No. 46824-7

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of

MICHAEL ST. GEORGE BENT,

Appellant,

v.

LASHANDRE NICHELE BENT,

Respondent.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Constitutional violations in dissolutions, established by ancient traditions and maintained by precedent, are so socially engrained as to be inconspicuous. LaShandre is blind to them as they are simply "well-established principles." BR 35. Michael's frankness may be offensive to those steeped in traditions established by pre-revolution British Imperial Courts of Chancellery. However, he makes no apology for boldly challenging the status quo relying on opinions of our highest courts as he seeks to defend the spirit of our nation as the land of the free and home of the brave. Not surprisingly, LaShandre's Response echoes with disbelief, asserting absurdity and blasphemy. Quoting numerous cases each referencing back to cases of ancient years confirms her reliance on precedent. So firm is her disbelief, contrarian opinions of even our highest courts are rejected wholesale. She regales Michael for nonconformance with "controlling law" unaware the Constitution is the supreme controlling law. Her arguments reduce to a vain "He is wrong and offensive." She agrees "parents have a protected interest in the care and custody of their children" but fiercely disagrees the requisite parent-child association is likewise protected. BR 26. The relocation analysis is fatally flawed due to inexcusable privileges granted LaShandre in violation of equal protection principles. The analysis is inapt and does not warrant debate.

STATEMENT OF THE CASE AND PROCEDURE

A. The parties' colorful dating and marital history is irrelevant

After acknowledging there was no value in attempting to explain why the marriage failed, LaShandre devotes 20 pages to extraneous and distorted history. She mistakenly assumes Michael intends to smear her and so she retaliates in kind. His intention has, from before the separation, been to secure remedial help but she resists due to "extremely sensitive to criticism". BR 16. While possibly unnecessary, Michael hereby clarifies her claims for the record and assures this Court his intention is not to belittle her. She needs care, for her sake and their children's, and not addictive entitlements. Their children instinctively hunger for an intimate motherly relationship that she cannot now provide. Ex 2 at 22. She has pleaded relentlessly to avoid exposing her apparent psychosis and cleverly avoided her fitness being questioned. CP 94. She does not question the Court's conclusions and there was no value in her extensive rehashing of history.

B. LaShandre's self-reported claims lack credibility

Her MMPI revealed she presents "herself in an overly favorable light", alerting need for caution as she will attempt to mislead this Court. BR 16. Her supposedly "neutral" Statement of Case is no more than her own uncorroborated self-assessment regurgitated from Dr Poppleton's

report. BR 2 & Ex 2 at 12-20. Her colorful claims are so contrived as to be comical. Judge Veljacic, the only judiciary to directly engage LaShandre, did not find her credible. Referring to evidence she used as basis for the 15 month TRO, he said "I didn't find the testimony ... to be to the point where I would have ... restrictions." RP 749-750. Photograph of a gun she claims was Michael's was shown to be a forgery. RP 520. Here again she distorts with subtle claims like "Michael left for 36 days without contact on an east-coast trip." BR 8. However, at Trial it was clear Michael "was on the phone with them at least once a day." RP 463.

C corroborates LaShandre refusal to work and continued unabated spending caused martial stress. CP 40 at 3. Michael felt he was working himself to an early grave and that she did not appreciate his efforts. This she interprets as "threatened suicide" and feeling of "no value". BR 11. LaShandre cleverly asserts "Michael wrote out his Will in summer 2010" causing her "concern" (BR 5), yet at Trial she testified she requested the email explaining its "Per your request" subject line. RP 347.

She describes an altercation following church where she left the church grounds claiming to listen to the service by radio though the service was not simulcast. Dr Dudley had asked C about the incident and he reported "that he remembers his father asking his mother if she wanted to get out of the car and walk." Ex 40 at 4. In LaShandre's sensationalized

and possibly devious recollection, "Michael interrogated … demanding to know" and "children, … were crying in the backseat." BR 6. This reinforces the importance of her Treatment plan Dr Poppleton established: "As an additional requirement … [she should] establish care with a mental health … provider in Florida for … help with objectivity." Ex 2 at 33.

