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No. 70531-8-I

COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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In re the Parentage of E.J.R:

MICHAEL JOHN RODERICK JR.,

Appellant,

v.

BRENDA JEANNE LYNN,

Respondent.

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BRIEF OF RESPONDENT

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Beverly Nored, WSBA #34055  
Nored Law  
15 S. Grady Way, Suite 400  
Renton, WA 98057  
(425) 954-7714

Sidney Tribe, WSBA #33160  
Talmadge/Fitzpatrick  
2775 Harbor Ave SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Attorneys for Respondent Brenda Jeanne Lynn



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## A. INTRODUCTION

Brenda Lynn was compelled to end her relationship with Michael John Roderick, Jr., after he became increasingly paranoid and unstable. As the father of their infant child, E.J.R., Roderick, Jr. had rights and responsibilities that Lynn acknowledged and tried to respect. She attempted unsuccessfully to implement an informal parenting plan with Roderick, Jr., until Lynn concluded he had become too unstable and dangerous to safely parent E.J.R.

Lynn filed a petition for a parenting plan, child support, and restraining order, proposing that the court impose a phased-in parenting plan. The phased-in plan allowed Roderick to continue having a relationship with E.J.R., conditioning his ability to have unsupervised access to the child on his seeking and receiving mental health care.

After over a year of hearings, continuances, and motions a trial was held. The trial court entered findings and conclusions that Roderick, Jr. was in danger of inadvertently harming E.J.R. because of his mental health issues. The court adopted the phased-in approach that Lynn proposed, which gave Roderick, Jr. increasing rights and responsibilities conditioned upon mental health diagnosis and treatment.

The trial court's order complies with the constitution and applicable statutes, and is supported by substantial evidence in the record. It should be affirmed.

B. STATEMENT OF THE CASE

Roderick, Jr.'s statement of the case is lengthy but does not cite to the record. Br. of Appellant at 22-40. He states that much of it is "from memory." *Id.* at 22. His allegations are either not supported by the record, or are disputed issues of fact that were contradicted by other substantial evidence.

(1) Factual Background

Roderick, Jr. and Lynn met in October of 2008 while living in Alaska. CP 86. Lynn, a social worker, was working as a case manager for the Arc of Anchorage, a private, not-for-profit organization dedicated to serving children and adults who experience developmental disabilities or mental health issues. *Id.*

Roderick, Jr. moved to Anchorage to be closer to Lynn. Lynn was able to assist him in getting a job with the Arc of Anchorage as a case manager. Roderick, Jr. also obtained part time work at another social service organization, Hope Community Resources. *Id.* The two began living together. Lynn observed that Roderick, Jr. often felt people were

against him, especially at the Arc. *Id.* He was struggling at the Arc to get along with coworkers, and with family members of the clients. *Id.*

Roderick, Jr. was fired in June of 2009 from the Arc for not meeting job performance. *Id.* It was a difficult time because Lynn still worked there, and was being groomed to be promoted. *Id.* at 87. Roderick, Jr. seemed jealous of Lynn's friends at Arc, and even insisted that Lynn stop being friends those whom he felt had assisted in getting him terminated. *Id.* Roderick, Jr. began to become more paranoid. He was convinced that one of the directors at Hope was out to get him. *Id.*

In December of 2009 Lynn was promoted to Team Leader II, and then became pregnant with Lynn and Roderick, Jr.'s daughter, E.J.R. Roderick, Jr. then got a full-time job with Hope, working in Dillingham, Alaska as a Home Support Specialist. *Id.* He lived in Hope's group home and provided 24 hour care to the residents. At first things appeared to be going well for Roderick, Jr., he said he liked his coworkers. *Id.* However, within a couple months he began to talk about a coworker who he said gave him a hard time and made it difficult to work there. *Id.*

In the summer of 2010 Lynn gave birth to E.J.R. at 32 weeks of gestation. *Id.* E.J.R. was in the intensive care unit for an extended period of time. Roderick, Jr.'s paternity was recorded in the Alaska office for vital statistics. CP 2. Roderick, Jr. was unable to be there for the child's

birth, because he was still working in Dillingham. During the time that E.J.R. was in intensive care, Roderick, Jr. was talking more and more about this coworker and the issues that they were having. *Id.* He claimed that his coworkers and his boss did not like him. He felt like they were trying to get him to quit. *Id.* He began to say that he heard people outside his window talking about him. He said that these coworkers were talking about him being an abuser, and that they thought he abused the clients in the home. *Id.* Lynn did not believe that Roderick, Jr. could be abusive, but acknowledged he did have a temper and tended to lose patience easily. *Id.*

Roderick, Jr. said that he was thinking of quitting and coming home. *Id.* Lynn attempted to convince him to stay and work, as they needed the income. *Id.* Roderick, Jr. came home at the end of August, 2010, and immediately Lynn had concerns. *Id.* His first night home, he drove with Lynn to an isolated park. *Id.* He began to question Lynn asking if she had ever cheated. *Id.* at 88. He said that he could hear his coworkers talking about how Lynn was cheating with a director at Hope Community Resources. *Id.* Lynn did not know who he was talking about, and noted that less than a month earlier she had just had an emergency C-section. She was spending all her time in the intensive care unit with their daughter. *Id.*

Roderick, Jr.'s paranoia increased significantly. He did not believe Lynn when she denied cheating, and would constantly ask her what she was doing. *Id.* He would call her nonstop. *Id.* He started saying that he was hearing people next door talking about him, saying that he was an abuser. Roderick, Jr. quit his job at Hope. He had told them that he had thrown a ball at one of the residents head, and had done something else as well. *Id.* Roderick, Jr. told the director at Hope about it before he resigned. Hope called the police. *Id.* The police came to Lynn and Roderick, Jr.'s home to talk to Roderick, Jr. about the alleged incident. He was supposed to contact an officer later to follow up, but he never did. *Id.*

Things began to get worse. Roderick, Jr. confronted the neighbors on what he thought they were saying about him. *Id.* He would go sit on his car and stare at the neighbor. Their landlord was even involved at one point, because Roderick, Jr. would be up in the middle of the night, pacing the house, yelling things at the wall towards the neighbors. During this time, Lynn had made the decision to stay at home with E.J.R. and go on call at work. *Id.*

Roderick, Jr. was able to get a job working as an armed security guard with Intercon, a security agency. *Id.* at 89. He was making very good money, and at first things were going well. However, Roderick, Jr.

still would question anything Lynn did, and insinuate that Lynn was plotting with someone to try to make his life “horrible.” *Id.*

