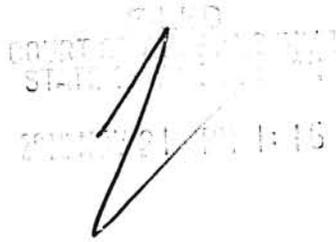


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No. 686682-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of

BALBIRPAL GREWAL
Respondent

and

HARJINDER GREWAL
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

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I. INTRODUCTION

As part of his abusive litigation tactics in this marital dissolution, Harjinder filed a petition to disestablish parentage. He offered no evidence to support the petition. He refused to pay the costs of the guardian ad litem, as ordered by the court, so none was ever engaged. He now attempts to assert the child's rights. This effort is frivolous, since Harjinder has no standing and invited the error (if there was error). In any case, the child has not been deprived of any right, since the child remains free to challenge Harjinder's parentage. Simply, there is no issue here, but only a continuation of Harjinder's abusive use of conflict.

II. RESTATEMENT OF ISSUES

1. The trial court did not abuse its discretion when it required Harjinder to pay the costs of a guardian ad litem.

2. The trial court did not err when it dismissed the baseless parentage action after Harjinder failed to comply with the court's order to pay the costs of a guardian ad litem.

3. Harjinder cannot assert the child's rights because the child has not been deprived of any rights and because he lacks standing; invited the error, if any; and error, if any, is harmless.

5. Harjinder should pay Balbirpal's fees on appeal.

III. RESTATEMENT OF THE CASE¹

This marriage ended after approximately ten years when Harjinder, without notice and after having cleaned out most of the marital assets, vacated the marital residence, leaving his wife and three children to fend for themselves. RP 74-83, 100-102.² For several years before his departure, he had perpetrated domestic violence against Balbirpal. RP 41-45, 84-86. Harjinder left Balbirpal without anyone to care for the children while she worked her night-shift job, so she missed work until her mother could come from California. RP 75, 99.

Because Harjinder had taken a loan against the house (using a line of credit to its maximum), the house was under water and could not be sold. RP 97-99. Yet, Balbirpal, who earns a salary of \$1000 a month, could not pay the mortgage, and the house went into foreclosure. *Id.* Harjinder had taken for himself all the family assets: he removed Balbirpal's gold (given to her upon marriage) from their safe deposit box, removed the couple's safe from the house (along with its contents of cash, etc.), and took the two vehicles of any value, including the only vehicle that

¹ A chronology of events is included in the appendix as a table.

² The verbatim report of the trial proceedings will be referred to simply as "RP." The VRP of other proceedings will include the date of the proceeding.

accommodated the children's three car seats. RP 75-83, 101-103; RP (03/13/12) 9-11. He immediately transferred ownership of his business (an automotive repair shop) to his brother, who is an x-ray technician. RP 72-73; CP 264 (finding he concealed assets).

Balbirpal sought a divorce, filing in March 2011, because she needed child support. RP 86. She also sought a domestic violence protection order, which the court granted. RP 85-86. Harjinder responded with abusive litigation, filing one meritless motion or petition after another, as the trial court found. CP 258-259. A commissioner found Harjinder engaged in an abusive use of conflict, as did the trial court after another of Harjinder's improper motions. Supp. CP ____ (sub 39: 08/10/11 Order). Repeatedly, in hearings, Balbirpal's counsel reprised this history, as did the court commissioner at one point and the trial court in findings at the end of the dissolution trial. See, e.g., RP (8/10/11) 6 (commissioner accusing Harjinder of "forum-shopping"); RP (11/17/11) 6-7 (counsel noting Balbirpal had been in court ten times in nine months); RP (12/29/11) 5-6 (counsel noting the burden on Balbirpal of the multiple filings); CP 258-259 (reprising motions and failures to abide by court orders). Indeed, by the time this matter reached

the trial judge, it was apparent that mediation would be futile, so the court waived the requirement. RP (01/06/12) 8.

Among the abusive actions filed by Harjinder was a petition to disestablish parentage, in which he purported to challenge that he was the father to the couple's youngest child. CP 1-8. He would have challenged parentage of all his children, and seemed to at various times, but an action involving the older two children was time-barred. CP 262; RP 4-5 (11/17/11); RP 12; RP (03/13/12) 11.

