

71398-1

71398-1

FILED
COURT OF APPEALS
DIVISION ONE

AUG 18 2014

No. 71398-1-I
IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

In re the Marriage of:
Nathan Brown, *Appellant*
and
Mi Brown, *Respondent*

OPENING BRIEF

Nathan Brown
Appellant, pro se
14720 114th Ave NE
Kirkland WA 98034
(253) 508-0495

A. Assignments of Error

Error # 1: - The trial court erred by entering an award of attorney fees against Appellant.

Error # 2: - The trial court erred by failing to vacate the case schedule and by failing to dismiss the petition on 9/24/12.

Error # 3: - The trial court erred by failing to warn Appellant of the need to moderate his conduct or have sanctions imposed?

Error # 4: - the trial court erred by failing to presume that litigation conduct is the responsibility of the attorney rather than the client.

B. Issues Pertaining to Assignments of Error

Issue # 1:

Did the trial court order that adopted the initial GAL recommendations with some modifications end the litigation in that the basis for adequate cause was no longer was disputed?

Issue # 2:

Irrespective of Issue # 1, did the trial court abuse its discretion by dismissing the action and also awarding attorney fees as a sanction?

Issue # 3:

Did the trial court err by failing to require Respondent to demonstrate the specific additional legal work directly caused by Appellant's litigation conduct? Irrespective of the above, did the trial court err by awarding attorney fees against Appellant instead of his attorney?

Issue # 4:

Under the facts of this case, were Appellant and his attorney entitled to notice that certain conduct was likely to cause exposure to sanctions thereby providing an opportunity to mitigate and avoid sanctions?

C. Statement of the Case

Each of the official acts described in this section is shown by SCOMIS printout, a copy of which is in the Appendix for convenience.

The parties were granted a decree of dissolution on 2/5/09. Also filed were a parenting plan, findings of fact and a child support order.

On about 4/26/12, Appellant Nathan Brown filed a petition to modify parenting plan with proposed plan [CP 1-7; 37-48], motion for temporary parenting plan with declaration [CP 8-22], and noted an adequate cause hearing which was heard on 5/31/12. Adequate cause was found and a GAL was appointed [CP 81-83; 97-99]. On 8/13/12, an initial report of GAL was filed [CP 84-86]. Appellant filed a motion for temporary order and declaration on 8/20/12 [CP 87-93]. The motion was set for hearing on 9/24/12 and an order was entered on that date after the hearing [CP 130-131; 143-145].

On 3/8/13, an order from pretrial conference was entered [CP 154-159]. On 3/28/13, Appellant brought a motion with an agreed order to continue the trial start to 6/24/13 [CP 160-162]. An amended case schedule was issued [CP 163-164].

On 4/16/13, the county prosecutor filed a petition to modify child support under the same case number [CP 165-167]. On 5/29/13, a pretrial conference order regarding the late addition of the child support issue was entered [CP 169-174]. On about 6/20/13, Respondent filed a motion to dismiss the petition to modify [CP 284-289] and also a declaration regarding attorney fees [CP 175-193].

Respondent's motion was noted for hearing on the date of trial on 6/25/13. An order of dismissal was entered that same day [CP 200-201].

On 7/8/13, Appellant Nathan Brown filed a motion for reconsideration of the order dismissing petition and granting fees [CP 203-207]. On 7/16/13, Respondent filed a motion and declarations regarding attorney fees. On 8/6/13, an order was entered to compel Appellant to respond to Respondent's motion re attorney fees. On 8/12/13, Respondent filed a reconsideration memorandum on 8/12/13 [CP 247-307].

On 10/15/13, Appellant filed a declaration seeking to reinstate the action and to either rescind the award of attorney fees or have the award be the sole responsibility of his former attorney [CP 308-311].

On 12/2/13, judgment was entered for attorney fees [CP 327-329]. Reconsideration was denied [CP 330]. An order regarding GAL fees was entered [CP 331]. Notice of appeal was filed on 1/2/14.

D. Summary of Argument

After a finding of adequate cause was made, and a trial date set, Appellant Nathan Brown was denied a trial. Allegedly, Appellant and/or his attorney failed to respond in an acceptable manner supposedly causing great extra attorney fees and legal work to be expended by Respondent.

The truth is somewhat different, as this brief will explain. Upon a motion by Appellant's attorney, the adverse GAL report was adopted before trial including its recommendations to maintain the residential status.

E. Argument

If the purpose of the modification action was to change which parent was to be the majority time parent, what was the purpose of adopting the GAL report before trial and before opportunity to cross-examine?

The order entered on 9/24/12 states in pertinent part:

3. The recommendations of Ms. Barton in her report are adopted except that the parents are not ordered to take co-parenting classes; see attached.

CP 143-144.

The page from the GAL report which was attached states in pertinent part:

Based on the foregoing discussion, I recommend the following:

1. The boys should continue to reside primarily with the mother and follow the residential schedule from the 2009 plan. The midweek visit should be scheduled at least 2 weeks in advance, if it is not to occur on Wednesday as currently scheduled.

...

5. . . . Any update should be provided to the court by February 1, 2013 for trial.

CP 145.

On the excerpted page, paragraph 2 is crossed out. According to the plain terms of the handwritten court order, the remainder of the page is incorporated into the court order. This creates an anomaly between the provision which says that the GAL recommendations are adopted and the provision which states that any update should be provided before a specific date for trial. The anomaly is whether the GAL recommendations resolve the disputed legal issue for which adequate cause was found or do they not, thereby awaiting resolution at trial.

To resolve the apparent conflict, "adopted" must first be defined.

Adopted can only mean that the GAL recommendations are determinative of the disputed issues.

Caselaw precedent holds that a superior court, on revision, can “adopt” the findings of a commissioner:

. . . [W]e see no reason why the superior court on a revision cannot adopt the commissioner’s orders and judgment either expressly or by clear implication from the record.

In re B.S.S., 56 Wn. App. 169, 170, 782 P.2d 1100 (1989).

The superior court may adopt the commissioner’s findings of fact as its own.

[emphasis added in both].

B.S.S., at 171.

In the context of revision motions, adoption of the commissioner’s findings by a superior court judge renders a decision that stands on its own. As the above quotes show, “adopt” causes the subject findings to have the same value and power as if the revision court made its own findings. Appellant cannot see why that meaning of adopt should not also apply as described further in this brief.

Another authority states the following as its definition:

To accept, appropriate, choose, or select. To make that one’s own (property or act) which was not so originally. To accept, consent to, and put into effective operation, as in the case of a constitution, constitutional amendment, ordinance, court rule, or by-law. [emphasis added].

Black’s Law Dictionary, 5th Ed. 1979.

Presuming that the above authorities are sufficient to demonstrate the meaning of “adopt” to this court, the issue becomes: What legal effect does the 9/24/12 order “adopting” the GAL recommendations have?

To answer that question, one usually must know what the purpose was in presenting the issue to court in the first place. In this case, it doesn't matter because unless Appellant carries his burden in the trial court, nothing changes. The "playing field" is slanted in favor of the non-moving party as a matter of law.

In the instant case, on 8/20/12, Appellant's trial attorney brought the motion to adopt "several provisions" of the GAL report. [CP 87-88]. It should be noted that the overall thrust of the GAL report was adverse to his client (Appellant here), specifically the provision regarding the continuation of the residential status quo. Thus, what the attorney was trying to achieve is not obvious. In any event, it is beyond the reach of this court to opine upon its wisdom or lack thereof. Suffice it to say that counsel is presumed to have a good reason for doing what he did.

The hearing was held on 9/24/12 and the order entered. [CP 143-145]. No revision was sought. The only conclusion can be that "adopt" in this situation is a request to have the commissioner make the legal determination of the modification issues. Otherwise the motion is pointless and the order is meaningless. Because no revision was taken by either side, the adopted provisions must stand as a binding determination (order) of the court. That can only mean that the issue for which modification was initially sought has been determined as of the date of entry. Further proceedings, as a matter of law, would be useless.

At that point, why neither attorney moved to dismiss the modification action is a mystery. Why the commissioner did not realize that she

was summarily determining the entire dispute is also a mystery.

SCOMIS shows little or no advocacy activity in the next 6 months. Several administrative actions took place: such as an order to appear for failure to follow case schedule though no action appears to have been taken in regard to it. The trial judge was changed. A pre-trial conference was held and an order issued therefrom. [CP 154-159]. This order shows that both parties and the judge behaved as if the 9/24/12 order had no effect or had never happened.

As argued above, there is no other way to view the 9/24 order than as having determined the ultimate issue before the court. Prior to the commissioner's action, the GAL report was just that – a report. It had no power and its value was only as a piece of evidence. The motion to adopt portions of it (and the order granting that motion) changed all that. It was, at that point, a substantive decision which had a profound legal effect which unfortunately was ignored by all concerned.

CR 1 states:

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

The activities in the trial court after the 9/24/12 order entered completely failed to secure “*the just, speedy, and inexpensive determination*” of the action. Ironically, the order dismissing the action without prejudice on 6/25/13 was the exact same result that the 9/24/12 order should have

obtained. Respondent's counsel even stated to the court on 6/25/13 that the 9/24 order adopted the GAL report.¹ [**VRP pg 23 – app B**].