Roderick, Jr. was employed with Intercon until August, 2011. Things continued to deteriorate between him and Lynn. Roderick, Jr. became very distrusting of everyone; Lynn had a hard time having people over to the home due to his erratic behavior. *Id.* He would be friendly one minute, and cold and harsh the next. Any time Lynn and Roderick, Jr. got into a fight, he would say that Lynn was just trying to make him crazy and that she was plotting to take E.J.R. away from him. *Id.* He would tell Lynn that she was evil, and a horrible mother for even contemplating leaving him as that would take E.J.R. away from him. *Id.*

In August, on a Friday evening, there was a knock at their door. Roderick’s supervisor from Intercon, a federal marshal, and two other unidentified federal agents were there to take Roderick, Jr.’s gun and put him on administrative leave. *Id.* They stated that he was seen on camera at one of the courthouses, entering court while it was in session with a loaded weapon. *Id.* Roderick, Jr. would not open the door and was becoming belligerent with the officers. They said they wanted to come into the home and take the weapon. *Id.* Roderick, Jr. would not let them in, and one of the men had put a foot in the door to stop him from closing

it. Roderick, Jr. would not give the gun back. Eventually Lynn gave the weapon to the officers and they left. *Id.*

About three weeks later, Roderick, Jr. was told that he was let go. Once Roderick, Jr. was put on leave, Lynn had to work full time. *Id.* They made the decision to break up, and move to Seattle, to allow Lynn to be closer to her family who could watch E.J.R. *Id.* This would prevent Lynn from having to put E.J.R. into day care. *Id.* at 89-90. Lynn sold her car and split the proceeds between herself and Roderick, Jr. *Id.* at 90. *Id.*

Once in Seattle, Lynn was able to secure employment with SL Start, a local human services organization, as a community resource manager. *Id.* She had full time work, and her sister watched E.J.R. *Id.* Roderick, Jr. visited E.J.R. somewhat consistently. *Id.* He paid very minimal child support. *Id.*

On May 1, 2012, Roderick, Jr. was returning E.J.R. from a scheduled visitation. Lynn's neighbor, Linda, came to tell Lynn about an incident with Roderick, Jr. Linda said she went up to E.J.R., who was with Roderick, Jr., and greeted her. Roderick, Jr. immediately got upset and told Linda to get away from his daughter, and that he did not know what she was up to, but that if she did not get away he would file a restraining order. *Id.* When Roderick, Jr. arrived to return E.J.R., Lynn asked what had happened with Linda and he immediately became upset.

*Id.* Lynn began to reach for E.J.R., but Roderick, Jr. pulled back. E.J.R. began to cry and reach for Lynn, crying “Mama.” *Id.* Lynn tried to take her again, thinking that Roderick, Jr. would let her come to Lynn. He backed away and ran into the driveway, still carrying E.J.R. *Id.*

Lynn’s sister witnessed the incident, and Lynn’s father was in the back yard and heard the commotion. *Id.* Both came out to the driveway. Lynn followed Roderick, Jr. to the driveway and again attempted to get E.J.R. *Id.* Roderick, Jr. was yelling at Lynn, Linda, and the family members. He was screaming that they were all on drugs and trying to plot against him. *Id.* at 91. Lynn told her sister to call 911. Lynn continued to try to get E.J.R., and Roderick, Jr. ran out into the street with her in his arms. *Id.* Eventually, he did give her back to Lynn. Roderick, Jr. also called 911 and was yelling at the operator, telling her that she needed to get a restraining order on Linda. *Id.* The police arrived and questioned him and Lynn’s sister. The police officer then came inside and asked Lynn if she had assaulted Roderick, Jr. She replied, “No.” *Id.* The police then instructed to Lynn to get a child support order and a parenting plan in place. They did not file a report. *Id.*

After that incident, Lynn did not feel that E.J.R would be safe alone with Roderick, Jr., so she supervised visitation. *Id.* They met at a park twice a week for about a month. Then on May 27 2012, Lynn

received a call from Roderick, Jr. to inquire about the following day's visit. *Id.* He said that he did not want to meet at the park. He said that he did not think that E.J.R. felt comfortable. *Id.* Lynn disagreed. He began to get agitated, and asked if they could meet in Lynn's backyard. Lynn stated that her family was not comfortable with him there considering what had happened in the driveway. *Id.* He said that Lynn had assaulted him in the driveway, and that he had medical proof of it and she would see it in court. Roderick, Jr. stated that Lynn did not love E.J.R., and that he was trying to save E.J.R. from Lynn. *Id.* After that Lynn did not meet him for visitation as she felt that he was too unstable to be around E.J.R. *Id.*

(2) Procedural Background

On June 12, 2012, Lynn petitioned for a residential schedule, parenting plan, and order of child support. CP 1, 19. The parenting plan provided for a three-phase process whereby Roderick, Jr. would initially have only supervised visitation with a professional supervisor, but would eventually have unsupervised residential time. *Id.* at 20-21. Roderick, Jr. would advance through the phases if he sought mental health care and treatment. *Id.* Lynn also sought sole decisionmaking for E.J.R. because of Roderick, Jr.'s inability or unwillingness to cooperate with Lynn in decisionmaking matters. *Id.* at 25. Lynn also requested that the court

enter temporary restraining order (“TRO”) keeping Roderick, Jr. from coming to her home or entering E.J.R.’s daycare. CP 83-84.

Representing himself, Roderick, Jr. filed his own separate petition under a different cause number, rather than responding to Lynn’s petition. CP 43. He denied virtually every contention in the plan, including jurisdiction and paternity. *Id.* He stated that Lynn had physically abused him during the May confrontation, and that the police officers had insulted him and refused to file reports. CP 42. He claimed that the fact that E.J.R. was residing with Lynn denied him his legal rights and due process. CP 44. He said that he was not properly named or served in the petition because his name is “Michael John Roderick, Jr.,” and not “Michael John Roderick.” *Id.* He stated he was denying paternity because Lynn had not filed the proper paperwork, but then went on to say “I am my daughter’s father and my name is Michael John Roderick, Jr.” *Id.*

Roderick, Jr., proposed a parenting plan that restricted Lynn’s residential time with E.J.R. based on willful abandonment and abuse. CP 48. He claimed Lynn’s actions regarding E.J.R. were an attempt to deny E.J.R.’s “civil rights, including due process of law and equal protection,” and that Lynn was trying to “obstruct justice regarding an EEOC complaint” Roderick, Jr. had filed. CP 49. He also requested legal counsel “in support of E.J.R.’s best interests, but requested that counsel be

appointed who was not a member of the King County Bar Association. CP 53. He stated that his “attempts to obtain counsel through this organization ha[d] been tampered with, interfered, and obstructed.” *Id.*

Roderick, Jr.’s financial declaration stated that his income was \$1400 a month, but he explained that he was not underemployed voluntarily. CP 61. He stated that his lack of full employment was attributable to “harassment,” “slander, libel, defamation of character, [and] deprivation [sic] of civil rights.” CP 60-61, 65.

