Yates' Memorandum in his May 20, 2019 praecipe but the Feb 8, 2019 Verbatim Report of Proceedings reflect counsel of Ms. Yates stated "Mr. Dennis is attempting to rely on a case that I don't believe applies, and I did provide the analysis in my memorandum." RP 4, ln 10. The RPC allegations were addressed via the legal memorandum and the trial court disregarded Mr. Dennis' baseless argument/accusations in its Mar 6, 2019 order. See, CP 118-122.

4. Mr. Dennis' Appellate Brief states "After the mediation date was set, the mother's attorney ..., sent a rather controlling letter ..." See, p. 2.

The letter from mother's attorney was dated and sent on Dec 11, 2018. CP 89.

Fulcrum sent out a confirmation letter scheduling the mediation date on Dec 19, 2018. CP 114.

5. Appellate Brief, p. 2: "(The mother's attorney) told (the father's attorney) that the mother would not go to the mediation if (the father's attorney) was going to be there. CP 89."

The letter actually stated

*[...]Your client has apparently indicated to Fulcrum he will be unrepresented during the mediation. My office has repeatedly advised Fulcrum we require something in writing from you confirming mediation can occur without your presence before Ms. Yates will participate in mediation with Mr. Dennis [...] Ms. Yates is willing to participate in mediation but **if it is your intent that Mr. Dennis be***

***unrepresented during mediation, we require written authorization from you .. CP 89<sup>7</sup>, (emphasis added).***

6. Appellate Brief, p. 3: “the Appellant . . . thought he could have his attorney go over anything that he signed ...”

The CR2A Stipulation signed by Mr. Dennis stated “Both parties ...had the opportunity to consult with an attorney prior to or during the mediation, and elected to proceed with the mediation and to sign this agreement.” CP 24.

7. Appellate Brief, p. 3: “After the mediation the father’s attorney received a letter [with] a threat that ...[Ms. Yates] would seek ‘the entire costs of mediation’ from the father. CP24-38 and CP 43, ln 18-19.”

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<sup>7</sup> Mr. Dennis’ interpretation that the Schweigert letter was designed to merely confirm Mr. Dennis’ attorney would not be present is not accurate. The Schweigert letter did not contain any language to suggest Mr. Dennis could not or should not be represented during mediation. The Schweigert letter merely asked for written confirmation that mediation could occur if Mr. Dennis was unrepresented and queried whether Mr. Stenzel intended to reserve the right to review and approve any agreements. Nothing in the Schweigert letter could have been construed as a prohibition against Mr. Dennis from changing his mind and having counsel present on the day of mediation. There was nothing in the Schweigert letter indicating Mr. Dennis was precluded from having contact with his attorney during the mediation and the Stipulation signed by Mr. Dennis affirmed that Mr. Dennis acknowledged having had the opportunity to consult with an attorney prior to or during mediation. See, CP 24. The Schweigert letter was intended to prevent the possible allegation of violating RPC 4.2 if Mr. Dennis attempted to mediate without his attorney and without his attorney’s knowledge. The Schweigert letter was also designed to determine whether Mr. Stenzel was reserving the ability to review and approve any agreement reached during mediation. See, e.g. *In re Patterson*, 93 Wn.App. 579, 969 P.2d 1106, (Div. 1 1999)

The Stenzel letter did not reserve the ability to review and approve any agreement reached during mediation. Mr. Dennis had the right and ability to settle his own case without the approval of his attorney under these circumstances. “...[A]n attorney is only an agent. A party may settle a case with or without an attorney. When the party undertakes a settlement directly with the other party, reduces it to writing, and signs it, as in this case, the requirements of CR 2A are met just as if the attorney had participated. It would be unfair to the other party to hold otherwise.” *In re Patterson*, 93 Wn.App. 579, 969 P.2d 1106, (Div. 1 1999)

Mr. Dennis' citations do not reflect or even address this inaccurate statement, as CP 24-38 contains the CR2A Memo of Agreement and the signed parenting plan and CP 43 is page 5 of the Motion for Order to Enforce.

“On January 2, 2019 proposed final orders, including a true and correct copy of the parenting plan signed by Mr. Dennis during the mediation, were sent to Mr. Stenzel's office.” CP 43, ln 18-19.

