

SUPREME COURT  
OF THE STATE OF WASHINGTON

|                        |   |                         |
|------------------------|---|-------------------------|
| TINA ANNELISE SCHMIDT, | ) |                         |
|                        | ) |                         |
| Appellant,             | ) | RESPONSE TO APPELLANT'S |
|                        | ) | OBJECTION AND MOTION TO |
|                        | ) | STRIKE                  |
| v.                     | ) |                         |
|                        | ) |                         |
| JOHN PATRICK OSMAN,    | ) |                         |
|                        | ) |                         |
| Respondent             | ) |                         |
| _____                  | ) |                         |

**1. Identity of Party Filing Response**

John Patrick Osman is the party filing this Response to the Objection/Motion to Strike filed by the Appellant.

**2. Statement of Relief Sought**

Respondent respectfully asks the court to deny the Appellant's Objection/Motion to Strike.

**3. Authority**

RAP 17.4(g)

**4. Response to Objection/Motion to Strike**

A. Extended Family Provision

While Appellant correctly points out that the Respondent provided an initial proposed Parenting Plan along with his Petition for Modification of Parenting Plan containing the provision cited as paragraph 3.13.11, Appellant fails to advise the Court that Respondent submitted a second proposed Parenting Plan to Appellant and the Court for the trial after the Parenting Evaluator, Dr. Wendy Hutchins-Cook provided her Parenting Evaluation and recommendations to the Court. In the Respondent's second proposed Parenting Plan, which he testified extensively about at the time of trial (RP 206-210), there is no extended family provision. See **Appendix A, Respondent's 2<sup>nd</sup> Proposed Parenting Plan.**

It is not uncommon for parties involved in a parenting plan dispute to propose a different Parenting Plan after receiving the Parenting Evaluator's recommendations, which is exactly what happened in this instance, i.e., Mr. Osman provided a different proposed Parenting Plan for the trial after receiving Dr. Hutchins-Cook's parenting evaluation report and recommendations. Respondent's second proposed Parenting Plan does not contain any provision for either parent to allow the other parent's

family members to spend time with the child based on geographic proximity to those family members.

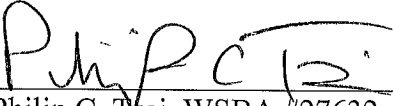
B. Substantial Change of Circumstances Related to Decision Making.

The reference to Report of Proceeding 309-310 contained in the Respondent's Answer for Review addressed the Appellant's belief that vaccinations/immunizations should not be given to children. Specifically, upon cross examination, the Appellant testified that if the trial court did not order joint decision making or order that the child be vaccinated, Appellant was not going to vaccinate the child. Appellant also testified that she was not going to have any of the childhood immunizations provided to the child. The statement that "clear scientific research that has established vaccinations and immunizations for children are safe and save children's lives" was argument on behalf of the Respondent. The issue before the trial court was not whether vaccinations and immunizations save children's lives, it was whether the Court should order joint decision making for the parents.

Respondent agrees that Dr. Hutchins-Cook's testimony regarding joint decision making was directly related to the best interests of the child.

However, Respondent also believes Dr. Hutchins-Cook's testimony recommending joint decision making was also based in part on John relocating from Atlanta to Washington. Dr. Hutchins-Cook's analysis includes statements about John being in Washington and compares the process for decision making while Respondent was in Atlanta compared to his being in Washington. Therefore, Respondent correctly argues that Dr. Hutchins-Cook's recommendation for joint decision making in the final parenting plan was in part based on Respondent relocating from Atlanta to Washington.

Respectfully submitted this 26<sup>th</sup> day of March, 2018 by:

  
Philip C. Tsai, WSBA #27632  
Attorneys for Respondent  
TSAI LAW COMPANY, PLLC  
2101 Fourth Avenue, Ste. 2200  
Seattle, WA 98121

# Appendix A

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**SUPERIOR COURT OF WASHINGTON COUNTY OF KING**

In re:  
ELLA GRACE SCHMIDT, minor child  
  
JOHN PATRICK OSMAN,  
Petitioner,  
  
and  
  
TINA ANNE LISE SCHMIDT  
  
Respondents.

