

No. 40598-9-II

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STATE OF WASHINGTON
BY 
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IN THE COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

In re the Guardianship of SEAN RAYMOND COBB
Clark County #09-4-00700-5

CHRISTINE SCOTT and DANIEL COBB, Appellants,
v.
LORRAINE SCOTT, Respondent.

REPLY OF APPELLANTS

Mark E. Didrickson,
Attorney for Appellants,
400 Columbia Street,
Suite 110,
Vancouver, WA 98660
(360) 694-4727

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I. ARGUMENT

Lorraine Scott's response, filed with the court on December 30, 2011, is so confusing, deficient, and out of compliance with RAP 10.3 that she should be deemed to have waived any arguments against the appellants' assignments of error filed in the Brief of Appellants.

II. CONSIDERATIONS ON REVIEW

Briefs submitted to appellate courts should meet certain formal standards. RAP 10(3)(a) and (b) require that the arguments of parties be supported by citations to legal authority and references to relevant parts of the record. RAP 10.3(a)(6); RAP 10.3(b). An appellate court should not consider arguments that are not supported by citations to legal authority or references to the record. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992). Failure to cite the record is not a mere formality but instead places an unacceptable burden on opposing counsel and on the court. Lawson v. Boeing Co., 58 Wn.App. 261, 271, 792 P.2d 545, 551 (Div. 1 1990). A court may 1) return a non-compliant brief to a party with orders to correct the brief within a given time, 2) order the brief stricken from the files with leave to file a new brief within a specified time, or 3) accept the brief. RAP 10.7. Furthermore, a party who fails to provide a reasoned argument or citation to legal authority in a brief may waive his or her contentions. See, e.g., Spokane Research & Defense Fund v. West Cent. Community Development Ass'n, 133 Wn.App.

602, 606, 137 P.3d 120, 121 (Div. 3 2006). Pro se appellate parties like Lorraine Scott are held to same standards as attorneys. See, e.g., Audit & Adjustment Co. v. Earl, 40416-8-II (Div. 2, filed Nov. 29, 2011)

III. THE PROBLEMATIC RESPONSE

A) **Non-Compliant and Deficient Response.** Composing a reply to Lorraine Scott's peculiar response is very difficult. For the most part, her response is not in the form of an argument but instead consists of simple denials or contradictions of the propositions stated by the appellants. Secondly, aside from a few random citations from RCW 11.88, it is devoid of citations to legal authority in support of Ms. Scott's position. Third, there are only a handful of references to the record in her discussions of proceedings below.

Fourth, and most maddeningly, there is no identifiable format. While lack of legal training cannot excuse the formal deficiencies of a pro se litigant, see *id.*, at _____. it is at least understandable that a pro se party would miss the fine points of legal citation or misunderstand the significance of a particular legal doctrine. However, even an average layperson without higher education would know that if the opposing party has seven assignments of error, for example, then he or she should specifically answer each assignment of error in turn and do the best he or she can. This common sense is reflected in RAP 10.3, which requires responses to answer the points in the appellate brief, dealing with each specific assignment of error. RAP 10.3(b); RAP 10.3(a)(4). However, Ms. Scott's response did not address each

assignment of error in this straight-forward fashion. Instead, she made such a mish-mash of her response, including irrelevant ad hominem attacks on counsel, that it is difficult and sometimes impossible to understand what her point may be. In the absence of legal citations, references to the record, or even the simplest framework of a response, the court is not required to construct an argument for Ms. Scott. State v. Cox, 109 Wn.App. 937, 943, 38 P.3d 371, 374 (Div. 3, 2002). That burden should not be imposed on opposing parties, either.