The standard of review for sanctions is abuse of sound discretion.

A 1989 Supreme Court case describes judicial discretion in a familiar manner:

A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. [cite omitted]. Also, "[a]n abuse of discretion exists only where no reasonable person would take the position adopted by the trial court." [cite omitted].

Allard v. First Interstate Bank, 112 Wn.2d 145, 148-149, 768 P.2d 998 (1989).

Another case expounds on the above holding:

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. [cite omitted]. Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

Pybas v. Paolino, 73 Wn. App. 393, 399, 869 P.2d 427 (1994).

The trial court abused its discretion when it both dismissed the action and also imposed sanctions.

One cannot read the **VRP** from 6/25/13 and fail to appreciate the candor expressed by Appellant's trial attorney. He willingly fell on his

¹ Arguably report should be recommendations. The import is the same, however.

sword over the missed steps in the processing of the case. He accepted full and exclusive responsibility for his failures. Yet the trial court assessed sanctions solely against Appellant in the form of an attorney fee award.

Does the discretion of the trial court in this situation extend to essentially ignoring an open court admission of culpability by an attorney, which was even acknowledged at the time by the trial court? No, because the main purpose of sanctions is to deter and educate. *See* **Wash. Ins. Exch. v. Fisons 122 Wn.2d 130, 916 P.2d 411 (1996)**.

In this instant case, the party moving for sanctions waited until five days before trial to move for dismissal. This belies any claim of being squeezed for time, especially so when the **VRP** shows that she even used alleged violations of the original case schedule (which had of course been superceded by the amended case schedule) as partial justification for her sanctions request. During all that pre-trial time she failed to try to obtain an order to show cause or an order to compel compliance.² While those are not pre-requisite steps for sanctions to be imposed, their omission shows how unconcerned she appeared to be until trial was imminent.

This court should reverse the sanctions against Appellant.

² Opposing counsel expressed to the court that she was unable to figure out who Appellant intended to call as witnesses. The amended case schedule showed a discovery cutoff date of 5/20/13. [CP 163-164]. In any event, witnesses who are not disclosed usually are not permitted to testify. One exception would be the parties themselves, which Appellant's attorney noted to the court at the hearing. Overall, it appears that the failure to disclose witnesses by Appellant would be a benefit to the other party because the strong presumption is that the parenting plan should not be changed.

Only LFLR 4(a) was cited by Respondent as authority for her motion to dismiss.

At **CP 288**, Respondent quotes **LFLR 4(a)**. This is the only authority she uses to justify her motion. The last clause of the last sentence reads **[F]ailure to comply ... may result in sanctions *or* dismissal.**

The conjunctive “or” should have prevented the result that is being appealed here. Because the trial court imposed both sanctions *and* dismissal, it abused its discretion:

A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.

Fisons, supra, at 339.

Because the local rule is unambiguous, imposition of both sanctions and dismissal is “an erroneous view of the law” and consequently is an abuse of discretion. Because it is impossible to determine which sanction is the one that the trial court would have imposed if it had taken the correct view, the sanctions/dismissal order must be vacated and remanded.

Notwithstanding the above, an award of 75% of the total attorney fees of Respondent cannot be anything but prohibited fee shifting.

Fee shifting is not the purpose of sanctions, regardless of which rule is cited for authority:

[T]he least severe sanction that will be adequate to serve the purpose of the particular sanction should be imposed. ... The sanction should insure that the wrongdoer does not profit from the wrong. The wrongdoer's lack of intent to violate the rules and the other party's failure to mitigate may be considered by the trial court in fashioning sanctions. The purposes of sanctions orders are to deter, to punish, to compensate and to educate. Fisons, at 355-56.

In re Firestorm 1991, 129 Wn.2d 130, 142, 916 P.2d 411 (1996).

As described above, no mitigation effort was made by Respondent. Yet the trial court came down hard on Appellant personally. Appellant's attorney admitted that any fault was his alone. Appellant is unlikely to ever be in a similar predicament again so the purposes of deterrence or education are unnecessary. Thus, no proper purpose of the rule could be fulfilled by the trial court's order. This is classic fee shifting and it is always an abuse of sound discretion.

Respondent utterly failed to segregate the fees she supposedly incurred due to Appellant's supposed non-production from the fees normally incurred in an action such as this.

In a situation involving a different type of sanctions, once again the amount of the fees awarded is limited – in this case to those fees specifically incurred due to the opposing party's bad acts:

Should a court decide that the appropriate sanction under CR 11 is an award of attorney fees, it must limit those fees to the amounts reasonably expended in responding to the sanctionable filings.

Biggs v. Vail, 124 Wn.2d 193, 201, 876 P.2d 448 (1994).

This necessarily means that more than a mere collection of billing records is sufficient. In fact, a Supreme Court decision addresses this:

The burden of proving the reasonableness of the fees requested is upon the fee applicant. [cite omitted]. Dwight's attorneys have provided extensive documentation of their efforts in this case. While this documentation forms the starting point under the lodestar method, it is not dispositive on the issue of the reasonableness of the hours. Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "[T]he trial court, instead of merely relying on the billing records of the plaintiff's attorney, should make an independent decision as to

what represents a reasonable amount for attorney fees".
Tampourlos, at 744. [emphasis added].

**Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859
P.2d 1210 (1993).**

Suffice it to say that Appellant actually did nothing to deserve a sanction of paying his former spouse's attorney fees. Assuming for the purpose of this brief that bad acts were done, it is clear that they were done by someone else who admitted culpability. Respondent's attorney had quite a recitation about how difficult trial preparation was for her because of the presumed bad acts yet she couldn't (or wouldn't) identify the extra work she had to do as a result.

The sanctions award is unfair to Appellant but more important is that it is not supported by evidence of harm to Respondent or her attorney. It seems like the only offense in the trial court was to fail to follow the rules, with Respondent assuming that that automatically grants her a right to have her fees paid by someone else. It does not.

F. Conclusion

The sanctions imposed on Appellant are purported to be due to intransigence that caused additional legal work and expense for Respondent's attorney to be ready for trial. Yet despite her assertions, she took no actions to force compliance until it was too late to do anything about it.

This is not much different than a store owner whose display window gets broken but he doesn't board it up despite looters taking his merchandise out of the store. Why? Because insurance will pay for it.

The trial court's purpose in punishing Appellant for the acts of his attorney is unknown. No benefit is served by such a decision and it should not be allowed to stand.

Had this case been ended on 9/24/12, there would have been no opportunity to miss deadlines that are the justification used for the award of fees. Respondent's attorney bears just as much responsibility for this failure to timely end the case as Appellant's attorney does. Yet she allowed it to go on uninterrupted even when she realized something was seriously amiss.

This court should correct this unfair result by reversing the award of sanctions.

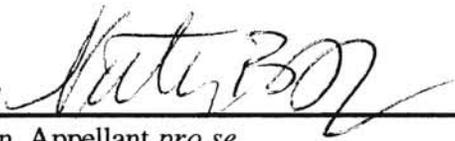
Respectfully submitted:

8/18/14

date

/s/

Nathan Brown, Appellant *pro se*



2014 SEP 19 PM 07:15

Appendix A

CASE#: 08-3-02672-1 KNT JUDGMENT# YES JUDGE ID: 32
 TITLE: BROWN VS BROWN
 FILED: 03/28/2008
 CAUSE: DIC DISSOLUTION WITH CHILDREN DV: Y

RESOLUTION: STPR DATE: 11/26/2008 SETTLED BY PARTIES AND/OR AGREED JUDGMEN
 COMPLETION: JODF DATE: 02/05/2009 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: APP DATE: 01/02/2014 ON APPEAL

ARCHIVED:

CONSOLIDIT: 08-2-01218-2

NOTE1:*CONSOLIDATED 04-18-2008/DOCKET UNDER THIS NUMBER

NOTE2:*THRESHOLD MET SUB 83.