No. 15-3-07774-4 SEA  
Parenting Plan  
(PPP / PPT / PP)  
 Clerk's action required: **1**.

**Parenting Plan**

1. This parenting plan is a *(check one)*:  
 Proposed Final Parenting Plan submitted by Petitioner, John Osman. It is not a signed court order (PPP).

2. Children – This parenting plan is for the following children:

| Child's name | Age |
|--------------|-----|
| 1. Ella      | 5   |

3. Reasons for putting limitations on a parent (under RCW 26.09.191)  
a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.  
*(If a parent has any of these problems, the court **must** limit that parent's contact with the children and right to make decisions for the children.)*

Neither parent has any of these problems. *(Skip to 3.b.)*

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b. **Other problems** that may harm the children's best interests. (If a parent has any of these problems, the court **may** limit that parent's contact with the children and right to make decisions for the children.)

Neither parent has any of these problems.

4. **Limitations on a parent**

Does not apply.

5. **Decision-making**

When the children are with you, you are responsible for them. You can make day-to-day decisions for the children when they are with you, including decisions about safety and emergency health care. Major decisions must be made as follows.

a. **Who can make major decisions about the children?**

| Type of Major Decision            | Limited<br>(only the parent named below has authority to make these decisions) |
|-----------------------------------|--|
| School / Educational / Child Care | <input checked="" type="checkbox"/> Joint (Mother and Father)                  |
| Health care (not emergency)       | <input checked="" type="checkbox"/> Joint (Mother and Father)                  |
| Other: Religion                   | <input checked="" type="checkbox"/> Each may expose to their religion          |
| Other: Extracurricular Activities | <input checked="" type="checkbox"/> Joint (Mother and Father)                  |

Joint decision making shall be utilized with arbitration if the parties do not agree. Parties shall use the Round Robin process: Whichever parent initiates a change provides the other parent, in writing, their idea and rationale, a brochure or information sheet, address, cost and contact person. If the receiving parent agrees, the decision is made. If, after research of material and facility, the parent does not agree, they then provide, in writing, their alternative idea, rationale, information and contact person. The parent receiving that communication then agrees or, after researching, disagrees and then they do one more round of this process. The parent who is last to disagree at end of second round must initiate, in writing, the conflict resolution phase.

Mother shall continue to schedule well-child checkups for doctor and dentist. She shall inform father of appointment times as soon as she knows them. He will inform mother if he will or will not attend the appointment. He should let her know

1 within 24 hours of her notice. If he does not attend (and I understand that this is  
3 mother's preference), she shall provide father a brief written summary of the visit  
5 including provider recommendations. Father may also decide to schedule his own  
7 individual follow-up consultation (not to include Ella) with the provider. Mother  
9 shall make the decision as to providers in her new community. She shall provide  
11 a list of all providers (including contact information) in writing. Mother must use  
13 in-network providers associated with the current insurance coverage applicable  
15 to Ella. Unless otherwise agreed, if Mother elects to use out-of-network  
17 providers, she bears the full cost.  
19

21 Mother shall provide father a written summary of the medical research of the pros  
23 and cons of the typical childhood immunization regimen. She shall also list the  
25 typical recommended regimen of immunizations including Ella's current status in  
27 her immunizations to those recommended in the future. If the time approaches for  
29 a scheduled immunization, and the parents are in disagreement, they shall use  
31 arbitration.  
33

35 If there are visits to the doctor between well-child visits because of symptoms,  
37 each parent shall inform the other of the appointment with the same provisions as  
39 for well-child visits. The parents shall follow the doctor's recommended treatment  
41 plan. All medicines shall go back and forth with Ella along with full instructions. If a  
43 course of treatment is recommended for the long-term (more than a regimen of  
45 antibiotics) or an invasive treatment such as surgery, orthodontics or eye care),  
47 both parents weigh in on the decision; and if in disagreement, go to arbitration.  
49

51 Mother has stated that she plans to keep Ella in Montessori for this kindergarten  
53 year, and has already enrolled her. The parents shall use the Round Robin  
55 process and arbitration for school placement decisions for first grade and  
57 thereafter.  
59

