

No. 79978-4

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SUPREME COURT
OF THE STATE OF WASHINGTON

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In re the Marriage of:
MICHAEL STEVEN KING,
Respondent,
v.
BRENDA LEONE KING,
Appellant,
and
STATE OF WASHINGTON,
Involved Party.

APPELLANT'S ANSWER TO BRIEF OF AMICUS CURIAE
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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE ATTORNEY GENERAL ERRS REGARDING PRIOR WASHINGTON DECISIONS ON THE RIGHT TO COUNSEL.....	3
A. The Question Before the Court Is Whether the Washington or Federal Constitution Provides Brenda with a Right to Counsel.....	3
B. <i>In re Halls</i> Did Not Decide the Question of the Constitutional Right to Counsel in Civil Cases	4
C. Counsel Is Mandated in Dependencies and Terminations Under the Washington Constitution, Not Merely by Statute.....	4
III. BRENDA IS ENTITLED TO COUNSEL UNDER ARTICLE I, § 10	7
IV. THE COURT WAS REQUIRED TO APPOINT COUNSEL FOR BRENDA BECAUSE OF THE COURT'S DUTY TO ADMINISTER JUSTICE IMPARTIALLY	10
V. BRENDA IS ENTITLED TO COUNSEL AS A MATTER OF DUE PROCESS.....	11
VI. BRENDA IS ENTITLED TO COUNSEL UNDER ARTICLE I, § 12 AND EQUAL PROTECTION	18
VII. CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page
Cases	
<i>Andersen v. King County</i> , 158 Wn.2d 1, 138 P.3d 963 (2006).....	14, 18, 19
<i>Chambers v. Baltimore & Ohio R.R. Co.</i> , 207 U.S. 142, 28 S. Ct. 34, 52 L. Ed. 143 (1907).....	19
<i>Corfield v. Coryell</i> , 6 F. Cas. 546, 4 Wash. C.C. 371 (C.C.E.D. Pa. 1823) (No. 3,230).....	19
<i>Doe v. State</i> , 216 Conn. 85, 579 A.2d 37 (1990).....	9
<i>Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake</i> , 150 Wn.2d 791, 83 P.3d 419 (2004).....	18
<i>Harper v. Va. State Bd. of Elections</i> , 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).....	20
<i>In re Custody of Halls</i> , 126 Wn. App. 599, 109 P.3d 15 (2005).....	4
<i>In re Dependency of Grove</i> , 127 Wn.2d 221, 897 P.2d 1252 (1995).....	5, 6, 12
<i>In re Lee</i> , 64 Okla. 310, 168 P. 53 (1917)	9
<i>In re Marriage of Ebbighausen</i> , 42 Wn. App. 99, 708 P.2d 1220 (1985).....	12
<i>In re Parentage of L.B.</i> , 155 Wn.2d 679, 122 P.3d 161 (2005).....	6
<i>In re Smiley</i> , 36 N.Y.2d 433, 330 N.E.2d 53, 369 N.Y.S.2d 87 (1975).....	9, 10
<i>In re Welfare of J.M.</i> , 130 Wn. App. 912, 125 P.3d 245 (2005).....	6
<i>In re Welfare of Luscier</i> , 84 Wn.2d 135, 524 P.2d 906 (1974).....	5, 6, 7
<i>In re Welfare of Myricks</i> , 85 Wn.2d 252, 533 P.2d 841 (1975).....	5, 6, 7

TABLE OF AUTHORITIES
(continued)

