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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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**MICHAEL F. MORGAN**

Appellant/Petitioner

vs.

**COLLEEN MORGAN**

Respondent.

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APPELLANT'S REPLY BRIEF

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**Michael F. Morgan**

Appellant/Pro Se Petitioner

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1. The wife was improperly awarded \$31,453 for funds she unilaterally removed from a community account after the parties separated.	

## **A . INTRODUCTION**

As the Guardian ad Litem established through her testimony on September 12, 2010, my position has "consistently been" that any visitation between Mrs. Morgan and my daughter be professionally supervised. RP 129. After seven court appearances, the court also concluded and continued to conclude for three years that any visitation between Mrs. Morgan and my daughter be professionally supervised. That conclusion was reached following an unsupervised visit at the Great Wolf Lodge in which Mrs. Morgan abandoned my then 10 year old daughter and proceeded to get drunk and disorderly. RP 6-12, September 12, 2010. The evidence demonstrates I have tried to use the legal system to protect my daughter but in the introduction of her brief Mrs. Morgan, through her counsel, describes my use of the legal system and my decision to exercise my statutory right to appeal as "perpetuating" my "intransigent" and "contemptuous" behavior. Page 1, Respondent's brief.

On page 8 of her brief, Mrs. Morgan, through her counsel volunteers information not relevant to any issue before the court but simply designed to discredit me by alleging that "Although he is an attorney..." I failed to comply with King County Local Rules in noting motions. Specifically, I did not use a case scheduling sheet as required under LFLR 5 and LFLR

17 to schedule matters on the "Family Law Motions Calendar." Since the motions were not to be heard on the Family Law Motions Calendar but by the trial judge-- and would thus be scheduled through the trial court's bailiff and not through the case scheduling sheet--the local rule did not have any application in the instant matter and was actually misapplied by the trial court.

As far as the motion to vacate (CP 227) referenced by Mrs. Morgan and stricken by the trial court, that motion was based on a sworn declaration from a witness endorsed for trial by Mrs. Morgan and set forth that she had not complied with the conditions of subsidized visitation. Specifically the declarant set forth that he had personally observed Mrs. Morgan forge AA slips, use a masking kit to produce clean UA test results, and that Mrs. Morgan had been hospitalized several times in 2011 due to her extreme intoxication. The respondent, as noted earlier, finds fault with me for bringing this relevant information to the attention to the trial court.

After demonizing me in their brief, on page two of the Respondent's brief Mrs. Morgan is mischaracterized as "the wife that cared for the parties' home and daughter..." The undisputed expert testimony at trial on September 12, 201 was that there was a "long history of Mrs. Morgan not

functioning well as a parent prior to the separation of Mr. and Mrs. Morgan." RP 57.

## **B. ARGUMENT**

### **1. The Trial Court Did Not Rely On ER 615 Or On Any Other Authority In Excluding The Guardian ad Litem From the Courtroom.**

On page 12 of her brief, Mrs. Morgan suggests that ER 615 gave the trial court the authority to exclude the Guardian ad Litem from the courtroom. On September 12, 2010 the trial court specifically said that ER 615 did not apply to the Guardian ad Litem. RP 26.

On page 11 and 12 of her brief, Mrs. Morgan argues that *State v. Lormor*, 172 Wn. 2d 85, 257 P. 3d 624 (2011) establishes the court "broad discretion" in respect to "courtroom operations" and thus would provide the trial court the authority to exclude the Guardian ad Litem from the courtroom. *Lormor, supra*. found the court did not abuse its discretion in excluding a disruptive child from a courtroom. There is no evidence that the Guardian ad Litem was disruptive or her presence in court would interfere with "courtroom operations." As noted on page 10 of Mrs.

Morgan's brief, the Guardian ad Litem was excluded from the courtroom when the trial judge discussed an ex parte conversation he had about the case--and the fact that the trial judge wanted to keep secret from the Guardian ad Litem that he allowed such ex parte contact to occur cannot be deemed an appropriate exercise of discretion.

As a matter of clarification, the ex parte contact in issue did not involve "another superior court judge" as set forth on page 8 of the respondent's brief.

**2. Mrs. Morgan Unilaterally Removing \$31, 453 From A Community Account After The Parties Separated Does Not Convert These Funds Into Mrs. Morgan's Separate Property**

Mrs. Morgan's counsel implies on page 15 of their brief that Mrs. Morgan unilaterally removing \$31,453 of community funds after the parties separate can later result in an assigned value of \$0 in the allocation of this asset and a windfall for Mrs. Morgan. In supporting this assertion Mrs. Morgan suggests that *Marriage of Soriano*, 31 Wn. App. 432, 643 P. 2d. 450 (1982) supports this proposition. *Soriano*, supra dealt with the assignment of a value to potential retirement income and has no application in this case.

Mrs. Morgan's appellate lawyers, furthermore, do not dispute what was set forth on page 4 and page 9 of my opening brief (March 20, 2012 RP 49) that Mrs. Morgan's trial lawyer misrepresented to the trial court that this asset was addressed in "temporary orders" and that the trial court relied upon this misrepresentation in assigning no value to this asset.