B) Waiver. On December 16, 2011, the court admonished Ms. Scott about numerous problems with the form of her response, which was filed on that day. The court's concerns included the absence of citations to legal authority, the lack of references to the record, and failure to structure her brief so as to track with the assignments of error, but also more basic problems like single-spacing of the text. The court returned this initial version of the response with instructions to make corrections and re-file the corrected version by December 27, 2011. Ms. Scott's second attempt was also returned by the court for failure to cite to the record or to double-space the text. A third version was filed on December 30, 2011, which was accepted by the court. This version nonetheless contains the fundamental errors discussed above. In Cox, a pro se appellant set forth an assignment of error with only a single sentence which contained no legal authority. As a result of this egregiously deficient presentation, Division 3 deemed him to have

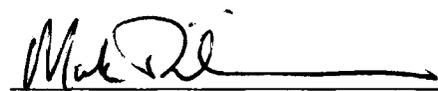
waived his opportunity for argument. *Id.*, 109 Wn.App at 937, 38 P.3d at 374. As with Cox, this court should deem Ms. Scott's response, after two chances to bring it into compliance with RAP 10.3, to be so deficient as to have waived any arguments against the appellants' assignments of error.

Copies of the court's correspondence with Ms. Scott is attached in the Appendix.

IV. CONCLUSION

By filing a response which conspicuously failed to comply with RAP 10.3's requirement for citations to legal authority, references to the record, and to address the appellants' assignments of error clearly and understandably, Lorraine Scott waived any arguments which she could have raised against the appellants' assignments of error.

RESPECTFULLY SUBMITTED THIS 30TH DAY OF JANUARY, 2012.



Mark Didrickson, WSB #20349,
Attorney for Appellants

APPENDIX



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

December 16, 2011

Lorraine Scott
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Elma, WA, 98541

Mark Evan Didrickson
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markdidrickson@operamail.com

CASE #: 40598-9-II/In Re the Guardianship of Sean Cobb
Case Manager: Cheryl

Dear Ms. Scott:

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not include the Tables. RAP 10.3(a)(2).

Brief does not include issues pertaining to assignments of error. RAP 10.3(a)(4).

Brief does not cite to the record. RAP 10.3(a)(5).

Brief does not contain an Argument together with citations to legal authority and references to relevant parts of the record. RAP 10.3(a)(6).

Brief is not double spaced. RAP 10.4(a)(2).

Brief is not signed. RAP 18.7, APR 13(a).

The sealed attachments are in the record. Please do not attach them to the brief.

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **December 27, 2011**. For your convenience, I am enclosing a *sample* brief. If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c



Washington State Court of Appeals

Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

December 23, 2011

Lorraine Scott
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Mark Evan Didrickson
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CASE #: 40598-9-II
In Re the Guardianship of Sean Cobb
Case Manager: Cheryl

Dear Ms. Scott

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not cite to the record. RAP 10.3(a)(5).

Brief is not double spaced. RAP 10.4(a)(2).

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **January 3, 2012**.

If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

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Attorney for Appellants,
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Vancouver, WA 98660
(360) 694-4727

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STATE OF WASHINGTON
BY _____
REPLY

**COURT OF APPEALS,
DIVISION II,
OF THE STATE OF WASHINGTON**

In re the Guardianship of)
SEAN RAYMOND COBB,) NO. 40598-9-II
An Incapacitated Person,)
DECLARATION RE SERVICE OF
REPLY OF APPELLANTS

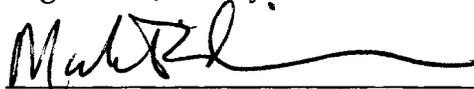
I, Mark Didrickson, declare:

On January 30, 2012, I served Lorraine Scott, Respondent, in her own capacity and as Guardian of Sean R. Cobb, an incapacitated person, with a copy of the Reply of Appellants herein by causing a full, true, and exact copy of the same to be deposited in the U.S Mail, postage prepaid, for delivery to Lorraine Scott at her address of record, to-wit:

Lorraine Scott
P.O. Box 1118,
Elma, WA 98541

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

Signed at Vancouver, Washington on January 30, 2012



Mark Didrickson, WSB #20349,
Attorney for Appellants