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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

NO. 301605-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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In re Marriage of:

NORMAN D. LESLIE,

Respondent,

vs.

JANELLE L. LESLIE,

Appellant.

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BRIEF OF APPELLANT JANELLE L. LESLIE IN REPLY

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**TABLE OF CONTENTS**

A. OVERVIEW OF FACT IN REPLY..... 1

B. ARGUMENT IN REPLY..... 5

C. RESPONDENT'S REQUEST FOR STATUTORY FEES ..... 12

D. CONCLUSION..... 12

## TABLE OF AUTHORITIES

### Table of Cases

<u>Beal v. City of Seattle</u> , 134 Wn.2d 769, 954 P.2d 237 (1998) .....	9
<u>Hollis v. Garwall, Inc.</u> 137 Wn.2d 683, 974 P.2d 836 (1999).....	9
<u>In re Jensen-Branch</u> , 78 Wn.App. 482, 899 P.2d 803 (1995).....	8, 10
<u>In re Kovacs</u> , 121 Wn.2d 795, 854 P.2d 629 (1993) .....	8, 9
<u>In re Marriage of Holmes</u> , 128 Wn.App. 727, 117 P.3d 370 (2005).....	12
<u>In re Marriage of Horner</u> , 151 Wn.2d 884, 93 P.3d 124 (2004).....	11
<u>In re Marriage of Wicklund</u> , 84 Wn.App. 763, 932 P.2d 652 (1996) ..	8, 9, 10
<u>Murphy v. Lint</u> , 135 Wn.2d 518, 957 P.2d 755 (1998) .....	1
<u>Schoonover v. Carpet World, Inc.</u> , 91 Wn.2d 173, 588 P.2d 729 (1978) ....	11
<u>State v. Rundquist</u> , 79 Wn.App. 786, 905 P.2d 922 (1995), <u>review denied</u> , 129 Wn.2d 1003 (1996).....	10
<u>State v. Steen</u> , 164 Wn.App. 789, 265 P.3d 901 (2011).....	8, 9
<u>State v. Ward</u> , 125 Wn.App. 138, 104 P.3d 61 (2005).....	8, 9

### Other Case Law

<u>In re Orfa Corp. of Philadelphia</u> , 170 B.R. 257 (E.D. Pa. 1994).....	11
<u>In re Rheam of Indiana, Inc.</u> , 133 B.R. 325 (E.D. Pa. 1991) .....	11

<u>United States v. Costa</u> , 356 F.Supp. 606 (D.D.C.), <u>aff'd</u> , 479 F.2d 921 (D.C. Cir.1973) .....	11
--	----

**Court Rules**

RAP 10.3 (a)(5) .....	1
RAP 10.3(a)(6) .....	9

**Statutes**

RCW 26.09.187 .....	8, 9
RCW 26.09.187(2) .....	9
RCW 26.09.187(2)(b)(i).....	10
RCW 26.09.187(2)(b)(ii) .....	10
RCW 26.09.187(2)(b)(iii) .....	10
RCW 26.09.187(3) .....	9, 10, 11
RCW 26.09.191 .....	10
RCW 26.09.191(3) .....	6, 7, 9
RCW 26.09.191(3)(g).....	8, 9

**Treaties**

Webster's Seventh New Collegiate Dictionary (G. & C. Merriam Company  
1967) ..... 7

### A. STATEMENT OF FACT IN REPLY

In reply to the "Brief of Respondent," it should be noted that many of the factual statements contained in said brief are unsupported by any citation to the record as required by RAP 10.3(a)(5) so as to be considered on this appeal. See also, Murphy v. Lint, 135 Wn.2d 518, 531-32, 957 P.2d 755 (1998).

