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**COURT OF APPEALS  
DIVISION \_\_\_ i**

**Case No.: 64634-6-1**

**STATE OF WASHINGTON**

**PATRICK CONARRO, Appellant**

**v**

**CLIFFORD PITCHER and KATHY CONARRO,  
Repsondents.**

**BRIEF OF APPELLANT/PETITIONER**

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
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**Patrick Conarro  
Appellant Pro Per  
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## I. Introduction:

This case evolves out of the filing of a Petition to establish Paternity by the Plaintiff after learning through DNA testing that he was not the biological father of the minor child, Ian Conarro. After filing the Petition and properly serving the defendants, Plaintiff filed motions to compel the genetic testing of defendant Clifford Pitcher.

A pre-trial hearing was held and Plaintiff nor either defendant was present. The Court set another date and also entered an Order for certain DNA evidence to be presented to the Court. Plaintiff complied with said Order and presented the DNA evidence that showed he was not the biological father of the minor child.

Prior to the date of the re-scheduled pre-trial hearing, and after Plaintiff had expended substantial resources to fly to Seattle to be present, the Court, sua sponte, dismissed the case prior to the time set forth in its prior ruling and after Plaintiff had already complied with said Order.

Plaintiff sought reconsideration and was denied. This appeal followed.

## II. Assignments of Error:

1. The trial court erred in entering its order dismissing the case prior to the time provided to Appellant/Petitioner to respond.

## III. Statement of the Case:

This case involves the proper establishment of paternity in a matter where the custodial parent was sleeping with her employer and became pregnant. After becoming aware that she was pregnant, the defendant, Kathy Conarro and defendant Clifford Pitcher, who is believed to be the biological father of the minor child, entered an agreement in Washington State to conspire and commit paternity fraud upon the Plaintiff [See CP 1].

This agreement and conspiracy took the form of the defendants coming together and cajoling the Plaintiff/Appellant to become involved and ultimately marry the defendant Kathy Conarro and she and defendant Pitcher continued this ruse until after the DNA test results became known which conclusively determined that Plaintiff/Appellant was not and is not the biological father of the minor child [Se CP 1 and 2].

Plaintiff/Appellant and defendant Kathy Conarro were eventually divorced in Colorado based on a separation agreement which is now being challenged in the Colorado Supreme Court to overturn that portion of the separation agreement for the fraud that was practiced by defendant Conarro upon the Plaintiff/Appellant.

As a result of the direct challenge to the legitimacy of the separation agreement, the determination of paternity that was established within said agreement is not final and the admissions of the defendant Kathy Conarro and stipulations made in the context of other court proceedings, it is clear that she knew that Plaintiff/Appellant was not the biological father of the minor child and that said defendant Clifford Pitcher may, in fact, be the actual biological father of the minor child.

Paternity proceedings were established but later dismissed, in error by the trial court. Plaintiff/Appellant sought relief by way of this appeal See CP 1,2,3,4,5,6 and7].

#### IV. Argument:

The only issue raised on this appeal is whether or not the trial court may dismiss a matter, pending before it, when the Orders of the trial court have either been complied with or the time to comply has not expired.

The Courts here in Washington State have held that a paternity action may be brought at any time as long as the child may be made a party, that is, prior to the child's demise. **Gonzales v.**

Cowen, 884 P.2d 19 (1994). In deciding whether a paternity action should proceed if the child is born during the marriage, the best interest of the child, is deemed paramount. In re Marriage of Their, 841 P.2d 794 (1992).

In reviewing a motion to dismiss or an order to dismiss, the Court of Appeals seeks evidence of manifest abuse of discretion. Abuse arises when the ruling is manifestly unreasonable or discretion may have been exercised by the court on untenable grounds. Escude ex rel. Escude v. King County Public Hospital Dist. No. 2, 69 P.3d 895 (2003). When one appeals from a dismissal without prejudice, the merits of the case are not in issue and are not generally reviewed, the only matter of importance is whether or not the court was justified in entering a judgment without reaching the merits of the case. Lewis County Sav. & Loan Ass'n v. Black, 374 P.2d 157 (1962).

This Court of Appeals has also held that the trial court must find that noncompliance with its orders caused substantial prejudice to the other party in order to justify the involuntary dismissal of an action. Johnson v. Horizon Fisheries, LLC, 201 P.3d 346 (2009). No such finding was made in the instant matter. The dismissal of an action is justified when a party proceeds in willful and deliberate disregard of reasonable and necessary court orders, the other party prejudiced as a result, and the efficient administration of justice is impaired. Apostolis v. City of Seattle, 3 P.3d 198 (2000). None of these requirements were met in the above captioned matter. The trial court, sua sponte, simply dismissed the case without notice to the Plaintiff and before the time period for compliance had expired.

Dismissal of a matter is an appropriate remedy when the record indicates that (1) the party has refused to obey a court order that was willful or deliberate, (2) the party's actions have substantially prejudiced the other party's ability to prepare for trial, and (3) the trial court

explicitly considered whether a lesser sanction would probably have sufficed; however, courts do not resort to dismissal lightly. Will v. Frontier Contractors, Inc., 89 P.3d 242 (2004).

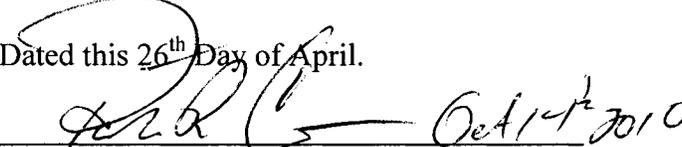
V. Conclusion:

It is clear that the trial court's dismissal of the above captioned matter was in error. There was no willful or deliberate disregard of the court's order, in fact, the exact opposite is true as the Plaintiff/Appellant did everything in his power to comply and did in fact comply with the trial court's order to provide the DNA evidence that proved he was not the biological father of the minor child.

Secondly, there was no prejudice to the opposing parties who have not filed a single appearance or other response in this matter. Thirdly, the trial court did not consider any lesser sanction prior to imposing the dismissal in this matter.

For those foregoing reasons and the law applied thereto, Plaintiff/Appellant prays this Court remand the matter back to the trial court and allow for the filing of an amendment to the Petition to Establish Paternity by adding the minor child as a party to the action. Upon remand, and the granting of leave to amend to add an indispensable party, Plaintiff/Appellant prays this matter may proceed to a proper adjudication on the merits of this action.

Dated this 26<sup>th</sup> Day of April.

  
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**CERTIFICATE OF SERVICE**

I, Patrick Conarro, do hereby certify that I served a copy of the foregoing Appellant's Opening Brief, on the following persons, so entitled to same, to wit:

Kathy Conarro  
The Colorado Springs Independent Newsweekly  
235 S. Nevada Ave.  
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Clifford Pitcher  
2500 E. Denny Way, Apt. 301  
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By placing same in a sealed envelope, addressed as noted herein above, having

adequate postage, prepaid and affixed thereto, and depositing same in the United

States Post Office located in Cascade, Colorado on this the 10<sup>th</sup> Day of ~~March~~ <sup>Sept 14<sup>th</sup> 2010</sup> March,

2010.  
  
Patrick Conarro