

No. 43660-4-II  
No. 44504-2-II  
(consolidated)  
COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

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Teresa G. Harkenrider,  
Respondent,

v.

Christopher Wodja,  
Appellant.

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BRIEF OF RESPONDENT

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**I. ISSUES PERTAINING TO APPELLANT'S CLAIMED ASSIGNMENTS OF ERROR**

- A. Did the trial judge err by retaining jurisdiction of this matter after entry of the orders finalizing the parties' divorce?
- B. Did the trial judge err by relieving Ms. Harkenrider of her requirement to submit to UA testing?
- C. Did Judge Nelson err by assessing an award of attorney's fees against Mr. Wodja and in favor of Ms. Harkenrider in June 8, 2012 Order on Reconsideration?
- D. Did Judge Nelson err by assessing an award of attorney's fees against Mr. Wodja and in favor of Ms. Harkenrider when her income is greater than his?
- E. Did Judge Nelson err by assessing an award of attorney's fees against Mr. Wodja and in favor of Ms. Harkenrider when she also issued an order as requested by Mr. Wodja?
- F. Did Judge Nelson err by entering Findings of Fact, Conclusions of Law and Order regarding Vexatious Litigation on June 21, 2012?
- G. Did Judge Nelson err on September 12, 2012 by denying Mr. Wodja's motion for review and to resume visitation?
- H. Did Judge Nelson err by granting a motion for reconsideration where the only "new" evidence presented was an unsigned, "draft" letter?
- I. Should this Court grant Ms. Harkenrider attorney's fees?

**I. STATEMENT OF THE CASE**

In the two pending consolidated appeals, Mr. Wodja seeks review of several post-dissolution orders entered by the trial court between April 27, 2012 and October 12, 2012. CP 96-103, 148-49, 161, 181, 182-83, 219-20, 323-25, 374, 390-93, and 394-95. The relevant portions of those orders are summarized and discussed below.

The Court entered Corrected Findings of Fact and Conclusions of Law in this matter on February 7, 2012. CP 20-30. Paragraph 2.8 provides:

The court finds that the most significant community assets . . . were lost . . . after Mr[.] Wodja's license to practice dentistry was suspended following his abuse of a patient and multiple findings of violations of the standard of care.

CP 22.

Paragraph 2.18 provides:

Judge Kathryn Nelson in Pierce County Superior Court shall take continuing jurisdiction over this case **until further order of this court or in the event of Washington State losing jurisdiction by operation of law**. The Court has heard a four-week trial and in excess of 30 witnesses, and it is in the best interest of these children to have the same judge oversee further matters affecting them.

CP 25 (emphasis added).

Judge Nelson further found:

Dr. Whitehill, who was called as Father's witness, does not recommend Father's contact with the children until it can be determined that Father can correct his parental deficiencies which are difficult Axis II disorders and traits. Entire sections of Father's psychological testing were invalid due to the Father's defensiveness and attempts to portray himself in a negative [positive, sic] light. Therefore, the court finds that the Father will have no visits, residential, or contact with the children pending further order of the Court as specifically set forth in the Parenting Plan.

Father failed to disclose numerous criminal incidents to both Dr.[.] Judd and Dr. Whitehill which were arguably of a sexual nature, which were not taken into consideration in the preparation of either experts' reports[.] Both experts testified to the Father's minimalization of incidents related to allegations of attempted rape, assault, kidnapping, and drugging of women.

The Court finds Dr. Whitehill persuasive with respect to most of Father's disorders and conditions[.] The court also finds that it is more likely than not that Father has a sexual deviancy, and frottage seems more likely than not given the admissible evidence provided in this case. Dr. Whitehill specifically noted the high interrater reliability of reports from numerous women related to Father's inappropriate conduct and behavior. . . .

CP 26.

Judge Nelson also found as follows:

### **Credibility**

The court finds that the testimony of Christopher Wodja was not credible in many respects. It is a manifestation of [his] disorders that he cannot accept rules and requirements of others. The way that father's mind perverts reality and his pathological lying, mostly in failed attempts to place himself in

the best light, was evident throughout the trial and his actions during litigation. . . .

CP 27.

### **Alcohol Dependence**

Testimony [prior to trial] indicated that Mother's evaluation for alcohol use did indicate alcohol dependency. As a result, she was put on random U.A.s by the Court. The credible [trial] testimony of Dr[.] Whitehill and others indicates that **the information provided by the Father as a collateral source to the evaluators must have skewed the results.**

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The Court does find that mother drank alcohol to excess on occasions. These appear to be relatively infrequent occasions[.] . . . . **Mother has chosen not to drink and has not failed any random testing. The Court requires random testing through the anticipated April 27, 2012 [review] hearing on a once to twice per month basis.** She will need to set up testing in her new location and file the results of those tests under seal in this action from a lab convenient to her new location.

The Court shall retain discretion to determine if any missed U.A. is excused due to Mother's work or travel which prevents her from completing the test.

CP 28 (emphasis added). Mr. Wodja did not appeal this order. CP 20-30 (Corrected Findings of Fact and Conclusions of Law).

On February 10, 2012, Judge Nelson entered an order setting forth the parameters for selecting Mr. Wodja's potential domestic violence/anger management treatment providers and prerequisites for his treatment. CP 31-32. The order anticipated that one of two

named providers would be appointed as Mr. Wodja's psychotherapist.

CP 31. The order also provided that:

Both treatment providers shall communicate with Teresa Harkenrider to obtain collateral contact information relative to Christopher Wodja and his need for treatment.

. . . [A]ny treatment provider for Christopher Wodja shall be provided collateral contacts, including expert reports, guardian ad litem information, criminal records related to Father's history, Department of Health records, and declaration of individuals setting forth allegations of abuse, sexual deviance, and other evidence provided to the court as a basis for restrictions [on Mr. Wodja's contact with Ms. Harkenrider and the children]. This must occur prior to commencement of any treatment for it to be acceptable to the Court.