Here, on page 1, Mr. LESLIE includes an "Introduction" section to his responsive brief which contains various factual assertions and no citation to the record in support thereof. Accordingly, all such statements should not be considered for purposes of this appeal. Id. In addition, these same statements are fraught with inaccuracies. For example, contrary to Mr. LESLIE's argumentative assertion, in paragraph 1, that the appellant lied about not being "already married" to Randy Eugene Hitchcock, the record reflects that neither Ms. LESLIE nor Mr. Hitchcock treated the marriage as being real. In fact, Mr. Hitchcock testified to this effect at trial. RP 249-50. Also, in paragraph 3 of the same "Introduction," Mr. LESLIE misstates the age of the parties' son, Duane, when fell and hit his head in Seattle. As the record reflects, Duane was born on February 15, 2010. [CP 2]. He was injured when he was 6 month old. [RP 47]. So, the accident could not have happened when he was age "16 months" as represented by respondent in his brief, at page 1. [RP 47].

There are further inaccuracies in respondent's "Statement of the

Case." For example, on page 1, Mr. LESLIE initially misrepresented that he only had 3 biological children. [RP 67-68]. When questioned on cross-examination, he finally admitted that he might possible have a fourth biological child. [RP 114-15].

Next, on page 2, paragraph 1, of his brief, Mr. LESLIE states, without any corroboration, that there was "no medical verification" that the appellant had gotten glass in her eye when she was assisting Mr. LESLIE with a vehicle windshield. The record reflects that the respondent was a witness to this. [RP 77-79]. By the same measure, in paragraph 2, Mr. LESLIE claims that Ms. LESLIE had reported to him that there was an occasion when Duane awoke that his lips were blue. [RP 109]. This so-called report is nothing but a fabrication on the respondent's part because it never happened.

Likewise, in paragraph 3, Mr. LESLIE total ignores and misrepresents the fact that there was evidence that Duane had likely had a "febrile seizure" on July 3, 2010, as an apparent reaction to having had multiple immunizations on June 28. [RP 50-53, 333]. Also, in paragraph 4, at page 3, he misrepresents the reason why Duane was not gaining weight for a time. This was due to the fact Duane was having difficulty breast feeding. [RP 109-10]. Ms. LESLIE then used a breast pump to help the problem, along with feeding him a supplemental diet of rice cereal and diluted apple juice which was recommended to her by a doctor.

[RP 109-10, 314-15].

Next, and again on page 3, the respondent purposely fails to represent his involvement and responsibility for Ms. LESLIE having written a letter to him. In fact, the letter was written precisely on Mr. LESLIE's demand and urging that she do so in exchange for Ms. LESLIE being allowed by the respondent to see and visit with Duane. [RP 123-24, 317-18]. In other words, the appellant was manipulated by Mr. LESLIE in having been forced against her will to write the subject letter. [Id.].

Next on page 3, Mr. LESLIE insinuates that the appellant's various health care problems were made up and, in fact, nothing was wrong. However, this is only the respondent's uncorroborated opinion based upon his own supposition, and the medical evaluation and treatment received by Ms. LESLIE indicates otherwise. [RP 61-63, 81, 131, 331-32]. Unfortunately, it was never definitely determined from a medical standpoint what exactly was wrong. [Id.]. Dr. Jeffrey Jones had at one point diagnosed Ms. LESLIE as possibly suffering from MS. [RP 60-63].

Mr. LESLIE then goes on to misrepresent, on page 4 of his brief, that during her medical employment as a nurse she acted beyond her authority by preparing "treatment plans" for patients. At trial, Ms. LESLIE acknowledged that this particular task could only be done by a physician, but also pointed out that she has no recollection whatsoever of ever having prepared such patient treatment plans. [RP 56].

Also, on page 4, the respondent falsely claims Ms. LESLIE fabricated her claim of assault against her employer at Affordable Auto & Truck in order to receive unemployment benefits. In fact, she was struck by her employer with a closed fist, and the medical treatment and her injuries she received clearly document and prove this. [RP 39, 260-62, 263, 324; CP 3].

Further, it was Mr. LESLIE himself who contacted law enforcement concerning the assault after seeing his wife's condition after the incident. [RP 179, 324]. While Ms. LESLIE's claim was later challenged by the State unemployment office, Ms. LESLIE appealed this decision which appeal remained open at the time of trial. [RP 265, 325].