In his petition, Harjinder alleged no facts and presented no evidence to support disestablishment. CP 1-8, 263 (court finding no evidence); RP 204-206; RP (03/13/12) 12 (court finding no evidence presented). Rather, in his first court appearance, he claimed the action was aimed, not at disproving parentage, but at proving the children were his children, accusing Balbirpal of saying otherwise "in the community." RP (11/17/11) 6. Balbirpal consistently denied ever suggesting to anyone that the children were not Harjinder's children. See, e.g., RP 89-90, 107. In fact, she testified that Harjinder's request for genetic testing was shaming her. RP 106-107. Harjinder argued he had a "right" to know the "truth" and he refused to pay child support otherwise. RP

12, 207; RP (03/29/12) 6, 11. He compared genetic testing to showing identification to buy liquor. RP 211.

At the same time as Harjinder was seeking genetic testing, he vigorously demanded more time with his children and professed to love them. See, e.g., Exhibit 26; RP 210. Balbirpal testified that Harjinder appeared to love the children. RP 90-94. He resisted her request to relocate to California (which finances may have made imperative) because he did not want to be separated from the children. RP (03/29/12) 8, 16. As the commissioner noted, Harjinder's petition had "awful strange timing" and was in "bad faith." RP (11/17/11) 7. Nevertheless, the commissioner ordered appointment of a guardian ad litem and required Harjinder to pay the costs, as well as to pay terms to Balbirpal. CP 18-44. Harjinder did neither. Instead, he kept asking for genetic testing. CP 84-122.

He said he did not have the money for a guardian ad litem, but the evidence overwhelmingly indicated otherwise. Indeed, the court found he was concealing assets and had access to plentiful cash. CP 264. The commissioner again denied the request, and ordered that he could renew it only once he had complied with all the court's orders. CP 128-129; RP (12/29/11) 6-7. Nevertheless, without paying the terms ordered by the commissioner and without

paying for the guardian ad litem, Harjinder raised the matter at trial. RP 12, 14, 22-23. He even resisted the court's order that he sign a quitclaim deed for the house, to aid Balbirpal's effort to save it from foreclosure, telling the court he would only sign if the court ordered genetic testing. RP 210-214.

At trial, the court analyzed the parentage petition under the statutory factors, but noted the absence of a guardian ad litem was due to the father's failure to engage one, despite his having up to \$60,000 available to him (from the line of credit) and multiple friends willing and able to loan him cash. RP (03/13/12) 14; RP 135, 164-167, 170-172. At the presentation of the court's orders, Harjinder indicated his intent to file another motion for genetic testing. RP (03/29/12) 17. Subsequently, he filed a motion to vacate. CP 281-282. He then filed a notice of appeal from nearly all the trial court's orders. CP 299-391. On appeal, he raises only the issues related to genetic testing. He does not challenge any of the court's factual findings.

IV. ARGUMENT IN RESPONSE TO APPEAL

A. THIS APPEAL CONTINUES HARJINDER'S ABUSIVE USE OF CONFLICT.

This case is a procedural mess, which is precisely what Harjinder sought to achieve through his multiple, baseless filings.

Before attempting to untangle this mess, Balbirpal observes that Harjinder builds his appeal argument on a foundation rotten at its very core, namely, the petition to disestablish parentage. In other words, Harjinder's attempt to assert the child's right to be represented in a parentage action is premised on the existence of a bona fide parentage action. That premise is false.

As recounted above, Harjinder has at every step schemed to deprive his family of their rights. He perpetrated domestic violence, assaulting and terrifying Balbirpal over the past several years. He breached his marital fiduciary duty and his family support obligations by taking the family safe, the contents of the family safe deposit box, the family cars, and the remaining equity in the family home. He left his wife and children alone without any means of support or even any way for the wife to work her night shift, since he left her without childcare. He has played a shell game with his business, seeking to avoid a fair assessment of his income and a fair distribution of this marital asset. He abused the litigation process, hailing Balbirpal and her counsel into court time and again for frivolous actions, wasting her time, her counsel's time, and the court's time. He was found by one commissioner to have engaged in the abusive use of conflict. Supp. CP ____ (sub 39); RP

(08/10/11) 7. After trial, a judge likewise found an abusive use of conflict. CP 259. Another commissioner, regarding the parentage action, found Harjinder was “intentionally abusing the legal process.” CP 128. These findings are unchallenged. He refuses to pay his child support or the terms assessed against him by the court, to the tune of more than \$13,000, and generally defies the court’s orders. CP 258-259. He claims persistently to be without funds, yet, by his own admission, he withdrew \$60,000 from a marital line of credit, sold two cars for \$20,000, took a trip to India, works one or two jobs, and has friends ready and willing to loan him money on request. CP 258. In short, the issues Harjinder attempts to raise on appeal should be viewed against this backdrop of gross and pervasive misconduct.