C. LaShandre chose not to work after C transitioned into daycare

She seems befuddled, attempting to paint a picture of herself as a stay-at-home mom who sacrificed for her children. First she says "the parties agreed that LaShandre would quit her job" then next assures "LaShandre quit working in 1999 at Michael's request." BR 4 & 10. She then fails to explain why she completed a $45k MBA in 2007 and why, among others, she sought employment submitting "countless" resumes though she reassures "Michael's continued requests that LaShandre stay at home with the kids". RP 376 & BR 5. While these distortions have no bearing on Michael's constitutionally based arguments, they reflect deceit.

D. No restriction on Michael's parenting after extensive study

Michael's emails to LaShandre's mother, a passionate African-American southern preacher, was peppered with religious language she understood. This private communication was intended to agitate and command her mother's intervention. Prior efforts with nice words had failed. CP 17 at 4. LaShandre's credit card statements referenced at trial

reveal she rented motel rooms across Portland over 30 times in 2013 while claiming to be job hunting. RP 541. She had years before contracted gonorrhea from similar behavior. CP 40 at 3.

Emails to her mother aptly reflected LaShandre's disgusting behavior unbecoming of a purported "stay-at-home-mom" who the County blindly assumed could care for the Bent children. Michael was obviously disappointed and sought to protect his children from their mother who is not whole. Ex 2 at 22 & 33, RP 113, BR 10 & BR 16. This and other actions well within his protected liberty and of no harm to LaShandre or their children were promoted as "poor judgment". LaShandre points to "recordings of LaShandre made on the children's phones" but it was her roommate Carmen Dixon, a conning convicted felon, who produced the recordings as evidenced by recorded private, intimate bedroom discussion between LaShandre and Carmen. BR 17 & RP 351. The recordings where provided as evidence of her psychosis but ignored by the County.

Dr Poppleton had already fully considered all that she reveals and concluded there was no reason to limit Michael's parenting – this after his thorough eight month "one-sided evaluation [focused on] dad". RP 145.

E. LaShandre's MMPI not corroborated and not incorporated

Her self-reported history is devoid of even a hiccup but she suffered heinous abuse as a young outgoing teenager. The dreadful event

was repressed and is an insidious family secret that taunts her. Her MMPI profile, possibly evidence of her trauma, led Dr Poppleton to alert the County "her profile was blown up across various scales." Dr Poppleton could report no further than the MMPI data revealing multiple very high elevated scales, cautioning that "raw-data hypotheses ... would need some degree of corroboration". Ex 2 at 22 & RP 113. Failure to seek feedback from even her counsellor reflects the "weakness of [his] evaluation." RP 156. She claims many ailments but presents no credible medical explanation suggesting her bizarre symptoms are psychosomatic and further evidence of psychosis. BR 10. Dr Poppleton lacked the required corroboration to incorporate her MMPI into his recommendation. BR 16 & RP 113. Lacking collateral interviews left her MMPI an interesting intellectual endeavor with insufficient rigor to enable interpretation of her MMPI profile.

However, more decisively, the extensive relocation assessment was fatally flawed due to unjustified privilege of favored bias granted LaShandre. Dr Poppleton called it "the constraint". CP 97. His 11-factor study is inapt and would be irrational to debate as the constitutional error reflects manifest abuse of discretion.

SUMMARY OF ARGUMENT

A. Though broad, the County's discretion has constitutional limits. The County exceeded these limits by irrationally granting LaShandre the privileges of presumption and favored bias for the relocation assessment.

B. The leniency afforded a pro se litigant is founded in the federal constitutional. Washington State accepts the constitution as supreme law.

C. Precedent is established by the longest standing opinion not explicitly overruled and it rejects the presumption for civil statutes.

D. Need for equal treatment was noted throughout the Trial and the appeal simply adds Constitution-based opinions foreign to lower courts.

E. Trial did not establish LaShandre's fitness but affirmed facts that show she cannot provide basic parental obligations established in Lybbert.

F. Per the US Supreme Court in Casey, spouses do not lose their constitutionally protected personal liberty when they marry. LaShandre's argument relies on inapt statutory restrictions on community property.