	Page
<i>Ino Ino, Inc. v. City of Bellevue</i> , 132 Wn.2d 103, 937 P.2d 154, 943 P.2d 1358 (1997)	16
<i>Iverson v. Marine Bancorporation</i> , 83 Wn.2d 163, 517 P.2d 197 (1973).....	11
<i>Kenny A. ex rel. Winn v. Perdue</i> , 356 F. Supp. 2d 1353 (N.D. Ga. 2005)	6
<i>Lassiter v. Dep't of Soc. Servs.</i> , 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).....	5, 6, 7, 17
<i>Miranda v. Sims</i> , 98 Wn. App. 898, 991 P.2d 681 (2000).....	8, 9
<i>Molloy v. Molloy</i> , 247 Mich. App. 348, 637 N.W.2d 803 (2001).....	13
<i>O'Connor v. Matzdorff</i> , 76 Wn.2d 589, 458 P.2d 154 (1969).....	11
<i>State v. Bartholomew</i> , 101 Wn.2d 631, 683 P.2d 1079 (1984).....	16
<i>State v. Clark</i> , 143 Wn.2d 731, 24 P.3d 1006 (2001)	16
<i>State v. Gunwall</i> , 106 Wn.2d 54, 720 P.2d 808 (1986).....	15, 16, 17, 18
<i>State v. Ortiz</i> , 119 Wn.2d 294, 831 P.2d 1060 (1992).....	16
<i>State v. Russell</i> , 125 Wn.2d 24, 882 P.2d 747 (1994).....	16
<i>State v. Templeton</i> , 148 Wn.2d 193, 59 P.3d 632 (2002).....	11
<i>State v. Vance</i> , 29 Wash. 435, 70 P. 34 (1902).....	19
<i>Troxel v. Granville</i> , 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).....	12
<i>United States v. Morrison</i> , 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000).....	18

TABLE OF AUTHORITIES
(continued)

	Page
Constitutional Provisions	
Const. art. I, § 1.....	17
Const. art. I, § 3.....	6, 15, 16, 17
Const. art. I, § 10.....	passim
Const. art. I, § 12.....	18, 19
Const. art. I, § 29.....	17
Const. art. I, § 32.....	17
Statutes	
Laws of 1977, 1st Ex. Sess., ch. 291, § 37.....	7
Mich. Comp. Laws § 722.27(1)(c).....	13
RCW 13.34.090	6, 7
Ch. 26.09 RCW.....	14
RCW 26.09.002	14
RCW 26.09.181	14
RCW 26.09.184	14
RCW 26.09.187	14

I. INTRODUCTION

Appellant Brenda King's opening brief explained at length the factual backdrop to the constitutional issues presented in this appeal. After a ten-year marriage during which Brenda was the stay-at-home mother and primary caregiver for the couple's three young children, a trial court transferred primary residential care for these children to Brenda's former husband, Respondent Michael King, and also granted him sole decision-making authority regarding the children. The trial court's ruling essentially reversed the roles the parents played in their children's lives.

The trial court issued these rulings as a result of a trial in which Michael was represented by capable counsel and Brenda, who left school in ninth grade, was pro se. Brenda had attempted for months prior to trial to secure legal representation through all methods available to her. Appellant's Br. at 4-5; *see also* Appellant's Reply Br. at 2, 4-5. But having no success, she went forward with the trial by herself and tried—but failed—to present her case effectively. She struggled with the rules of evidence, including such basic concepts as how to get relevant (and helpful) evidence admitted and how to get inadmissible (and prejudicial) evidence excluded. Appellant's Br. at 9-12. Brenda also struggled with how to handle the various complex issues in the case, such as her domestic violence allegations against Michael, psychological issues, and a Guardian

ad Litem (“GAL”) who became adverse to Brenda even though she did not interview everyone suggested by Brenda, did not prepare a final report, and relied on statements that were flatly contradicted by the supposed speakers. Appellant’s Br. at 5-7, 11-12. Brenda even struggled with the basic rules of courtroom decorum, as she tried to play lawyer, witness, and adversary party in the midst of highly emotional issues and testimony. Appellant’s Br. at 6.

The Attorney General essentially ignores these facts and jumps straight to the legal issues. Although the Attorney General should be credited for at least responding to all of Brenda’s constitutional arguments (which Michael and the State of Washington notably did not),¹ the thrust of the Attorney General’s position is that State-adjudicated, adversarial dissolution proceedings involving fundamental parenting rights do not fall under the “narrow circumstances” in which an indigent civil litigant has a constitutional right to counsel. Amicus Brief of Attorney General at 2. In other words, the Attorney General admits that there are some circumstances in which an indigent civil litigant has a constitutional right to counsel, but asserts this is simply not one of those cases.