CP 32.

On March 16, 2012, Judge Nelson entered an Order on Post-Decree Matters, in which she found that "Christopher Alan Wodja intentionally misrepresented material facts to the court with regard to his alleged treatment with Dr. Allen Traywick. This misrepresentation is perjurious and warrants specific note in the file, and [is] part of a repeated pattern of behavior on the part of Mr. Wodja." CP 47-49, 44-45.

Subsequent to entry of the Corrected Findings of Fact and Conclusions of Law in which Judge Nelson retained jurisdiction of this case (CP 20-30), Mr. Wodja nonetheless improperly obtained orders to show cause from three separate court commissioners, attempting

to bring motions for contempt against Ms. Harkenrider on the commissioners' family law dockets rather than before Judge Nelson. RP (April 27, 2012) at 5-7.

This was brought to Judge Nelson's attention on April 27, 2012. *Id.* That same day, Judge Nelson entered an order addressing her retention of jurisdiction. CP 181. Judge Nelson explained that judicial officers in Pierce County routinely retain jurisdiction of certain family law cases and that they put the other judicial officers, including court commissioners, on notice that other judicial officers are not to perform any duties in such a case. RP (April 27, 2012) 6-7.

That same day, Judge Nelson reviewed the issue of Ms. Harkenrider's ongoing requirement to submit to random urinalysis testing. Judge Nelson ordered:

... Teresa Harkenrider is relieved of any further obligation to undergo random urinalysis testing. The court specifically finds that Teresa Harkenrider did not inappropriately miss any scheduled urinalysis tests, and that her reasons for absence were related to the fact that she was scheduled for urinalysis testing at another facility, or was out of the state at the time she was called.

CP 182. *See also* CP 50-52 (3/8/12 results –negative), CP 135-58 (summary of all testing provided at CP 136; all negative); CP 114-17; 268-90. At the hearing, Judge Nelson orally ruled, "I find that Ms. Harkenrider has relieved this court of its concerns about any alcohol

use or abuse, and I find that she is no longer required to take random UA's." RP (April 27, 2012) at 32.

On May 11, 2012, Judge Nelson entered an order clarifying her April 27, 2012 rulings pertaining to her requirements for Mr. Wodja's required domestic violence/anger management treatment. CP 219-20; RP (May 11, 2012).

Judge Nelson ruled that a new anger management provider needed to be selected. CP 219-20. Mr. Wodja was to provide names of potential providers to Ms. Harkenrider's counsel; a provider could then be appointed by agreed order or would be designated by the Court at a later hearing. CP 220.

On June 8, 2012, Judge Nelson heard a Motion for Reconsideration brought by Mr. Wodja. RP (June 8, 2012), CP 184-95. Mr. Wodja sought reconsideration of several of Judge Nelson's rulings made on April 27, 2012. CP 184-95. Judge Nelson found that Mr. Wodja's motion had not been brought in good faith. CP 324; RP (June 8, 2012) 10 ("the Court agrees [the motion] was not properly noted for today, and the Court believes that it was strategically not confirmed for today."). She awarded Ms. Harkenrider attorney's fees

in the amount of \$2,500, to be entered as a judgment against Mr. Wodja. CP 324-25.

On June 15, 2012, Judge Nelson heard argument on another of Mr. Wodja's motions in which he sought an order "clarifying" the decree of dissolution, asking that it be amended to include the VIN number of the Toyota Landcruiser that had been awarded to him. CP 291-92. Ms. Harkenrider's counsel argued:

... [Mr. Wodja's] filing of this motion was unnecessary, and Ms. Harkenrider has described in her reply declaration that this is simply a furtherance of Mr. Wodja's constant efforts to harass her.

She supplied to the Court all of the documentation that she submitted online [to the Department of Licensing/Department of Motor Vehicles] in the month of January. She made the application regarding the lost title. She personally communicated with the Department of Licensing. She has been assured that everything has been done on her side that needs to be done. Mr. Wodja does not need a VIN number and a decree. We don't routinely put VIN numbers in Decrees. They may be entered, and if he would have simply forwarded an order, there would have been no opposition to that.

RP (June 15, 2012) at 4-5. At the conclusion of argument counsel further argued:

Your Honor, I renew the request for an award of fees related to this. This was a completely unnecessary motion. Had Mr. Wodja proposed such an order, even without filing a motion, it would have been signed. Had he filed a proposed order as required by local rule along with this motion, this could have been avoided. He misrepresented the facts about what is necessary to transfer the title. Ms. Harkenrider showed what

she did, and that her response was unnecessary and it does warrant an award of attorney fees.

RP (June 15, 2012) at 33-34. She continued:

... all of the fees we have requested up until now have been related to intransigence and the fact that [Mr. Wodja] does everything within his power to make this matter more difficult than it already is.

RP (June 15, 2012) at 35. Judge Nelson issued an order clarifying the award of the Landcruiser, including its VIN. She awarded Ms.

Harkenrider \$500 in attorney's fees. RP (June 15, 2012) at 35; CP 374.

On June 7, 2012, Ms. Harkenrider filed a Motion and Declaration for Finding of Vexatious Litigation/Restraints/Sanctions & Fees, CP 293-306, along with a Memorandum of Law. CP 307-22.

Mr. Wodja objected to the motion. CP 333-58. On June 21, 2012 Judge Nelson entered Findings of Fact and Conclusions of Law that provide a summary of Mr. Wodja's post-trial conduct. CP 390-93.

Among others, Judge Nelson entered the following factual findings:

4. This Court has made previous findings that Mr. Wodja intentionally misrepresented material facts with regard to his alleged treatment with [Dr.] Traywick, which was perjurious and is part of a repeated pattern by Mr. Wodja.
5. Since the findings referred to in Paragraph 4 above, Mr. Wodja has continued to file pleadings that are not timely, unresponsive to the issues to be addressed, or are otherwise without legal basis to be heard. His pleadings have at times violated local rules.