G. The Munoz case demonstrated strict scrutiny principles apply at dissolution when fundamental rights are implicated.

H. This Court is asked to verify the decree violates Michael's constitutional rights to establish cause of action for a §1983 claim.

I. Michael's appeal is legitimate and the 'taking" clause limits government ability to transfer his personal property to LaShandre.

ARGUMENT

A. THE COUNTY EXCEEDED CONSTITUTIONAL LIMITS IN GRANTING LASHANDRE PRIVILEGES

The County's broad discretion has strict boundaries defined by the US Constitution and in particular the Fourteenth Amendment:

> "[The Due Process bars] certain government actions regardless of the fairness of the procedures used to implement them." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 846, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

Michael's interests in parent-child association for the purpose of raising and educating his children was implicated by the requested relocation and required the County to equally and rigorously protect the rights of both parents to associate with their children. While LaShandre agrees "parents have a protected interest in the care and custody of their children", she ignores the requisite parent-child association. However, Courts respect the right of parents to associate with their children and hold this right of association as a fundamental right.

> "[F]reedom of 'expressive association' and freedom of 'intimate association.' ... are protected [for such] relationships [that] attend the creation and sustenance of a family, including ... raising and education of children." American Legion Post No. 149 v. Wash. State Dept. of Health, 164 Wn.2d 570, 595, 192 P.3d 306 (2008).
>
> "[F]reedom of association receives protection as a fundamental element of personal liberty." Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984).
>
> "A parent's constitutionally protected right to rear his or her

> children without state interference, has been recognized as a fundamental "liberty" interest." In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998).

The coveted designation of fundamental right demands strict scrutiny to assure equal protection of both parents' interests in dissolution.

> "Under the equal protection clause, the appropriate level of scrutiny depends on the ... rights involved. ... Strict scrutiny ... applies to laws burdening fundamental rights or liberties." American Legion at 600.

LaShandre might assume Family Courts are granted free-reign under the guise of an Equity Court. While their heritage as Courts of Chancellery has caused considerable confusion over the years, it is well established:

> "[C]ourts of equity must be governed by rules and precedents no less than the courts of law. ... [T]he alternative is to use each equity chancellor's conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each chancellor's foot." Lonchar v. Thomas, 517 US 314, 323 (1996).

> "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law." INS v. Pangilinan, 486 U.S. 875, 883, 108 S.Ct. 2210, 2216, 100 L.Ed.2d 882 (1988)

The fatal flaw in the County's actions was to grant unjustified privileges to a mother who does no more than a nanny for two healthy teenagers having material needs. Privileges granted LaShandre, merely due to residency classification, violate the equal protection clause, rendering the analysis inapt, fatally flawed and, while there are disparities, not merit debate.

> "[A] statutory classification ... must rest upon some ground of difference having a ... substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Caban v. Mohammed, 441 U.S. 380, 391, 60 L.Ed.2d 297, 99 S.Ct. 1760 (1979).

This is not to say, as LaShandre counters, that a true "primary parent" cannot be granted favored bias or approval to relocate. However, such favor requires the child be substantially more dependent on that parent to establish a true "primary parent" relationship, as when only one parent is fit and not simply a primary residential parent.

> "In a case like this, the Equal Protection Clause requires more than the mere incantation of a proper state purpose". Trimble v. Gordon, 430 U.S. 762, 769, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977).

In blindly applying the relocation act at dissolution, the County in effect presume the Bent children to be more dependent on the parent they happen to spend more time with; this, an artifact of the County's arbitrary "local-rule plan." RP 734. The County sidestepped appropriate substantive Due Process evaluation required to establish a substantial relation between the privilege granted and the County's objective. Seemingly in the County's view, mere baby-sitting adequately meets the criteria for preferential treatment in the relocation assessment. Mere sitting is of course not substantially related to raising two healthy teenage boys. These boys need good role-models of responsible citizenship and not just a coordinator good at "cracking down" on them to complete chores. RP 125. In

situations that demand a primary parent, the child's wellbeing will, by definition, be highly dependent on that parent. It is critical to afford that parent additional autonomy to ensure she can provide for her child. Only in these select cases, with a clearly and substantially established "primary parent", does that parent's autonomy rise to a compelling interest.