In addition to the foregoing clarifications concerning Mr. LESLIE's responsive brief, the following additional facts should once more be considered and emphasized in connection with this appeal. During underlying proceedings, Rebecca M. Coufal was appointed guardian ad litem for the parties' minor child, Duane. [CP 1]. She undertook an independent investigation in this regard. She, thereafter, filed her report and recommendations with the court [CP 1-6], wherein she noted that prior to the parties' separation the appellant, JANELLE LYNN LESLIE [now Belton], had been the child's "primary caretaker." [CP 3]. In this regard, Ms. Coufal had been advised by Ms. LESLIE's other children that "she is a caring parent who will do anything for her children." [CP 4].

Ms. Coufal went on to note that neither parent was beyond reproach in terms of each of their individual foibles. In her view, "[t]his case is complicated by the mother's history of misrepresentation . . . [and she]. . . does not appear to have a good money sense [about her]. [CP 3, 6]. In turn, Ms. Coufal observed that the father was not without fault or possible shortcomings raising certain concerns. Her contacts reported that Mr. LESLIE is "arrogant," and is known "to have a drinking problem." [CP 4]. In addition, Ms. LESLIE had informed her of three [3] incidents which, if true, "would qualify" as domestic violence in her considered view. [CP 4]. In this regard, Mr. LESLIE admitted to Ms. Coufal that on one occasion he had smashed the windshield of a vehicle that the appellant was sitting inside. [CP 4].

It was once again pointed out at trial that the Duane's first months of life were under the care of the mother as primary parent, and that the guardian ad litem, Ms. Coufal, had not expressed any concerns directly associated with her daily care of the child. [June 23, 2011 RP 413]. Ultimately, the superior court chose to ignore these critical factors when rendering its decision concerning custody and related factors associated with the care of this minor child. [CP 25-32].

## **B. ARGUMENT IN REPLY**

1. Contrary to the misplaced assertions of the respondent, the superior court of Pend Oreille County, State of Washington, committed reversible error when, in terms of its paragraph 2.2 Other Factors (RCW

26.09.191(3)) of its "Parenting Plan Final Order," the court failed to identify how the alleged conduct of the mother provided any nexus to support the equivocal conclusion that such parental conduct "may" adversely affect the "best interests of the child" in terms of his physical, mental or emotion health and well-being in this case. [Issue No. 1].

On pages 5 and 6 of his "Brief of Respondent," NORMAN D. LESLIE, first takes issue with the indisputable fact the superior court failed to identify how the alleged conduct of the appellant, JANELLE LYNN LESLIE [now Belton], provided any "nexus" to support the court's equivocal conclusion that her alleged conduct "may" adversely affect the "best interests of the child" in terms of his physical, mental or emotion health and well-being. In this regard, Mr. LESLIE attempts to deflect this error in the court's decision-making process by attempting to supplant these unsupported findings with his own self-serving assessment, interpretation and view of the record. Suffice it to say, this strategy does not in any sense dispose of the omission by the court to identify a "nexus" between the appellant's claimed conduct and the court's equivocal and vague conclusion on a possible adverse impact on the child. Nor, did the trial court deal with Ms. Coufal's own investigation and assessment that the appellant "is a caring parent who will do anything for her children." [CP 4].

In common parlance, the existence of a "nexus" implies or suggests that there is a clear, certain and logical "connection or link" between certain facts and a particular conclusion to be drawn therefrom. See,

Webster's Seventh New Collegiate Dictionary, at 569 (G. & C. Merriam Company 1967). However, the superior court opined in paragraph 2.2 Other Factors (RCW 26.09.191(3)) of its "Parenting Plan Final Order" on July 21, 2011, later filed on July 28, that:  
The mother's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:

A long-term and persistent pattern of dishonesty, fraudulent actions, financial exploitation and other such misconduct which not only operates as a poor parental example but which has also endangered this child's health on at least one occasion. Specifically, the mother fraudulently held herself out as a registered nurse when she had not completed even high school and when the child suffered a fractured skull she removed the child from the hospital, representing that she could monitor his recovery, when she had neither the experience or the knowledge of what to observe. Additionally, the mother married the father when she had a prior undissolved marriage. She financially exploited both of these husbands. She has fabricated medical problems to get attention and sympathy. She has an ability to make a very "personable" first impression which is used, however, to manipulate others and get what she wants, without regard to whether it would be in the best interests of the child.