6. Mr. Wodja's intent is to create expense for Ms. Harkenrider and does constitute harassment. The facts that support this finding are:
  - a. Mr. Wodja did not sign the final pleadings in the case previously signed by the judge, but interlineated his preferred findings throughout the documents, changing the orders of the Court, and necessitating re-draft and re-presentation. Mr. Wodja was ordered to pay attorney's fees of \$1,120 on February 7, 2012. [CP 20-30]
  - b. Mr. Wodja's actions in treating with a unilaterally obtained provider without court authorization, and without following the court's order to provide treatment providers with materials (Parenting Plan VI) caused a February 10, 2012 hearing, and also a March 16, 2012 order (see Paragraph 4 above). [CP 31-32, 47-49.] Attorney's fees in the amount of \$1,000 were awarded based upon Mr. Wodja's intransigence. Mr. Wodja also attempted to interlineate numerous provisions of the March 16, 2012 order, that were not ordered by the Court, and are visible on the original in the file. [CP 47-49.]
  - c. On March 20, 2012, Mr. Wodja pursued his first contempt order before the commissioner's court, despite knowing that the trial court had retained jurisdiction over all matters for this family, and he refused to voluntarily correct the situation, when asked to by opposing counsel. [CP 459-62.] After a March 27, 2012 letter order striking the matter, on April 2, 2012 Mr. Wodja again improperly filed before the commissioner pleadings for another contempt order.
  - d. Mr. Wodja was responsible for ex parte communication being made to the Court that caused the Court to indicate receipt of same from Paula van Pul on March 21, 2012. Mr. Wodja then improperly provided Ms. Harkenrider's attorney's emails to Mr. Wodja to third parties and the Court, creating confusion and ex parte communications.

[CP 211-14.] Mr. Wodja's improper intent is also shown in the selection of bits and pieces of these emails without appropriate context.

- e. Mr. Wodja's Motion for "Reconsideration of the March 16, 2012 Order" filed on March 22, 2012, did not provide new information that was not available at the time of the original motion, or provide any other legal basis for reconsideration. [CP 63-88.]
- f. A legal memorandum re: CR 11 sanctions and attorney's fees was also filed by Mr. Wodja, and denied by the Court, together with a post-decree motion Mr. Wodja requested be addressed "without oral argument" in contravention of local court rules. [CP 89-96.]
- g. Mr. Wodja failed to consolidate his re-noted Motion for "Reconsideration" with the already existing April 27, 2012 Review Hearing. He scheduled his motion for, and it was heard on, April 20, 2012. It was denied by the Court, and attorney's fees in the amount of \$1,500 were awarded against him, as the motion was without legal or factual basis. [CP 159-60.]
- h. Mr. Wodja included in his response to Ms. Harkenrider's pleadings concerning the April 27, 2012 Review Hearing, Parenting Plan modifications which included numerous false hearsay statements, was legally not on point and had no relevance to the Review Hearing set before the Court. Specifically, Mr. Wodja persisted in filing a report which was never part of the original trial and had conclusions which were opposite to the evidence presented at trial. [CP 161-65, 166-70.]
- i. On April 25, 2012, Mr. Wodja filed another meritless motion to show cause for contempt alleging violation of the Parenting Plan when there was no such issue in the Parenting Plan. [CP 171-72.]

- j. Mr. Wodja has continued to seek motions for reconsideration of specific factual findings made on April 27, 2012, despite having no new information or information that was unavailable to him prior to the April 27, 2012 ruling. [CP 184-95, 196-200, 221-24, 234-35, 242-47, 248-63, 264-65, 266-67, 268-90, 291-92.]
  - k. Mr. Wodja acted to create confusion and chaos concerning a judicial mistake concerning language describing the type of treatment the substitute provider for Mr. Notarfrancisco should provide, and Mr. Wodja was successful in having said provider remove, or fire, himself. [CP 215-18.]
  - l. Mr. Wodja proposed that Diane Shepard be appointed for anger management [treatment], and Ms. Harkenrider agreed, but no order that can be entered by the court by agreement has been circulated to Ms. Harkenrider through her attorney, and neither has it been re-noted and confirmed for hearing by the court. The confirmation failure has followed receipt of Ms. Harkenrider's responses. [CP 221-24, 375-82, 383-89, 394-95.]
  - m. As indicated in part above, Mr. Wodja failed to note more than one motion on a motion date; noted an improper second motion for reconsideration after the first failed on June 8, 2012 and another motion on June 15, 2012 for inclusion of a VIN number for a vehicle awarded to him. [CP 291-92.] No attempt to circulate the latter as an agreed order to Ms. Harkenrider's attorney was made. Outstanding still (as of June 15, 2012) is the motion to appoint Diane Shepard, and a motion to allow oral testimony by a new expert witness. [CP 224-24, 234-35.]
- 7. Mr. Wodja has communicated with court staff via email, and forwarded emails from third parties to the Court in an ex parte fashion. [CP 211-14, 215-18.]
  - 8. Mr. Wodja has been found by the Court to pervert the truth and lie in order to make himself look good. He has

changed the caption of the case to reflect his former wife as “formerly known as Teresa Wodja” when in fact she never had that legal name. [See, e.g., CP 63, 89, 184-196, 221, 242, 248, 264, 268, 291, 333.] This, together with other acts, [is] evidence of an intent to upset, control and intimidate Ms., Harkenrider.

9. Mr. Wodja has inserted WSBA numbers on note for motion calendars although he is not a member of the Washington state Bar Association.
10. No amount of the total sum of \$5,870 in attorney’s fees assessed against Mr. Wodja has been paid to Ms. Harkenrider or her counsel. The assessment of attorney’s fees has not been effective as a sanction to the bad faith conduct of Mr. Wodja.