> "The nature of a compelling interest varies based on the circumstances, but it is a very stringent standard; ..."The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to" a fundamental right. Therefore, "we must searchingly examine the interests the state seeks to promote." Ex parte E.R.G., 73 So.3d 634, 645 (Ala.2011)

The Munoz Court held unequal infringement of parents' fundamental right is manifest abuse of discretion unless there is such a compelling reason.

> "[W]here the trial court does not follow the generally established rule of noninterference in [a liberty interest] in child custody cases without an affirmative showing of compelling reasons for such action, we are of the opinion that this is tantamount to a manifest abuse of discretion." Munoz v. Munoz, 79 Wn.2d 810, 814, 489 P.2d 1133 (1971).

Parenting is a multifaceted role requiring a fit adult willing and capable to provide for their child's moral, intellectual and material welfare. BA 27. It should therefore be apparent a primary parent must be engaged and dutifully provide. As recognized by our highest Court:

> "[T]he rights of the parents are a counterpart of the responsibilities they have assumed. ... The relationship of love and duty in a recognized family unit is an interest in liberty entitled to constitutional protection." Lehr v. Robertson, 463 U.S. 248, 258,

77 L.Ed.2d 614, 103 S.Ct. 2985 (1983).

The County overstepped its authority in granting her the privilege of favored bias without proof of substantial dependency.

B. PLEADING IS NOT A GAME OF SKILL AND SHALL BE CONSTRUED TO DO SUBSTANTIAL JUSTICE

The leniency afforded pro se litigants is founded in the federal constitutional premise that The People established a limited government and reserved the right to petition the government for redress of grievances. Washington State accepts the constitution as supreme law.

> "[W]hile sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

> "Federal Rules rejects ... pleading is a game of skill. [T]he purpose of pleading is to facilitate a proper decision on the merits." Conley v. Gibson, 355 U.S. 41, 48, 2 L.Ed.2d 80, 78 S.Ct. 99 (1957).

C. GOVERNMENT EXISTS TO PROTECT CIVIL LIBERTY AND PRESUMPTIONS MUST PROTECT LIBERTY

Armstrong is the longest standing state Court opinion not explicitly overruled and it clearly rejects the presumption for civil statutes.

> "There is no presumption in favor of the constitutionality of any regulation involving civil rights." State ex rel. Holcomb v. Armstrong, 39 Wn. (2d) 860, 863, 239 P. (2d) 545 (1952).

Government was established to protect liberty and has limited allowance to infringe The People's liberty. Presuming constitutionality requires The

People to tenderly contest objectionable actions of their hired protectors. LaShandre does not appreciate the obvious incongruity.

> "[Due Process grew from] a philosophy that the individual was the center of society ... and that government should be entrusted with few controls and only the mildest supervision over men's affairs." Armstrong at 873.

LaShandre also misunderstands the separation of powers doctrine. It is not to keep branches in their own 'sand box' as she alludes but instead to counter collusion. The presumption undermines this by avoiding constructive debate between branches so necessary to limit government.

> "By necessity any form of deference to the legislative branch, however slight, is a corresponding burden to the citizen who relies upon an independent and impartial judiciary to vindicate and protect his legal rights." Island County v. State, 135 Wash.2d 141, 158, 955 P.2d 377, 386 (1998) (Sanders, J., concurring)

Legislators may speak for the majority but even the majority is not at liberty to ignore the Constitution.

> "One's right to life, liberty, and property, to free speech, ... and other fundamental rights may not be submitted to vote ..." West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638, 63 S.Ct. 1178, 1185, 87 L.Ed. 1628 (1943)

LaShandre wrongly assumes the Court cannot invalidate precedent.

> [W]hen ... precedent alone is all the argument that can be made to support a ... rule, it is time for the rule's creator to destroy it." Trammel v. United States, 445 U.S. 40, 48, 63 L.Ed.2d 186, 100 S.Ct. 906 (1980).