CP 43, ln 22-23 states “On January 9, 2019 Ms. Schweigert's letter indicated, in relevant part, that Ms. Yates would pursue a request for terms if she was required to file a motion to enforce.”

#### **VI. MR. DENNIS' INTRANSIGENCE JUSTIFIED THE AWARD OF ATTORNEY FEES**

In her motion to enforce the CR2A, Ms. Yates requested attorney fees based on the intransigence of Mr. Dennis. CP 105, ln 12-13; CP166, ln 3- 11. Ms. Yates did not request an award of attorney fees under any other legal theory.

Intransigence includes delay tactics, obstruction, and any other actions that make proceedings unduly difficult and costly. *In re Marriage of Bobbitt*, 135 Wn.App. 8, 30, 144 P.3d 306 (2006); *In re Marriage of Foley*, 84 Wn.App. 839, 846, 930 P.2d 929 (1997). Fees awarded on the basis of one party's intransigence is an equitable remedy in actions that may

be ordered without regard to the financial status of the parties. *In re Marriage of Mattson*, 95 Wn.App. 592, 604, 976 P.2d 157 (1999). In the present case, the trial court awarded Ms. Yates attorney fees for being required to bring the motion to enforce. Had the motion merely been one to present or even clarify, it is unlikely Ms. Yates would have requested terms and less likely the trial court would have granted them. That the motion had to be one to enforce was a result of Mr. Dennis' making the proceedings unduly difficult and costly. The trial court properly segregated the fees caused by Mr. Dennis' intransigence and awarded Ms. Yates her costs to litigate the motion to enforce. See, *In re Marriage of Crosetto*, 82 Wn.App. 545, 565, 918 P.2d 954 (1996).

A. Mr. Dennis' Objection to the Enforcement of the CR2A Stipulation was an Act of Intransigence that Justified the Award of Attorney Fees

Mr. Dennis' efforts to prevent the enforcement of the CR2A Stipulation based on the reservations of RCW 26.09.191 restrictions was not reasonable because a represented party has the ability to enter a CR2A agreement without his attorney. See, *In re Patterson*, 93 Wn.App. 579, 969 P.2d 1106, (Div. 1 1999). Mr. Dennis' obstructionist behavior precluded Ms. Yates from being able to note a presentment, which would have been the appropriate manner by which to address Mr. Dennis' concerns about adequate cause.

Mr. Dennis' position is mostly closely analogous to that described in *Patterson*, even though both of those two parties engaged in mediation without their attorneys. The *Patterson* Court found

“Patterson could have prevented this result by having counsel attend the mediation or by informing the mediator in writing in advance of mediation that any agreements would be conditioned upon review and approval by counsel. He also could have refused to sign until he met with his counsel. Patterson signed the agreement. He may have made a mistake, but the court is not compelled to relieve him of it.” *In re Patterson*, 93 Wn.App. 579, 969 P.2d 1106, (Div. 1 1999)

As was noted in *Patterson*, Mr. Dennis could have had his attorney accompany him, and could have refused to sign any agreement. If Mr. Dennis had questions during the mediation, he could have called his attorney before signing. Mr. Dennis had many options available to him. The option Mr. Dennis chose was to sign the binding CR 2A Stipulation and the negotiated parenting plan and then to obstruct the entry of final orders by making disingenuous arguments and providing an inaccurate recitation of facts.

During oral arguments on Feb 8, 2019, after hearing a number of unsupported representations from Mr. Dennis' counsel, the trial court specifically inquired as to whether Mr. Dennis' counsel had spoken with Ms. Yates counsel or with Fulcrum since the mediation, and before forcing Ms. Yates to file a motion to enforce. See, RP 19, p. 16, ln 1-2, and RP 19,

p. 18, ln 22-25 to RP 19, p. 19 ln 1-2. The trial court noted that Mr. Dennis' objection appeared to be "form over substance." RP 19, p. 20, ln 24. The trial court also noted that

*It seems to the Court that your request is 'let's go try this all over again.' I want to have a trial on all of these issues. The mediation time and effort should be wasted as if there was no agreement reached. And you've not even reached out to talk to Fulcrum to understand what it was they spoke with your client about while he was there. And you may not want to bring that to the Court ... and the mediation agreement may prohibit the Court from calling the mediator as a witness.*