¹ To the extent the Attorney General repeats arguments made by Michael and the State, Brenda does not repeat the responses set forth in her reply brief.

Brenda wholeheartedly disagrees. Indeed, as the trial court recognized, the “issues of parenting” at stake here are “no less serious to the litigants . . . than the potential loss of liberty that comes from criminal proceedings.” RP Feb. 27, 2006 at 2:21-3:2. A lawyer was necessary in order for the adjudication to be just; without one, the proceeding and the result that ensued were fundamentally unfair.

II. THE ATTORNEY GENERAL ERRS REGARDING PRIOR WASHINGTON DECISIONS ON THE RIGHT TO COUNSEL

A. The Question Before the Court Is Whether the Washington or Federal Constitution Provides Brenda with a Right to Counsel

Brenda agrees with the Attorney General that in civil cases in which there is no constitutional right to counsel, whether counsel should be provided at State expense is a legislative decision. *See* Amicus Brief of Attorney General at 2-3. But the precise question before the Court is whether either the Washington or federal constitution requires the State to provide Brenda an attorney at trial. Because this was an adversarial proceeding concerning an interest as critical as parenting and the parties were unevenly and unfairly matched, the answer to that question is yes.²

² The Attorney General’s invocation of the “American Rule” regarding fee-shifting between private parties, Amicus Brief of Attorney General at 2, is entirely beside the point. Brenda could not afford her own attorney, and thus she is not seeking to shift her own legal expenses.

B. *In re Halls* Did Not Decide the Question of the Constitutional Right to Counsel in Civil Cases

The Attorney General states that “to the extent Washington courts have addressed the question, it has been rejected,” but his sole citation from Washington for this statement is to *In re Custody of Halls*, 126 Wn. App. 599, 611 n.4, 109 P.3d 15 (2005). Amicus Brief of Attorney General at 15. The court in *In re Halls* did not reject a claimed right to counsel. It explained that the mother appealing a parenting plan modification “asks that we direct the trial court to appoint counsel to represent her on remand,” but then immediately concluded that “the [right to counsel] issue is not before us yet” because it appeared there was no longer a live dispute between the parties as to the children’s placement. 126 Wn. App. at 611. The footnote from *In re Halls* quoted by the Attorney General merely states, “No Washington case has held that a party to a child custody dispute is entitled to representation at State expense.” *Id.* at 611 n.4. But noting that no case has yet held in favor of Brenda’s claimed right is altogether different from a case rejecting the claimed right. *See* Appellant’s Reply Br. at 9 n.8.

C. Counsel Is Mandated in Dependencies and Terminations Under the Washington Constitution, Not Merely by Statute

The Attorney General suggests that counsel is provided to indigent parents in dependencies and terminations in Washington solely as a matter

of legislative grace, rather than as a requirement of the Washington Constitution. *See* Amicus Brief of Attorney General at 5, 13.³ His analysis is incorrect.

As the Attorney General notes, the right to counsel in terminations in Washington was first recognized in *In re Welfare of Luscier*, 84 Wn.2d 135, 524 P.2d 906 (1974). The Court based its decision on due process and did not distinguish between the federal and Washington constitutions. 84 Wn.2d at 138. A year later, the Court held that this right to counsel extends to dependencies as well as terminations. *In re Welfare of Myricks*, 85 Wn.2d 252, 254, 533 P.2d 841 (1975). In 1981, the United States Supreme Court decided *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981), and reached a different result than *In re Luscier* and *In re Myricks* in so far as the federal constitution is concerned. But since then, no Washington court has held that *In re Luscier* and *In re Myricks* were wrongly decided as a matter of Washington law, or are no longer valid. As recently as 1995, this Court reaffirmed that counsel is mandated in terminations and dependencies as a constitutional rule. *In re Dependency of Grove*, 127 Wn.2d 221, 237, 897

³ Confusingly, the Attorney General also suggests the opposite, i.e., that there is a constitutional right to counsel in termination proceedings. Amicus Brief of Attorney General at 3.