In Mugler, the US Supreme Court went so far as to assert that Courts,

"upon their own responsibility", must determine if laws are invalid.

> "There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, ... the courts must obey the Constitution rather than the law-making department of government, and must, *upon their own responsibility*, determine whether, in any particular case, these limits have been passed." Mugler v. Kansas, 123 U. S. 623, 661 (1887). [Emphasis added.]

A free people would not give up their most treasured freedoms and Armstrong is standing precedent. Rectifying confusion caused by recent misapplication of the presumption may require a Declaratory Judgment.

D. CONSTITUTION REQUIRED EQUAL PROTECTION

Argument for equal treatment was pervasive at Trial (CP 533) and the appeal formalizes using opinions of higher Courts.

> "The equal protection clauses of the Fourteenth Amendment ... require that 'persons similarly situated with respect to the legitimate purpose of the law receive like treatment.'" State v. Schaaf, 109 Wn.2d 1, 17, 743 P.2d 240 (1987).

LaShandre suggests the Bent parents are not similarly situated given they performed differing parental functions. However, being the "same" is not required by the equal protection clause. "Similarly situated" is more inclusive and only pertinent distinguishing attributes can be used to deny membership to a class. Even more inclusive provisions apply here where a fundamental right, Michael's right of association, is impacted.

> "The equal protection clause parallels the due process demand for adequate justification of state abridgement of fundamental rights.

> ... [County policies must be] carefully 'tailored' to achieve the articulated state goal." State v. Koome, 84 Wash.2d 901, 910, 530 P.2d 260 (1975).

Here, the state goal is to ensure the Bent children are adequately cared for and the only relevant attribute is that of being a fit parent.

> "[The] state may interfere only if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." Custody of Smith at 17.

LaShandre argues "a parenting plan that ... promote the best interests of the children' does not violate a parent's constitutional rights." BR 27. This opinion is not on point given relocation "shifts the analysis away from only the best interests of the child ...." BR 23. She references Katare but that case is also not on point as it involved international travel which is not a fundamental right. She also asserts mere entry of a Parenting Plan is compelling. BR 30. However, that puts the cart before the horse. Entry of a plan is important but it is creating the plan that is compelling. Fit parent(s), not the County, decide how to parent their children and required identifying a fit parent to care for the Bent children.

> "For the state to [recognize parents] authority to raise the child as the parents see fit, except when the state thinks another choice would be better, is to give the parents no authority at all." Custody of Smith at 20.

This required the County to diligently verify parental fitness. The County failed its paramount duty by irrationally imposing its arbitrary "local rule"

with insufficient attention to the needs of the Bent children.

> "[T]he Constitution recognizes higher values than speed and efficiency. The State's interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause ...." Vlandis v. Kline, 412 U.S. 441,450, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973).

Until either Bent parent is shown unfit, they are considered similarly situated with regard to their relationship with their children. Michael was entitled to but denied equal protection of his parenting rights.

E. LASHANDRE CANNOT MEET BASIC PARENTAL OBLIGATIONS AND FITNESS WAS NOT ASSESSED

LaShandre's fitness was not established at Trial and was not adequately evaluated to refute reliable concerns. Failure to evaluate her, in like manner to extensive psychological evaluations ordered for Michael, was a violation of the equal protection guarantee.

> "The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a ... another ... If both are not accorded the same protection, then it is not equal." Regents of the University of California v. Bakke, 438 U.S. 265, 289-90, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978).

Her shockingly insane and morbid allegations triggered the cycle of collusion Dr Poppleton observed. BR 32. It was further reinforced by the County's blind acceptance of her veracity. The Bent children deserve protection and are worth the effort to assure LaShandre's fitness. Her right to privacy is subordinate and here, trivial given "Liberty finds no

refuge in a jurisprudence of doubt." Casey at 844.

> "The right to familial integrity ... does not include a right to remain free from ... investigations." ... An anonymous tip may justify investigation ...." Croft v. Westmoreland County Children & Youth Servs., 103 F.3d 1123, 1125-26 (3d Cir. 1997).