After completing mandatory family law orientation, CP 79, Roderick, Jr. filed a motion to change the caption of the matter, arguing that it should say “Michael John Roderick, Jr...and no other version or any other respondent.” CP 82. The motion was denied because he did not provide Lynn notice, and did not present the order in family law court with the assigned judge. CP 80.

A hearing was held on August 29, 2012. CP 105. Both parties appeared. *Id.* Lynn’s request for an interim TRO during the proceedings was granted, but other issues were continued for one month to afford Roderick, Jr. time to obtain counsel. CP 103, 107-09.

While the matter was continued, Lynn expressed concern to the court about Roderick, Jr.’s behavior and actions, and renewed her request for a restraining order to be included in the parenting plan. CP 113-14.

Lynn noted harassing and stalking behavior inconsistent with the August 29 TRO the trial court had entered. *Id.* Included in Lynn's evidence was a birthday card to E.J.R. in which he told the child he had been receiving death threats. CP 119.

At the September 25, 2012 hearing, both parties appeared. CP 120. The trial court entered temporary parenting plan and child support orders. CP 120. The matter was continued to October 30, because Roderick, Jr. still had not responded to Lynn's petition. CP 121, 127.

On October 25, five days before the next hearing, Roderick, Jr. filed a declaration stating that Lynn had "testified to this court" that she had "pointed a loaded, cocked, semi-automatic handgun" at him and E.J.R. on August, 19, 2011.<sup>1</sup> CP 151. Roderick, Jr. accused Lynn of shaking and choking E.J.R. CP 152. He demanded dismissal of Lynn's petition and "counsel at cost of this court and a lawful jurisdiction where the law is obeyed." *Id.* He attached a form from McLeod Visitation, the professional supervision service in charge of his visits with E.J.R. CP 153-58. He claimed to be the custodial parent, and said that E.J.R. had been abducted. *Id.* He accused Lynn of abusing E.J.R. and having mental

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<sup>1</sup> This appears to be a reference to Lynn's declaration in which she stated that when Roderick, Jr. refused to hand over his weapon to his employer and federal officials, Lynn gave them the gun. CP 89. That Roderick, Jr. is referring to Lynn's declaration is clear from his later attempt to seek a protection order using Lynn's declaration as evidence and drawing the court's attention to the section regarding the gun. CP 164-72. The declaration does not say that Lynn pointed the weapon at anyone, let alone E.J.R. *Id.*

problems. *Id.* He also included a police report he filed accusing Lynn of similar behavior. CP 159-63. He petitioned for a domestic violence protection order. CP 164-68. He again accused Lynn of abducting E.J.R. CP 178.

At the October 30 hearing, both parties appeared. CP 190. Again, a temporary parenting plan and order of child support had to be entered because Roderick, Jr. had still not responded regarding the parenting plan or other matters.<sup>2</sup> CP 182, 188. Another TRO was also entered. CP 209.

In early December, 2012, trial was set for April 15, 2013 on both Lynn's petition and Roderick, Jr.'s separate petition. CP 216. The parties were directed to mediate. CP 217. On December 31, 2012, Roderick, Jr. moved to vacate the temporary orders and dismiss Lynn's action on the grounds that (1) Lynn had perjured herself in her financial documents, (2) Lynn had confessed to assaulting E.J.R. with a loaded deadly firearm, and (3) the paternity documentation was not valid. CP 228.

A pretrial conference was held on March 15. CP 238. Roderick, Jr. still did not have counsel. *Id.* The pretrial order set deadlines for witness and exhibit disclosure, and estimated one day for trial. CP 239-44. On March 22, Roderick, Jr. again moved to dismiss Lynn's petition

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<sup>2</sup> Instead of responding to Lynn's petition, Roderick, Jr. had filed his own petition under a separate cause number. CP 216, 273. The matters were consolidated. *Id.*

on the grounds that he was not properly named on documents because they said Michael Roderick instead of Michael Roderick, Jr. CP 245-46. He also requested either a court appointed special advocate (“CASA”) representative or a guardian ad litem (“GAL”) to represent E.J.R. CP 247-48. He noted his motions for less than a week before the April 15 trial date; his dismissal motion was set for April 11, and his motion to appoint a CASA representative for April 12. CP 249-52. He also moved for “dismissal clarification of parenting plan.” CP 257-58. He again recited his accusations against Lynn and complained that he was Michael Roderick, Jr. not Michael Roderick. *Id.* He once again requested “free counsel” due to “extraordinary burdens and constitutional issues of child and father and crimes of petitioner.” *Id.* He noted that motion for April 9. CP 268. The three motions were set on two different commissioner’s calendars. CP 272.

Roderick, Jr. served Lynn with only one of his three notes for motion. CP 272. Lynn opposed the motions on procedural and substantive grounds, and moved to continue the trial date. CP 272-96. Lynn’s counsel stated that Roderick, Jr. had refused to speak with her about mediation, would only discuss visitation, and refused to give her his current address. CP 296-97. Trial was continued to May 28. CP 313.

In the month leading up to the trial, Roderick, Jr. emailed bailiff and law clerk Peggy Wu about various procedural issues. CP 317-31. Some of the emails concerned Wu, including a suggestion by Roderick, Jr. that he would be seeking to bring the gun referred to in the August 2011 incident as evidence.<sup>3</sup> *Id.* Wu was also concerned that Roderick, Jr. noted that he was “not a lawyer” and wanted Wu to tell him what to do. *Id.*

On May 28, 2013, the trial was held. Roderick, Jr. represented himself. CP 332. The trial court questioned Roderick, Jr. about procedure, proceedings, and the roles of the parties. *Id.* Many of his exhibits were admitted. CP 333, 340-41. Roderick, Jr.’s competency was addressed. CP 333. His motions to dismiss, to appoint a CASA or GAL, to continue, to compel a federal agent to appear, to dismiss due to his incompetency, and to continue to allow a CPS investigation were denied. *Id.* The parties presented opening statements, Lynn testified and Roderick, Jr. cross-examined her. *Id.* at 333-35. The trial was continued to another day, where Roderick, Jr. again requested a continuance, which was denied. CP 335.

The trial court entered findings of fact and conclusions of law and established the parenting plan and child support orders. CP 337. The court also appointed a CASA, and entered a continuing restraining order.

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<sup>3</sup> Wu was unfamiliar with the facts and thus could not know that Roderick, Jr. was not in possession of the weapon confiscated in Alaska in 2011. *Id.*

CP 337, 345. The trial court found that Roderick, Jr. had a “long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.” CP 366. Specifically, the court found that “Mr. Roderick, Jr. has displayed erratic behavior consistent with mental health concerns. There is a concern the he may inadvertently harm the child if his mental health issues are untreated.” CP 369.