61 Mother shall make decisions for activities outside of school, such as sports, art,  
63 music, dance, or day camps unless they fall into Ella's time with her dad. There  
65 shall be a joint decision and arbitration, if necessary. There shall be the same  
67 provision for father to select one activity per season (if he so chooses) as in the  
69 Georgia Parenting Plan.  
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73 **b. Reasons for limits on major decision-making, if any:**

75  Does not apply.  
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6. **Dispute Resolution – If you and the other parent disagree...**

From time to time, the parents may have disagreements about shared decisions or about what parts of this parenting plan mean.

a. To solve disagreements about this parenting plan, the parents will go to *(check one)*:

the dispute resolution provider below (before they may go to court):

Arbitration (*mediator or agency name*): Larry Besk, Cheryll Russell or Boyd Buckingham whomever is first available.

**Important!** Unless there is an emergency, the parents must participate in the dispute resolution process listed above in good faith, before going to court. This section does **not** apply to disagreements about money or support.

b. If mediation, arbitration, or counseling is required, one parent must notify the other parent by *(check one)*:  certified mail  other (*specify*): in writing, email is okay

The parents will pay for the mediation, arbitration, or counseling services as follows *(check one)*:

Equal split of costs.

**What to expect in the dispute resolution process:**

- Preference shall be given to carrying out the parenting plan.
- If you reach an agreement, it must be put into writing, signed, and both parents must get a copy.
- If the court finds that you have used or frustrated the dispute resolution process without a good reason, the court can order you to pay financial sanctions (penalties) including the other parent's legal fees.
- You may go back to court if the dispute resolution process doesn't solve the disagreement or if you disagree with the arbitrator's decision.

7. **Custodian**

The custodian is Tina Schmidt solely for the purpose of all state and federal statutes which require a designation or determination of custody. Even though one parent is called the custodian, this does not change the parenting rights and responsibilities described in this plan.

*(Washington law generally refers to parenting time and decision-making, rather than custody. However, some state and federal laws require that one person be named the custodian. The custodian is the person with whom the children are scheduled to spend more of their time.)*

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## Parenting Time Schedule (Residential Provisions)

Check one:

Complete the parenting time schedule in sections 8 - 11.

### 8. School Schedule

#### a. Children under School-Age

Alternating weekends from Friday after school or work until return to mother's care on Sunday at 5:00 p.m.

If the parties reside within 10 miles of each other, father shall have from Thursday after school or work until Monday morning drop off at school.

On the week opposite the alternating weekends with the father, Ella shall Wednesdays from after school or work with return to mother's care at 7:00 p.m. If the parties reside within 10 miles of each other, this mid week visit shall be an overnight with the father returning Ella to school on Thursday morning.

Father shall also be able to participate in Ella's school and activities in addition to the above-noted residential time. Father shall provide school and activity leaders with his contact information so that he is on email and newsletter lists. If both parents want to participate on field trips, they shall alternate.

#### b. School-Age Children

Alternating weekends from Friday after school or work until return to mother's care on Sunday at 5:00 p.m.

If the parties reside within 10 miles of each other, father shall have from Thursday after school or work until Monday morning drop off at school.

On the week opposite the alternating weekends with the father, Ella shall Wednesdays from after school or work with return to mother's care at 7:00 p.m. If the parties reside within 10 miles of each other, this mid week visit shall be an overnight with the father returning Ella to school on Thursday morning.

Father shall also be able to participate in Ella's school and activities in addition to the above-noted residential time. Father shall provide school and activity leaders

1 with his contact information so that he is on email and newsletter lists. If both  
3 parents want to participate on field trips, they shall alternate.  
5

7 **9. Summer Schedule**

9 Same as school schedule.  
11

13 For summer vacation 2017, Ella, age 6, shall have 2 non-consecutive 7-day  
15 uninterrupted periods with each parent. Both parents shall provide the other with  
17 itinerary of flight numbers and destination, along with a contact telephone number.  
19 The itinerary shall be provided in writing 7 days prior to exchange.  
21

23 For summer vacation 2018, Ella, age 7, shall have the same vacation schedule as for  
25 2017.  
27

29 For summer vacation 2019 and thereafter, Ella shall have 3 weeks with each parent,  
31 taken in 2 periods, one period being 14 days, and the other period being 7 days.  
33 Same as above for itinerary.  
35