P.2d 1252 (1995). Citing *In re Luscier* and *In re Myricks*, the Court stated that the constitutional right to counsel in civil cases extends to cases “where a fundamental liberty interest, similar to the parent-child relationship, is at risk.” *Id.* at 237. Elsewhere in *In re Grove*, the Court similarly stated that notwithstanding the existence of a statute providing for appointed counsel in dependencies and terminations, “[w]e note, however, that this court has determined that an indigent parent in a dependency action has a constitutional right to counsel at trial at public expense.” *Id.* at 229 n.6 (citing *In re Myricks*, 85 Wn.2d at 255); *see also In re Welfare of J.M.*, 130 Wn. App. 912, 921, 125 P.3d 245 (2005) (right to counsel in terminations “derives from the due process guaranties of article I, section 3 of the Washington Constitution as well as the Fourteenth Amendment”).⁴ The Attorney General has cited no case holding otherwise.

The Attorney General misleads when he states that after *Lassiter*, the Legislature “subsequently resolved the question statutorily.” Amicus Brief of Attorney General at 13. RCW 13.34.090 was first enacted in

⁴ Rather than conclude that the Washington Constitution does not require counsel for parents in terminations and dependencies, the Court has recently alluded to the possibility that the State may be required to provide counsel for children in those proceedings as well. *In re Parentage of L.B.*, 155 Wn.2d 679, 712 n.29, 122 P.3d 161 (2005) (citing *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353, 1359-61 (N.D. Ga. 2005)), *cert. denied*, 126 S. Ct. 2021 (2006).

1977, three years after *In re Luscier* and many years before the United States Supreme Court's decision in *Lassiter*. See Laws of 1977, 1st Ex. Sess., ch. 291, § 37, codified at RCW 13.34.090. RCW 13.34.090 has continued in force with unrelated revisions since. RCW 13.34.090 merely codifies and standardizes the holdings of *In re Luscier* and *In re Myricks*; it does not create a purely statutory right that otherwise does not exist.⁵

III. BRENDA IS ENTITLED TO COUNSEL UNDER ARTICLE I, § 10

Unlike Michael or the State,⁶ the Attorney General attempts to directly address Brenda's argument that she is entitled to counsel under Article I, § 10 of the Washington Constitution. The Attorney General begins by acknowledging that Article I, § 10 "addresses the availability of judicial processes, such as discovery, to all parties." Amicus Brief of Attorney General at 16. In the Attorney General's view, however, the constitution is satisfied if these processes are "available" in name only, they need not be available in reality. "[J]udicial processes"—including

⁵ It is unimaginable that the Attorney General would argue, if the question were before the Court, that the Washington Constitution does not require counsel for indigent parents in terminations and dependencies, given his recognition that the consequences of the complete termination of parental rights are so "dramatic." Amicus Brief of Attorney General at 5.

⁶ Michael misconstrued Brenda's argument as being nothing more than an argument that Brenda was entitled to a lawyer under the common law. Respondent's Br. at 35-39. The State chose not to address the question at all.

discovery, but also the compulsory attendance of witnesses, the presentation of helpful evidence, the ability to keep inadmissible evidence from being admitted, and an impartial decision based on all relevant facts and evidence—were not available to Brenda in any meaningful way because she did not have a lawyer. *See* Appellant’s Br. at 5-13. The trial court agreed. RP Feb. 27, 2006 at 2:1-3 (Brenda was “not . . . well served because she was pro se”); RP Feb. 27, 2006 at 2:4-19 (agreeing that Brenda was unable to have evidence admitted that a lawyer could have brought in and that Brenda failed to make objections that the court would have sustained if made); CP 39 (Brenda “was at a significant disadvantage”); *see also* Appellant’s Br. at 14-15. The access to the courts required by Article I, § 10 must be *meaningful* access, which failed to occur given Brenda’s utter inability to put on a case in the trial below. *See* Appellant’s Br. at 22-27.