The final parenting plan adopted the “phased-in” approach Lynn proposed, where Roderick, Jr. would have only supervised visits with E.J.R. while he sought mental health evaluation and counseling, but then increased his rights and responsibilities with respect to time with E.J.R. as he showed improvement. CP 366-67. The trial court concluded that Roderick, Jr.’s mental health issues at least temporarily prevented him from sharing major life decision-making with Lynn, but that the court would review that status in nine months if he had complied with the parenting plan. CP 371, 375.

Roderick, Jr. timely appealed from the trial court’s orders. CP 382. The verbatim report of proceedings has not been filed. Roderick, Jr. sought an order of indigency asking that the transcript be produced at public expense. Appendix A. His request was denied. *Id.*

### C. SUMMARY OF ARGUMENT

Roderick, Jr.'s brief does not contain sufficient citations to the record, relevant authority, or cogent argument to allow this Court to conduct review. Many of the 122 issues he raises cannot be addressed in any meaningful way.

If, in light of Roderick, Jr.'s *pro se* status, this Court wishes to attempt review of some of the issues he raises, the record and orders at issue demonstrate no legal error or abuse of discretion.

Roderick, Jr. was not entitled to counsel at public expense in this hearing to establish a parenting plan, and he was granted multiple continuances and had ample opportunity to obtain counsel. The trial court did not abuse its discretion in refusing to conduct a pretrial competency hearing, and concluded that Roderick, Jr. was competent to proceed.

The trial court also did not abuse its discretion in declining to appoint a GAL for E.J.R. There was substantial evidence to suggest that Lynn was capable of representing E.J.R.'s interests.

Finally, the trial court's parenting plan order contains sufficient findings of fact and conclusions of law, supported by substantial evidence. There was evidence in the record to support the trial court's finding that Roderick, Jr.'s unstable mental health could cause him to inadvertently harm E.J.R., and that he should have restricted access to her unless and until those issues are addressed.

The trial court's parenting plan should be affirmed.

D. ARGUMENT

- (1) Roderick, Jr. Has Neither Provided Any Citations to the Record nor Filed the Verbatim Report of Proceedings, and Refers to Facts and Events Not in the Record; This Court Cannot Conduct Meaningful Review

As a threshold matter, Lynn's ability to respond on appeal and this Court's review process are hampered by Roderick, Jr.'s failure to obey the Rules of Appellate Procedure. First, his brief contains no specific citations to the clerk's papers. He repeatedly states that his factual assertions are from "memory." Br. of Appellant at 22, 39. Roderick, Jr.'s statement of the case contains no record citations and mostly consists of his recollection of events not in evidence. His argument section repeatedly indicates "CP" and "Audiofile" in brackets, but no pinpoint citations are provided. Second, Roderick, Jr. has not provided the verbatim report of proceedings, despite continually challenging the trial court's statements and actions at the hearing in his assignments of error and argument. Br. of Appellant at 4-5, 10-12, 47-49.

"The appellant bears the burden of complying with the Rules of Appellate Procedure ("RAP") and perfecting his record on appeal so the reviewing court has before it all the evidence relevant to deciding the issues before it." *Rhinevault v. Rhinevault*, 91 Wn. App. 688, 692, 959

P.2d 687 (1998); *see also*, *In re Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990). This Court may decline to reach the merits of an issue if this burden is not met. *Id.*, citing *State v. Wheaton*, 121 Wn.2d 347, 365, 850 P.2d 507 (1993).

Moreover, the RAPs mandate strict requirements for content, style, and form for all briefs filed with the appellate court. *See* RAP Title 10. For example, every factual statement included in an appellant's brief must be supported by citation to the record. *See* RAP 10.3(a)(4). If a party submits a brief failing to comply with this rule, the appellate court may return it for correction, strike it with leave to file a replacement, or accept the brief. *See* RAP 10.7. Sanctions ordinarily adhere for such inadequate briefing. *Id.*; *see, e.g.*, *Hurlbert v. Gordon*, 64 Wn. App. 386, 400–01, 824 P.2d 1238 (1992) (imposing \$750 in sanctions for “laissez faire” briefing, as errors “hampered the work of the court”); *Lawson v. Boeing Co.*, 58 Wn. App. 261, 271, 792 P.2d 545 (1990) (“The failure to cite to the record is not a formality. It places an unacceptable burden on opposing counsel and on this court.”).

Pro se litigants are held to the same standards as attorneys and must comply with all procedural rules on appeal.<sup>4</sup> *In re Marriage of*

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<sup>4</sup> There is no question that a *pro se* litigant who has mental health issues will not always be held to the same standard as an attorney. *See Carver v. State*, 147 Wn. App. 567, 575, 197 P.3d 678 (2008). However, this case is distinguishable from *Carver*. The

*Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Failure to do so may preclude appellate review. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). The failure of an appellant, including a pro se appellant, to provide argument and citation of authority in support of an assignment of error precludes appellate consideration of an alleged error. *Avellaneda v. State*, 167 Wn. App. 474, 273 P.3d 477 (2012).

Roderick, Jr. raises 10 numbered assignments of error, each of which is followed by an unnumbered list of “Issues Pertaining to Assignments of Error.” Br. of Respondent at 1-22. In all, he raises 122 issues. *Id.* He fails to support the majority of the issues he raises with argument and citation of authority. A number of these issues are unreviewable on this record.

First, every issue Roderick, Jr. raises regarding the conduct and/or comments of the trial judge during proceedings is unreviewable because he has not filed the verbatim report of proceedings. This includes: (1) Issues under Assignment of Error No. 3 (amorphous claims that the trial court interfered with hearing); (2) Issues under Assignment of Error No. 6 (suggesting that the trial court subjected him to “psychological torture”);

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appellant in *Carver* was diagnosed with dementia and could not perform even the simplest office functions. *Id.* Here, the trial court’s assessment was that Roderick, Jr. needed evaluation, but there is no evidence he is incompetent or unable to understand the proceedings below or on appeal.

(3) Issues raised under Assignment of Error No. 7 (claims that the trial court interrupted him, made statements about his mental state, or failed to conduct the hearing fairly); and (3) Assignment of Error No. 8 (claims that the trial court did not allow him “sufficient” cross-examination of witnesses).

Other assignments of error/issues Roderick, Jr. raises are not sufficiently explained and argued to allow review, including: (1) Assignment of Error No. 6 (questions without explanation whether trial court “could have made” a parenting plan without violating the equal protection provision of the Fourteenth Amendment); and (2) Assignment of Error No. 9 (claims the First Amendment provision guaranteeing the rights to free speech and redress of grievances were violated).

This Court should not consider these assignments of error and/or that are completely unsupported by the record, argument, or any authority.