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	SERVICE
PET01	BROWN, NATHAN * III		
RSP01	BROWN, MI K		
AKA	BROWN, MI KEYONG		
GAL01	BARTON, LISA K		
WTP01	BERRY, CHARLES NELSON III		
BAR#	08851		
ATP02	LAWSON, PETER CARL		
BAR#	28886		
ATP03	ZUNDEL, TERRY ANN		
BAR#	22019		
WTR01	FOWLER, JULIE K		
BAR#	30108		
ATR02	SAXION, LORI M.		
BAR#	20262		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	03/28/2008	\$FFR	FILING FEE RECEIVED	
1	03/28/2008	SMPTDS	SUMMONS & PET FOR DISSOLUTION	
2	03/28/2008	*ORSCS	SET CASE SCHEDULE	03-02-2009ST
		JDG50	JUDGE JAMES D. CAYCE, DEPT 50	
3	03/28/2008	CICS	CASE INFORMATION COVER SHEET	
		LOCK	ORIGINAL LOCATION - KENT	
4	03/28/2008	CIF	CONFIDENTIAL INFORMATION FORM	
5	04/16/2008	CS	CONFIRMATION OF SERVICE	
6	04/17/2008	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
7	04/25/2008	AG	AGREEMENT & OATH	
8	05/01/2008	NTAPR	NOTICE OF APPEARANCE	
9	05/02/2008	RSP	RESPONSE TO PETITION	
10	05/05/2008	DCLR	DECLARATION /NATHAN BROWN, III	
11	05/30/2008	NTMTDK	NOTE FOR MOTION DOCKET	06-16-2008MF
		ACTION	MTN FOR TEMP ORDERS	
12	05/30/2008	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
13	06/02/2008	ORRTPO	ORD REISSUING TEMP PROTECTION ORDER /ISSD	06-17-2008MF

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
		EXP01	EX-PARTE, DEPT	
13A	06/02/2008	OR	ORDER ON MTN.TO CHANGE ASSIGMT AREA	
		LOCK	ORIGINAL LOCATION - KENT	
14	06/03/2008	NTMTDK	NOTE FOR MOTION DOCKET	06-17-2008MF
		ACTION	MTN FOR TEMP ORDERS	
15	06/03/2008	MT	MOTION /TEMP ORDER	
16	06/03/2008	DCLR	DECLARATION OF MI BROWN	
17	06/03/2008	DCLR	DECLARATION OF JOHNNY GUEST	
18	06/03/2008	DCLR	DECLARATION OF HYUNGHEE GUEST	
19	06/03/2008	DCLR	DECLARATION OF MI SOOK CHOE	
20	06/03/2008	DCLR	DECLARATION OF LISA YI	
21	06/09/2008	CRRSP	CORRESPONDENCE RE DATA ENTRY	
22	06/10/2008	RPY	REPLY TO PET MTN FOR TEMP ORDER	
23	06/11/2008	DCLR	DECLARATION NATHAN BROWN	
24	06/12/2008	SEALFN	SEALED FINANCIAL DOCUMENT(S) /CS	
25	06/12/2008	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
26	06/12/2008	FNDCLR	FINANCIAL DECLARATION /PETITIONER	
27	06/12/2008	DCLR	DECLARATION OF NATHAN BROWN JR	
28	06/12/2008	DCLR	DECLARATION OF RAYCHEL SINGLETON	
29	06/12/2008	DCLR	DECLARATION OF NATHAN BROWN	
30	06/12/2008	DCLR	DECLARATION OF KWAN S BROWN	
31	06/12/2008	DCLR	DECLARATION OF CHIN S PAK	
32	06/12/2008	DCLR	DECLARATION OF RANDALL LIPPINS	
33	06/12/2008	DCLR	DECLARATION OF JAMES LEE	
34	06/12/2008	DCLR	DECLARATION OF MARK BROWN	
34A	06/13/2008	DCLR	DECLARATION OF ESTHER PARK	
34B	06/13/2008	DCLR	DECLARATION OF EDMUND PARK	
35	06/16/2008	TMO	TEMPORARY ORDER	
		FAM02	FAMILY LAW - KENT	
35A	06/16/2008	MTHRG	MOTION HEARING	
		PRO	JUDGE PRO TEM	
-	06/16/2008	AUDIO	AUDIO LOG DR 1F/10:42:45	
35B	06/16/2008	DCLR	DECLARATION OF MI BROWN	
36	06/17/2008	TMRO	TEMP RESTRAINING ORDER /ISSD	
		FAM02	FAMILY LAW - KENT	
37	06/17/2008	ORDYMT	ORDER DENYING MOTION/DOM VIOLENCE	
38	06/17/2008	HSTKNA	HEARING STRICKEN:IN COURT NONAPPEAR	
		FAM01	FAMILY LAW, DEPT 1	
39	06/17/2008	PPT	PARENTING PLAN - TEMPORARY	
40	06/17/2008	MTHRG	MOTION HEARING	
		FAM02	FAMILY LAW - KENT	
-	06/17/2008	AUDIO	AUDIO LOG DR1G / 9:57:56	
41	06/18/2008	NT	KCFCS CASE CLOSURE NOTICE	
42	06/18/2008	SEALRPT	SEALED CONFIDENTIAL RPTS CVR SHEET	
43	06/18/2008	SEALRPT	SEALED CONFIDENTIAL RPTS	
44	06/19/2008	COPC	CONFIRMATION OF PARENTING CLASS/PET	
45	06/24/2008	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
46	06/24/2008	COPC	CONFIRMATION OF PARENTING CLASS/PET	
47	06/26/2008	ORTR	ORDER OF TRANSFER TO FAMILY CRT	
		FAM02	FAMILY LAW - KENT	
48	07/09/2008	NT	NOTICE /KCFCS CASE CLOSURE	
49	07/11/2008	CINSC	CONFIRM ISSUES: NO STATUS CONFER. /ALREADY IN MED	

-APPEARANCE DOCKET-

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
50	07/23/2008	NT	NOTICE / NONCOMPLIANCE/FCS	
51	08/20/2008	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
52	08/25/2008	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
53	08/25/2008	NTACA	NOTICE OF ATTY CHANGE OF ADDRESS	
54	11/12/2008	ORCJ JDG36	ORDER FOR CHANGE OF JUDGE JUDGE GEORGE T MATTSON, DEPT 36	
55	11/25/2008	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
56	11/26/2008	NTSSTD	NT STLMT/AUTH CLRK STRK TRIAL DATE	
57	12/01/2008	NT	NOTICE /KCFCS CASE CLOSURE	
58	01/09/2009	ORPTH	ORDER TO APPEAR PRETRIAL HRG/CONF	02-06-2009
59	02/05/2009	DCD EXP02	DECREE OF DISSOLUTION EX-PARTE, DEPT - MAIL WATNESS	
-	03/17/2009	CRFOLY	CERTIFICATE MAILED TO OLYMPIA	
60	02/05/2009	FNFL EXP01	FINDINGS OF FACT&CONCLUSIONS OF LAW EX-PARTE, DEPT	
61	02/05/2009	PP EXP01	PARENTING PLAN (FINAL ORDER) EX-PARTE, DEPT	
62	02/05/2009	MTHRG EXP01	MOTION HEARING EX-PARTE, DEPT	
-	02/05/2009	AUDIO	AUDIO LOG DR 325-2	
63	02/05/2009	ORS EXP01	ORDER FOR SUPPORT EX-PARTE, DEPT	
64	02/05/2009	RTSR	RESIDENTIAL TIME SUMMARY REPORT	
65	02/05/2009	CRTC	CERTIFICATE OF COMPLIANCE	
66	04/26/2012	NTMTDK ACTION	NOTE FOR MOTION DOCKET MTN FOR ADEQ CAUSE/TEMP ORDERS	05-23-2012JF
67	04/26/2012	NTHG ACTION	NOTICE OF HEARING DETERMINATION ADEQUATE CAUSE	05-22-2012JF
67A	04/26/2012	PTMD	PETITION FOR MODIFY PARENTING PLAN	
67B	04/26/2012	MTAF	MTN/DECLR FOR TEMPORARY ORDER	
67C	04/26/2012	CIF	CONFIDENTIAL INFORMATION FORM	
67D	04/26/2012	SM	SUMMONS ON MODIFICATION	
67E	04/26/2012	DCLR	DECLARATION /PETITIONER	
67F	04/26/2012	DCLR	DECLARATION /PHILIP D BOHN	
67G	04/26/2012	DCLR	DECLARATION /GREG BROWN	
67H	04/26/2012	FNDCLRP	FINANCIAL DECLARATION OF PET	
67I	04/26/2012	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	
67J	04/26/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
67K	04/26/2012	*ORSCS JDG01	SET CASE SCHEDULE JUDGE TIMOTHY A. BRADSHAW DEPT 1	04-01-2013ST
68	04/27/2012	PPP	PROPOSED PARENTING PLAN /PET	
69	04/30/2012	NT	NOTICE RE ORD SETTING CASE SCHEDULE	
70	05/03/2012	NTHG ACTION	NOTICE OF HEARING DETERMINATION ADEQUATE CAUSE	05-23-2012JF
71	05/08/2012	RTS	RETURN OF SERVICE	
72	05/22/2012	NTPRES	NOTICE OF PRESENTATION TO EX PARTE	
73	05/23/2012	ORCNT EXP06	ORDER OF CONTINUANCE /STIP EX-PARTE, DEPT. KENT - CLERK	05-31-2012JF
74	05/24/2012	RSP	RESPONSE TO PET	
75	05/24/2012	FNDCLRR	FINANCIAL DECLARATION OF RESP	
76	05/24/2012	AFRSP	AFFIDAVIT OF RESPONDENT	
77	05/24/2012	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	