[Emphasis added] [CP 26]. However, as stated before, this statement of the superior court contains no logic or proof of a "nexus" between the mother's described conduct and the possibility of any recognizable, or definite, adverse effect on well-being of Duane. Any suggestion of adversity is rendered equivocal at best by way of the court's precise employment of the term "may" rather than another term indicating the

mother's purported conduct would, in fact, be "adverse to the best interests of the child" so as to warrant any specific parental restriction as contemplated under RCW 26.09.191(3)(g). See also, In re Marriage of Wicklund, 84 Wn.App. 763, 770-72, 932 P.2d 652 (1996).

Without the requisite, finding of adversity, it is clear the superior court abused its discretion on untenable grounds and untenable reasons when placing any restrictions on the mother associated with the residential provisions as well as the mother's decision-making authority. In re Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); Wicklund, at 770; In re Jensen-Branch, 78 Wn.App. 482, 490, 899 P.2d 803 (1995).

Finally, to the extent Mr. LESLIE has failed to respond to appellant's precise issue concerning the court's lack of any identified "nexus," such failure to respond should be considered a concession on his part as to the merits of appellant's arguments on said issue no. 1. See, State v. Ward, 125 Wn.App. 138, 143-44, 104 P.3d 61 (2005). Such treatment of respondent's failure to respond is entirely consistent with the requirements of RCW 26.09.191(g)(3) as discussed herein and in appellant's opening brief on this issue. See, State v. Steen, 164 Wn.App. 789, 804 n.10, 265 P.3d 901 (2011).

2. Contrary to the additional claims of the respondent, the superior court also abused its discretion, and committed further reversible error, when it failed to examine and make specific findings of fact as to all statutory factors specified in RCW 26.09.187 as they relates to the needs of the child. [Issue no. 2].

On pages 6 through 8 of his brief, Mr. LESLIE then goes on to claim that since the superior court determined that RCW 26.09.191(3) restrictions apply, there was no requirement that any findings be made in terms of the statutory factors listed in RCW 26.09.187. Once more, the argument side-steps the precise issue being framed by the appellant in issue no. 2. See, State v. Ward, 125 Wn.App. 138, 143-44, 104 P.3d 61 (2005); see also, State v. Steen, 164 Wn.App. 789, 804 n.10, 265 P.3d 901 (2011).

Furthermore, this novel assertion by Mr. LESLIE is not supported by any citation to legal authority as required by RAP 10.3(a)(6). It is a long settled rule of appellate practice in Washington that an argument unsupported by any legal authority will not be considered on appellate review. Hollis v. Garwall, Inc. 137 Wn.2d 683, 689 n.4, 974 P.2d 836 (1999); Beal v. City of Seattle, 134 Wn.2d 769, 777 n.2, 954 P.2d 237 (1998).

In effect, the respondent has not in any way demonstrated or explained how the superior court's error was not further compounded by its failure to enter specific findings of fact, independent of its equivocal reference to RCW 26.09.191(3)(g) and as required under the related provisions of RCW 26.09.187(2) and (3). This omission in itself constitutes a manifest abuse of discretion. In re Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); In re Marriage of Wicklund, 84 Wn.App. 763,

770-72, 932 P.2d 652 (1996); In re Jensen-Branch, 78 Wn.App. 482, 490, 899 P.2d 803 (1995).

By the express terms of the court, the restrictions placed upon the mother's decision-making authority are tied to the court's equivocal and improper creation of a restriction under RCW 26.09.191. [CP 26, 31]. This constitutes reversible error in and of itself under RCW 26.09.187(2)(b)(i). Indeed, there is nothing in the record to support the view of the superior court that the mother "has abused her unilateral decision-making in the past," or that she has failed to demonstrate her ability or desire to cooperate in the decision-making process with the husband. Consequently, any reliance by the court on RCW 26.09.187(2)(b)(ii) and (iii) are unsupported by the record, and such "findings" even though made on these particular grounds, constitute a manifest abuse of discretion. State v. Rundquist, 79 Wn.App. 786, 793, 905 P.2d 922 (1995), review denied, 129 Wn.2d 1003 (1996); Wicklund, at 770.