Roderick, Jr. purports to provide argument and analysis of some issues, including the trial court’s general “abuse of discretion” and its failure to appoint him counsel or order a competency hearing. Br. of Appellant at 46-47. Roderick, Jr. claims that the trial court erred. But he fails to cite to the portion of the record where the issues was raised, addressed, and resolved below. A party is required to include references to relevant parts of the record in the party's argument section of its brief.

RAP 10.3(a)(6). Roderick, Jr. has failed to comply with this rule. Roderick, Jr. also fails to provide citations to the record for material he represents to be verbatim quotations from testimony or documents in the record. His failure to cite to the verbatim report of proceedings is compounded by the fact that he has not filed the report with this Court.<sup>5</sup>

This Court is not required to search the record to locate the portions relevant to a litigant's arguments, and should decline to do so with respect to these arguments. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). Roderick, Jr.'s failure to comply with the appellate rules precludes review of these issues.

Roderick, Jr. raises additional “errors of the trial court” in the argument section of his brief, such as “parental alienation,” “abusive use of conflict,” and “contempt.” Br. of Appellant at 46. Again, Roderick, Jr. provides no citations to the record in support of his arguments and requests for relief, nor does he provide any supporting legal authority or meaningful argument. “Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

Roderick, Jr. challenges the alleged trial court findings that he is “erratic,” “paranoid,” and “delusional.” Br. of Appellant at 47. Nowhere

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<sup>5</sup> Roderick, Jr., moved for a finding of indigency by the Supreme Court so that the transcript could be produced at public expense. His motion was denied. Appendix A.

in the trial court's findings or orders do such statements exist. As with other issues he raises, Roderick, Jr. fails to provide citations to relevant parts of the record relevant to this issue.

In short, Roderick, Jr. has failed to provide this Court with briefing that will allow any meaningful review. This Court should affirm the trial court's orders.

(2) Roderick, Jr. Had Opportunity to Retain Counsel, Stated that He Knew He Could Benefit from Counsel, and Was Not Entitled to Free-Court Appointed Counsel in the Hearing to Establish a Parenting Plan

Roderick, Jr. raises a number of related arguments in support of his first assignment of error on appeal: whether the trial court was obliged to appoint him counsel in this civil proceeding to establish a parenting plan. Assignment of Error No. 1; Br. of Appellant at 1, 40-42, 46, 47-49, 51. Roderick, Jr. argues that it was improper for the trial court to allow him to proceed *pro se* citing *Indiana v Edwards*, 554 U.S. 164, 128 S. Ct. 2379 (2008) and *Turner v. Rogers*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 2507 (2011).<sup>6</sup> Br. of Appellant at 40, 42. He argues that court-ordered expenses – such as court costs and child support payments – deprived him of the financial ability to retain counsel, again citing *Turner* and *Edwards*. Br. of Appellant at 48,

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<sup>6</sup> It is unclear why there is no U.S. Reporter citation for this opinion three years after its issuance. However, even recent published opinions citing the case note that no U.S. Reporter citation exists. *See, e.g., Miller v. Deal*, 295 Ga. 504, 761 S.E.2d 274, 277 (2014).

50. Roderick, Jr. says he is indigent citing *Turner*, and says his swollen tongue made him “incoherent” contrary to *Edwards*. Br. of Appellant at 49. Roderick, Jr. says the trial court knew he could not afford a lawyer, and thus should have acted to appoint him free representation. Br. of Appellant at 50, 51.<sup>7</sup> He also argues this is a due process issue. Assignment of Error No. 5; Br. of Appellant at 7-8.

(a) There Is No Constitutional or Statutory Right to Counsel at Public Expense in a Proceeding to Establish a Parenting Plan

The question of whether Roderick, Jr. was entitled to counsel at public expense is a legal issue reviewed de novo. *State v. Adams*, 138 Wn. App. 36, 44, 155 P.3d 989 (2007); *State v. Burns*, 159 Wn. App. 74, 78, 244 P.3d 988 (2010), *as corrected* (2011).

The case controlling all of Roderick, Jr.’s claims regarding his claimed right to counsel at public expense is *King v. King*, 162 Wn.2d 378, 174 P.3d 659 (2007). In *King*, our Supreme Court ruled that an indigent parent has no federal or state constitutional right to the appointment of counsel in a dissolution and parenting plan proceeding. *King*, 162 Wn.2d at 398. The Court held that fundamental constitutional

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<sup>7</sup> Roderick, Jr. also claims that he has the right to counsel at public expense under the ADA. Br. of Appellant at 40-41. However, a parenting plan hearing is not an ADA proceeding, and Roderick, Jr. makes no argument regarding why the ADA should apply here, or that the ADA mandates counsel at public expense for any person who has mental health issues.

rights are not implicated in such a proceeding, and that even assuming *arguendo* that they were, failure to provide free counsel did not violate a parent's right to due process, access to courts, or equal protection. *Id.* at 388-97.

Neither case cited by Roderick, Jr. – *Edwards* or *Turner* – mandates trial courts to supply court-appointed counsel to litigants in proceedings to establish a parenting plan. Those cases address different rights and interests, and do not apply here. In *Edwards*, the United States Supreme Court ruled that a defendant who was adjudged mentally competent to stand trial could be compelled constitutionally to accept court-appointed counsel after he was determined to be incompetent to conduct trial proceedings. *Edwards*, 554 U.S. at 178. In *Turner*, the Court concluded that a court could, in some circumstances, afford other procedural safeguards in civil contempt proceedings short of appointing counsel without offending due process. *Turner*, 131 S. Ct. at 2520.

The constitutional right to appointed counsel is presumed only when a person's personal liberty is at stake:

In sum, the Court's precedents speak with one voice about what "fundamental fairness" has meant when the Court has considered the right to appointed counsel, and we thus draw from them the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty. It is against this

presumption that all the other elements in the due process decision must be measured.

*Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 26-27, 101 S. Ct. 2153 (1981). Even when a proceeding involves an issue as fundamental as the termination of parental rights, or potential imprisonment in a civil contempt proceeding for failing to comply with a child support order, the right to appointed free counsel is not categorical. *Id.*, see also, *Turner*, 131 S. Ct. at 2520. For example in *Lassiter*, the Supreme Court applied the balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893 (1976) to determine whether indigent parents had the right to appointed counsel in a proceeding to terminate their parental rights. *Id.* at 27.

Here, *King* applies and Roderick, Jr. was not entitled to counsel at public expense in the parenting plan proceeding.

- (b) The Trial Court Considered the Issue and Concluded Roderick, Jr. Was Competent; Substantial Evidence Exists that Roderick, Jr. Was Capable of Proceeding<sup>8</sup>

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<sup>8</sup> The fact that the trial court concluded that Roderick, Jr. had unaddressed mental health issues does not equate with a finding that he was incompetent to proceed *pro se*, nor did it necessitate a competency hearing. The two inquiries are separate, and a person may have the mental ability to undertake some tasks but not others. *Edwards*, 554 U.S. at 175 (“Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual’s functioning at different times in different ways.”).

