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Case No: 70537-7-I

**IN COURT OF APPEALS  
OF THE STATE OF WASHINGTON**  
Division One, Seattle

Michelle Wilburn-Donahue (n/k/a Baker),

Petitioner - Appellant,

v.

Christopher Scott Dilworth,

Respondent - Appellee.

RECEIVED  
SUPERIOR COURT  
KING COUNTY  
JAN 17 2017

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Reply Brief of Appellant Michelle Wilburn-Donahue (Baker)

Appeal from the Superior Court of King County, the Honorable Suzanne  
R. Parisien, Case No 09-3-02166-3 KNT

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## **ARGUMENT**

### **1 – MS. BAKER DECLINES TO OBJECT TO MR. DILWORTH’S BRIEF UNDER RAP 10.7.**

RAP 10.7 permits Ms. Baker to object to Mr. Dilworth’s brief for failing to comply with the requirements of RAP Title 10. Ms. Baker prefers swift resolution of this matter and therefore declines to do so. She will instead address issues she is able to identify in Mr. Dilworth’s brief.

### **2 – MR. DILWORTH DOES NOT DENY THAT THE COURT LACKED SUBJECT MATTER JURISDICTION BECAUSE OF HIS FAILURE TO BRING A WRITTEN MOTION**

Mr. Dilworth raises no argument directly addressing this first argument of Ms. Baker. He does not deny that no written motion was before the Court, and cites no legal authority for an exception to CR(7)(b), cited at length in Ms. Baker’s opening brief, which requires all motions, except those made “during a trial or hearing”, to be written. He also makes no argument that an exception to CR 5, requiring service of the written pleadings upon the other party, exists for this case.

Therefore, even if he prevails in his argument that the June 18 order (CP 136) was a clarification, and not a modification, the question was still not properly before the Court.

**3 – MR. DILWORTH ERRONEOUSLY CHARACTERIZES THE COURT’S RULING AS A “CLARIFICATION”.**

Mr. Dilworth’s central argument appears to be that the order simply clarifies ambiguous wording in the previous order, and makes explicit the Court’s intent.

This argument begs the question that the motion to clarify, even if made by the Court, was not in writing, and there appears to be no exception allowing such a motion to be brought in the informal manner that applied in this case.

Setting aside the issue of the lack of written motion, characterizing the Court’s ruling as a clarification ignores the Court’s failure to provide supporting Findings of Fact and Conclusions of Law, and ignores the intent expressed by the Court.

Ms. Baker wrote in detail in her brief (Appellant’s Brief, pages 15-17) about the requirement that a modification of a parenting plan must, under RCW 26.09.260(1) and related case law, be supported by appropriate findings of fact and will not simply repeat the argument here. Mr. Dilworth has not disputed that all previous parenting plans did NOT

require Ms. Baker to subsidize Mr. Dilworth's car and hotel expenses. He has not disputed that the Findings of Fact and Conclusions of Law (CP 133) as well as the Order on Modification (CP134) issued following the April 17, 2013 trial expressed the Court's intention NOT to modify the existing parenting plan, and has raised no argument to reconcile these documents with his theory that the Court intended to modify previous orders in the parenting plan issued April 17<sup>th</sup> (CP 132). With this in mind, it is unreasonable to argue that the Court intended to modify the plan following the April 17<sup>th</sup> trial.

Where an order is ambiguous, a reviewing court seeks to ascertain the intention of the court that entered the original order by using general rules of construction applicable to statutes, contracts, and other writings. (In re Marriage of Gimlett, 95 Wn.2d 699 (1981), Callan v. Callan, 2 Wn.App. 446 (1970)). Undefined, unambiguous terms within a legal document are given their ordinary meaning, which may be determined by referring to a dictionary. (In re Marriage of Tower, 55 Wn.App. 697, 703 (1989)). The order (CP 132 at Section 3.11) twice states explicitly that the parents shall share cost of airfare but nowhere explicitly orders reimbursement for other expenses. Further, all documents which accompany the parenting plan in question state that no modification is in order, and the Court also states on the record during the June 17<sup>th</sup>

teleconference that her intent was to carry forward the previous order (RP 6-17-2013, page 10, line 17-18).

Accordingly, while the language of the parenting plan admittedly invites confusion, the only reasonable reading is that Ms. Baker should continue to share in air fare costs, while the father should continue to bear responsibility for the hotel and car rental costs.

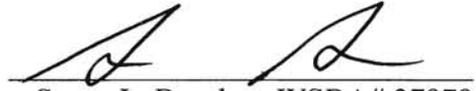
### **CONCLUSION**

For these reasons, this Court should void the order issued on June 18, 2013 and hold that:

1. The issues raised in the June 17, 2013 proceeding were not properly before the Court under CR 5, CR 7, and CR 59 and the Court therefore lacked subject matter jurisdiction to issue orders.
2. The Court below modified the parenting plan without making required findings of fact, and such modification should therefore be reversed.
3. The Order issued on June 18, 2013 should be declared void, and Ms. Baker should be permitted to recover any reimbursements for hotel and car rental costs made to Mr. Dilworth in compliance with the June 18, 2013 Order

Dated: October 22, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Beecher', written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I certify that I directed the Opening Brief of Appellant Michelle Wilburn-Donahue (n/k/a Baker) to be served by U.S. Mail on October 22, 2013 to the following:

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