37 The parents shall alternate yearly first choice of dates. They shall provide their dates  
39 to the other parent by April 15 each year. The parents are not limited or restricted as  
41 to their decisions for summer. They may use their time to enroll Ella in camps, or to  
43 visit family, or stay home.  
45

47 **10. Holiday Schedule (includes school breaks)**

49  This is the Holiday Schedule for  all children  school-age children only:  
51 (Put one parent's name in each column and fill out when the children will be with that  
53 parent for holidays and school breaks.)  
55

57 Ella shall have 3-day weekends (Martin Luther King Day, Memorial Day and  
59 Labor Day) with father. This may mean Ella has 3 weekends in a row with her  
61 father. These weekends shall begin on Friday recess from school or work until  
63 Monday at 5:00 p.m.  
65

67 Ella shall alternate midwinter and spring breaks with each parent each year with  
69 the father having spring break in odd years and midwinter break in even years.  
71 The weekend on each end of the break shall be with the regularly scheduled  
73 parent.  
75

77 Winter holiday break in December shall be alternated first half with the father  
79 and second half with the mother in even years and second half with father and

1 first half with mother in odd years. The exception to this is that Ella shall be with  
3 her mother overnight for the first night and last night of Hanukkah. The time  
5 begins after school, approximately 3 pm, and ends with delivery to school or to  
7 father, if it is Ella's time to be with him.  
9

11 Ella shall be with her father overnight for December 24 and 25 each year,  
13 beginning at 3 pm, with return to mother's care December 25 at 7 pm, if it is  
15 Ella's time to be with her. For those years in which the dates of the first and last  
17 nights of Hanukkah and Christmas Eve or Day overlap, the parents shall  
19 alternate selecting which date they shall have with Ella. For example, mother  
21 would select either first or last night of Hanukkah on her year, and Father, on his  
23 year, would choose December 24 or December 25. It is not likely that this will  
25 occur very often.  
27

29 Winter holiday break begins after school or work on the day of school dismissal,  
31 and ends at 5 pm the day before school resumes. New Year's Eve and Day are  
33 part of the holiday break.  
35

37 Mother's Day and Father's Day shall be with that parent. Ella's time with them  
39 shall begin Saturday at noon, and end Sunday at 5 pm.  
41

43 Ella shall be with her father on Easter every year, and with mother for Passover  
45 every year. These days shall include an overnight. Ella is overnight with father  
47 Saturday beginning at noon, with return to mother Sunday at 5 pm. Ella is  
49 overnight with her mother the night of Passover beginning at noon if a non-  
51 school day, or after school, ending at 5 pm the next evening. If Passover falls  
53 within Ella's spring break with father, spring break is not interrupted. If Easter  
55 falls within Ella's spring break with mother, spring break is not interrupted. As  
57 described earlier, spring break does not include weekends. The weekends are  
59 considered within the regular residential time. Easter will always be on a  
61 Sunday, so it will not interfere with spring break.  
63

65 July 4th shall be alternated yearly with the father in odd years and the mother in  
67 even years. The exception is if July 4th is included in one parent's choice of  
69 summer vacation period, in which case, it does not interfere with summer  
71 vacation dates.  
73

75 Ella's birthday shall alternate yearly with mother in even and father in odd years.  
77 Ella's time with her parent begins after school, or on non-school days at noon  
79 the day before, and ends at 5 pm the next day.

1 Halloween: Father may celebrate this with Ella each year. It begins after  
3 school and ends at 8 pm.

5  
7 Thanksgiving: Ella shall alternate yearly with each parent with father in odd  
9 years and mother in even years. The holiday begins after school Wednesday,  
11 and ends at 5 pm Sunday.

13  
15 Yom Kippur: Ella shall be with mother from after school the day of, with return to  
17 regular schedule the next morning.

19  
21 Rosh Hashanah: Ella shall be with her mother from after school the day of, with  
23 return to regular schedule the next day. If this holiday conflicts with Labor Day,  
25 Ella's time shall be with mother for the holiday, with return to father if part of the  
27 3-day weekend remains.