Even if the trial court did not have an obligation to appoint him counsel at public expense, Roderick, Jr. argues the trial court was obliged to conduct an evidentiary hearing to determine whether he was competent to proceed. Br. of Appellant at 41, 49. He states that both he and opposing counsel thought him to be “not competent,” thus warranting a competency hearing Br. of Appellant at 47-48.

As a threshold matter, Roderick, Jr. does not point out that the trial court did in fact consider the question of whether Roderick, Jr. was competent to proceed, and concluded that he was. CP 333. Therefore, the trial court did conduct a hearing on competency, although there is no way to evaluate the adequacy of that hearing because Roderick, Jr. provided no transcript.

Even assuming *arguendo* that Roderick, Jr. intended to argue that the hearing was inadequate, the record shows that it was not an abuse of discretion for the trial court to conclude Roderick, Jr. was competent. In order to demonstrate mental incompetence, a litigant must present substantial evidence of an inability to understand the proceedings and rationally participate. *State v. Gwaltney*, 77 Wn.2d 906, 907, 468 P.2d 433 (1970). In Washington, and in many other states, a person accused of a crime is held to be legally competent to stand trial if he is capable of properly understanding the nature of the proceedings against him and if he

is capable of rationally assisting his legal counsel in the defense of his cause. *State v. Henke*, 196 Wash. 185, 82 P.2d 544 (1938); *State v. Durham*, 39 Wn.2d 781, 238 P.2d 1201 (1951).

The tests applied in federal courts are similar, and federal authority can be consulted on the subject. *Gwaltney*, 77 Wn.2d at 907. The United States Supreme Court has found an accused is legally competent to stand trial on a charge filed against him if he “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and if “he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 80 S. Ct. 788 (1960).

If a party is to represent himself or herself *pro se*, the test is whether that party is able to conduct the tasks of litigation. *McKaskle v. Wiggins*, 465 U.S. 168, 175, 104 S. Ct. 944 (1984). Those tasks include organizing and conducting the defense, selecting witnesses and examining them freely, bringing motions, making objections, and arguing to the court. *Id.*

Even in a criminal matter, there is no obligation of trial court to hold competency hearing *sua sponte* unless there is “substantial evidence” of incompetence. *Davis v. Woodford*, 384 F.3d 628, 644 (9th Cir. 2004); *In re Rhome*, 172 Wn.2d 654, 669, 260 P.3d 874 (2011) (no right of

mentally ill defendant in criminal matter to have independent determination).

A litigant arguing that a competency hearing should have been held *sua sponte* must present substantial evidence of inability to proceed. *Allen v. Calderon*, 408 F.3d 1150, 1151 (9th Cir. 2005) (hearing justified where substantial evidence existed of mental incompetence, declarations stating litigant did not understand orders).

There is sufficient evidence in the record to establish that Roderick, Jr. was mentally capable of participating in the parenting plan proceeding. The record reflects that he understood the nature of the proceedings: that he was involved in a parenting plan dispute. CP 43. There are no declarations or other evidence to demonstrate otherwise. His writings concerning the parenting plan proceedings were cogent, although not always completely accurate. CP 42-44, 48-49, 61, 82, 151. He made motions and raised rational arguments, such as the interesting technical argument that he was not properly served because Lynn's petition did not indicate his full name. *Id.* He also argued that Lynn had endangered their child as a rationale for granting him full custody. CP 151.

Roderick, Jr.'s filings indicated he understood nature of proceedings, and he appeared at the hearings and trial. CP 105, 120, 190, 238, 352. Although there is no hearing transcript, he offered his own

testimony and cross-examined Lynn. CP 333-35. He filed exhibits and asked for particular witnesses to appear. *Id.*

Even assuming Roderick, Jr. had presented substantial evidence from which the trial court could determine that Roderick, Jr. needed counsel, Roderick, Jr. himself already knew that he needed counsel and requested it. CP 103-04, 258, 318-19. On appeal, Roderick, Jr. argues the trial court should have granted him a continuance to retain counsel. Brief of Appellant at 47, 48. He was. Roderick, Jr. was granted a continuance specifically to afford him the opportunity to obtain counsel, and several additional continuances thereafter, allowing him ample time to do so. CP 103-04, 121, 313. In fact, the trial was held almost a year after Lynn filed her petition. CP 1, 313.

Roderick, Jr. has presented no evidence, let alone substantial evidence, that he was incompetent to participate in the parenting plan hearing, or that the trial court was under any obligation to further examine his competence or appoint him counsel at public expense.

(3) The Trial Court Did Not Violate Statutes, Contravene the Constitution, or Abuse Its Discretion in Conducting the Hearing or Crafting the Parenting Plan

Roderick, Jr. raises a number of statutory and constitutional challenges to the parenting plan. Assignments of Error Nos. 4, 7, 8; Br. of Appellant at 40-50. He claims it is flawed in a number of ways. *Id.* He

argues that the trial court failed to apply RCW 26.09.191 and RCW 26.09.520. *Id.* at 5, 40. He argues that the trial court violated the First Amendment by granting Lynn sole decision-making power regarding religious upbringing, and by refusing to allow him to take E.J.R. to Israel. *Id.* at 20, 38, 43. Roderick, Jr. argues that “parental alienation, abusive use of conflict and contempt” occurred, citing the unpublished opinion *In re Marriage of Hollingshead*, 157 Wn. App. 1039 (2010).<sup>9</sup> Br. of Appellant at 46.

(a) The Parenting Plan Does Not Violate Any Statutory or Constitutional Provisions

Roderick, Jr. argues that the parenting plan violates RCW 26.09.004 and .191 because it unreasonably places restrictions on his residential time until he seeks mental health assistance. Br. of Appellant at 46. This issue is reviewed for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). He also argues that the trial court violated his constitutional right to due process by finding that he had mental health issues that needed to be addressed. *Id.* at 46-47. This issue of whether his due process rights were violated is a question law reviewed *de novo*, and the question of whether evidence supports the

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<sup>9</sup> Roderick, Jr. refers to the case as “*Hollingshead v. Wilson*.” Br. of Appellant at 46. However he cites the case number 26593-5-III, which confirms that he is referring to the unpublished decision *In re Hollingshead*. As this Court is aware, litigants may not cite to unpublished opinions of the Washington Court of Appeals.

trial court's conclusion is reviewed for substantial evidence. *Adams*, 138 Wn. App. at 44; *Govett v. First Pac. Inv. Co.*, 68 Wn.2d 973, 973, 413 P.2d 972 (1966).