#### **CONCLUSIONS OF LAW**

1. The entry of final dissolution and parenting plan pleadings does not end a court’s jurisdiction in the case, as questions may arise concerning the meaning of the decree, a provision may be omitted, or a change of circumstance may create a need to change the prior decree. A party may bring actions to clarify or interpret, vacate or modify. A party may also bring actions to enforce the provisions of, or restrain violations of, the court’s orders including the Parenting Plan and Child Support Order, for example.
2. In this matter, the final pleadings themselves provided for a review of parental compliance and progress in connection with parenting issues on a set date. To wit: “The Court is willing to schedule a hearing (April 27, 2012) to assess the Father’s progress by reviewing at that time a petition to modify the existing parenting plan due to a substantial change in circumstances, i.e., an improvement in Father’s condition through progress in his treatment and behavior that would allow a change in the no contact with the children provision that is the result of the trial.”

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7. Mr. Wodja is required to seek leave of the court before making any new filings other than in Paragraph 6 above, if he is pro se. Leave of the court is not required if Mr. Wodja is represented by legal counsel.
8. Mr. Wodja may not file future pleadings concerning Ms. Harkenrider's alleged issues with alcohol and/or drugs based upon history or events that pre-date the court's order of April 27, 2012.
9. Attorney's fees for Mr. Wodja's conduct [were] largely addressed at the time of his bad faith, although other bad faith actions have not yet been sanctioned. Mr. Wodja's bad faith conduct required Ms. Harkenrider to file the instant motion providing to the court a summary of the history of bad acts and legal authority for the court's consideration.
10. A judgment for \$2,000 in additional attorney's fees to Ms. Harkenrider is assessed against Mr. Wodja and shall be entered forthwith as a sanction for other bad faith no[t] previously sanction[ed] and for Ms. Harkenrider's need to file her motion.

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**ORDER RE: VEXATIOUS LITIGATION/RESTRAINTS/  
SANCTIONS & FEES**

Ms. Harkenrider's Motion Re: Vexatious Litigation/ Restraints /Sanctions & Fees is hereby Granted as outlined in the Findings of Fact and Conclusions of Law above.

CP 390-93.

On June 22, 2012, the Court entered an Order appointing Diane Shepard to serve as Mr. Wodja's "anger management provider." CP 394-95.

On August 3, 2012, Mr. Wodja brought a Motion for Visitation. CP 410-16. Ms. Harkenrider opposed the motion by filing a detailed

declaration setting forth the well-documented reasons why the motion should be denied. 2CP 1-47.

On September 12, 2012, Judge Nelson entered Findings of Fact and Conclusions of Law (and Order) on Mr. Wodja's Motion. 2CP 96-103. Judge Nelson found "there has not yet been a substantial change of circumstances that gives the court adequate cause to change the Final Parenting Plan, and there is no change yet that would justify a reconciliation process and visitation between the children and their father." 2CP 96. Judge Nelson specifically noted that the vast majority of "evidence" Mr. Wodja presented in support of his motion was irrelevant. He submitted reports and/or testimony that were proffered either prior to or during trial. 2 CP 97 n.1. Mr. Wodja provided a report from an expert who had previously been removed from the case by the Court. 2 CP 97 n.1. Mr. Wodja also presented declarations from other providers who had clearly not been furnished with the full factual information necessary to formulate an appropriate treatment plan. 2 CP 97 n.1.

Mr. Wodja immediately sought reconsideration of this ruling. 2CP 104-23. The only "new" evidence Mr. Wodja presented to support his motion was a letter from Paula van Pul; however, the letter is

marked "DRAFT" and is not signed. CP 119-20. Judge Nelson denied the motion. 2CP 148-49.

**November 29, 2012 letter from Court.**

On November 29, 2012, Judge Nelson's Judicial Assistant sent a letter to the parties in which she advised them that a hearing scheduled by Mr. Wodja for November 30, 2012 was struck. 2CP 161. The procedural history that culminated in this letter is extremely convoluted, perhaps deliberately, by Mr. Wodja.

- 9/24/12; Wodja files a motion for leave to present a motion for reconsideration of 9/12/12 order denying motion to resume contact with the children 2CP 104-23
- 10/3/12; Harkenrider's opposition 2CP 126-32
- 10/4/12; Wodja renotes hearing 2CP 133-34
- 10/11/12; Wodja files strict reply 2CP 135-40
- 10/11/12; Wodja moves to strike supplemental declaration of Ms. Harkenrider 2CP 141-47
- 10/12/12; order denying reconsideration 2CP 148-49
  
- 10/22/12; Wodja seeks reconsideration of order denying reconsideration<sup>1</sup> CP 515-28
- 11/16/12; Wodja seeks to "reinstate" hearing struck by the Court CP 151-60

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<sup>1</sup> Mr. Wodja refers to the hearing on this motion being struck by the Court; however, the record referred to was not designated as part of the Clerk's Papers.

On November 29, 2012, the Court sent the parties a letter informing them the hearing Mr. Wodja had scheduled for November 30, 2012 for his motion to “reinstate” his prior hearing had been struck. 2CP 161. Mr. Wodja also appeals this letter.

## **II. ARGUMENT**

Ms. Harkenrider asks this Court to deny Mr. Wodja’s consolidated appeal in its entirety and to affirm each of Judge Nelson’s rulings. By virtue of these appeals, Mr. Wodja persists in his attempts to relitigate and retry issues correctly resolved by Judge Nelson.

This Court reviews conclusions of law de novo. In order to affirm a trial court’s findings of fact, they must be supported by substantial evidence. *See, e.g., Nordstrom Credit, Inc. v. Dep’t of Revenue*, 120 Wn.2d 935, 942, 845 P.2d 1331 (1993).

In this case, all legal issues presented by Mr. Wodja are controlled by well settled law. *See, e.g.,* chapter 26.09 RCW. Every issue of fact raised by Mr. Wodja is well supported by substantial evidence in the record from below.