She wrongly suggests RCW 26.09.187 and .520 are roughly equivalent. Among many differences, RCW 26.09.187 references .191 in its entirety and would shunt the bias of the temporary parenting plan.

Her expected support from Michael and facts confirmed at trial show her as unable to provide for their children. RP 253. As such she fails basic requirements established by Lybbert and cannot be presumed fit:

> "[C]ommonly understood general obligations of parenthood entail these minimum attributes: duty to supply the necessary food, clothing, and medical care [and] provide an adequate domicile". In re Adoption of Lybbert, 75 Wn.2d 671, 674, 453 P.2d 650 (1969)

She provides no facts to support that she is fit. Instead, she asserts it is offensive to expect a parent be independently self-sufficient. However, it is far more offensive to consider the working parent irrelevant because he provided for her and their children for 15 years instead of lazing at home.

F. SPOUSES DO NOT LOSE THEIR CONSTITUTIONALLY PROTECTED LIBERTY THROUGH MARRIAGE

US Supreme Court in Casey affirmed spouses, in contemporary times, do not lose their constitutionally protected liberty when they marry.

> "The Constitution protects individuals, men and women alike ... [Spouses] do not lose their constitutionally protected liberty when

they marry." Casey at 896-98,

LaShandre's relies on community property restrictions to assert individual rights are affected during marriage. Obviously, community property is not individual property. Nonetheless, restrictions LaShandre mention work to ensure Michael's individual property rights, as portion of the community, are respected by joint owner(s). Her apparent confusion relating to community property is not unique:

> "In interpreting the law of community property in this state, we deal with an undefined concept: [T]he exact nature of a community has been somewhat less than crystal clear.... The community, like the Kingdom of Heaven, is "like unto" a number of things (see Matthew 13:24-33), but seems to defy precise definition." deElche v. Jacobsen, 95 Wn.2d 237, 248, 622 P.2d 835 (1980).

LaShandre points to "well-established principles", unaware they are ancient practices from a prior era. BR 35. While cherished by beneficiaries, they do not comport with modern society but are so socially engrained as to be imperceptible. It helps to reflect on the historical basis.

> "[O]ur Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women, not on a pedestal, but in a cage. Indeed, this paternalistic attitude became ... firmly rooted in our national consciousness." Frontiero v. Richardson, 411 U.S. 677, 684, 93 S.Ct. 1764, 1769-70, 36 L.Ed.2d 583 (1973).

More disturbing, unless carefully applied, these ancient practices readily infringe protected rights. However, it is firmly established that

constitutional rights prevail whenever statutory rights conflict.

> "Where a constitutional right conflicts with a common law principle — however ancient or cherished — the guarantee of the constitution must prevail." Tilton v. Cowles Publishing Co., 76 Wash.2d 707, 715, 459 P.2d 8 (1969).

She suggests Michael's arguments were inadequate "naked castings" but relies primarily on statutory regulations attempting to invalidate US Supreme Court opinions. BR 37. Michael again emphasizes that his personal property was not available for the County to administer and distribute as it desired. In doing so the County enacting a "Taking."

> "A permanent [transfer of asset] authorized by state law is a taking without regard to whether the State, or instead a party authorized by the State, [received the asset]." Loretto v Teleprompter Manhattan CATV Corp., 458 US 419, Note 9, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982).

Michael's individual property right was, per Casey, not disturbed by his marital status. Assets held solely in Michael's name are his individual property and likewise LaShandre's assets are hers.

> "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. [R]ight to liberty and the personal right in property ... are basic civil rights ... long been recognized." Lynch v. Household Finance Corp., 405 U.S. 538, 552, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972).

This constitutional principle effectively bounds "Community Property" to property that is explicitly and legally jointly owned. The County lacked

authority to assign Michael's assets to LaShandre, a public person.

> "[A] State, by ipse dixit, may not transform private property into public property without compensation .... This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That Clause stands as a shield against the arbitrary use of governmental power." Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U. S. 155, 164 (1980).