-APPEARANCE DOCKET-

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
78	05/24/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
79	05/24/2012	TS	TRANSCRIPT /SCHOOL RECORDS	
80	05/29/2012	DCLR	DECLARATION OF NATHAN BROWN	
81	05/31/2012	RVWHRG	REVIEW HEARING	
-	05/31/2012	FAM02	FAMILY LAW - KENT	
82	05/31/2012	AUDIO	AUDIO LOG DR 1F	
	05/31/2012	ORAPGL	ORDER APPOINTING GAL -TBD	
		FAM02	FAMILY LAW - KENT	
83	05/31/2012	ORRACG	ORDER RE ADEQUATE CAUSE - GRANTED	
		FAM02	FAMILY LAW - KENT	
84	06/15/2012	NTAPR	NOTICE OF APPEARANCE & OATH /GAL	
85	06/22/2012	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
86	08/13/2012	RTGAL	REPORT OF GUARDIAN AD LITEM	
87	08/13/2012	SEALRPT	SEALED CONFIDENTIAL RPTS	
88	08/15/2012	AFML	AFFIDAVIT OF MAILING	
89	08/20/2012	MTAF	MOTION AND DCLR/TEMP ORDER	
90	08/20/2012	DCLR	DECLARATION OF NATHAN BROWN III	
91	08/20/2012	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
92	08/31/2012	NTMTDK	NOTE FOR MOTION DOCKET	09-14-2012MF
		ACTION	MODIFICATION OF PARENTING PLAN	
-	09/10/2012	SCS	STATUS CONFERENCE SETTING	09-17-2012FC
93	09/10/2012	DCLR	DECLARATION OF MI K. BROWN	
94	09/10/2012	FNDCLR	FINANCIAL DECLARATION /RESP	
95	09/10/2012	FNDCLR	FINANCIAL DECLARATION /PET	
96	09/10/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
97	09/10/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
98	09/13/2012	RPY	REPLY TO DECLARATION/PET	
99	09/17/2012	LIST	LIST /NONCOMPLIANCE CHECKLIST	
100	09/17/2012	HSTKNA	HEARING STRICKEN:IN COURT NONAPPEAR	
		JDG47	JUDGE DEBORAH FLECK, DEPT 47	
101	09/20/2012	DCLR	DECLARATION OF NATHAN BROWN	
102	09/20/2012	ORSGT	ORDER SHORTENING TIME	09-24-2012OA
		FAM02	FAMILY LAW - KENT /ADDON-MF	
103	09/21/2012	MT	MOTION TO STRIKE/RESP	
104	09/24/2012	ORGMT	ORDER GRANTING MOTION RE GAL	
			RECOMENDATIONS	
		FAM02	FAMILY LAW - KENT	
105	09/24/2012	MTHRG	MOTION HEARING	
		FAM02	FAMILY LAW - KENT	
-	09/24/2012	AUDIO	AUDIO LOG DR 1F	
106	09/25/2012	ORTA	ORD TO APPEAR FAIL TO FOLL SCHEDULE	12-10-2012
107	10/02/2012	CINSC	CONFIRM ISSUES: NO STATUS CONFER.	
-	10/02/2012	CIFAM	C.I.: REFERRED TO FAMILY LAW MED.	
108	10/03/2012	NTDMP	NT RE: DEPENDENT OF MILITARY PERSON	
109	10/30/2012	NT	NOTICE/KCFCS CASE CLOSURE	
110	11/28/2012	ORCJ	ORDER FOR CHANGE OF JUDGE	
		JDG14	JUDGE BRIAN D. GAIN, DEPT 14	
111	01/17/2013	DIS	DISCLOSURE OF PRIMARY WITNESSES/RSP	
112	02/06/2013	ORPTH	ORDER TO APPEAR PRETRIAL HRG/CONF	03-08-2013
113	02/26/2013	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
114	03/08/2013	ORPTC	ORDER ON PRE-TRIAL CONFERENCE	
115	03/28/2013	ORCTD	ORD FOR CONTINUANCE OF TRIAL DATE	06-24-2013ST
116	03/28/2013	ORACS	ORDER AMENDING CASE SCHEDULE	06-24-2013

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
117	04/16/2013	NTDMP	NT RE: DEPENDENT OF MILITARY PERSON	
118	04/16/2013	PTMD	PETITION TO MODIFY SUPPORT	
-	04/16/2013	ADM03	STATE'S SUPPORT	
119	04/17/2013	ORPTH	ORDER TO APPEAR PRETRIAL HRG/CONF	05-24-2013
120	05/29/2013	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
121	05/29/2013	ORPTC	ORDER ON PRE-TRIAL CONFERENCE	
122	06/20/2013	DCLR	DECLARATION OF LORI M. SAXION	
123	06/20/2013	MTDSM	MOTION TO DISMISS /RESP	
124	06/25/2013	NJTRIAL	NON-JURY TRIAL	
		JDG32	JUDGE LEROY MC CULLOUGH, DEPT 32	
-	06/25/2013	AUDIO	AUDIO LOG 4A	
125	06/25/2013	DCLR	DECLARATION OF LISA BARTON	
126	06/25/2013	ORDSM	ORDER OF DISMISSAL	
126A	07/05/2013	ORCJ	ORDER FOR CHANGE OF JUDGE	
		JDG32	JUDGE LEROY MC CULLOUGH, DEPT 32	
127	07/08/2013	MTRC	MOTION FOR RECONSIDERATION /PET	
128	07/10/2013	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
129	07/16/2013	NTHG	NOTICE OF HEARING	07-26-2013
			/MTN FOR JDGMNT ATTY FEES	
130	07/16/2013	MTAF	MOTION AND AFFIDAVIT/DCLR/RSP	
131	07/16/2013	DCLR	DECLARATION OF LORI SAXION	
132	07/25/2013	NTMDLF	NOTE FOR MOTION DOCKET-LATE FILING	07-25-2013
		ACTION	RECONSIDER DISMISSAL/FEES W/ATTY	
133	07/25/2013	NTMDLF	NOTE FOR MOTION DOCKET-LATE FILING	07-25-2013
134	08/02/2013	NTMDLF	NOTE FOR MOTION DOCKET-LATE FILING	08-09-2013
135	08/02/2013	NTMDLF	NOTE FOR MOTION DOCKET-LATE FILING	08-08-2013
136	08/06/2013	ORC	ORDER TO COMPEL RESPONSE & RE FEES	
137	08/12/2013	MTRC	MOTION FOR RECONSIDERATION RSP	
138	09/12/2013	NTAPR	NOTICE OF APPEARANCE /PETITIONER	
139	10/15/2013	DCLR	DECLARATION OF NATHAN BROWN	
140	11/20/2013	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
141	12/02/2013	JD	JUDGMENT ON MTN FOR ATTY FEES	
142	12/02/2013	ORMRC	ORDER ON MTN FOR RECONSIDERATION	
			/DENIED	
143	12/02/2013	ORGMT	ORDER GRANT MTN FOR GAL FEES	
144	01/02/2014	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
-	01/02/2014	\$FFNP	FILING FEE NOT PAID	
145	01/22/2014	\$FFR	FILING FEE RECEIVED /APPEAL	290.00
146	01/22/2014	RTS	RETURN OF SERVICE	
147	01/28/2014	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
148	02/03/2014	TRLC	TRANSMITTAL LETTER - COPY FILED	

=====
=====END=====

Appendix B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

4	NATHAN BROWN,)	
)	
5)	KING COUNTY CAUSE
	Petitioner,)	No. 08-3-02672-1 KNT
6)	
	vs.)	
)	COURT OF APPEALS
7	MI BROWN,)	No. 71398-1-I
)	
8)	
	Respondent.)	

VERBATIM TRANSCRIPTION OF AUDIO CD OF PROCEEDINGS

--oOo--

JUNE 25, 2013

--oOo--

Heard before the Honorable LeRoy McCullough, at Kent
Regional Justice Center, 401 4th Avenue N, Department
32, Kent, Washington.

---oOo---

CYNTHIA A. KENNEDY
Court Approved Transcriber
P.O. Box 3288
Belfair, WA 98528
(916) 496-2680

A P P E A R A N C E S:

--oOo--

PETER LAWSON, Attorney at Law, appeared on behalf of
the Petitioner;

LORI SAXION, Attorney at Law, appeared on behalf of the
Respondent;

LISA BARTON, Guardian Ad Litem.

--oOo--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHRONOLOGICAL INDEX

--oOo--

1		
2		
3		
4	<u>JUNE 25, 2013</u>	
5	Respondent's Motion to Shorten Time	5
6	Objection by Mr. Lawson	6
7	Argument by Ms. Saxion	6
8	Argument by Mr. Lawson	6
9	Argument by Ms. Saxion	7
10	Court deems motion moot	8
11	Argument on Motion to Dismiss:	
12	Argument by Ms. Saxion	9
13	Argument by Mr. Lawson	14
14	Argument by Ms. Saxion	22
15	Argument by Mr. Lawson	28
16	Court's ruling - Granted without prejudice	29
17	Discussion re attorney's fees	29
18	Discussion re GAL fees and being discharged	36
19	Concluded	38

20

21

--oOo--

22

23

24

25

1 KENT, WASHINGTON

2 JUNE 25, 2013

3 MORNING SESSION - 9:19 A.M.

4 --oOo--

5 THE COURT: Thank you. Good morning, you
6 may be seated.

7 MS. SAXION: Good morning.

8 MR. LAWSON: Good morning, Your Honor.

9 THE COURT: This is the matter of
10 Nathaniel Brown, III, I believe and -- is it Mi?

11 THE RESPONDENT: Mi.

12 THE COURT: -- Mi Keyong Brown. It looks
13 like the cause number is 08-3-02672-1 KNT.

14 Apparently, Mr. Brown, we were
15 waiting for your counsel.

16 THE PETITIONER: Yes, sir.

17 THE COURT: And parties will introduce
18 themselves for this record, please.

19 First, Mr. Brown, you are the
20 Petitioner; is that right, counsel?

21 MR. LAWSON: Yes, Your Honor.

22 THE COURT: All right. You are?

23 MR. LAWSON: Peter Lawson for Brown .
24 He's the Petitioner for the modification.

25 MS. SAXION: And, good morning, Your

1 Honor. Lori Saxion. I represent Mi Brown, who is the
2 Respondent.

3 THE COURT: All right. Thank you.

4 So, Mr. Lawson, we were waiting for
5 you I believe.

6 What I have -- trying to figure this
7 out. I think besides, is your motion to shorten time
8 that was set before Judge Gain?