*None the less, it seems to me that in the exercise of the obligation or the representation, I would think that Counsel would want to speak with that mediator and understand whether that mediator discussed the [intention] with your client, whether or not you could understand that [intention] so that ... **the proposed parenting plan could be clarified short of coming to this Court trying to abrogate or get rid of the CR2A Agreement.** RP 19, p 21 ln 17 to p. 22, ln 10. Emphasis added.*

In his opposition to Ms. Yates' motion to enforce the CR2A, Mr. Dennis asserted Ms. Yates' attorney had provided Mr. Dennis with "her version of what she felt was the best parenting plan for her client ..." CP 86, ln 7 -8. In his appellate brief, Mr. Dennis asserted "...the mother and her attorney (provided) the father with her "version" of a settlement parenting plan ..." Appellate Brief, p. 3. Despite making these arguments, Mr. Dennis never explained how or why, if the parenting plan had truly been drafted by the mother's attorney and sent to Mr. Dennis for his signature

without any negotiation or input from Mr. Dennis/Mr. Dennis' well-educated brother<sup>8</sup>, it would not have contained RCW 26.09.191 restrictions for domestic violence. It can be reasonably inferred that the "reserved" under the RCW 26.09.191 clearly reflects the fact Mr. Dennis did not agree for formal restrictions to be entered against him and Ms. Yates had not agreed that the boxes stating "neither parent has any of these problems" should be checked. See, CP 24 and CP 25-26. The "reserved" language was obviously a mediated and negotiated compromise that was advantageous to Mr. Dennis, in that he avoided having formal .191 restrictions entered against him. See, CP 25-26. Mr. Dennis' assertions to the contrary were and are disingenuous and provide further support for the trial court's award of attorney fees based on his intransigence.

Mr. Dennis has not appealed the trial court's order enforcing the CR2A Stipulation. He is only appealing the attorney fees that were awarded as a result of the obstructionistic behavior he engaged in that forced Ms. Yates to file and argue a motion to enforce.

B. Mr. Dennis' Argument and Misrepresentation of Case Law was an Act of Intransigence that Justified the Award of Attorney Fees.

In his procedural declaration, motion and brief, Mr. Dennis alleged

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<sup>8</sup> Mr. Dennis' brother, Christopher Dennis, holds a Master's Degree in Social Work (MSW). CP 103, ln 25-26

violations of RPC 4.2 and 4.3 and asserted *Cruz v. Chavez*, 186 Wn.App. 913 (Wash.App. Div. 1, 2015) was analogous. See, CP 82-93. There were no parallels between the Cruz case and Ms. Yates/Mr. Dennis' case. The trial court properly disregarded Mr. Dennis' baseless argument and accusations regarding violations of the Rules of Professional Conduct and properly awarded fees based on Mr. Dennis' intransigence.

Specifically, in *Cruz*, the defendant's attorney consistently engaged in egregious conduct which included subpoenaing confidential records by representing himself to be the opposing party's attorney. The defendant's attorney also appeared to be complicit in securing a clandestine settlement agreement between the defendant and Ramirez, one of the petitioners, without the knowledge of Ramirez's attorney. The Cruz/Ramirez agreement was not negotiated in the presence of a professional mediator. The defendant's attorney was alleged to have encouraged Mr. Ramirez, a non-English speaking plaintiff, to cease all communication with Mr. Ramirez's attorney after signing the agreement and accepting a check. Defendant's attorney then failed to disclose the existence of the settlement agreement to the plaintiff's attorney for nearly five months, and finally made the disclosure five days before the trial date.