The Attorney General also relies on *Miranda v. Sims*, 98 Wn. App. 898, 991 P.2d 681 (2000), for his narrow view of the reach of Article I, § 10. *See* Amicus Brief of Attorney General at 16. But there are important differences between *Miranda* and the present case. *Miranda* was an inquest proceeding, in which family members of the decedent asserted a right to counsel. 98 Wn. App. at 899-900. The proceeding was not adversarial, and it was nonparties who desired counsel. Under the test

Brenda proposes, the nonparties in *Miranda* still would not be entitled to counsel. See Appellant's Br. at 25 (first factor of four-factor test is that the proceeding be adversarial). Lack of counsel in a proceeding that is not adversarial, particularly for a nonparty against whom no relief will be entered, does not raise the same concerns of fairness, accuracy of decision-making, and appearance of impropriety that are raised when a party in an adversarial proceeding lacks counsel.

The Attorney General also relies on several out-of-state cases in his Article I, § 10 argument. See Amicus Brief of Attorney General at 17. These cases are not dispositive of whether Brenda had a right to counsel at the trial below. Two of these cases did not involve a request for court-appointed counsel. *Doe v. State*, 216 Conn. 85, 579 A.2d 37 (1990), addressed whether attorneys' fees could be awarded against the State after a class of indigent women, *represented by legal aid lawyers*, successfully sued to enjoin the State from enforcing certain laws regarding payment for abortions from State funds. 579 A.2d at 38, 43. The court specifically noted that, "The plaintiffs in this case . . . do not maintain that they were entitled to court-appointed counsel." *Id.* at 43. *In re Lee*, 64 Okla. 310, 168 P. 53, 54 (1917), addressed a request for waiver of filing fees.

The third non-Washington case cited by the Attorney General, *In re Smiley*, 36 N.Y.2d 433, 330 N.E.2d 53, 369 N.Y.S.2d 87 (1975),

actually supports Brenda. This case did not address a state constitutional provision like Article I, § 10, but instead relied on federal analysis. The issue in *In re Smiley* was whether counsel is required for indigent wives in *all* dissolution proceedings, whether or not children are involved. 330 N.E.2d at 55. Though the New York court rejected that argument, in doing so, it stated that counsel would be “essential” in “complicated matrimonial litigation,” and noted that disputes over the custody of children would make a dissolution case complicated. *Id.* at 57; *see also* Appellant’s Reply Br. at 12.

IV. THE COURT WAS REQUIRED TO APPOINT COUNSEL FOR BRENDA BECAUSE OF THE COURT’S DUTY TO ADMINISTER JUSTICE IMPARTIALLY

The Attorney General briefly responds to Brenda’s argument regarding the judiciary’s duty to administer justice impartially, an argument ignored by Michael and the State. Amicus Brief of Attorney General at 17-18. The Attorney General suggests that this argument is nothing more than a reformulation of Brenda’s other arguments and a statement of policy that should be addressed to the Legislature. *Id.* at 17. Not so. The courts’ core judicial functions and powers are at the heart of our system of government. There is a long heritage of established principles regarding what fairness means in an adjudication. *See* Appellant’s Br. at 28-31. These principles are a source of guidance and

can inform the Court's analysis of the requirements of Article I, § 10, discussed above. In addition, the courts' duties are a source of judicial power in their own right. *See Iverson v. Marine Bancorporation*, 83 Wn.2d 163, 167, 517 P.2d 197 (1973) (waiving filing fees because of court's duties to provide "fair and impartial administration of justice" and "to see that justice is done in the cases that come before the court"); *O'Connor v. Matzdorff*, 76 Wn.2d 589, 600, 458 P.2d 154 (1969) (waiving filing fees because of court's duty to see that justice is done); *see also State v. Templeton*, 148 Wn.2d 193, 212, 217-18, 59 P.3d 632 (2002) (holding that court rule requiring the State to give notice of the right to counsel in DUI investigatory detentions prior to the time when required by either the Washington or federal constitution was proper exercise of Court's inherent power to enact procedural rules).