9 MS. SAXION: Right.

10 THE COURT: And your motion is to shorten
11 time to consider the dismissal of this action for
12 failure to comply with the case schedule; is that
13 correct --

14 MS. SAXION: Yes, it is, Your Honor.

15 THE COURT: -- in essence?

16 So why don't you -- why don't we
17 just start there.

18 MS. SAXION: All right. May I remain
19 seated?

20 THE COURT: Yes.

21 MS. SAXION: All right. Thank you, Your
22 Honor.

23 MR. LAWSON: Your Honor, the first --
24 first I would just like to object that I never got
25 notice that there was a shorten time motion. I just

1 got the motion itself. In fact, I was going to object
2 to it because I received it on Friday, so I never
3 received a phone call. I never got notice that there
4 was a shorten time motion at all on that.

5 THE COURT: Are you at NE 122nd Way in
6 Kirkland?

7 MR. LAWSON: Yes.

8 THE COURT: Well, let's talk about the
9 notice issue first, Ms. Saxion.

10 MS. SAXION: Yes, Your Honor. We do
11 communicate by email and I sent it. I sent it quite
12 late in the night on the -- on Thursday, and sent also
13 the shortening time order in the notice. I sent all of
14 that in one email and also at the end of the email said
15 if he was missing anything, to please let me know. And
16 we have been in phone contact since then. Counsel
17 called me. He didn't say anything about it when we had
18 our conversation. I asked him if he had any trial
19 notebooks or anything for me, and he said he was
20 bringing them today. That was the extent of our
21 conversation.

22 THE COURT: Back to you, Mr. Lawson.

23 MR. LAWSON: Well, Your Honor, like I
24 said, I -- I read her motion that she had sent over --
25 or the motion to dismiss, but I never had any knowledge

1 that there was a shorten time motion today. I thought
2 that it was filed just -- she just filed it. I never
3 saw any motion for shortening time.

4 MS. SAXION: Then, Your Honor, I would
5 move orally to have the court consider this on
6 shortened time on the day of the trial because that's
7 the only way I ever would have presented it would have
8 been for trial day.

9 The only reason it wasn't sent, the
10 motion, early with the six-days' notice is we were
11 scheduled to go out to trial yesterday, and
12 Mr. Lawson's documents weren't due to me, of course the
13 last Monday before, also Joint Statement of Evidence,
14 all of those were due and I was waiting for them from
15 Mr. Lawson because I couldn't bring my motion to
16 dismiss until I gave him a chance to get them to me and
17 kept calling him to get them to me, and I put in I
18 think the last email I sent to him as part of my
19 exhibits asking him, you know, trial day is Monday, can
20 I please have some documents.

21 So this matter would have been
22 shortened time in any event because there wasn't
23 six-days' notice to be able to be given in any event
24 because it would be a trial day motion.

25 So I'm not even sure if the order

1 shortening time was necessary. I did it anyway.

2 THE COURT: I'm not sure either.

3 MS. SAXION: Right. It's a trial motion.
4 I just wasn't certain so I thought I would do it
5 anyway.

6 THE COURT: You have on your note for
7 hearing a trial date of Monday, 6/20, so there's been
8 about three different trial dates floating?

9 MS. SAXION: There's been quite a few
10 different trial dates, yes.

11 THE COURT: On the subject of the motion
12 to dismiss, Mr. Lawson, are you prepared to address
13 that motion.

14 MR. LAWSON: Yes, Your Honor, I am.

15 This is a case that began in --

16 THE COURT: Here's the procedural issue.
17 Assuming, for the sake of argument, that you didn't get
18 the motion to shorten time to hear the argument on the
19 motion to dismiss, we would still be able to entertain
20 counsel's motion to dismiss as apart of the trial
21 schedule.

22 Would you agree with that?

23 MR. LAWSON: Yes.

24 THE COURT: All right. So I don't know
25 that I need to rule on the order shortening -- the

1 motion, Ms. Saxion, regarding shortening time.

2 MS. SAXION: Thank you.

3 THE COURT: That's rendered moot by
4 counsel's agreement that we are going to go forward and
5 address the motion to dismiss.

6 Mr. Lawson, if you are prepared to
7 do that, what we, of course, would do, Mr. Brown and
8 Ms. Brown, the person bringing the motion usually gets
9 the first opportunity to say why they want the motion
10 to be granted. The responding person gets a chance to
11 say something, and then the person bringing the motion
12 gets the last brief word on why the motion should be
13 granted.

14 So that's the way we'll proceed,
15 starting with you, Ms. Saxion.

16 MS. SAXION: Thank you, Your Honor.

17 The Petitioner, of course, is the
18 moving party in this modification. It is a full
19 modification for a custodial change of the parent.
20 There's already been one continuance of the trial date
21 requested by the Petitioner. The trial date was
22 originally scheduled for April 1 and it was to be
23 continued into June, and we didn't oppose this.
24 Counsel said he needed additional time to get ready for
25 trial. I do not recall the substance of what his

1 motion was. I didn't see the motion. I just agreed
2 that we would give him the additional time. So he was
3 given quite a bit more time to prepare for the trial.
4 And I have attached those exhibits to my motion.

5 We received the amended case
6 schedule from our originally-signed, I see, Judge Gain,
7 on March 28, and it was issued with the agreed order of
8 continuance. We, of course, had deadlines for our
9 trial preparation. There was a disclosure of primary
10 witnesses due by the parties. Petitioner, to date, has
11 never provided or filed a disclosure of any of his
12 witnesses. Respondent, we filed our disclosure of
13 primary witnesses with the court and provided that to
14 counsel on December 17, 2012 under the newly continued
15 -- actually under the original case schedule.

16 We filed that with the court on
17 January 17 with confirmation of receipt. On January
18 17, we also provided a copy to counsel.

19 The order amending case schedule
20 that was issued after the continuance required possible
21 additional witnesses to be disclosed by April 22. The
22 Petitioner never filed his original primary witness
23 list so there weren't any additional ones for him to
24 file. I didn't prepare any additional because there
25 was nothing opposing or know other witnesses named

1 after I alone had named my witnesses.

2 We did attend two settlement
3 conferences. Those have failed.

4 The exchange of witness and exhibit
5 lists were then due next and documentary evidence no
6 later than June 3. Petitioner never provided a witness
7 list of any type nor an exhibit list and certainly not
8 the mandatory exhibit list with all of his documentary
9 exhibits that should have been submitted for trial by
10 the deadline.

11 My deadline to inspect those
12 documents thus was June 10, 2013, so I couldn't do
13 anything about it when I don't have any exhibits from
14 the Petitioner. And, to date, I haven't seen anything
15 from the Petitioner in preparation for the trial.

16 The Petitioner's trial brief,
17 statement of evidence, documented exhibits, and exhibit
18 list, these were all due no later than June 17. To
19 date sitting here, I've received nothing.

20 It is not that I haven't tried. I
21 do believe I submitted some of my correspondence and
22 letters and there were multiple phone calls made to
23 Mr. Lawson trying to explain what was needed and what
24 was required by the court, for him to please look at
25 his case schedule so we weren't operating in the blind.

1 I've had no opportunity thus to
2 depose any of his witnesses that he intended to call.
3 We're operating completely in the dark here.

4 We were on the phone with the
5 Honorable Judge Brian Gain for our pretrial conference
6 on May 29. Counsel was present during that conference,
7 and the trial court ordered us, over the phone, to
8 comply with all of these deadlines. And I've given you
9 our order on pretrial conference.

10 The Petitioner hasn't met any of the
11 requirements under the original case schedule in the
12 trial preparation phase I'm discussing or disclosing
13 witnesses or exhibits. Again, I talked in my
14 declaration about the phone calls that I've had with
15 him andments I've sent trying to get this case ready
16 for trial.

17 We're moving to strike the matter
18 based on his failure to comply with King County LFLR 4,
19 noncompliance of the case schedule. And I'm sure the
20 court is very familiar with this case schedule so I
21 won't read that back. And LFLR 4, I set out in its
22 entirety in my motion at page 5. LR 16 doesn't apply
23 to our case.

24 So not only has he failed to comply
25 with the original case schedule, but also the amended

1 case schedule and also the pretrial conference order
2 issued by our original trial judge.