B. THE STANDARD OF REVIEW.

Of the issues Harjinder argues, the only one he can raise is whether the court could require him to pay for the guardian ad litem and, whether, when Harjinder did not comply with this order of the court, the court could deny his motion for genetic testing. Br. Appellant, at 2 (Issue #3). The standard of review for this issue is abuse of discretion. *In re Marriage of Bobbitt*, 135 Wn. App. 8, 31, 144 P.3d 306 (2006).

While the Uniform Parentage Act does not specify who is to pay for the guardian, analogous statutes permit the court to “order either or both parents” to pay this expense and provides for payment at public expense upon proof of indigency. RCW 26.12.175(d). Harjinder never objected to the court’s requirement that he pay for the G.A.L. and he raises no challenge to that order on appeal. (Harjinder did not even seek revision of the court commissioner’s order. See, e.g., RP (12/29/11) 8.) Indeed, he was opposed to appointment of a G.A.L. from inception of the case. CP 6.

The court properly ordered Harjinder to pay for the G.A.L. Because he did not, and did not prove that he could not, he himself caused dismissal of his frivolous petition to disestablish parentage.

As discussed below, the other issues are not ones Harjinder can raise.

C. HARJINDER HAS NO STANDING TO RAISE THE CHILD’S RIGHT.

Harjinder correctly anticipates the problems he has with standing. Br. Appellant, at 7-9. More than that, Harjinder has a problem claiming violations to the child’s interests when, in fact, the child has “not been deprived of any legal rights.” *In re Parentage of C.S.*, 134 Wn. App. 141, 152, 139 P.3d 366 (2006). The child is not

a party to these proceedings and is not, therefore, barred from asserting his rights to a parentage determination in the future. RCW 26.26.505; RCW 26.26.630(2). This fact flatly undermines Harjinder's effort to hijack the child's interests for his own purposes, which he more candidly admitted in the trial court had to do with his "rights." See, e.g., RP 12, 207. Simply, not only does Harjinder lack standing to assert the statutory and constitutional rights of the child, there is no need for him to do so, since the child remains possessed of his rights.

D. HARJINDER SHOULD BE BARRED FROM RAISING THE G.A.L. ISSUE BY THE DOCTRINE OF INVITED ERROR.

Harjinder also correctly anticipates that he has a problem with invited error. Br. Appellant, at 14-15. A court "will deem an error waived if the party asserting such error materially contributed thereto." *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1996). Under the doctrine of invited error, a party "cannot set up an error at trial and then complain of it on appeal." *Id.* The doctrine applies "when a party takes an affirmative and voluntary action that induces the trial court" to make the error challenged on appeal. *Casper v. Esteb Enterprises*, 119 Wn. App. 759, 771, 82 P.3d 1223 (2004).

Assuming *arguendo*, that it was error for the trial judge to proceed to analyze Harjinder's baseless parentage claim at trial, it certainly was an error Harjinder invited. That is, Harjinder is wholly responsible for the fact that there was no guardian ad litem. He failed to comply with the court's order to engage the services of the guardian ad litem. He complained he did not have the money to pay for the guardian ad litem, yet, as the court found, the problem was not that Harjinder lacked money, but that he was concealing it. CP 264. Having deliberately obstructed the appointment of a guardian ad litem, he cannot now complain, on behalf of the son he wishes to dispossess, that there was no guardian ad litem. *In re Estate of Stevens*, 94 Wn. App. 20, 30-31, 971 P.2d 58 (1999) (party may not direct court to incorrect legal standard, then ask for relief on appeal based on that error).

Harjinder argues the court should not apply this doctrine here because the child would be penalized for Harjinder's conduct. Br. Appellant, at 15. The only merit to this argument has to do with the merits of having Harjinder as one's father. That, however, is not the argument Harjinder makes. Rather, he relies on a case from Wisconsin, where, on far different facts, the court chose not to

invoke the doctrine. *Id.*, citing *In re Support of C.L.F.*, 298 Wis.2d 333, 344, 727 N.W.2d 334 (2007).

In the first place, in apparent contrast to Wisconsin, Washington “strictly applies the doctrine of invited error,” even if the error is constitutional. *State v. Boyd*, 109 Wn. App. 244, 249, 34 P.3d 912 (2001). There is every reason this strict approach should apply here.