The County was to protect Michael's personal property interests:

> "And it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment." Shelley v. Kraemer, 334 U.S. 1, 22, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

In coercing Michael to provide his personal property to LaShandre, the County effected a "Taking". Equal protection assured LaShandre equal share of any jointly owned property but the County was constitutionally prohibited from allocating his property regardless of the public interest in maintaining LaShandre's post-separation lifestyle or for any other interest.

> "[A] permanent [transfer of asset] authorized by government is a taking without regard to the public interests that it may serve." Loretto at 426.

During the marriage, while unemployed, she enjoyed a lavish lifestyle that amply compensated for her contributions in the home. She references Washburn to justify maintenance but at Trial held Washburn inapplicable. RP 673. Michael, anticipating her income would reduce his stress, had invested and sacrificed for her to secure her desired MBA, but LaShandre later chose to not apply her degree.

> "[M]arriage is a shared enterprise, a joint undertaking ... in many ways it is akin to a partnership. ... Where a partner to marriage takes the benefits of his spouse's support ... and the marriage is then terminated without the supported spouse giving anything in return, an unfairness has occurred that calls for a remedy." In re Marriage of Washburn, 101 Wn.2d 168, 182, 677 P.2d 152 (1984).

Had she utilized her MBA starting 2007, by time of separation she could have accumulated over $300k, considering a median imputed income per RCW 26.19.071(6). RP 435. The fact that LaShandre now finds herself in need, does not make Michael responsible for her up-keep.

> "In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. ... So far as private persons ... have seen fit to take the risk ..., we cannot see that the fact that their risk has become a danger warrants the giving to them greater rights than they [secured]." Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 - 417, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

The County, per social policy, afforded LaShandre the flexibility to dissolve her agreement with Michael and to pursue an independent life.

> "The uniform marriage and divorce act replaced the traditional grounds for divorce with a "no fault" standard. The statute reflects the public policy ..., that "when a marriage has failed ... divorce will be permitted." In re Marriage of Littlefield, 940 P. 2d 1362, 1371 (1997).

Arguably, on the day of legal separation, in granting her request, the County accepted her as a public ward but then burdened Michael to provide. Such penalty required criminal conviction but there was none. The County cannot burden Michael with the cost of this social policy

requiring payment of spousal subsidies to LaShandre, a public person.

> "Fifth Amendment's just compensation provision is designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 318-19, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987).

Likewise, the County was not entitled to impose a parenting arrangement unless clearly required for the children's health or safety.

> "The trial court does not have the responsibility or the authority ... to create ideal circumstances for the family". Littlefield at 50.

Michael was fully able to directly care for their children leavings the County no basis to infringe Michael's property rights to subsidize LaShandre. Instead the County was required to ensure she contributed to their children. Michael too was required to provide for their children but the County was not at liberty to dictate how; only that he must.

> "The state has a compelling interest in assuring that the primary obligation for support of ... children falls on both natural parents [and] responsibility for a child's support rests upon both parents." State v. Wood, 89 Wn.2d 97, 102-103, 569 P.2d 1148 (1977).

> "A parent's constitutionally protected right to rear his or her children without state interference, has been recognized as a fundamental "liberty" interest. ... the state may interfere only if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." Custody of Smith at 15-17.

Short of demonstrating Michael an unfit parent, the County was not at liberty to infringe his parental autonomy or property rights.

> "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Pennsylvania Coal at 416.
>
> "[The County's] obligation is to define the liberty of all, not to mandate [its] own moral code." Casey at 850.

Challenging the status quo is not easy but it is essential here to uphold the spirit of our nation as the land of the free and home of the brave.

> "[Michael's argument] will undoubtedly lessen to some extent the freedom and flexibility of [the County]. But such consequences necessarily flow from any decision upholding a claim of constitutional right; many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities, and the Just Compensation Clause of the Fifth Amendment is one of them." First English at 321.

Equal protection required the County to govern impartially and, while it may seem harsh to old-style paternalist, it is The Peoples' expectation.

> "The concept of equal justice under law requires the State to govern impartially." Lehr at 265.