3 We're moving for a dismissal with
4 prejudice as to his identical grounds and basis. Any
5 party I understand can move any time for a modification
6 if they plead appropriate circumstances, but certainly
7 not the circumstances that he may have pled up until
8 today. If he has new circumstances he wants to plead
9 beyond today's date, I certainly wouldn't have any
10 objection to that. But he's had his chance to litigate
11 his case on any and all claims he may have had from the
12 date of filing up until the trial date of today.

13 So we're asking that this case be
14 dismissed. This is ambush trial, and it simply isn't
15 fair to my client. We've done no trial preparation
16 because we have nothing. So the only thing I did was
17 my motion to dismiss because we have nothing else to
18 work on here. I didn't even know if he intended the
19 call a witness, for instance, his client. So we're not
20 prepared for trial because there shouldn't be a trial
21 in this case, Your Honor.

22 We're asking for attorney's fees. I
23 fight my attorney's fee declaration. We're asking for
24 100 percent of those attorney's fees. I'm also asking
25 for costs in the form of the guardian ad litem fees

1 that my client had to pay her portion of those fees.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 Mr. Lawson?

5 MR. LAWSON: Good morning, Your Honor.

6 We went to the settlement
7 conference, we did the mediations. We had two
8 mediations. We're unable to reach settlement. We got
9 adequate cause in this case. We don't have any
10 witnesses other than the parties. The guardian ad
11 litem is here, my client's here, Ms. Brown is here.
12 Okay? Those are going to be our witnesses. Okay?

13 And I understand about the
14 documentary evidence and the trial brief, but this case
15 was based on the fact that these children, the two
16 boys, Lucas and Christian, were not having their
17 educational needs met by the mother, and they were
18 absent and their grades were slipping. Okay? The
19 guardian ad litem did a report. She found that the
20 children should not move but she considered that if
21 their grades started slipping again, that -- that there
22 might be a change of -- that she would consider a
23 change in placement.

24 So, really, there's a --

25 THE COURT: The question before the Court

1 is why didn't she comply with the case schedule. I
2 understand the concern about the young people's
3 educational achievement or lack thereof. I'm the --
4 I'm the last person that you have to convince that
5 education is important. I believe that, and I commend
6 any parent for wanting to make sure that their children
7 are educated and educated properly. That's not the
8 question yet.

9 I need to know why there was not
10 compliance with the case schedule.

11 MR. LAWSON: Well, as far as the joint
12 statement of issues, I thought that we basically had
13 covered those and -- and there wasn't really any need
14 -- should have probably filed it. But this is a simple
15 case, and -- and I -- I thought that with the testimony
16 of my client, and with the testimony of the guardian ad
17 litem, and with the testimony of Ms. Brown, that it
18 could be a relatively quick, efficient case.

19 Now, if Ms. Saxion needs more time
20 to prepare for trial, then we could have a short
21 continuance, but I really do not think -- if you want
22 me to comply and get the documents in, I could do that,
23 but I don't think that my client --

24 THE COURT: So the answer is you thought
25 you had covered the issue in your settlement

1 conferences?

2 MR. LAWSON: Well, we had -- we had
3 talked about how long the trial was going to be, what
4 the issues we were going to discuss, and we've been to
5 two mediations, so we probably should have submitted
6 the documents.

7 THE COURT: Might not have been a bad
8 idea.

9 What did you take Judge Gain's order
10 of 5/29 to mean?

11 MR. LAWSON: Well, I think that I ended
12 up getting that order -- I -- I don't think that I --
13 I've seen that order, but I didn't -- I guess I really
14 didn't follow it -- I guess I didn't follow it.

15 THE COURT: But you understood that he
16 wanted you to at least exchange the information so that
17 you could be ready for trial. You understood that, of
18 course.

19 MR. LAWSON: Well -- well, I did, Your
20 Honor. And I -- you know, this gets a little bit into
21 our case here, but we -- we start off last year with a
22 situation where my client was concerned. Okay? And
23 the guardian ad litem got involved, and she made a
24 recommendation that the children stay where they are.
25 And then we've been talking to the guardian ad litem

1 and with Ms. Saxion and her paralegal about this case
2 and what we're going to do about it. And then I got on
3 to Skyward educational system. I got the text from
4 Nathan to check it out yesterday, and this was
5 something that we had suspected. But there were,
6 like -- his son Lucas has, like, 21 absences.

7 THE COURT: I'm not going there yet.

8 MR. LAWSON: Okay.

9 THE COURT: I don't -- we're not there
10 yet.

11 My question is -- and I'm looking at
12 this order where it says, "One week before trial, you
13 must deliver to all parties financial declaration,
14 witness list, exhibit list" and then some other things
15 "four days before trial."

16 Was there anything confusing about
17 the order that Judge Gain issued or --

18 MR. LAWSON: Well, I guess that -- I
19 guess what -- first off, was that the financial
20 information was not part of our original petition. We
21 weren't seeking a modification of the child support.
22 We were just simply modification so that the children
23 could be moved in with my client and then he could stay
24 -- they could start school in the fall with him. And
25 so maybe there was some confusion on -- on my part on

1 that.

2 But, yes, the week before it should
3 have been in on Monday. I should have had the
4 documents to Ms. Saxion, and I didn't do that. So that
5 -- that is my fault. But I've had some --

6 THE COURT: Let me interrupt you then,
7 Mr. Lawson.

8 We have a choice here -- I have a
9 choice here after I hear from Ms. Saxion to either
10 dismiss the case without prejudice, dismiss it with
11 prejudice, grant a continuance, order sanctions against
12 you for noncompliance. I've got a range of things that
13 I -- that I could do.

14 And I don't think that anybody in
15 the room is taking lightly the issue of the children's
16 education. I think we're all concerned about that.

17 Given those range of options that we
18 have, what is it that you want the court to know?

19 MR. LAWSON: Well, I think that it's --
20 one of the things that I've been struggling with is
21 that I think my client should be able to take the
22 stand. All right? And I don't want to -- I don't want
23 him to be ambushed on Ms. Saxion, and I could use a
24 little bit more time to prepare.

25 Now, the only thing that is a --

1 that was a consideration here but is -- it hasn't been
2 dealt with is is that the guardian ad litem -- and I
3 think this would be a big part of the case -- the
4 guardian ad litem had completed her report basically
5 during the summer, so she's going to be doing the same
6 thing that she's doing now, and so that report was
7 complete and there real hadn't been an updated report.
8 I don't know how important the court would find that or
9 how important the guardian ad litem would find that.

10 But given the new information that
11 we have here and that now we're going into a summer
12 period where the schedule changes from how it's been,
13 it goes to week-on/week-off after the school is out,
14 and so we've got, you know -- you know, a different
15 schedule than what will happen in the fall.

16 The -- the -- the worry here is is
17 that we get so far down the line in the summer that if
18 we did have a trial or if we -- if it was dismissed
19 without prejudice and we refiled, that we would then
20 have to have the kids start school again with -- in the
21 Auburn school district.

22 And -- and I think that we can make
23 a strong case that -- that -- that my client, when he
24 decided to bring this petition, was right and that
25 there was pressure on, because the guardian ad litem

1 was involved, the -- the behavior improved, and then
2 once the report came out, then it -- the behavior
3 slipped back to where it was. And I know that my
4 client, he brought this motion. He's -- he's concerned
5 that this is a slippery slope, that it -- that -- that
6 he's seen it with his oldest son, that once these kids
7 start to fall off, that they continue to fall. And
8 that was part of, you know -- even though the oldest
9 son now is -- is older and not a minor anymore, he's
10 18. It -- we had a lot of -- I mean, there's been
11 continuing problems with him not -- and not even
12 graduating from high school and then not even
13 completing credit -- not graduating with his class and
14 not concluding his credits.

15 So there's some real merit to my
16 client's case, and I -- I don't think that it should
17 just be dismissed if -- if there's anyway that I can
18 protect him from having the case dismissed. I -- I'll
19 shoulder the blame and then I'll get the documents
20 ready.

21 But -- but what I saw on the -- on
22 the Skyward yesterday looked exactly like where we
23 were --

24 MS. SAXION: Your Honor --

25 MR. LAWSON: -- last year.

1 MS. SAXION: -- I would have to object.
2 He's discussing --

3 THE COURT: Anything else by way of
4 concluding remarks on the options that the Court has?

5 MR. LAWSON: Well, I mean, maybe it would
6 be good that -- pursuant -- what the guardian ad litem
7 report it does say that there are two things about it
8 that -- that are -- are interesting. She says that if
9 the --

10 THE COURT: Okay.

11 MR. LAWSON: -- behaviors --

12 THE COURT: And remember, I'm not getting
13 to the substance. We're looking at the procedure, at
14 this step what procedure should be taken. I'm not
15 getting to the substance yet.

16 MR. LAWSON: Well, I mean, I think that
17 the Court may be more informed if the guardian ad litem
18 did an updated report. We could -- we could take
19 testimony from the guardian ad litem today and my
20 client and start. And if -- and if the court feels
21 that you need more information, then we could, you
22 know, take a recess and continue and start a new
23 investigation based on what my client is talking about.

24 THE COURT: And why should I not impose
25 sanctions on you even if I did that? Either way, why

1 should I not impose sanctions on you?

