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COURT OF APPEALS, DIVISION ONE, SEATTLE
STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner/Appellee,

VS.

FANTAHUEN M. HUSSEIN, Appellant/Plaintiff

Vs.

MARINA GLISIC, Respondent/Defendant.

King County Superior Court the Honorable Judge Dean S. Lum

Cause Numbers **09-2-01102-8 SEA**

Consolidated with 09-3-07867-3 SEA

REPLY BRIEF OF APPELLANT

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A. Assignments of error

Assignments of Error No. 1:

The trial court abused its discretion when it ignored appellant's initial motion to dismiss the petition for a domestic violence protection order on behalf of respondent and the children of the marriage and other pretrial motions, such as for temporary custody.

Assignment of Error No. 2:

The trial court erred when it conducted trial in the absence of Amharic Interpreter during the direct examination and cross-examination phases of the trial.

Assignment of Error No. 3:

The trial court erred when it denied appellant witnesses based on the representation of respondent's counsel that he had not received the pleadings and papers in a timely fashion, even though the same counsel did not agree to represent respondent on the marriage dissolution until December 2009, a full month after appellant had filed and served papers on respondent pro se.

Assignment of Error No. 4:

The trial court erred when it sanctioned appellant for attorney's fees, suppression of all exhibits and witnesses on appellant's witness list filed on October 18, 2010, while late, still before any papers were filed and served by respondent's counsel.

Assignment of Error No. 5:

The trial court erred in admitting testimony of Greenleaf as the court order that sent him to the Domestic Violence Program was issued under SMC 520274 under a Stipulated Order of Continuance, when such testimony would not have been admissible in the criminal proceedings on the grounds that involved "self incrimination" without Miranda

warning or right to remain silent warning being given to appellant.

Assignment of Error No. 6:

The trial court abused its discretion when it refused to allow all the information available with regard to parenting functions, and with regard to evidence that would have allowed for a fair and equitable distribution of the family bank accounts and tax exemptions.

Assignment of Error No. 7:

The trial court's citation and rendition on the record is the only credibility that could be given to the testimony of respondent with regard to her denial that she filed the protection order as a response to the fact that appellant had filed a petition for an Anti-Harassment order against Attiba Fleming, who was then residing with respondent and whom she admitted was her "significant other" and that the protection order under the above cause number was to forestall appellant from "harassing" him.

Assignment of Error No. 8:

The trial court abused its discretion when it adjudged and extended the protection order issued under 09-2-01102-8 SEA without a hearing, notice of hearing to extend temporary order of protection.

Assignment of Error No. 9:

The trial court erred when it denied access to the court for appellant to present his defense of the charges for which he stood under the 09-2-01102-8 SEA and which commissioner reserved for final disposition via dissolution court by consolidating the matter and referencing the issue with respect to whether the children should be included in the protection order at all as there was not any convincing evidence that the children had been involved in any incidents whatsoever.

Assignment of Error No. 10:

Trial court erred in suppressing evidence with regard to the dependency of the children for which respondent had allegedly needed the funds though evidence would have shown that respondent had constant access to the appellant's primary bank account and withdrew sums larger than that which would have been provided by the DSHS Temporary Aide for Needy Families program, thus the trial court abused its discretion when it suppressed such evidence based upon a untimely service claim of an experienced attorney that did not claim that such a delay would prejudice his client and thereby required suppression.

Assignment of Error No. 11:

Trial court abused its discretion by using a lower standard as jury for the matter when it accepted that a charge under RCW 10.99 was placed before the court and consolidated with the marriage dissolution, the standard should have been beyond a reasonable doubt and appellant should have been granted a jury, not a bench under the circumstances where he faced a loss of liberty interest and parental custody and control over his family and home possessions, which were not divided by the dissolution court but rather by the Seattle Municipal Court under the Stipulated Order of Continuance appellant's no contact was to remain in place during the pendency of the continuance, which, according to Seattle City Attorney's Office, allows the court to extend its statutory one year jurisdiction to two years, and theoretically, beyond.

Assignment of Error No. 12:

The trial court violated the "spirit" of due process of law and right to access the court to petition for a redress of grievance with its known power of what amounts to absolute

discretion to weight or give any weight it chooses to whomsoever it chooses without regard for a ruling of being overturned as it is well settled that appellate court will not look at the evidence in any light other than the one the judge looked though the judge is not a jury within the meaning of the word, and where there are element of crime contained within the trial court's records, then all evidence must be looked at with the idea in mind that the accuser is held to the higher standard to "prove" each and every element of the crime charged.