Discretion is abused when it is exercised by a trial judge in an untenable or manifestly unreasonable manner. *Marriage of Freeman*, 169 Wn.2d 664, 671; 239 P.3d 557 (2010); *State ex rel. Carroll v.*

*Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). All matters in this case appealed by Mr. Wodja were well within Judge Nelson's discretion and supported by well-settled law. They were carefully considered and properly decided.

Self-represented parties are held by courts to the same standards as attorneys; they are also bound by the same procedural rules and substantive laws. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); *Patterson v. Superintendent of Public Instruction*, 76 Wn. App. 666, 671, 887 P.2d 411 (1994), *review denied*, 126 Wn.2d 1018, 894 P.2d 564 (1995).

Mr. Wodja spends considerable time in his brief making arguments that are unrelated to any of the specific issues, orders or rulings appealed from. He attempts to appeal orders long after the time for appeal has passed by instead purporting to appeal the series of unsuccessful motions for reconsideration he subsequently brought. The argument in this brief is confined to those orders and rulings specifically appealed from, and to any related arguments in Mr. Wodja's opening brief.

**A. JUDGE NELSON HAD WIDE DISCRETION TO RETAIN JURISDICTION OF THIS MATTER SUBSEQUENT TO ENTRY OF FINAL DISSOLUTION ORDERS.**

April 27, 2012 Order – Trial Court’s Retention of Jurisdiction.

Mr. Wodja apparently appeals this order in its entirety. CP 181, 2 CP 97 n.2. As stated above, throughout his appeal, Mr. Wodja attempts to circumvent the Rules of Appellate Procedure by purporting to appeal several unsuccessful motions for reconsideration, when, in actuality, he is attempting to appeal the substance and merits of the underlying motions.

With regard to this particular order, Mr. Wodja argues that Judge Nelson “ignored the maxims regarding jurisdiction, particularly the UCCJEA” in the April 27, 2012 order. Br. of Appellant at 17-18; CP 181. Mr. Wodja’s motion for reconsideration does not present, nor does his brief point to, any procedural irregularity, misconduct, accident or surprise, and importantly, no newly discovered material evidence to justify Judge Nelson reconsidering this order. CR 59(a); CP 184-95. **It should be noted that Mr. Wodja’s motion for reconsideration does not even mention Judge Nelson’s retention of jurisdiction.** CP 184-95. *In re Marriage of Verbin*, 92 Wn.2d 171, 595 P.2d 905 (1979) (affirming trial court’s exercise of discretion to

retain jurisdiction of matter in matter implicating UCCJEA).

Nonetheless, Judge Nelson's denial of reconsideration was proper and should be affirmed.

Mr. Wodja ignores the provision of the initial Findings of Fact and Conclusions of Law (CP 20-30) that specifically states Judge Nelson was retaining jurisdiction of the case "until further order of this court **or in the event of Washington State losing jurisdiction by operation of law.**" CP 25 (emphasis added). These Corrected Findings of Fact and Conclusions of Law were never appealed; therefore they are all verities on appeal. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002) (unchallenged findings of fact are verities on appeal).

If Mr. Wodja is, in fact, appealing this underlying order, his Notice of Appeal was not filed until July 6, 2012 – 60 days too late. Therefore, Mr. Wodja's indirect appeal of this order is not timely and should be rejected by this Court. RAP 5.1, 5.2 (requiring a party to file a notice of appeal 30 days after the entry of the decision the appealing party wants reviewed).

**B. SUBSTANTIAL EVIDENCE IN THE RECORD AMPLY SUPPORTS JUDGE NELSON'S FINDING THAT THERE WAS NO NEED FOR MS. HARKENRIDER TO CONTINUE TO SUBMIT TO RANDOM UA TESTING.**

April 27, 2012 Order – Order on Post-Decree Matters.

Mr. Wodja similarly attempts to indirectly appeal this second April 27, 2012 order, even though, as noted immediately above, his Notice of Appeal was filed 60 days too late. CP 182-83. Mr. Wodja argues that Judge Nelson erred by relieving Ms. Harkenrider of her obligation to submit to random urinalysis testing. Br. of Appellant at 36-37.

Mr. Wodja argues that Judge Nelson erred by (a) relying solely on her own opinion in making this ruling; Br. of Appellant at 36-37; and that (b) Judge Nelson erred because she relied on expert trial testimony as a basis to order Ms. Harkenrider to submit to random urinalysis testing, but she would not later consider Mr. Wodja's proffered "experts" at the time this issue was reviewed by the Court on April 27, 2012. Br. of Appellant at 37.

In claiming that Judge Nelson "relied upon [her] own opinion," Mr. Wodja refers to CP 159. Br. of Appellant at 37. However, CP 159 is an order that *pre-dates* the April 27, 2012 hearing and has nothing to do with the issues addressed at that hearing.

Nevertheless, it is clear from the record that Ms. Harkenrider fully complied with the Court's earlier testing requirements, and that Judge Nelson's decision to relieve Ms. Harkenrider of the requirement to submit to any further testing is supported by substantial evidence in the record. CP 50-52, 114-17, 135-58, 182, 268-90; RP (April 27, 2012) 15-18, 23-32.

The declarations from Mr. Wodja's own alcohol dependency "experts" *post-date* the April 27, 2012 hearing *and they post-date the period for reconsideration*. CR 59(a); CP 248-63 (Declaration of David A. Harris, filed with the trial Court on June 7, 2012); CP 264-67 (Declaration of Lisa M. Daheim, filed with the trial Court on June 7, 2012). Both "experts" indicate their conclusions were based solely on Mr. Wodja's presentation of his version of the "evidence" to them. Neither "expert" ever spoke with Ms. Harkenrider. *Id.*

A trial court is vested with discretion to determine the credibility of experts offering opinions at trial. *See, e.g., State v. Benn*, 120 Wn.2d 631, 662, 845 P.2d 289 (1993) (holding that a trial court determines the credibility of expert testimony and does not abuse its discretion in discounting expert testimony and relying on other witnesses' testimony instead).