2 MR. LAWSON: Well, I mean -- it's a hard
3 argument for me to make against that. I mean, I'm a --
4 a sole -- I mean, I'm a sole practitioner and I -- I --
5 I don't have a lot of money, but -- but, I mean, there
6 is -- there is that -- there is the fact that, you
7 know, I didn't get the documents in, even though I
8 think some of them are kind of moot. But I didn't get
9 -- I think I put Ms. Saxion in a position to where she
10 feels that she was unable to prepare for trial today.

11 THE COURT: All right. I appreciate
12 that. I appreciate that candor.

13 Brief rebuttal?

14 MS. SAXION: Yes, Your Honor. Just for
15 interest value, I guess, I'm a sole practitioner.

16 Counsel just stated he brought this
17 motion. Perhaps he doesn't realize the gravity. This
18 is not a motion anymore. We're at a trial, and this is
19 my whole objection. We're not standing before
20 commissioners anymore. This is it. This is the day.
21 This is the day we all have to be prepared, and I've
22 asked over and over, and even assisted, for preparation
23 and nothing was done.

24 And it's not just the pretrial
25 order. He -- he said he didn't read the order or maybe

1 not understood it. He was on the phone in person with
2 Judge Gain going through the pretrial order. None of
3 the trial issues or procedural issues were discussed in
4 settlement conference. He mentions mediation. We
5 didn't have mediation. We did two settlement
6 conferences, mandatory required on attendance of at
7 least one. We did two of those in separate rooms. The
8 ordinary fashion that they are effective. Never each
9 saw one another's faces. The last thing we would have
10 discussed is our procedure for trial today. Those were
11 for settlement purposes, and anything discussed there
12 can't be brought to court for today.

13 So as to his statement that -- that
14 he made about commissioner's prior rulings, those are
15 inaccurate, and they're also of record. The last
16 commissioner hearing we had where the GAL report was
17 adopted, was he said that the court adopted and
18 recommended is not accurate. The court actually told
19 both parents that they had a duty because Mr. Brown
20 sees his children on a regular basis under the
21 parenting plan that's in existence now. He can't
22 shoulder mother with all the burden of two elder teen
23 boys if there's some problem with them.

24 So in any event, what counsel has
25 vastly stated are inaccurate. He doesn't even know

1 what's been going on. The oldest son graduated high
2 school. He has his diploma. He graduated high school
3 with his diploma. Counsel should have known that for
4 this case if we're sitting here at trial.

5 Their youngest son is doing great in
6 school. They have a middle son, who's a teen, who's a
7 problem. But in any event, they need to work through
8 that problem. They have a parenting plan that allows
9 for methods to work through that problem. That is what
10 they should turn to, not come in to trial unprepared,
11 just shooting from the hip and saying, well, let's do
12 it.

13 As far as the trial witnesses, we
14 don't have a clue who he's going to call. It is
15 sometimes ordinary, sometimes not, to call your GAL.
16 The parties could have stipulated that the GAL's order
17 is what it is. We put in the GAL order. The GAL
18 doesn't have to appear unless she just comes and sits
19 at trial to sign off of or give the Court anymore
20 information. We don't have to walk through lengthy --
21 the report, it can be stipulated into the record.

22 There are so many things here that
23 could have been done to streamline and move this case
24 forward, and none of them were done. They weren't each
25 attempted or spoken about.

1 So we still renew -- and putting his
2 client on the witness stand, he has that right to do it
3 as of today, but not without telling me that was his
4 intent, so if I wanted to, I could have deposed. That
5 is why we do an early witness disclosure under the
6 original case schedule.

7 So I'm sitting here with a shotgun
8 at my head, saying, go ahead and do trial. Counsel
9 should not be given any more time. This is not for me
10 to have additional time. This was for him to get his
11 act together -- poor client, get his client prepared
12 for what was going to go on today. He got a
13 continuance before. He knew what was to happen today.
14 He should have been prepared. He's a lawyer. He knows
15 the rules. He knows what has to be done under the
16 original case schedule, not even the pretrial order,
17 and it just simply wasn't done.

18 This is why we want this case
19 dismissed. He's had plenty of opportunities. And with
20 prejudice. If there's any current problems of these
21 children going forward and it is the middle child, who
22 none of what he stated was accurate, but it is only one
23 child that they both need to work with. And if they're
24 not working with that child, then he can bring a new
25 modifications if he chooses or my client will bring a

1 mod but not facts that existed from the day he filed
2 the petition until today. That needs to, as I'm
3 requesting, be dismissed with prejudice right to
4 today's date and sanctions and terms.

5 Thank you, Your Honor.

6 THE COURT: Couldn't you technically
7 interview Mr. Brown today and talk with the guardian ad
8 litem today and perhaps have the trial start either
9 this afternoon or tomorrow?

10 MS. SAXION: I -- no, I don't think
11 that's appropriate to only give me -- I might want to
12 spend a whole day with somebody and have all my
13 documents laid out on how I want to question them and
14 previous declarations that he wrote under oath.
15 There's no way I could do that --

16 THE COURT: Do --

17 MS. SAXION: -- and be ready for this
18 afternoon.

19 THE COURT: Do you feel that you would be
20 totally surprised by anything that Mr. Brown would say?

21 MS. SAXION: Definitely. Definitely.
22 Could be.

23 THE COURT: And a continuance for a week?

24 And I am considering --

25 MS. SAXION: Oh. Oh, I -- I can't --

1 THE COURT: I am considering terms by the
2 way, so that's --

3 MS. SAXION: I couldn't do it in a week
4 because the family law seminar being this week. I'll
5 be leaving Thursday.

6 THE COURT: So --

7 MS. SAXION: So that only gives me
8 tomorrow.

9 THE COURT: All right.

10 MS. SAXION: I -- I can't do it in a
11 week. I'm sorry, but I couldn't.

12 THE COURT: But, in some sense, if we
13 continued the case and awarded sanctions, you could be
14 prepared for trial.

15 MS. SAXION: As long as we -- I -- I feel
16 as long as we did a new case schedule giving him new
17 deadlines of things that he has to do, like, name his
18 witnesses. I mean, from what they say today could
19 change significantly from when we move forward.

20 THE COURT: Uh-huh.

21 MS. SAXION: I mean, I was under the
22 impression we were going to have a new GAL coming in
23 today to testify, from what counsel told me, that he
24 had hired a new GAL. I didn't know.

25 THE COURT: All right.

1 MR. LAWSON: Your Honor, I -- you know, I
2 just want to say that all -- all that's -- I'll be
3 accountable for all of that. But, I mean, I -- the
4 idea that this trial was continued only because of me
5 is not -- is not accurate. I mean, I have the emails
6 which the paralegal says, you know, our need for a
7 continuance. And the GAL says, look, I don't think you
8 guys are ready for trial, and I'm going on vacation.
9 Neither of you guys are ready for trial, and I'm going
10 on vacation.

11 So, I mean, this is a case where,
12 you know, that -- that probably doesn't matter that
13 much for today, but this is a case where my client
14 should be heard and -- and that -- that -- you know,
15 I'll take what -- you know, what's coming to me, but I
16 really think that -- and I would ask that if it is
17 continued, that it's not continued too long so that --
18 I know my client had planned last year for the kids to
19 be with him and had gone to the school and met with the
20 school, which is in his school district. He did that.
21 And I know that he can do that again now, but he just
22 got concerned that it was going to take too -- you
23 know, that it get too close to the start-of-school date
24 to move the kids, and I just hope that that doesn't
25 happen again this year.

1 THE COURT: Thank you.

2 The court's going to make the
3 decision to grant the motion to dismiss this petition,
4 but it is without prejudice. And the issues that were
5 raised in the petition may in fact be raised again. I
6 think that the court, when the matter comes back to
7 trial, will have the opportunity to sit and parents
8 participate for the children's best benefit, and I am
9 not in any way interested in foreclosing the
10 opportunity to take a full look at the total picture.

11 So the motion to dismiss would be
12 granted but without prejudice.

13 Now, here's -- here's one reason
14 why, Mr. Lawson and Mr. Brown, the -- the rules are set
15 out because they mean something. And the idea is that
16 when the parties come to trial, they should know what
17 to expect from the other side and they should not have
18 to prepare on the fly, so to speak.

19 It is true that Ms. Saxion knew, I
20 think, that Mr. Brown was going to be called as a
21 witness. I think it's true that Ms. Saxion had a
22 pretty good sense of what Mr. Brown was going to say
23 about his concern with the children. And I think
24 Ms. Saxion probably knew -- had a pretty good sense of
25 what the guardian ad litem was going to say.

1 That doesn't make it right, however,
2 because she, as the person who's having to -- is behind
3 and having the responsibility of representing her
4 client, may find that she needs to bring in an expert
5 witness or a nonexpert witness to counter the
6 educational deficiency allegations that were made by
7 the dad. And it is entirely possible that she can't do
8 that with one-day's notice.

9 We know what the issues are.
10 They're dealing with concerns about the kids' behavior
11 and education. I know that much. And so I also know
12 that there is a certain level of expertise that goes
13 with that, having been trained as an educator, so it's
14 not enough to just kind of generally know that these
15 people are going to be testifying, but the parties need
16 an opportunity to prepare and then to call the
17 witnesses, to depose individuals and so forth.