Assignment of Error No. 13:

The trial court erred when it failed to transmit the order of indigency to the Supreme Court and appellant has been prejudiced by time and lack of money to pursue immediate remedy for erroneous rulings and judgments in the family law court.

Assignment of Error No. 14:

Trial court erred when it allowed Karen Blackford, attorney for appellant, to withdraw as counsel at a time when the court knew of the complexities of the case and the current charges being leveled against appellant for which his attorney should have filed a reply in opposition and corrected the procedural errors.

Assignment of Error No. 15:

Trial court erred in issuing judgments of five year protection order during marriage dissolution portion of the trial because the court lacked jurisdiction over the petition for a protection order and was void.

Issues Pertaining to Assignments of Error

Issue of Error No. 1:

Whether court lacked jurisdiction when it showed favoritism to Ms. Glisic because she came to court unprepared for this serious charge, the October 13, 2009, court granted Ms.

Glisic an additional two weeks so that she could get some evidence from the City Attorney based on her allegations to them that Mr. Hussein had violated the City of Seattle Municipal Court No Contact Order; the court reissued the TRO for a third time on November 2, 2009, where again, the court granted her a continuance, this time without even an offer of proof as to the facts of why she failed to appear, and again re-issued the TRO, such that a statutory scheme, power to grant two week Temporary Restraining Order, is proper when it is extended without cause from September 29, 2009 until December 3, 2009, and even then did not give final order but rather reserved it for the marriage dissolution court though there was no court to join it to in September 2009; in other words the respondent Glisic is more protected than appellant Mr. Hussein [court did not grant him a continuance or any delay when he was arrested based on the above when his petition for an Anti-Harassment against Mr. Flemming, in fact, the court alleged that when one fails to appear the court has no recourse, and unless this court grants the funds for this very complex case this statement cannot be supported by the record because appellant cannot afford to get the transcription of the court's admonishment that "it doesn't matter where you were" or that roommate had to call to inform the court this of the reason for your failure to appear does not matter and cannot be continued and expired in two weeks. The court went on to tell me that I had to file another petition, not like when the respondent failed to appear. At one point the court pointed out that "it's clerk received a phone call" that you were in jail" failed to appear at the petition for a protection order on three occasions; and whether courts are empowered to extend jurisdiction to any person, whether they appear or not, as in this portion of this appeal addressing the order of protection, and, if no, then does court retain jurisdiction based on

Ms Glisic' petition which expressly addressed the respondent in Mr. Hussein's a petition for an ant harassment order against Attiba Flemming, Ms. Glisic' admitted was her "significant other" and needed the court's protection under her filing [CP 706] when Mr. Hussein had initiated the petition based on the alleged assaults committed by him while he was accompanied by Ms. Glisic, a protected person, [CP 133 – 138], the respondent should have been collaterally estopped, or issue of domestic violence in the form of a violation of the SMC no contact order issued two years earlier should have been precluded as a bar for respondent to relitigating an issue that was already litigated and decided in a prior proceeding as in Seattle Municipal Court Cause No. 544652. [CP 736] and should have been precluded from being heard again in the marriage dissolution at the point of granting .191 restrictions based upon "*The elements of issue preclusion are as follows: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.*" Which should have precluded respondent Glisic from relitigating those matters already tried on the Domestic Violence issues as was the case here, in which Mr. Hussein was acquitted by a jury of peers but was not the case in this matter as the court clearly favored granting the restrictions requested by court appointed counsel for respondent and was error. *Jane Doe v Fife Municipal Court*, 74 Wn. App. 444; *Shoemaker v. Bremerton*, 109 Wn.2d 504, 507-08, 745 P.2d 858 (1987) (quoting *Malland v. Department of Retirement Sys.*, 103 Wn.2d 484, 489, 694 P.2d 16 (1985)).

Issue of Error No. 2:

The court granted appellant interpreter and costs, due to a finding of indigency, [CP 731, 732, 733] and then conducted several hearings without the aid of an interpreter, relying on Mr. Hussein, who had already requested an Amharic interpreter, to state whether he was willing to proceed without an interpreter present and was an abuse of process and discretion of the court.

Issue of Error No. 3.