A trial court wields broad discretion when fashioning a permanent parenting plan. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). The court's discretion must be guided by several provisions of the Parenting Act of 1987, namely RCW 26.09.187(3) (enumerating factors to be considered when constructing a parenting plan), RCW 26.09.184 (setting forth the objectives of the permanent parenting plan and the required provisions), RCW 26.09.002 (declaring the policy of the Parenting Act of 1987), and RCW 26.09.191 (setting forth factors which require or permit limitations upon a parent's involvement with the child). *Id.*

A trial court may place some restrictions on a parent's unsupervised access to a child if that parent has "A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004...." RCW 26.09.191(3)(b). "Parenting functions" are defined to include "[m]aintaining a loving, stable, consistent, and nurturing relationship with the child," "[a]ssisting the child in developing and maintaining appropriate

interpersonal relationships,” and “[e]xercising appropriate judgment regarding the child’s welfare....” RCW 26.09.004(2)(e).

RCW 26.09.191(3)(g) allows the trial court to limit the terms of the parenting plan if it finds a parent's conduct is “adverse to the best interests of the child.” *Katare v. Katare*, 175 Wn.2d 23, 35-36, 283 P.3d 546 (2012), *cert. denied*, 133 S. Ct. 889 (U.S. 2013). Imposing such restrictions “require[s] more than the normal ... hardships which predictably result from a dissolution of marriage.” *Id.*

The trial court found that it was necessary to implement a phased-in parenting plan under RCW 26.09.191 because it found Roderick, Jr. had unaddressed mental health issues that impeded his ability to safely have unsupervised access to E.J.R. CP 366, 369. Specifically, the trial court found that “Mr. Roderick, Jr. has displayed erratic behavior consistent with mental health concerns. There is a concern that he may inadvertently harm the child if his mental health issues are untreated.” CP 369.

The trial court’s findings speak directly to the test enunciated in *Katare*: whether a more limited parenting plan protects a child’s best interests. *Katare*, 175 Wn.2d at 36. The trial court did not violate relevant statutes in crafting a phased-in parenting plan that imposed some restrictions on Roderick, Jr.’s unsupervised access to E.J.R., allowing a later lifting of those restrictions as Roderick, Jr. demonstrated that he had

a handle on his mental health issues. The plan does not alienate Roderick, Jr. from E.J.R. He still has supervised access to her, even in Phase I of the plan. The trial court's parenting plan is a proper exercise of discretion and appropriately applies the relevant statutes.

Roderick, Jr. next contends that the trial court violated his First Amendment right to freedom of religion in the parenting plan by (1) granting sole decision-making power to Lynn regarding E.J.R.'s religious upbringing, citing *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 488, 899 P.2d 803 (1995) and (2) denying him the right to take E.J.R. from her mother and move to Israel. *Id.* at 20, 37, 42-46.<sup>10</sup>

In *In re Marriage of Jensen-Branch*, the trial court placed sole religious decision-making authority in the mother. 78 Wn. App. at 483. It permitted the father to take the children to his church when they were with him, but expressly prohibited him from providing "any religious education or indoctrination." *Id.* This Court found the prohibition restricted the father's free exercise rights. It held the trial court "could restrict [father] from teaching his children his faith only upon a substantial showing of

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<sup>10</sup> Roderick, Jr.'s contention that he has a First Amendment religious right, or a right under Israeli law, to take E.J.R. from her mother and move with her to Israel, and that the trial court abused its discretion in crafting a parenting plan that prohibited him from doing so is without merit, and actually reinforces the wisdom of the trial court's imposed limitations under RCW 26.09.191(3). See *Katara*, 175 Wn.2d at 36 (father's threat of abducting children and moving with them to India constituted sufficient grounds to impose travel restrictions in parenting plan).

potential or actual harm to the children[.]” *Id.* Had the court not placed the teaching restriction on the father, however, its decision to place sole decision-making authority in the mother would have been reviewed under the abuse of discretion standard, even if the trial court considered the parents' religious affiliations in making its decision. *Id.* at 490.

The critical feature of *Jensen–Branch* – an express prohibition placed on the father from teaching his faith to his children – is absent here. This distinction militates against finding a free exercise restriction and thereby applying the *Jensen–Branch* “substantial showing” test here. If the trial court intended not only to place sole decision-making in Lynn, but also to prevent Roderick, Jr. from taking E.J.R. to his church or teaching her his faith, Roderick, Jr.'s free exercise claim would be strong. However, nothing in the parenting plan restricts those activities.

The court here based its decision on a finding that Roderick had mental health issues that impeded his ability to parent E.J.R. and communicate with Lynn. CP 369. Also, the trial court’s order allows Roderick, Jr. to petition to change the major decisions provision after he completes Phase I, after he gets treatment for his mental health issues. CP 370. The trial court’s order demonstrates no abuse of discretion or violation of Roderick, Jr.’s religious liberty.

(b) The Parenting Plan Contains Sufficient Findings of Fact and Conclusions of Law

Roderick, Jr. argues that the trial court's finding of fact in the parenting plan were insufficient, citing *Bay v. Jensen*, 147 Wn. App. 641, 650, 196 P.3d 753 (2008). Assignment of Error No. 8; Br. of Appellant at 42.

A trial court issuing a parenting plan must make findings of fact and conclusions of law sufficient to suggest the factual basis for the ultimate conclusions. *Lawrence v. Lawrence*, 105 Wn. App. 683, 686, 20 P.3d 972 (2001). In this case, the issue is whether the findings were adequate to support the trial court's phased-in parenting plan under RCW 26.09.191(3).

Findings to support parenting plan restrictions under RCW 26.09.191 are sufficient if they refer to the best interests of the child and state the specific reasons for the restrictions, citing the criteria laid out in the statute. *Kinnan v. Jordan*, 131 Wn. App. 738, 752, 129 P.3d 807 (2006). The trial court must make findings relating to all of the relevant statutory factors at issue. *In re Marriage of Stern*, 57 Wn. App. 707, 711, 789 P.2d 807, *review denied*, 115 Wn.2d 1013 (1990).

*Bay*, upon which Roderick, Jr. relies, is inapposite. That case involves a parent's request for child relocation, not establishment of a

parenting plan. *Bay*, 147 Wn. App. at 645. A court order allowing relocation of a child by one parent is subject to a mandatory eleven factor test. *Id.*; RCW 26.09.520. A trial court relocation order *must* make findings addressing all eleven factors. *Id.* at 650, *citing In re Marriage of Horner*, 151 Wn.2d 884, 896, 93 P.3d 124 (2004).