G. EQUAL PROTECTION DEMANDS STRICT SCRUTINY WHEN A FUNDAMENTAL RIGHT IS BURDENED

Michael presented the Munoz case as precedent showing strict scrutiny principle applies when weighing fundamental rights of two parents. The BA also presented a comprehensive constitutional argument to justify the use of strict scrutiny principles given required equal protection of fundamental rights. See American Legion at 600.

H. VALIDATION OF CONSTITUTIONAL VIOLATIONS REQUIRED FOR § 1983 CLAIMS

Michael asserts the County processes violated his and his children's constitutional rights resulting in an inhumane and invalid decree. This violation also established cause of action against the Clark County Municipality (as the entity accountable for the Superior Courts). This Court is asked to validate constitutional errors as a required precursor for a §1983 claim but also to annul the unconstitutional decree provisions. Given the broad discretion of Superior Courts, a claim is futile without first having this Court's validation of the asserted constitutional errors.

I. MICHAEL'S APPEAL IS NOT FRIVOLOUS AND AWARDING FEES EFFECTS A TAKING

Michael's appeal is not frivolous but openly debates the constitutionality of practices that no longer effectively regulate marriages. There were no findings to suggest the Bent children were substantially more dependent on LaShandre, and irrationally granting privileges based on an arbitrary County policy that bias one parent over the other …

> "may not constitutionally be applied in that class of cases where the mother and father are in fact similarly situated with regard to their relationship with the child." Lehr at 267.

Here again, opposing the status quo is hard but essential to uphold liberty.

> "Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular. … From the obligation of this promise this Court cannot and should not assume any exemption when duty requires it to decide a case in conformance with the Constitution. … The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the

Nation to which it is responsible." Casey at 868.

CONCLUSION

LaShandre fails to present a coherent and authoritative argument to counter Michael's claims based on opinions of our highest Courts.

a. She does not provide justification for the privilege granted her in the relocation assessment and so fails to save the invalid assessment.

b. She fails to invalidate the Lybbert fitness criteria or show it does not apply and therefore she must be held to the criteria.

c. She fails to show the infringements of Michael's rights to autonomy and property are constitutionally valid. Precedent alone is insufficient.

d. The County executed a "Taking" in ordering Michael to provide his property to LaShandre and in directly transferring his property to her.

e. Irrational and arbitrary due process violations were executed by Clark County Policymakers, establishing cause of action for a §1983 claim.

f. Michael's claim is not frivolous and there are no grounds to penalize him to pay LaShandre's attorney fees.

Respectfully submitted February 4, 2015.

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26.19.071
Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

(b) Wages;

(c) Commissions;

(d) Deferred compensation;

(e) Overtime, except as excluded for income in subsection (4)(i) of this section;

(f) Contract-related benefits;

(g) Income from second jobs, except as excluded for income in subsection (4)(i) of this section;

(h) Dividends;

(i) Interest;

(j) Trust income;

(k) Severance pay;

(l) Annuities;

(m) Capital gains;

(n) Pension retirement benefits;

(o) Workers' compensation;

(p) Unemployment benefits;

(q) Maintenance actually received;

(r) Bonuses;

(s) Social security benefits;

(t) Disability insurance benefits; and

(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;

(b) Child support received from other relationships;

(c) Gifts and prizes;

(d) Temporary assistance for needy families;

(e) Supplemental security income;

(f) Aged, blind, or disabled assistance benefits;

(g) Pregnant women assistance benefits;

(h) Food stamps; and

(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;

(b) Federal insurance contributions act deductions;

(c) Mandatory pension plan payments;

(d) Mandatory union or professional dues;

(e) State industrial insurance premiums;

(f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

[2011 1st sp.s. c 36 § 14; 2010 1st sp.s. c 8 § 14; 2009 c 84 § 3; 2008 c 6 § 1038; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Notes:

Findings -- Intent -- 2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date -- 2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings -- Intent -- Short title -- Effective date -- 2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Effective date -- 2009 c 84: See note following RCW 26.19.020.

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Severability -- Effective date -- Captions not law -- 1991 sp.s. c 28: See notes following RCW 26.09.100.

DECLARATION OF SERVICE

I certify that on the date listed below, I served by method noted, one copy of the REPLY BRIEF OF APPELLANT on the following:

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