### **3. The Trial Court Did Not Find, As Mrs. Morgan Claims, That She Lost A Diamond Ring**

On page 18 of her brief, Mrs. Morgan argues that she lost a diamond ring and so this ring did not constitute an asset before the court. Mrs. Morgan, through her lawyers, is misrepresenting the factual findings. The trial court specifically said on November 9, 2011 (RP 45-46) that the ring was an asset and did not endorse Mrs. Morgan's argument that she lost the ring. Neither party nor the trial court disputes the fact the ring was worth \$18,300 (see RP 44, September 12, 2010) and that this was my inherited separate property (RP 44, September 12, 2010) so I should have been either awarded the ring or the monetary value of the ring.

#### **4. RCW 26.09.020 Does Not Authorize A Court To Order A Party to Pay For Another Party's Supervisor**

Mrs. Morgan argues on page 18-21 of her brief that it is in our daughter's "best interests" that I pay for her supervisor. Mrs. Morgan, however, provides no cases, sociological studies, or reference to any testimony that would support that hypothesis. On September 14, 2010 (RP 100-101) Mrs. Morgan's alcohol treatment counselor testified that for Mrs. Morgan to achieve sobriety it would be through a 12 step program in which she, not I, would be personally responsible for addressing the issues and the behaviors associated with her alcoholism. There is no basis to endorse the respondent's argument that enabling Mrs. Morgan will assist in her becoming a fit and sober parent.

Mrs. Morgan, through her counsel, also appears to mislead the court in citing *In re Marriage of Chua & Root*, 149 Wn. App. 47, 202 P.3d 367 (2009) as authority for a court ordering a party to pay another party's supervision costs. This case simply noted there was statutory authority to order a party to pay the "transportation" costs associated with a supervised visit. There is, as set forth in my opening brief, no statutory authority to order a party to pay for another party's supervisor.

Mrs. Morgan on page 23 of her brief correctly notes there is no authority to insert the costs of supervised visits in the support orders. There is also, however, no authority to insert such a financial provision in a Parenting Plan so the court entering such a provision was improper.

#### **5. CR 11 Provides That A Pleading Is Well Grounded In Fact**

On September 12, 2011 (RP 61) Mrs. Morgan denied owning any real estate other than her interest in the family home. As noted on page 15 of Mrs. Morgan's brief, Mrs. Morgan's trial lawyer in her trial brief listed a condominium in Moclips, Washington as a community asset. CR 11 obligates an attorney when submitting a pleading that it be well grounded in fact--and Mrs. Morgan appellate lawyers don't dispute this condominium is a community asset nor explain how CR 11 was complied with if this was not an asset. The fact, as her own lawyer's pleading demonstrates, that Mrs. Morgan lied (or at least was mistaken) about the real estate holdings of the community should not result in a windfall of over \$60,000 for Mrs. Morgan. In any event, on September 14, 2010 (RP 148) the trial court adopted the position of Mrs. Morgan's attorney that all submissions in the court file were properly before the court--which would

include Mrs. Morgan's concession in her trial brief that a condominium was a community asset.

**6. RCW 26.09.090(1)(a) Directs A Trial Court To Calculate The Need For Spousal Maintenance Only After It Has Determined The Parties Child Support Obligations.**

The court ordered permanent spousal support to begin in November 2011 (CP 221). The respondent essentially argues on page 25 of their brief that while I was found in contempt for not paying "temporary" maintenance from November 2011 to March 2012 I should have been found in contempt for not paying "permanent" maintenance during this time frame and that the distinction between these two forms of maintenance has no substantive difference. There is, however, not only a procedural due process difference but a substantive difference since pursuant to *Wilson v. Wilson*, 165 Wn. App. 333, 267 P. 3d 485 (2011) the child support payments should have been decided before the determining of spousal support but (CP 209) child support payments were determined and started 4 months after maintenance was determined--resulting in another windfall for Mrs. Morgan.

The maintenance and support calculations were not properly calculated by the court. The respondent does not dispute, as set forth in my opening brief, that imputed income is not a spousal support standard (although used as such by the trial court) but is only a statutorily established child support standard.

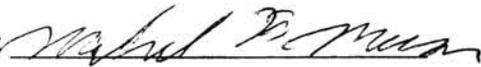
The court also miscalculated, in determining her support obligations, Mrs. Morgan's income as imputed at minimum wage when RCW 26.19.071 (6) requires a court to determine her income based on her estimated median-income through the bureau of census. A trial court's award of maintenance results in an abuse of discretion when "it does not evidence a fair consideration of the statutory factors." *Marriage of Matthews*, 70 Wn. App. 116, 123, 852 P.2d 462, rev. denied, 122 Wn 2d 1021 (1993).

### **C. CONCLUSION**

On pages 28-32 of my opening brief I chronicled the lies Mrs. Morgan repeatedly uttered that drove up the legal fees in this case and constituted intransigence. In response, Mrs. Morgan essentially does not dispute that she repeatedly lied or that these lies made the case more expensive but

seems to argue that her lies should be condoned since these were "initial attempts to maintain primary care of her daughter." Respondent's brief page 31. The respondent, however, cites no authority in which a defense to an intransigence finding (or a charge of perjury) is that the lies were in furtherance of misleading a court in deciding custody and visitation issues.

Dated this 22nd day of March 2013.

By: 

Michael F. Morgan

Pro Se Petitioner