Similarly, the superior court committed further, error with its entry of all residential provisions of its "Parenting Plan Final Order" [CP 25-32] by failing, even in the first instance, to enter any expressed findings of fact as statutorily required under the considerations listed in RCW 26.09.187(3). Again, Mr. LESLIE neglects to explain why such findings were not required except for self-serving assertion than no findings were

requirement in this particular instance.

This fundamental failure to make the required finding under RCW 26.09.187(3) once again constitutes an abuse of discretion in itself amounting to reversible error. See, In re Marriage of Horner, 151 Wn.2d 884, 894-95, 93 P.3d 124 (2004). As the Washington state supreme court has aptly recognized:

Findings of fact play a pivotal role upon review: "[t]he purpose of findings on ultimate and decisive issues is to enable an appellate court to intelligently review relevant questions upon appeal, and only when it clearly appears what question were decided by the trial court, and manner in which they were decided, are the requirements met." Schoonover v. Carpet World, Inc., 91 Wn.2d 173, 177, 588 P.2d 729 (1978).

Horner, at 895-96; see also, In re Rheam of Indiana, Inc., 133 B.R. 325, 338 (E.D. Pa. 1991); see also, United States v. Costa, 356 F.Supp. 606, 608 (D.D.C.), aff'd, 479 F.2d 921 (D.C. Cir.1973); In re Orfa Corp. of Philadelphia, 170 B.R. 257, 271 (E.D. Pa. 1994). Simply put, the superior court has in this instance failed to provide the appellate court with the necessary record and findings for a proper review of the parenting plan in this case. Id.

3. Contrary to the position of the respondent, the superior court ultimately abused its discretion, and thereby committed reversible error, when it improperly issued its final order of child support which was wrongfully based upon the court's erroneously entered final parenting. [Issue no. 3].

Once again, for the reasons set forth above, as well as those reasons cited in appellant's opening brief, the final order of child support must also be reversed on the basis of manifest abuse of discretion. In re Marriage of Holmes, 128 Wn.App. 727, 738-40, 117 P.3d 370 (2005).

#### C. RESPONDENT'S REQUEST FOR STATUTORY FEES

Finally, on page 8 of his "Brief in Response," Ms. LESLIE requests that he be awarded his costs and statutory attorney fees in the event he is the prevailing party. For the reasons and grounds set forth above, appellant submits the respondent cannot prevail on the issues raised on this appeal and is not, therefore, entitled to the requested relief of costs and statutory attorney fees.

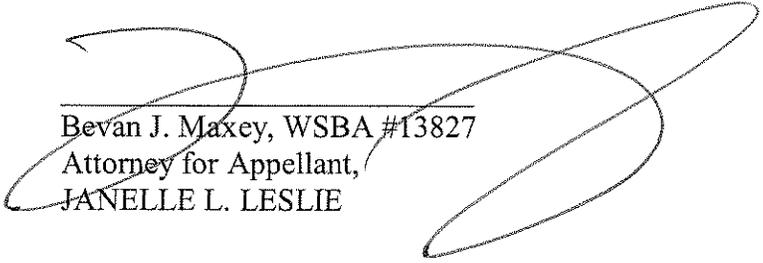
#### D. CONCLUSION

Based upon the foregoing points and authorities, the appellant, JANELLE L. LESLIE, once more respectfully requests that challenged decisions of the superior court concerning parental custody, care and decision-making process associated with the parties' minor son, Duane N. Leslie, be reversed and, accordingly, that this matter be remanded to the superior court for further proceedings consistent with the considered decision of this court concerning such final matters of parental custody, residential issues and the decision-making process associated with the care

of the minor child, Duane, as are addressed by this court on this appeal.

DATED this 30<sup>th</sup> day of July, 2012.

Respectfully submitted:



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