V. BRENDA IS ENTITLED TO COUNSEL AS A MATTER OF DUE PROCESS

The Attorney General analyzes due process only in so far as it applies to Brenda's rights with respect to parenting her children. The Attorney General does not directly address Brenda's argument that her fundamental right of access to the courts is a separate right also protected by due process and that it requires the appointment of counsel. *See Appellant's Br.* at 32, 35, 38-39; *Appellant's Reply Br.* at 16-17.

Like Michael and the State, the Attorney General argues that terminations and parenting plans entered after dissolution trials are so fundamentally different from each other that the legal analysis applicable to the former is entirely inapplicable to the latter. Amicus Brief of Attorney General at 3 & n.2, 4-6, 8. But a parent has a liberty interest in the development of the parent-child relationship, not just its bare existence. *See Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). Although terminations undeniably work a more extreme deprivation, parenting decisions in dissolution cases nonetheless place the parent at risk of losing a substantial part or nearly all of the care, custody, and companionship of the child and, accordingly, parenting decisions are subject to strict due process constraints. *See In re Grove*, 127 Wn.2d at 237 (right to counsel extends to cases “where a fundamental liberty interest, similar to the parent-child relationship, is *at risk*”) (emphasis added); *In re Marriage of Ebbighausen*, 42 Wn. App. 99, 103, 708 P.2d 1220 (1985) (Washington and federal due process prevented court from determining child’s placement in dissolution action on basis of statements of lawyers in chambers outside the presence of the parents, rather than on evidence admitted in trial on the merits); Appellant’s Reply Br. at 17-18. As a Michigan court has explained:

We agree that custody decisions and termination of parental rights are different situations, but find that both necessitate due process of law. While custody decisions are modifiable there is an important liberty interest in the development of the parent-child relationship. The loss of a parent's presence and contribution at each stage of a child's development cannot be compensated for after a modification of custody. Additionally, the standard of proof to be met in order to change an "established custodial environment" prevents change of custody except in the most compelling cases.

Molloy v. Molloy, 247 Mich. App. 348, 637 N.W.2d 803, 806 (2001) (quoting Mich. Comp. Laws § 722.27(1)(c)) (citation and footnote omitted), *aff'd in part and vacated in nonrelevant part*, 466 Mich. 852, 643 N.W.2d 574 (2002).

Regarding the State's interests, the Attorney General argues that the State has a strong interest in not expending funds to pay for counsel in actions, like dissolutions, that are commenced by private parties because the State has no ability to control whether or not the actions are brought and thus it cannot control the amount of funds it will have to expend on counsel. Amicus Brief of Attorney General at 8-9. Regardless of the State's financial interest, it is overly simplistic to view a marital dissolution as a purely private affair. Civil marriage is an institution created, maintained, and controlled by the State to serve State interests.

Andersen v. King County, 158 Wn.2d 1, 86-87, 138 P.3d 963 (2006). Just as the State controls access to marriage, it also controls dissolution, division of property, and placement of children after a marriage ends. *See* Ch. 26.09 RCW. Unlike another contract between private parties, spouses are powerless to end a marriage and resolve contested issues, including parenting issues, on their own. Even if divorcing spouses agree in every respect, their stipulations must be approved and entered by a court to have effect, and the court still must independently agree that the best interests of the child will be served by any plan proposed jointly by the parties. *See* RCW 26.09.002, .181, .184, .187.