The “expert” testimony Mr. Wodja had presented at trial regarding Ms. Harkenrider’s purported alcohol abuse was equally unreliable. In its unchallenged Findings of Fact and Conclusions of Law, Judge Nelson found “The credible [expert trial] testimony . . . indicates that **the information provided by [Mr. Wodja] as a collateral source to the [alcohol dependency] evaluators must have skewed the results** [of Ms. Harkenrider’s alcohol dependency evaluation.]” CP 28 (emphasis added). A reviewing court defers to a trial court’s credibility determinations and will not reweigh evidence even if it would have resolved conflicting evidence differently.

*Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959); *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009). “Stated another way, an appellate court is not in a position to find persuasive evidence that the trier of fact found unpersuasive.” *Quinn*, 153 Wn. App. at 717. Any of Mr. Wodja’s arguments related to this ruling should be rejected by this Court, and Judge Nelson’s ruling should be affirmed.

**C. THIS COURT NEED NOT REVIEW JUDGE NELSON'S  
MAY 11, 2012 ORDER.**

May 11, 2012 Order on Motion for Clarification.

Mr. Wodja also indirectly appeals the entirety of this order, which was intended to clarify other rulings made by Judge Nelson on April 27, 2012 pertaining to Mr. Wodja's domestic violence/anger management treatment. CP 219-20. However, Mr. Wodja makes no discernible argument in his brief to explain why he believes this particular order should be reviewed by this Court. Therefore, any reference made by Mr. Wodja to this order should be disregarded and rejected by this Court. This Court should affirm this order.

**D. JUDGE NELSON'S AWARD OF ATTORNEY'S FEES ON  
JUNE 8, 2012 WAS BASED ON FINDINGS SUPPORTED  
BY SUBSTANTIAL EVIDENCE.**

June 8, 2012 Order on Reconsideration / CR 11 Sanctions.

Mr. Wodja appeals Judge Nelson's award of \$2,500 in attorney's fees to Ms. Harkenrider in this order. CP 323-25. Br. of App. at 18-19.

Mr. Wodja first argues, mistakenly, that there were no findings to support this award. Br. of Appellant at 19. The order clearly provides:

**The Court finds** Mr. Wodja's motion was not brought in good faith. The Court finds that Mr. Wodja strategically failed to confirm his prior noted motions, which includes his motion to appoint Diane Shepard which was not heard by the Court as it was not properly noted today.

\*\*\*

Teresa Harkenrider is awarded attorney fees in the amount of \$2,500 which shall be reduced to judgment forthwith.

CP 324-25 (emphasis added).

This Court reviews a trial court's award or denial of attorney fees for abuse of discretion. *In re Marriage of Freeman*, 169 Wn.2d 664, 676, 239 P.3d 557 (2010); *Morgan v. City of Federal Way*, 166 Wn.2d 747, 758, 213 P.3d 596 (2009).

There were sufficient findings that support this award. Said findings were supported by substantial evidence. This award was well within Judge Nelson's discretion. This award of attorney's fees should therefore be affirmed by this Court.

**E. THE PARTIES' RELATIVE INCOMES IS ONLY ONE BASIS UPON WHICH A TRIAL COURT MAY AWARD ATTORNEY'S FEES.**

Mr. Wodja also appears to argue that he should not have been ordered to pay any of Ms. Harkenrider's attorney's fees due to her current level of income. Br. of Appellant at 19. He also argues that an award of attorney's fees is not a "matter of right" and that it should

have been based on a showing of one party's need versus the other party's ability to pay. Br. of Appellant at 19.

There are several well-established, different bases upon which a trial court may award attorney's fees in matters related to domestic law. RCW 26.09.140 provides that a trial court **may** order one party to pay the other party's attorney's fees after considering the relative financial resources of both parties. But this is not the sole basis upon which a trial court may assess an award of attorney's fees.

A trial court's finding of intransigence is also a basis for an award of attorney's fees, irrespective of the relative financial resources of the parties. *In re Kelly*, 170 Wn. App. 722, 287 P.3d 12 (2012), provides a highly pertinent illustration:

Washington courts have recognized intransigence as a basis for attorney fees in dissolution proceedings. *In re Marriage of Crosetto*, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). 'Intransigence' may be shown by 'litigious behavior, bringing excessive motions, or discovery abuses.' *In re Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002). Washington courts have also used the phrase to describe parties motivated by their desire to delay proceedings or to run up costs. *See id.* (citing *Gamache v. Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859 (1965); *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969)).

*Kelly*, 170 Wn. App. at 739-40.

As mentioned above, a trial court's award of attorney fees is reviewed for abuse of discretion, "whether the award is under a statute or for intransigence." *In re Marriage of Bobbitt*, 135 Wn. App. 8, 29-30, 144 P.3d 306 (2006). The award will not be disturbed unless the trial court exercised its discretion in an untenable or manifestly unreasonable manner. *In re Marriage of Mattson*, 95 Wn. App. 592, 604, 976 P.2d 157 (1999).

In the June 8, 2012 order, Judge Nelson found Mr. Wodja's behavior to be intransigent. CP 324. Specifically, Judge Nelson found that Mr. Wodja had deliberately failed to confirm certain motions, and had not properly noted the motions that were to be heard on June 8, 2012. CP 324. Therefore, Judge Nelson did not abuse her discretion in awarding attorney's fees to Ms. Harkenrider based on Mr. Wodja's intransigence. This ruling should be affirmed by this Court.

**F. THE MOTION BROUGHT BY MR. WODJA, HEARD ON JUNE 15, 2012 WAS WHOLLY UNNECESSARY.**

June 15, 2012 Order Designating Christopher A. Wodja Title Owner of Vehicle.