Second, the facts of this case differ radically from *C.L.F.*, which seemed to involve a bona fide claim. In Wisconsin, appointment of a guardian ad litem is required whenever physical custody is contested. 727 N.W.2d at 336. In *C.L.F.*, a G.A.L. was appointed, but withdrew just before the hearing because of a medical emergency. The hearing involved, among other things, where the child would go to school, and the court, with the parties’ assent, all feeling the pressures of time, proceeded without the G.A.L. Later, the father argued it violated the statute to do so. The appellate court chose not to apply the invited error doctrine because neither parent could waive the child’s statutory right to have his best interests independently represented and advocated for in the hearing. *Id.*, at 340.

In *C.L.F.*, all of the parties and the court were behaving reasonably and with apparent concern for the child when they agreed to proceed without the G.A.L. (i.e., the alleged invited error). By contrast, here, Harjinder himself impeded the participation of the G.A.L. and was otherwise guilty of bad faith and abusive use of conflict. The underlying action was not legitimate. Harjinder's participation was designed to obstruct at every stage. Taken to its logical conclusion, Harjinder could permanently forestall any action on his frivolous petition by simply refusing to pay for the G.A.L. The invited error doctrine is put to good use in this case.

Finally, in any case, unlike in *C.L.F.*, where the child's best interests were adjudicated without the guardian ad litem, the child's rights in this case remain unaffected by Harjinder's baseless petition. The child has lost nothing.

E. ANY ERROR WAS HARMLESS ERROR.

A byproduct of Harjinder's litigation tactics is confusion and the cost to Balbirpal and the court of sorting out the messes he makes is high. Here, after he filed a meritless petition to disestablish parentage, and after he filed multiple motions for genetic testing, and after he failed to comply with the court's orders to engage a guardian ad litem, the court prohibited Harjinder from

renewing the request until he did comply. CP 128. As discussed above, making Harjinder pay for the G.A.L. was well within the court's authority, an authority Harjinder does not challenge. Moreover, courts have the authority and the duty to administer justice in an orderly and efficient manner. *In re Marriage of Robertson*, 113 Wn. App. 711, 714, 54 P.3d 708 (2002) (trial court has inherent powers to do 'all that is reasonably necessary' to efficiently administer justice). Not only did it make sense for the court to place on Harjinder the burden of moving the parentage action forward, the court has the authority to do precisely that.

After Harjinder waived his right to revise the commissioner's order, it became binding on him. *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007). Consequently, he was barred from renewing his request at trial. Because the court could well have refused to hear this matter, and dismissed it summarily at that point, this Court should affirm, since this Court may affirm on any grounds supported by the record. *LaMon v. Butler*, 112 Wn.2d 193, 200-201, 770 P.2d 1027 (1989). Among other things, this principle protects against wasting judicial resources. *Redding v. Virginia Mason Medical Center*, 75 Wn. App.

424, 426, 878 P.2d 483 (1994). Here, the mother and the children would also benefit from this protection.

Perhaps because the commissioner's order had been lost in the flurry of Harjinder's paperwork, the court proceeded to hear the parentage action on the merits, noting that the absence of a G.A.L. was Harjinder's doing. CP 262-264; RP (03/13/12) 14. If this was error, it is most certainly harmless, meaning it "is trivial, formal, or merely academic and ... in no way affects the outcome of the case." *State v. Gonzales*, 90 Wn. App. 852, 855, 954 P.2d 360 (1998).

Most obviously, the error is harmless because the child is not bound by it, as discussed above. The error is also harmless because Harjinder's pleadings and testimony failed utterly to substantiate that anyone but he was the child's father. Indeed, the trial court would have been well within its authority to dismiss outright the parentage petition, since it lacked any facts justifying relief. *Atchison v. Great W. Malting Co.*, 161 Wn.2d 372, 376, 166 P.3d 662 (2007) (quoting *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994)) (dismissal permitted under CR 12(b)(6) where "it appears beyond a reasonable doubt that no facts exist that would justify recovery.").

Harjinder. RP 109. She is in debt for litigation expense, including expense far exceeding what was necessary. RP 111-112. She continues working a low paying job, while Harjinder has job skills he should be putting to use. RP 69-70, 72-73. The court found he is concealing assets. CP 264. Because of this disparity, Harjinder should pay Balbirpal's fees.

VI. CONCLUSION

For the foregoing reasons, the orders should be affirmed and Harjinder should be ordered to pay Balbirpal's fees.

Dated this 20th day of November 2012.

RESPECTFULLY SUBMITTED,



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