That said, Brenda and her pro bono counsel are mindful of the potential cost to the State if the constitutional right of an indigent litigant like Brenda is recognized by the Court. But the Attorney General does not respond to—and therefore does not rebut—Brenda’s argument that the appointment of counsel in a case such as hers quite possibly would have *saved* the State money, due to efficiency and time saved. *See* Appellant’s Br. at 34; Appellant’s Reply Br. at 19. More broadly, neither the potential cost in some cases, nor the potential efficiencies and thus saving in others, should alone determine the outcome of the constitutional analysis. And, as emphasized in the opening and reply briefs, Brenda is not advocating for the provision of counsel in all dissolution cases raising parenting

issues. Brenda tried but failed to find private counsel, this case was complex, and the parties were unevenly matched. It is only in such a case that counsel is constitutionally required. *See* Appellant's Br. at 24; Appellant's Reply Br. at 24-25.

In addition to those safeguards cited by Michael and the State, the Attorney General cites a handful of additional supposed safeguards to protect against an erroneous result in the absence of counsel. Amicus Brief of Attorney General at 9-10; *see also* Appellant's Reply Br. at 19-20 (responding to arguments of Michael and the State). Many of these procedures were followed at least in letter in the trial below, but as the trial court concluded, CP 39-40; RP Feb. 27, 2006 at 2:1-3:2, Brenda was entirely disadvantaged and was unable to present her case effectively or adequately.

As to Brenda's argument that the guarantee of due process under Article I, § 3 of the Washington Constitution is broader than the federal constitution, the Attorney General's analysis of the six factors from *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), comes up short. The Attorney General states that it has "already been decided" that Article I, § 3 is no broader than the federal Due Process Clause. Amicus Brief of Attorney General at 14. In fact, Article I, § 3 has been interpreted more broadly than the federal Due Process Clause. *See supra* Part II.C;

see also State v. Bartholomew, 101 Wn.2d 631, 641, 683 P.2d 1079 (1984) (“reliability of evidence standard embodied in the due process clause of our state constitution” provides broader protection than federal due process); *State v. Clark*, 143 Wn.2d 731, 778-79, 24 P.3d 1006 (2001) (reaffirming this holding of *Bartholomew*). Further, the case cited by the Attorney General did not involve the right to counsel in civil cases. *See State v. Ortiz*, 119 Wn.2d 294, 302-04, 831 P.2d 1060 (1992). As noted in the opening brief, *see* Appellant’s Br. at 35-37 n.14, cases performing *Gunwall* analyses of Article I, § 3 in other contexts are not applicable here, because “when the court rejects an expansion of rights under a particular state constitutional provision [under *Gunwall*] in one context, it does not necessarily foreclose such an interpretation in another context.” *State v. Russell*, 125 Wn.2d 24, 58, 882 P.2d 747 (1994); *see also Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 115, 937 P.2d 154, 943 P.2d 1358 (1997) (explaining that *Gunwall* analyses “must focus on the specific context in which the state constitutional challenge is raised”).

On the second *Gunwall* factor, differences between the federal and State constitutions, the Attorney General asserts incorrectly that each constitutional provision must be considered in a vacuum. Amicus Brief of Attorney General at 14 n.9. As the Court explained in setting out the second factor in *Gunwall*: “Even where parallel provisions of the two

constitutions do not have meaningful differences, *other relevant provisions of the state constitution may require that the state constitution be interpreted differently.*” 106 Wn.2d at 61 (emphasis added). Thus, it is entirely proper for the Court to consider Article I, § 3 in light of Article I, §§ 1, 10, 29, and 32, as Brenda argued in the opening brief. Appellant’s Br. at 36. On the third and fourth *Gunwall* factors, common law history and preexisting state law, Brenda has explained the scope and nature of the common law at the time of incorporation into Washington law. Appellant’s Br. at 21; Appellant’s Reply Br. at 14-15 & n.12.

Finally, on the sixth *Gunwall* factor, whether the matter is of national or local concern, the Attorney General reasons that a matter is only local if it raises “uniquely local due process concerns.” Amicus Brief of Attorney General at 15. This reasoning turns the final *Gunwall* factor on its head. In *Gunwall*, the Court asked, “[i]s the subject matter local in character, or does there appear to be a need for national uniformity? The former may be more appropriately addressed by resorting to the state constitution.” 106 Wn.2d at 62 (footnote omitted). By inviting States to reach different conclusions as a matter of state law, the United States Supreme Court indicated in *Lassiter* that there is no need for national uniformity regarding the provision of counsel in family law matters. 452 U.S. at 33-34. Family law is a quintessential matter of local, not national,

concern; there is certainly no national uniformity governing child custody. See *United States v. Morrison*, 529 U.S. 598, 615, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000) (family law is an “area[] of traditional state regulation”).