29  
31 **11. Conflicts in Scheduling**

33 The Holiday Schedule must be observed over all other schedules. If there are conflicts  
35 within the Holiday Schedule (*check all that apply*):

37  Named holidays shall be followed before school breaks.  
39

41  
43 **12. Transportation Arrangements**

45  
47 Transportation shall be provided by parents or their surrogates. They shall provide  
49 email or text notice if a surrogate is doing the transportation. Surrogates must be  
51 known to Ella.

53  
55 The parents shall alternate the two trips for weekend transportation with the Ferry as  
57 exclusive transportation mode. Mother shall bring Ella to the Seattle side of the ferry  
59 and Father shall bring Ella to the Port Orchard side of the ferry. The parties shall use the  
61 ferry system unless it is not running. If the ferry is not running, then the parties shall  
63 drive rather than utilize the ferry. The parents shall determine a mid-point as the location  
65 of the exchange. Both parents drive to the midpoint at the exchanges if the ferry is not  
67 running.

69  
71 The parents' attitude about transportation, and their responses to Ella, will be very  
73 important. Mother has had practice with Ella making the trip to her grandmother's  
75 home, and to visit Federal Way friends. This same matter-of- fact, positive attitude will  
77 benefit Ella for exchanges. Both parents shall refrain from any negative attitude or  
79 behavior leading up to and during transportation and exchanges. Short, civil and  
pleasant "hello and how are you" communication benefits Ella. It also benefits Ella to

1 have a brief hug and kiss at separation rather than prolonged "I love you, miss you"  
3 type statements. Sending her off with "love you and fun" or "Have a good week"  
5 benefits her.  
7

9 **13. Moving with the Children (Relocation)**

11 If the custodian plans to move, s/he **must notify** every person who has court-ordered time  
13 with the children.

15 ***Move to a different school district***

17 If the move is to a different school district, the custodian must complete the form *Notice of*  
19 *Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days** before the  
21 intended move.  
23

25 ***Exceptions:***

- 27
- 29 ■ If the custodian could not reasonably have known enough information to complete  
31 the form in time to give 60 days' notice, the custodian must give notice within **5 days**  
33 after learning the information.
  - 35 ■ If the custodian is relocating to a domestic violence shelter or moving to avoid a  
37 clear, immediate and unreasonable risk to health or safety, notice may be delayed  
39 **21 days**.
  - 41 ■ If information is protected under a court order or the address confidentiality program,  
43 it may be withheld from the notice.
  - 45 ■ A custodian who believes that giving notice would put her/himself or a child at  
47 unreasonable risk of harm, may ask the court for permission to leave things out of  
49 the notice or to be allowed to move without giving notice. Use form *Motion to Limit*  
51 *Notice of Intent to Move with Children (Ex Parte)* (FL Relocate 702).  
53

55 The *Notice of Intent to Move with Children* can be delivered by having someone personally  
57 serve the other party or by any form of mail that requires a return receipt.

59 If the custodian wants to change the *Parenting Plan* because of the move, s/he must  
61 deliver a proposed *Parenting Plan* together with the *Notice*.

63 ***Move within the same school district***

65 If the move is within the *same* school district, the custodian still has to let the other parent  
67 know. However, the notice does not have to be served personally or by mail with a return  
69 receipt. Notice to the other party can be made in any reasonable way. No specific form is  
71 required.  
73

75 ***Warning! If you do not notify...***

77 A custodian who does not give the required notice may be found in contempt of court. If  
79 that happens the court can impose sanctions. Sanctions can include requiring the

1 custodian to bring the children back if the move has already happened, and ordering the  
3 custodian to pay the other side's costs and lawyer's fees.

5 **Right to object**

7  
9 A person who has court-ordered time with the children can object to a move to a different  
11 school district and/or to the custodian's proposed *Parenting Plan*. If the move is within the  
13 same school district, the other party doesn't have the right to object to the move, but s/he  
15 may ask to change the *Parenting Plan* if there are adequate reasons under the  
17 modification law (RCW 26.09.260).

19 An objection is made by filing the *Objection about Moving with Children and Petition about*  
21 *Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File your  
23 *Objection* with the court and serve a copy on the custodian and anyone else who has  
25 court-ordered time with the children. Service of the *Objection* must be by personal service  
27 or by mailing a copy to each person by any form of mail that requires a return receipt. The  
29 *Objection* must be filed and served no later than **30 days** after the *Notice of Intent to Move*  
31 *with Children* was received.