18 So I am -- I'm not going to give in
19 to the idea that -- in this circumstance where there is
20 absolute noncompliance, where Judge Gain, as recently
21 as May, told both sides to comply, there is -- there's
22 nothing before the court which would suggest any
23 mitigation, mitigating circumstances, so I'm going to
24 grant the motion to dismiss and -- and award terms.

25 The amount of attorney's fees,

1 Mr. Lawson, I don't know if you've had a chance to
2 review that carefully, I'm not going to order that
3 today, Ms. Saxion. But I'm going to give you,
4 Mr. Lawson, an opportunity to go through and see if you
5 have an issue with any of that. If the parties can
6 reach an agreement, I'm fine with that. If not, then
7 you can bring it back before the court and we will
8 determine what the amount will be. But there will be
9 some materials for having failed to comply with the
10 court's schedule.

11 Any questions?

12 MS. SAXION: No, Your Honor.

13 MR. LAWSON: Well, I have one question,
14 Your Honor.

15 I mean, the only thing that -- we --
16 we -- we had an expert witness, and -- and I'm not
17 saying that, you know, we had the expert witness, the
18 guardian ad litem. It said in there that if the trial
19 court felt that we needed to have more information
20 about the case, that then the guardian ad litem could
21 do an updated report. That's in one of the orders.
22 And -- and, you know, rather than starting off with a
23 petition and added for cause and everything again and
24 getting it set on a trial schedule, if -- if we could
25 -- even if -- if the sanction was that -- that I came

1 up with the money for the guardian ad litem to do the
2 new report, I think that it would be a better use of
3 time and, you know, you can do the attorney's fees in
4 this, but it would be a better use of time to -- to
5 have the guardian ad litem that could have looked into
6 the issues that you raised, an expert witness, and --
7 and then -- and then go that direction.

8 THE COURT: Well, here's -- my order
9 stays the same. But I think you raised an interesting
10 point. That is to say, why can't the parties talk this
11 through with the guardian ad litem. I'm not
12 prohibiting either side from discussing what's in the
13 best interest of the children. As a matter of fact,
14 when the two sides work it out, it's better. I don't
15 know your children, right? So it's better for the
16 parents to work that out. You shouldn't have to bring
17 this matter before a court unless you've had a chance
18 to actually sit down and work this out. You've got the
19 guardian ad litem report. You know that she
20 understands what's going on, and so there's no reason
21 why the parties can't meet and talk about this.

22 So if you want the input from the
23 guardian, get that input from the guardian, but that
24 does not mean that you have to come to court having
25 failed to comply with the court's schedule.

1 Do you have a question, sir?

2 THE PETITIONER: Yes, sir.

3 THE COURT: Did you want talk to your
4 lawyer first?

5 THE PETITIONER: No, I want to ask you --

6 THE COURT: Yes.

7 THE PETITIONER: -- a question, sir.

8 When you say you're dismissing this
9 trial, does that mean I have to start all over again?

10 THE COURT: Basically, yes.

11 THE PETITIONER: Is there anything that I
12 can -- my kids, you know, they're going to miss out on
13 a whole another year, and --

14 THE COURT: They might and they might
15 not. It depends on how of you and your attorney and
16 Ms. Brown and her attorney are able to work this thing
17 out. They may miss out on another year and they may
18 not. I don't know.

19 You have an opportunity, both of
20 you, as parents to work together on this. You decided
21 you were -- you know what I mean? So --

22 THE PETITIONER: Yes, sir.

23 THE COURT: -- I don't know what happened
24 in the settlement conference. I used to do them. But
25 I do know that often parents are very stubborn and I

1 know that both sides think that they're right and
2 sometimes they forget whose -- who this is really
3 about --

4 THE PETITIONER: Yes, sir.

5 THE COURT: -- and I don't know if that's
6 it or not.

7 But I'm suggesting to you that you
8 have a choice to either start this over again and work
9 through this or try to work through if you need to
10 start it all over again. Those are the choices that
11 you have.

12 THE PETITIONER: But, sir --

13 THE COURT: Yes.

14 THE PETITIONER: -- the problem has been,
15 you know, since the divorce, she's been so adversar --
16 there has been no communication. I mean, that's the
17 problem. I mean, there's just been none, and so my
18 kids have been suffering and my --

19 THE COURT: All right. Well, you --
20 you're going to have to work that out with -- between
21 counsel and the guardian ad litem. I commend you for
22 wanting to have the best, Mr. Brown, for your children.
23 Ms. Brown, I commend you for wanting to have the best
24 for your children. But this is not the way we do
25 things. You don't -- you don't set a trial and not

1 tell anybody anything and then expect to go to trial.
2 We don't do it that way. So you're going to have to
3 work that out another way.

4 Yes? Final question?

5 THE RESPONDENT: Yes, Your Honor, when
6 you were saying that it was part of the petition was
7 that -- that there be something added into the -- the
8 order about dispute resolution, because there wasn't
9 anything in the original order about that, and I wonder
10 if that is something that would be considered as an
11 adding or if you're just dismissing this case.

12 THE COURT: I'm dismissing the case
13 altogether. This petition. But those -- those
14 comments that you're making are excellent comments.
15 That's why you talk about it. You don't ignore the
16 case or you don't do that. You talk to each other and
17 you try to have an open mind about what we want. I
18 don't think that's a bad idea for dispute resolution.
19 I don't think it's a bad idea for the parents to be
20 concerned about the kids. I think the two sides ought
21 to talk about it.

22 Okay. Prepare the order.

23 THE GUARDIAN AD LITEM: Your Honor?

24 THE COURT: Yes.

25 THE GUARDIAN AD LITEM: I'm the guardian

1 ad litem, Lisa Barton.

2 THE COURT: Yes.

3 THE GUARDIAN AD LITEM: Can I address the
4 court briefly?

5 THE COURT: Yes.

6 THE GUARDIAN AD LITEM: The order
7 appointing me indicated that the Court needed to
8 approve all my fees, and obviously I need an order
9 discharging me. So would it be appropriate for me to
10 present that to the Court later today?

11 THE COURT: Yes.

12 THE GUARDIAN AD LITEM: All right. Thank
13 you.

14 THE COURT: That would be fine. And that
15 will be a part of the -- part of the sanction, so,
16 Mr. Lawson, you will be prepared to address that as
17 well.

18 All right. And so you may be
19 reengaged later, and I'm going to ask you to be
20 available to both sides.

21 Based on the little bit that I've
22 seen and the bit that I've heard, I don't think this
23 case case arises -- I don't think it needs to go to
24 trial. I think that your input and the recent input
25 from the counsel, I think you could work through this.

1 So you will available at least to
2 talk to them today.

3 THE GUARDIAN AD LITEM: Yes.

4 THE COURT: Is that right?

5 THE GUARDIAN AD LITEM: Yes.

6 THE COURT: Counsel, did you hear that?

7 Yes?

8 All right.

9 MS. SAXION: Your Honor, I only have one
10 quick question.

11 THE COURT: Yes.

12 MS. SAXION: The attorney's fee statement
13 that he's going to look at the declaration and then
14 we'll try to pow wow and -- could we have a deadline
15 for that?

16 THE COURT: What, Mr. Lawson, works for
17 you, please?

18 MR. LAWSON: I don't know. I've got a --
19 I don't know. How about the end of the summer, August?

20 THE COURT: Well, I -- I usually don't
21 write things out like that. I'm -- somewhere within
22 two to three weeks is what I'm looking at.

23 MR. LAWSON: Okay, Your Honor.

24 THE COURT: So July --

25 MS. SAXION: 15?

1 THE COURT: July 15? All right. July
2 15.

3 Anything else, Ms. Saxion?

4 MS. SAXION: No, Your Honor.

5 THE COURT: All right. I'll be in
6 chambers when the order is ready.

7 MS. SAXION: Thank you.

8 (Whereupon proceedings concluded.)

9 --oOo--

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

No. 71398-1-I

IN THE COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

Nathan Brown)	DECLARATION OF SERVICE
Appellant)	
vs)	
Mi Brown)	
Respondent)	

Nathan Brown declares as follows:

On the date shown below, I served a true copy of the following:

OPENING BRIEF

upon the Respondent's attorney by delivering a copy via **email** to:

Lori Saxion, atty for Respondent
733 1st Ave North
Kent WA 98032

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated 8/18/14 at Kirkland WA

NS
Nathan Brown, declarant

94:8 100 01 500 11/16
STATE OF WASHINGTON
COURT OF APPEALS DIVISION ONE

No. 71398-1-I

IN THE COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

Nathan Brown)	
Appellant)	DECLARATION
vs)	OF SERVICE
)	
Mi Brown)	
Respondent)	

Nathan Brown declares as follows:

On the date shown below, I served a true copy of the following:

OPENING BRIEF

upon the Respondent's attorney by delivering a copy via email to:

Lori Saxion, atty for Respondent
733 1st Ave North
Kent WA 98032

2014 AUG 19 PM 0:16
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated 8/18/14 at Kirkland WA

/s/ Nathan Brown
Nathan Brown, declarant