VI. BRENDA IS ENTITLED TO COUNSEL UNDER ARTICLE I, § 12 AND EQUAL PROTECTION

The Attorney General states that Washington Constitution Article I, § 12 differs from the federal Equal Protection Clause “only when a state law affords a special privilege or immunity to a minority to the detriment of the majority.” Amicus Brief of Attorney General at 18.⁷ That was the test advanced by the three-justice plurality opinion in *Andersen*, 158 Wn.2d at 9 (Madsen, J., announcing the judgment), but it has never been adopted by a majority of the Court. The test recognized by at least four justices in *Andersen* is that Article I, § 12 is violated when the State grants a citizen, class, or corporation—whether or not that person or entity is a minority, or a disfavored one—a privilege and that privilege is not available equally to all. *Id.* at 59 (J.M. Johnson, J., concurring in

⁷ The Attorney General cites *Grant County Fire Protection District No. 5 v. City of Moses Lake* (“*Grant County IF*”), 150 Wn.2d 791, 807-08, 83 P.3d 419 (2004), as supporting the test he proposes. The pages he cites are a part of the Court’s *Gunwall* analysis and they do not contain any statement or test like the one he advances. In *Grant County II*, the Court concluded, “[f]or a violation of article I, section 12 to occur, the law, or its application, must confer a privilege to a class of citizens.” 150 Wn.2d at 812.

judgment only, joined by Sanders, J.), 121 (Chambers, J., concurring in dissent, joined by Owens, J.).

The Attorney General argues that the State grants no privilege to the represented spouse in a contested parenting action such as this one. Amicus Brief of Attorney General at 19. Again, the Attorney General ignores precedent. Washington case law recognizes that the ability to pursue a claim in court is a “privilege.” See *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902) (stating that the “usual remedies . . . to enforce . . . personal rights” are a “privilege”); see also *Andersen*, 158 Wn.2d at 60 (J.M. Johnson, J., concurring in judgment only) (stating that “privileges” include the right to “institute and maintain actions of any kind in the courts of the state”) (quoting *Corfield v. Coryell*, 6 F. Cas. 546, 552, 4 Wash. C.C. 371 (C.C.E.D. Pa. 1823) (No. 3,230)); *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148, 28 S. Ct. 34, 52 L. Ed. 143 (1907) (“The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . .”). When only one party to an action has the ability to participate in any meaningful way, that party has been granted a privilege within the meaning of Article I, § 12.

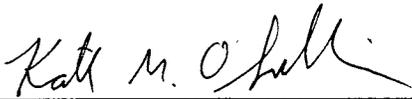
In addition, even if federal analysis comes into play, Brenda is entitled to counsel for the reasons stated in the opening and reply briefs. *See* Appellant's Br. at 43-44; Appellant's Reply Br. at 22-23. Notably, there are *two* fundamental rights at issue here, Brenda's fundamental parenting rights and her fundamental right of access to the courts, and an effect on either fundamental right triggers strict scrutiny under federal equal protection analysis. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966).

VII. CONCLUSION

Appellant Brenda King lost decision-making power over and primary residential care of her children based on a record that did not contain helpful and available evidence but did contain inadmissible and prejudicial evidence. Only one party was provided meaningful access to the court, resulting in a trial that was unconstitutional and unjust. The Court should reverse and remand for a new trial with instructions for the Superior Court to provide counsel for Brenda King.

DATED: April 16, 2007

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CERTIFICATE OF SERVICE

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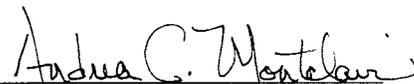
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Seattle, Washington this 16th day of April, 2007.


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