33 **Right to move**

35 During the 30 days after the *Notice* was served, the custodian may not move to a different  
37 school district with the children unless s/he has a court order allowing the move.

39 After the 30 days, if no *Objection* is filed, the custodian may move with the children without  
41 getting a court order allowing the move.

43 After the 30 days, if an *Objection* has been filed, the custodian may move with the children  
45 **pending** the final hearing on the *Objection unless*:

- 47  
49
  - 51 ■ The other party gets a court order saying the children cannot move, or
  - 53 ■ The other party has scheduled a hearing to take place no more than 15 days after  
55 the date the *Objection* was served on the custodian. (However, the custodian may  
57 ask the court for an order allowing the move even though a hearing is pending if the  
59 custodian believes that s/he or a child is at unreasonable risk of harm.)

61 The court may make a different decision about the move at a final hearing on the *Objection*.

63 **Parenting Plan after move**

65 If the custodian served a proposed *Parenting Plan* with the *Notice*, and if no *Objection* is  
67 filed within 30 days after the *Notice* was served (or if the parties agree):

- 69  
71
  - 73 ■ Both parties may follow that proposed plan without being held in contempt of the  
75 *Parenting Plan* that was in place before the move. However, the proposed plan  
77 cannot be enforced by contempt unless it has been approved by a court.

- 1           ▪ Either party may ask the court to approve the proposed plan. Use form *Ex Parte*  
3           *Motion for Final Order Changing Parenting Plan – No Objection to Moving with*  
5           *Children* (FL Relocate 706).

7           **Forms**

9           You can find forms about moving with children at:

- 11           ▪ The Washington State Courts' website: [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms),  
13           ▪ The Administrative Office of the Courts – call: (360) 705-5328,  
15           ▪ Washington LawHelp: [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org), or  
17           ▪ The Superior Court Clerk's office or county law library (for a fee).

19           *(This is a summary of the law. The complete law is in RCW 26.09.430 through 26.09.480.)*

21           **14. Other**

23           **ADDITIONAL PROVISIONS:**

25           There is no indication that father's use of alcohol or marijuana interferes with the  
27           performance of parenting functions. However, it is in the best interests fo Ella for the  
29           Father not to consume alcohol or use marijuana for 12 hours prior to or during Ella's time  
31           with him.

33           Father shall participate in 12 hours of individual counseling or coaching with a substance  
35           abuse specialist at Therapeutic Health Services.

37           The parents shall participate with a parenting coach for guidance in their communication  
39           for at least 6 months. There should be at least one in-person individual meeting with  
41           each parent, and if agreeable to the parenting coach, further meetings can be in-person  
43           or by telephone or other electronic media. The parents shall each use the same  
45           professional. Candidates:

47           Karin Ballantyne (206) 227-0022, [kbbgal@gmail.com](mailto:kbbgal@gmail.com)

49           Jayne Hulsey (206) 329-4090

51           Parents shall continue their individual counseling for at least 6 months, or as their  
53           therapist recommends.

55           Father shall have FaceTime or Skype communication with Ella each night at 7:00 p.m.  
57           unless father has residential time with the child on that day.



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**15. Proposal**

This is a proposed (requested) parenting plan.

**16. Court Order**

Does not apply. This is a proposal.

**If this is a court order, the parties and/or their lawyers (and any GAL) sign below.**

This order *(check any that apply)*:

- is an agreement of the parties.
- is presented by me.
- may be signed by the court without notice to me.

This order *(check any that apply)*:

- is an agreement of the parties.
- is presented by me.
- may be signed by the court without notice to me.

\_\_\_\_\_  
*Phillip C. Tsai, WSBA #27632*  
*Attorney for Petitioner*

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*Attorney for Respondent*

**TSAI LAW CO.**

**March 26, 2018 - 11:06 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95485-2  
**Appellate Court Case Title:** In the Matter of the parentage and Support of Ella Schmidt  
**Superior Court Case Number:** 15-3-07774-4

**The following documents have been uploaded:**

- 954852\_Other\_20180326110552SC567201\_3438.pdf  
This File Contains:  
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Response to Appellant's Objection and Motion to Strike

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