In the present case, Mr. Dennis pursued scheduling mediation through Fulcrum over a one-month period. CP 89. Mr. Dennis indicated it

was his belief Fulcrum would only communicate his requests directly to Megan Yates and indicated he wanted/expected a non-attorney mediation. CP 82, ln 17-20. Megan Yates has consistently asserted she was Mr. Dennis' domestic violence victim during their relationship, which makes it concerning that Mr. Dennis' efforts and stated intent was to induce her to mediate without her attorney. See, CP 102, ln 18. On Dec 11, 2018, counsel for Ms. Yates initiated contact with Mr. Dennis' attorney to confirm Mr. Dennis had the authority to engage in mediation without his attorney. CP 89. On Dec 19, 2018, Fulcrum sent out a letter scheduling mediation for Dec 31, 2018, making it clear both parties were permitted to be accompanied by their "representative" and noting that adding an additional person would require the agreement of both parties. CP 114-115.

The mediation process was facilitated by a professional mediator. CP 114-115. At the conclusion of the mediation, Mr. Dennis signed an agreement that specifically included his acknowledgement he had the opportunity to consult with his attorney before signing. CP 24. Both the agreement and the parenting plan listed the typed name and/or the legible signature of Ms. Yates' attorney when the mediator took them to Mr. Dennis. CP 24 and 38. Ms. Yates was not engaging in any type of subterfuge as to her attorney's presence or involvement. See, CP 24 and 38. Ms. Yates' attorney sent copies of the agreements to Mr. Stenzel on

Dec 31, 2018, and then promptly sent proposed final orders to Mr. Stenzel the following week. CP 104, ln 7-10.

There were no parallels between this case and the *Cruz* matter. Mr. Dennis' pleadings and argument were an inappropriately obstructionist tactic that further contributed toward making the proceedings unduly difficult and costly that further justified the trial court's award of attorney fees. See, *In re Marriage of Bobbitt*, 135 Wn.App. 8, 30, 144 P.3d 306 (2006); *In re Marriage of Foley*, 84 Wn.App. 839, 846, 930 P.2d 929 (1997).

## VII. ATTORNEY'S FEES

An appeal is frivolous and an award of attorney fees may be appropriate when there are no debatable issues on which reasonable minds can differ, when the appeal is so devoid of merit that there is no reasonable possibility of reversal, or when the appellant fails to address the basis of the lower court's decision. *Matheson v. Gregoire*,

139 Wn.App. 624, 639, 161 P.3d 486 (2007). Ms. Yates is entitled to fees on each of these bases. Ms. Yates should also be entitled to fees based on CR 11.

Here, Mr. Dennis argues on appeal that the trial court's order for the fees was arbitrary based on such inaccurate assertions as "the mother's counsel insist(ed) on not having the father's attorney at the mediation" and

“(the mother’s attorney) drafted the proposed parenting plan and had it delivered to the unrepresented party, and the mediator talked him into signing it.” Appellate Brief, p 10, and 11-12. On appeal Mr. Dennis continuously argues that the judge “ordered that the father pay the mother’s fees in the amount of \$1,600, without any explanation of why he ordered those fees other than the father’s action forced the mother **to file a motion for presentment ...**” Appellate Brief, p. 7 (emphasis added). Mr. Dennis’ argument and position are quite deceptive because the court clearly sanctioned him for forcing the mother to file a motion to enforce rather than a motion to present or a motion to clarify – either of which would likely have been appropriate.

Further, throughout his Appellate Brief, Mr. Dennis argues contradictory and incorrectly stated evidence (which is not the appellate standard; see, *Burrill*, 113 Wn.App. at 868), and the contradictory evidence he argues is not supported by the plain reading of his cited evidence.

Mr. Dennis’ appeal is so devoid of merit, there is no possibility of reversal. His argument is based on his misstatement of the facts contained in the record, which should warrant sanctions.

Mr. Dennis’ appeal fails to address or otherwise misstates the basis of the lower court's ruling. Ms. Yates’ request for attorney fees was based only on her assertion that Mr. Dennis’ opposition to enforcement of the

CR2A Stipulation was an act of intransigence. The appellate record demonstrates that Mr. Dennis' subterfuge permeated the entire litigation proceeding, but despite this, the trial court only imposed the requested terms related to the motion to enforce.

Ms. Yates requests attorney's fees pursuant to RAP 18.9(a) for having to respond to Mr. Dennis' frivolous appeal.

Signed this 10<sup>th</sup> day of March, 2020, by:

  
Karen Schweigert, WSBA No. 35642

**SCHWEIGERT LAW**

**March 10, 2020 - 12:29 PM**

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