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SUPREME COURT
STATE OF WASHINGTON
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No. 90072-8

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Custody of:
MASON WADDLE,

GREG MINIUM and LINDA
MINIUM,

Petitioners,

and

PATTI SHMILENKO,

Respondent,

JOHN SHMILENKO,

Respondent,

PATTI SHMILENKO,

Respondent,

and

GREG and LINDA MINIUM,

Petitioners.

RESPONSE TO
JOHN SHMILENKO'S
MOTION TO ENLARGE
TIME FOR RESPONSE TO
FINANCIAL DECLARATION
AND
REPLY IN SUPPORT OF
MOTION TO STRIKE

A. Relief Requested.

Petitioners Greg and Linda Minium ask this Court to deny respondent John Shmilenko's motion to enlarge time to respond to



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the Miniums' timely financial declaration, and ask this Court to strike his untimely answer. The time for respondent's motion to enlarge time to file his answer to the Miniums' financial declaration was *before* it was due, not after, and particularly not in response to the Miniums' motion to strike. The respondent's motion comes too late and his answer should be stricken.

B. Grounds for Relief.

This Court should strike respondent's answer because it does not challenge any of the substantive information set forth in the Miniums' financial declaration. Instead, respondent uses the opportunity to chastise the Miniums for their claimed behavior towards the Shmilenkos, which is itself a direct product of being forced to respond in court to what would otherwise be private family disputes. This is particularly true when the Miniums are constantly confronted with the false criticism that they are somehow trying to cut M.W. off from his "father's side of his heritage." (Response 8) This is wholly untrue, as evidenced by the fact that the Miniums have a good relationship with M.W.'s biological paternal grandfather, who has not engaged in litigation with the Miniums and reported to the GAL that he regularly sees M.W. in visits facilitated by the Miniums. (*See* CP 260: "Rich is

[M.W.]’s biological paternal grandfather. He reported having a relationship with [M.W.] since he was born. He reported seeing [M.W.] about once per month now – mostly when the Miniums bring him to Long Beach (where Rich lives), but sometimes when he visits the Minium’s home in Longview.”)

If the Miniums do not “respond with warmth” or “respond graciously” towards the Shmilenkos, it is because the Shmilenkos have kept the Miniums in court to micromanage how they are raising of M.W. The warmth of the parties’ relationship is in any event not a basis to deny the Miniums’ request for attorney fees under either RCW 26.10.080 or as a matter of equity under the *de facto* parentage doctrine. *See, e.g., Custody of Numm*, 103 Wn. App. 871, 887-88, 14 P.3d 175 (2000) (acknowledging that a parent expressing dislike of the side of the family that brought a custody petition and avoiding old family friends that support the other side in the custody litigation does not make the parent unfit, and awarding attorney fees), *abrogated for other reasons by Custody of Shields*, 157 Wn. 2d 126, 136 P.3d 117 (2006).

This Court should also disregard respondent’s claim in his response to the Miniums’ motion that an award of attorney fees is not warranted based on the Miniums’ alleged intransigence. The

Miniums have not been intransigent, were never found intransigent in the trial court, and respondent never raised intransigence as a basis to deny attorney fees in his response brief. (See Resp. Br. 22-24) Instead, he argued that an award of attorney fees was not warranted because there was “no evidence in the record demonstrating relative need of the parties,” and claimed that RCW 26.10.080 did not apply in this case. But as is required by RAP 18.1(c), the Miniums timely filed a financial declaration in this Court to support their request for attorney fees based on need. The respondent’s failure to file his own financial declaration is an admission that he indeed has the ability to pay the Miniums’ attorney fees. *Marriage of Hamilton*, 120 Wn. App. 147, 158, 84 P.3d 259 (2004).

Further, the Miniums did not “give[] up on their statutory claim for fees” under RCW 26.10.080. (Response 4) As addressed in their opening brief, an award of attorney fees under RCW 26.10.080 is wholly appropriate as the respondent’s action for third party visitation arose out of his petition for third party custody under the existing RCW ch. 26.10 action. (CP 67-77, 156-61) As an alternative basis and in response to the respondent’s assertion in his response brief that an award of statutory fees was not warranted

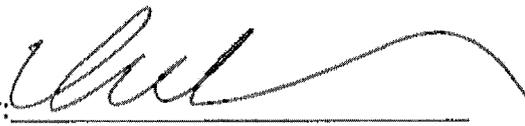
because his request for visitation is premised on the *de facto* parentage doctrine, the Miniums also asked the Court to exercise its “equitable authority” under the *de facto* parent doctrine to award attorney fees to them for having to defend their right to raise M.W. without court interference at the behest of a paternal step-grandfather who had the opportunity to seek visitation rights with his wife when the order appointing the Miniums was entered, but chose not to do so. (Reply Br. 13)

C. Conclusion.

This Court should deny respondent’s motion to enlarge the time to file his answer to the Miniums’ timely financial declaration, strike his answer, and award attorney fees to the Miniums.

DATED this 16th day of July, 2015.

SMITH GOODFRIEND, P.S.

By: 

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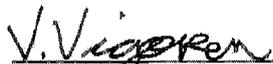
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 16, 2015, I arranged for service of the foregoing Response to John Shmilenko's Motion to Enlarge Time for Response to Financial Declaration and Reply in Support of Motion to Strike, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 16th day of July, 2015.



Victoria K. Vigoren

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Cc: Catherine Smith; Valerie Villacin; 'noelle@noellemclean.com'; 'Dana Walker'; 'dahl@walstead.com'; 'mjandersen@walstead.com'; 'Karen L Murphy'; 'Heidi Thomas'
Subject: RE: In re the Custody of Waddle, Cause No. 90072-8

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From: Amanda Norman [mailto:amanda@washingtonappeals.com]
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Subject: In re the Custody of Waddle, Cause No. 90072-8

Attached for filing in pdf format is a Response to John Shmilenko's Motion to Enlarge Time for Response to Financial Declaration and Reply in Support of Motion to Strike, in the *Custody of Waddle*, Cause No. 90072-8. The attorney filing these documents is Valerie A. Villacin, WSBA No. 34515, email address: valerie@washingtonappeals.com.

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