Mr. Wodja also appeals the judgment for attorney's fees entered against him on June 15, 2012. CP 374. He appears to base this claim on his perception that he was the "prevailing party" on the

underlying motion. Br. of Appellant at 19; CP 374. He cites no legal authority to support this argument as a proper basis for an award of attorney's fees.

This motion was yet another example of the pervasive intransigence Mr. Wodja engaged in throughout this litigation; the record supports Judge Nelson's award of fees. At the conclusion of argument counsel for Ms. Harkenrider noted that Mr. Wodja could have simply provided her a proposed order, which would have been signed and presented for entry without the necessity of a full hearing. RP (June 15, 2012) at 33-34. Judge Nelson did not abuse her discretion in making this award of attorney's fees. *Freeman*, 169 Wn.2d at 676; *Morgan*, 166 Wn.2d at 758. This ruling should not be disturbed by this Court. *See, e.g.*, CP 171-72; 293-306; 324-25; 390-93.

**G. JUDGE NELSON'S ORDER REQUIRING MR. WODJA TO SEEK LEAVE OF COURT PRIOR TO MAKING ANY MORE FILINGS IN THE CASE WAS JUSTIFIED BY WELL-SETTLED LAW AND THE RELATED FINDINGS OF FACT WERE SUPPORTED BY SUBSTANTIAL EVIDENCE.**

June 21, 2012 Findings of Fact and Conclusions of Law and Order re: Vexatious Litigation/Restraints/Sanctions & Fees.

Mr. Wodja appeals the June 21, 2012 order in which Judge Nelson found him to have engaged in vexatious litigation throughout

the proceedings. June 21, 2012. Specifically, Mr. Wodja appeals Findings of Fact 3–10, Conclusions of Law 1, 2 and 7–10 and the Order. CP 390-93. There are several legal bases upon which vexatious litigation can be sought.

**i. CR 11 sets forth basic requirements for every legal filing in a given case, including filings made by pro se parties.**

Civil Rule 11 requires that every pleading, motion and legal memorandum, including those filed by a pro se party, must be signed to assure the Court that “it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” CR 11. This Rule is buttressed by a court’s “inherent equitable power” to safeguard the integrity of the proceedings before it. *See, e.g., McNeil v. Powers*, 123 Wn. App. 577, 581, 97 P.3d 760 (2004).

**ii. Federal Courts have long provided relief to parties who are subjected to vexatious litigation.**

Washington case law acknowledges the practice and authority of trial courts to enjoin “the continuance of frivolous and vexatious

litigation.” *DeLong v. Parmelee*, 157 Wn. App. 119, 236 P.3d 936 (2010) (citing *In re Hartford Textile Corp.*, 681 F.2d 895 (2d Cir. 1982) (injunction issued against continuance of frivolous and vexatious litigation affirmed), *cert. denied*, 459 U.S. 1206 (1983)). *See also* David Goodnight, Greg Tolbert and Jason Morgan, *The Pro Se Dilemma: Washington Courts and Vexatious pro Se Litigation*, Washington State Bar News, 28 (2009) (setting forth criteria employed by Ninth Circuit courts in issuing “pre-filing injunctions”).

**iii. Judge Nelson’s June 21, 2012 Findings of Fact were supported by substantial evidence.**

Ms. Harkenrider’s June 7, 2012 Motion and Declaration (for Finding of Vexatious Litigation) provides a very detailed account of the factual basis for the motion. CP 293-306. There is substantial support for the subsequent Findings of Fact throughout the record designated on appeal:

- Corrected final pleadings needed to be prepared and entered due to Mr. Wodja interlineating his own findings in the documents initially entered, contrary to the Court’s orders. [CP 20-30.]
- Mr. Wodja unilaterally secured the services of a treatment provider who had not been authorized by the Court; he failed to provide any initial treatment providers with collateral information after being ordered to do so by the Court. [CP 31-32, 33-34, 35-36.]

CP 295.

- Mr. Wodja provided inaccurate information to one treatment provider. [CP 47-48.]
- Mr. Wodja brought a motion for the appointment of one treatment provider even though Ms. Harkenrider would have simply agreed to the entry of a stipulated order, which would have reduced attorney's fees expended in this regard. [CP 221-24.]
- Mr. Wodja intentionally misrepresented the fact he was obtaining treatment from one provider when, in fact, he was not. [CP44-45, 47-48.]

CP 296.

- The Court also found that Mr. Wodja had intentionally misrepresented facts regarding his purported treatment with a second treatment provider. [CP 75.]
- Ms. Harkenrider was awarded attorney's fees based on Mr. Wodja's intransigence. [CP 159-60.]

CP 297.

- Mr. Wodja attempted to interlineate provisions that were not ordered by the Court on its March 16, 2012 order. [CP 47-49.]
- Mr. Wodja then brought a motion for an order to show cause re contempt, seeking the relief denied by the Court in its March 16, 2012 order. [CP 459-61, 462.]
- Judge Nelson had previously ordered she was retaining jurisdiction of the matter prior to that, but Mr. Wodja brought this contempt motion before a court commissioner instead. [*Id.*, CP 181]

CP 298.

- Mr. Wodja forwarded a letter from a treatment provider to the Court, but not to Ms. Harkenrider's counsel. [CP 215-18.]

CP 298-99.

- Mr. Wodja repeatedly forwarded e-mails from Ms. Harkenrider's counsel, taken out of context, to the court, third parties and treatment providers, creating needless confusion. [CP 211-14, 215-15.]
- In Mr. Wodja's March 22, 2012 motion for reconsideration, he simply asked that Judge Nelson reconsider her March 16, 2012 order, but he failed to provide any new information or a sufficient legal basis to justify reconsideration. This motion, along with a memorandum regarding CR 11 sanctions and attorney's fees, was denied. [CP 63-88, 89-96; CP 159-60.]
- Mr. Wodja scheduled a post-decree motion, noting "no oral argument unless ordered," which is not Pierce County practice.
- Although reminded by Judge Nelson of her ongoing exclusive jurisdiction, Mr. Wodja attempted to bring another order to show cause before a court commissioner on April 2, 2012. [RP (April 27, 2012) at 5-7.]