Whether court rules supersede constitutional provisions guaranteeing each person a “fair and unbiased” judge and one that is bound first by Article VI of the Constitution for the United States of America and its laws which operate to limit, restrict and prohibit judicial and congressional authority and exercise of power, especially in family laws where the Church once settled dissolution, and not Court and State take over that religious function from every person’s right not to have their religion interfered with by the state

Assignment of Error 4. –

Whether all of the issues presented in this action came under the provisions of statutory protections such that counsel would have needed to be appointed when it became clear that Mr. Hussein’s attorney Karen Blackford intended to withdraw because I could not give her \$6,000 or sign a promissory note and the court was well aware that I was indigent and that the issues involved both civil and criminal charges and court should not have granted her to withdraw because it was not fair or proper and left me, an English speaker as a second language, and I write in my native tongue Amharic, it has its own alphabet and is very different from English language, not to mention I have no knowledge of legal language in my native tongue or English.

B. Statement of the Case

It would be redundant to repeat again a statement of the case, therefore, appellant relies on his original statement of the case is incorporated by this reference as though it was contained herein in writing.

C. Summary of Argument

The Domestic Violence Prevention Act, chapter 26.50 RCW, authorizes a domestic violence victim to petition the court for a protection order. *Spence v. Kaminski*, 103 Wn. App. 325, 330, 12 P.3d 1030 (2000); see RCW 26.50.030. The petition for relief must allege domestic violence and must be accompanied by a sworn affidavit that sets forth specific facts and circumstances supporting relief. *Spence*, 103 Wn. App. at 330; see RCW 26.50.030(1). After notice and a hearing, the court may enter a permanent protection order if it finds that the respondent is likely to resume acts of domestic violence. *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002); see RCW 26.50.060. But when the order restrains the respondent from contacting his own children, the order is limited to one year in duration. *Stewart*, 133 Wn. App. at 550-51; RCW 26.50.060(2). However, this court has extended the protection order after it had already existed as to the mother, for over three years, and then this court extended it for an additional 5 years, even though the court rules do not allow judges to supersede the law aforementioned.

In this state however, they hold that “Court rules are to be interpreted in the same manner as statutes.” *State v. Greenwood*, 120 Wn.2d 585, 592, 845 P.2d 971 (1993). A court must interpret a rule as it is written and may not read into it things that it may conceive that the drafters have left out. *Waite v. Morissette*, 68 Wn. App. 521, 525, 843 P.2d 1121, review denied, 122 Wn.2d 1006 (1993)

In this matter the court record indicates that the court did everything in its power to use the court rules to punish one party without counsel for attorney conduct and rules violations, yet where the statutes favor “continued parental continuity” over restrictions, this court used itself as juror to determine which of the two parties he chooses to believe knowing that judges will not be held to account for wrongs done that cause grievous harm to people because they would then be subject to the punishments of law as we are. So, the court went out of its way to impose sanctions against Mr. Hussein, but no matter what lies Mr. Amblad told (he claimed that I hadn’t served him by October 18, which just isn’t true, and utilizes the rules solely for adversarial purposes of making Mr. Amblad look like HE was the party and entitled to the court’s protection of his profession when he claimed that I had not “timely served” his client and him.

In General, the Court said, “The trial court a nondiscretionary duty to vacate a void judgment. There is no time limit for moving to vacate a void judgment under CR 60(b)(5).” The mere passage of time following entry of a default judgment which is void for lack of personal jurisdiction does not constitute a waiver of the right to challenge the judgment as void”, which concerns me in that all judges know each other, went to school together, watch out for each other’s flaws and protect unlawful conduct of one another, thus I do not have any chance to prove that the judge was biased from the beginning because Mr. Amblad has been working in family law and was trained by one of the judges that made a ruling in this matter that protects him for giving legal services in the marriage dissolution portion. But the court told the State of Washington that they didn’t even have to appear, give evidence, take testimony or any other thing and their petition for child support, medical support, and back child support, Ms. Glisic began

receiving TANF long before I closed our joint bank account and throughout the entire time of our separation I have taken care of both my wife and children along with the State of Washington but I will never get the chance to present our financial records to them because the court cut me off from participating because Mr. Amblad alleged that I hadn't served him. I wish this case could have an appeal attorney work on it because they would know all the legal terms that you all want to hear. Again, not fair to me but the respondent she got counsel appointed for petition for protection order, Mr. Amblad and the King County Prosecuting Attorney both appeared in the Spokane Administrative Court Child Support petition, and Marriage Dissolution and even on appeal, the respondent, by virtue of her status economically, is somehow entitled to appointment of counsel but the one facing loss of liberty and property and parental rights is not. How is that fair?

Appellant asserts a fair review would result in the same decision as in "The Does [where that court] correctly observe that a void judgment is always subject to collateral attack. *Bresolin v. Morris*, 86 Wn.2d 241, 245, 543 P.2d 325 (1975). We will, therefore, first address the issue of whether the portions of the various orders of the courts of limited jurisdiction assessing court costs against the Does are void judgments. A judgment is considered void as opposed to merely erroneous when "the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved". *Bresolin*, at 245. A void judgment must be vacated whenever the lack of jurisdiction comes to light. *Mitchell v. Kitsap Cy.*, 59 Wn. App. 177, 180-81, 797 P.2d 516 (1990).

The critical question here is whether the judgment ordering payment of court costs was

void or merely erroneous. The Washington Supreme Court discussed the difference between a void judgment and an erroneous judgment in some detail in *Dike v. Dike*, 75 Wn.2d 1, 448 P.2d 490 (1968). The court quoted with approval language from *Robertson v. Commonwealth*, 181 Va. 520, 536, 25 S.E.2d 352, 146 A.L.R. 966 (1943), regarding how a void judgment can be distinguished from an erroneous judgment.”

D. Argument

In the matter that is the sample case that came closest to my own, the Court said, as it should be found here, that “We agree that insufficient evidence supported issuing a permanent protection order.

Further, the trial court's finding of domestic violence is contradicted by the police report of February 8, 2008, and giving it a fair reading, one must see that it is inconclusive had the investigation been allowed by trial court would not have matched the disclosures made solely by affidavit of respondent and her counsel Kristofer Amblad.

Mr. Amblad asserts that I should have raised all these issues at various courts, however, it appears, the law favors counsel having been appointed for me and my children. On Appeal, indigent litigants, should have a right to Counsel on Appeal as of Right, and if not, it is the policy of statute RCW 2.52 should have been applied to both parties as their income was one and appointment of counsel was based on income.

Ergo, it seems under the policy expressed in RCW 10.101, if there is a statutory right to counsel "at all stages" of a particular court proceeding, that right should include representation through an appeal as of right. Appeal - Indigent Litigants - Right to Counsel - Appeal as of Right - Policy of Statute. Under the policy expressed in RCW 10.101, if there is a statutory right to counsel "at all stages" of a particular court

proceeding, that right should include representation through an appeal as of right.

In civil cases, the constitutional right to legal representation is presumed to be limited, though the 7th amendment contradicts the modern practice of ignoring the constitutional protections given civil cases, and to those cases in which the litigant's physical liberty is threatened or where a fundamental liberty interest, similar to the parent or child relationship, is at risk.

The Courts have said that “For purposes of the rule that there is a constitutional right to counsel in cases involving a fundamental liberty interest, the right that is threatened is not considered "fundamental" in a constitutional sense if the interest at stake is only a financial one.” And while this may be the case, where there is fraud and the State is prosecuting a person, due process of law and the right to appeal is additionally protected by the State Constitution.

In the state of Washington, Constitution, art. I, § 22 (amend. X) expressly grants a right of appeal in criminal cases, but there is no comparable right in civil cases and none can be inferred from the state constitution, but arguably, the federal one grants what the state one lacks. It seems that Mr. Amblad want to determine who has the right to appeal and have counsel, however, in Washington the right to appeal in civil cases is twofold, and appellant asserts should be favored over not granting the right to allow proper review, is expressed thusly, “In civil cases, if the right to appeal exists, it is a right which is granted by the Legislature or at the discretion of the court.” And, the Court went on to say, “Where the opportunity to appeal has been made available by statute, the State may not arbitrarily deprive a litigant of access to the appellate system: but this does not mean that a state acts unfairly because it does not provide counsel and public funding at every

stage of every lawsuit. The rights guaranteed by the equal protection clause of the Fourteenth Amendment and Washington's privileges and immunities clause, Const. art. I, § 12, are substantially identical. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.”

Furthermore, the record will show that trial court deviated from the standard for determining the credibility of witnesses and the weight to assign conflicting testimony due his dual bias of protecting the public defender assigned to the marriage dissolution, and protecting the image of “another O. J. “ paying for what is perceived to be a white woman suffering at the hands of a Black man syndrome seem clear from the record that the respondent’s testimony was evasive, argumentative whenever possible and the court refused to direct the witness to give straight forward answers, but instead only admonished pro se counsel for “smiling”, so while it is for the trial judge, whose findings are reviewed only to determine whether they are supported by substantial evidence, appellant argues such a review will not find the testimony without contradiction and constant interruptions by both court and the witness and her counsel. The record will show that RCW 26.09.187(3) sets out the factors a trial court must consider in making residential provisions for a child in a parenting plan was never utilized, and the decision rendered in the protection hearing court was not going to be interfered with by any judge sitting on the bench in King County as a matter of common practices. Yet, under RCW 26.09.187(3)(a)(i), the trial court is required, in making residential provisions, to give the greatest weight to the relative strength, nature, and stability of the child's relationship with each parent.