CP 299.

- Mr. Wodja re-noted a motion for reconsideration, scheduling it for April 20, 2012 knowing a review hearing had already been scheduled for April 27, 2012, resulting in hearings on two consecutive weeks rather than on the same date. [CP 63-88, 159-60.]

CP 299-300.

- The Court heard Mr. Wodja's motion for reconsideration on April 20, 2012 and awarded attorney's fees to Ms. Harkenrider in the amount of \$1,500 because his motion was "without legal or factual basis." [CP 159-60.]

CP 300.

- On April 25, 2012, Mr. Wodja filed a third motion for an order to show cause for contempt, asking to address an issue not included in the Parenting Plan, and bringing it before a court commissioner rather than Judge Nelson.

CP 171-72.

Judge Nelson's June 21, 2012 findings were supported by substantial evidence; the order was grounded in well-established law. This order should be affirmed by this Court.

**H. MR. WODJA DID NOT PROPERLY APPEAL THE JUNE 22, 2012 ORDER.**

June 22, 2012 Order Appointing Diane Shepard.

Mr. Wodja appeals the last three paragraphs of this order. CP 394-95. However, he did not devote any portion of the argument in his opening brief to this claimed error. Therefore, this portion of his appeal should be rejected by this Court.

**I. MR. WODJA FAILED TO ESTABLISH ADEQUATE CAUSE TO MODIFY THE PARENTING PLAN.**

September 12, 2012 Findings of Fact and Conclusions of Law and Order on Motion for Visitation and Review of Case Progress.

On September 12, 2012, Judge Nelson entered Findings of Fact and Conclusions of Law (and Order) on Mr. Wodja's motion to resume his visitation. 2CP 96-103. Judge Nelson found "there has not yet been a substantial change of circumstances that gives the court adequate

cause to change the Final Parenting Plan, and there is no change yet that would justify a reconciliation process and visitation between the children and their father.” 2CP 96. Judge Nelson specifically noted that the vast majority of “evidence” Mr. Wodja presented in support of his motion was simply irrelevant. He submitted reports and/or testimony that had already been proffered either prior to or during trial. 2 CP 97 n.1. Mr. Wodja provided a report from one expert who had been previously removed from the case by the Court. 2 CP 97 n1. Mr. Wodja also presented declarations from other providers who had clearly not been furnished with the full and truthful factual background necessary to formulate an accurate understanding of the circumstances as well as an appropriate course of mental health treatment for Mr. Wodja. 2 CP 97 n.1.

The Court’s Findings, Conclusions and Order were based on a host of evidence found in the record. Judge Nelson did not err. This order should be affirmed by this Court.

**J. JUDGE NELSON PROPERLY DENIED MR. WODJA’S MOTION FOR RECONSIDERATION OF HER SEPTEMBER 12, 2012 ORDER.**

October 12, 2012 Order Granting Wodja’s Motion for Leave of the Court to Hear Wodja’s Motion for Reconsideration and Order Denying Wodja’s Motion for Reconsideration of Judge Nelson’s 9/12/12 Order.

Mr. Wodja immediately sought reconsideration of Judge Nelson's September 12, 2012 ruling, 2CP 104-23. The only "new" evidence he presented in support of his motion was a letter from Paula van Pul, one of his treatment providers; however, the letter is clearly marked "DRAFT" and is not signed. CP 119-20.

This Court may overturn a trial court's decision to deny a motion for reconsideration only if it finds the trial court abused its discretion. *See, e.g., Rivers v. Wash. State Conf. of Mason Contrs.*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). Judge Nelson did not abuse her discretion in denying the motion and should be affirmed by this Court. 2CP 148-49.

**K. MS. HARKENRIDER IS ENTITLED TO AN AWARD OF ATTORNEY FEES.**

RCW 26.09.140 provides:

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

RAP 18.9 provides, in pertinent part:

The appellate court on its own initiative or on motion of a party may order a party or counsel . . . who . . . files a frivolous appeal . . . to pay terms . . . to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

“An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.” *Chapman v. Perera*, 41 Wn. App. 444, 455-56, 704 P.2d 1224 (1985) (citations omitted).

None of Mr. Wodja’s arguments have any basis in the law or in the record below. Reasonable minds cannot differ as to the issues presented by Mr. Wodja; nor can reasonable minds differ as to the propriety of Judge Nelson’s numerous rulings. Therefore, this Court should deem Mr. Wodja’s appeal to be frivolous and should award Ms. Harkenrider her reasonable attorney’s fees for having to respond to it.

### **III. CONCLUSION**

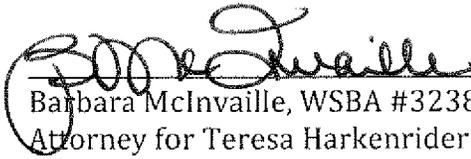
Mr. Wodja’s appeal is clearly part of his ongoing effort to retry and relitigate the issues that were before and properly decided by Judge Nelson. He has appealed several motions for reconsideration but is actually improperly attempting to appeal the rulings on the underlying motions.

Mr. Wodja claims numerous errors in his Notice of Appeal, but failed to address many of them. He cannot then attempt to remedy this failure in his Reply Brief. He cannot point to any evidence in the record that indicates Judge Nelson abused her discretion or made any

errors of law. Ms. Harkenrider respectfully asks that this Court affirm each of Judge Nelson's rulings that are appealed by Mr. Wodja.

DATED this 29<sup>th</sup> day of October, 2013.

RESPECTFULLY SUBMITTED,

  
Barbara McInville, WSBA #32386  
Attorney for Teresa Harkenrider



# HELLAND LAW OFFICE

**October 29, 2013 - 3:20 PM**

## Transmittal Letter

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