For purposes of the rule that the State may interfere with a parent's fundamental

right to autonomy in child-rearing decisions only if it is seeking to prevent harm or a risk of harm to the child, a child [emphasis added here] is harmed by witnessing the parent's repeated assaults against the other parent and by fear that the assaults will continue.”, which was alleged but no evidence from the children supported the allegation. [11] Attorney Fees, accordingly, and the factors and ability to pay. An appellate court may decline to award attorney fees on appeal under RCW 26.09.140 if the requesting party has failed to demonstrate that the opposing party has the ability to pay.” Clearly the record of this case or I should say these cases, have had every judge which the appellant appeared assessed and determined that he is indigent. However, when he requested attorney’s fees, the trial court, again, showing its bias, said, in essence, yeah you are indigent, but you ain’t poor, so pay the man! “Generally, we may refuse to review a claim of error not raised in the trial court. RAP 2.5(a). However, where, as here, the asserted error concerns the trial court's authority to act, we may elect to review the issue. *See* RAP 2.5(a)(1) (appellate court may review issue of lack of trial court jurisdiction for first time on appeal In addition, “[l]egislative definitions included in the statute are controlling.” *Id.* “[A]n unambiguous statute is not subject to judicial construction.” *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). “A statute is ambiguous if it can be reasonably interpreted in more than one way, . . .” *Id.* at 20-21

Appellant assert that the law of the case in “Assault, Criminal - Domestic Violence RCW (10.99) - Protection Order - Contact With Minor Children - Suspension of Parenting Plan - Validity should be as follows, “Although a domestic violence protection order issued under RCW 26.50.060 cannot suspend an entire permanent parenting plan or impose a long-term restriction on parental contact with a minor child, a protection order

may temporarily suspend relevant provisions of a parenting plan to protect a child from a threat or fear of domestic violence.”

D. Conclusion

Appellant argues that the only proper position is one that affords review and that every right and protection for family continuity purposes should be afforded for justice to prevail and two minor children will not unjustly suffer because us adults can not see that for all the parties in these matters, no child in this matter had counsel yet what would happen to their rights to be honorable children to both parents is taken and no one cares about the negative and unfair impact such a decision has on the children and their future. In other words, they are children under age for a season because the law made it so, they are their parents for life because God made it so. This ruling makes my children believe that man is higher than God and no one cares about their rights to have both parents, no of whom committed any crime (unless D.V. is charged, but the protection afforded criminal defendants are not afforded a parent) yet their liberty interest, religious and language training end or are shifted to strangers and all without any real need. That is wholly inappropriate, and in my children’s eyes “totally unfair!”

Consequently, after proper and full review, I think you call it De Novo, this court will render the same decision as below or similar.

“We review a decision to grant or deny a protection order for an abuse of discretion. In re Marriage of Stewart, 133 Wn. App. 545, 550, 137 P.3d 25 (2006). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. In re Marriage of Horner, 151 Wn.2d 884, 893, 93 P.3d 124 (2004). We uphold a trial court's findings if substantial evidence in the record supports them. Stewart, 133 Wn. App. at 550. Substantial evidence is that sufficient to

persuade a fair-minded, rational person of the finding's truth. In the Matter of the Contested Election of Schoessler, 140 Wn.2d 368, 385, 998 P.2d 818 (2000).” There is no rationale basis, no fair basis, no fair process and no opportunity for a non English speaking pro se to have had all the sanctions requested by attorney for respondent, who like appellant, started her action pro se. For all these reasons this Honorable Court should grant appellant a vacated judgment for child support, parenting plan restrictions, protection order granted for five years for wife and children and order remand to allow evidence to be presented with regard to the State enforced portion under DCS and King County Prosecuting Attorney’s Civil Enforcement Division of Child Support arrearage and remand for the purpose of State of Washington conducting an investigation with regard to the issue of proven need for respondent and children during the period she claimed it. And finally, appellant asserts that as experienced Americans and public servants to do that which is both lawful and justice under the circumstances of a full review.

March 14, 2012

Respectfully submitted,


Fantahuen M. Hussein, Pro Se Appellant