Here, the trial court's findings of fact and conclusions of law explain the court's reasons for imposing the phased-in parenting plan and restricting Roderick, Jr.'s initial access to E.J.R. The trial court found that Roderick, Jr.'s unaddressed mental health issues could cause him to inadvertently harm E.J.R. The trial court also addressed the relevant factor in RCW 26.09.191(3), the best interests of the child and Roderick, Jr.'s inability to properly and safely parent E.J.R. unsupervised.

(c) Substantial Evidence Supports the Trial Court's Findings and Conclusions that Roderick, Jr. Should Obtain Help with His Mental Health Issues Before Taking Unsupervised Control of His Child or Sharing Critical Decision-making Tasks with Lynn

Roderick, Jr. also argues that the trial court incorrectly found that he had mental health issues, and abused its discretion in crafting a parenting plan on that basis. Br. of Appellant at 48. Roderick, Jr. states that the trial court refused to subpoena expert witnesses to refute the court's findings that his testimony indicated mental health issues. *Id.* at 48. He argues that trial court should not have labeled him delusional, and

that the trial court's "slanderous diagnosis" should be overturned. *Id.* at 47-48. He argues that the trial court abused its discretion in conditioning unsupervised residential time on Roderick, Jr.'s compliance with his first receiving mental health evaluation and treatment. *Id.*

A trial court may limit a parent's residential time if the trial court finds that the parent has "a long-term emotional or physical impairment which interferes with the ... performance of parenting functions." RCW 26.09.191(3)(b). The trial court did so here, citing Roderick, Jr.'s mental health issues. CP 366, 369.

Our Supreme Court has noted that restrictions on visitation under RCW 26.09.191(3) are permissible if they are imposed to protect a child from physical, mental, or emotional harm. *In re Marriage of Chandola*, 180 Wn.2d 632, 648, 327 P.3d 644 (2014), *as corrected* (Sept. 9, 2014), *reconsideration denied* (Sept. 10, 2014). An abuse of discretion occurs only when the restrictions imposed in the parenting plan are not reasonably calculated to prevent such harm. *Id.* In *Chandola*, the Court concluded that emotional instability was sufficient grounds to place reasonable restrictions when it threatened the child's emotional and physical well-being. *Id.* at 651.

That Roderick, Jr. displayed unpredictable and emotional behavior is evidenced in the record. Both Lynn and other witnesses expressed

concern about his stability. CP 90, 96-98. He repeatedly misrepresented facts to CPS in an attempt to wrongfully accuse Lynn of child abduction and abuse, including threatening E.J.R. with a loaded weapon and “admitting” to it in her declaration. CP 151, 178, 228. Lynn’s declaration noted Roderick, Jr.’s erratic behavior and frivolous accusations, which caused Lynn to fear him and necessitated the imposition of a restraining order. CP 86-91. Roderick’s court filings also suggest some mental health issues, as he did not always have a realistic view of the facts, and suggested that there were forces working against him among the police, the KCBA, and elsewhere. CP 42, 53, 60-61.

Roderick, Jr. does not and cannot argue substantial evidence does not support the trial court’s order. Review of the record as to this issue, to the extent possible, shows no error. The trial court limited Roderick, Jr.’s residential/visitation time only until he could be evaluated and treated by a mental health professional. CP 366-69.

The phased-in parenting plan the trial court imposed is reasonably calculated to protect E.J.R. while providing Roderick, Jr. with the opportunity to increase his parenting time by getting the help and support he needs. The plan allows Roderick, Jr. more and more visitation and residential time as he progresses with his emotional and mental stability.

Thus, as he acquires the stability to be a better parent, he will have more opportunity to do so. *Id.*

The trial court imposed a reasonable, phased-in parenting plan contingent upon Roderick, Jr.'s mental health progress. The trial court's parenting plan contains the relevant findings, supported by substantial evidence. The court did not abuse its discretion.

(4) E.J.R. Was Represented Below By Lynn and a CASA Worker, the Trial Court Did Not Abuse Its Discretion in Declining to Appoint a GAL

Roderick, Jr. repeatedly asserts that the trial court denied E.J.R. representation, and that he was forced to represent her. Assignment of Error No. 2; Br. of Appellant at 3, 49. He argues that the trial court should have appointed a GAL to represent E.J.R. in court. *Id.* This issue is reviewed for abused of discretion. *Dugger v. Lopez*, 142 Wn. App. 110, 117, 173 P.3d 967 (2007).

A trial court may appoint a GAL to represent the interests of a minor or dependent child when the court believes the appointment of a GAL is necessary to protect the best interests of the child in any proceeding regarding the determination or modification of a parenting plan, child custody, visitation, or support, or the distribution of property or obligations. RCW 26.12.010; RCW 26.12.175(1)(a). Unless otherwise ordered, the GAL's role is to investigate and report to the court concerning

parenting arrangements for the child, and to represent the child's best interests. RCW 26.12.175(1)(b).

In a dissolution action involving minor children, “[t]he court *may* order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both.” RCW 26.09.220(1) (emphasis added). RCW 26.12.175 provides:

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter.... The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county.

Absent circumstances raising concern for the child's welfare and safety, the trial court is not required to appoint a GAL for the child in an action under chapter 26.26 RCW solely to establish a parenting plan between acknowledged, legal parents. *Dugger*, 142 Wn. App. at 112, 121.

Here, the trial court did not abuse its discretion in declining to appoint a GAL for E.J.R. based on Roderick, Jr.’s unfounded accusations. The allegations of abuse against Lynn were unsupported by any objective facts, and the trial court was not obligated to accept Roderick, Jr.’s allegations over Lynn’s. The trial court heard from both parents, weighed the evidence, and made findings that were sufficiently supported by the

record. Based on these findings, the trial court determined a parenting plan. The trial court's decision was not unreasonable or untenable and it did not abuse its discretion by not appointing a GAL.

(5) Lynn Is Entitled to Her Attorney Fees on Appeal

RAP 18.1 allows a party to recover attorney fees on appeal if a statute, contract, or equitable principle applies. Lynn asks for her fees based on both RCW 26.09.140 and the equitable principle of sanctioning intransigent conduct.

RCW 26.09.140 provides that a party in an action under the chapter may recover his or her attorney fees on appeal. Lynn asks this Court to exercise its discretion in awarding Lynn her attorney fees under this statute.

Lynn also asks that this Court consider her request in light of Roderick, Jr.'s intransigent conduct. This basis for fees has its roots in the equitable exception to the American Rule for bad faith conduct. If a party's conduct in a case is particularly litigious, causing the successful party to require additional legal services, fees and expenses will be awarded regardless of the financial resources of the prevailing party. *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989) (13 days of trial, 127 trial exhibits, and 1,000 pages of testimony required to unravel husband's financial affairs); *Eide v. Eide*, 1 Wn. App. 440, 462 P.2d 562

(1969) (husband tampered with exhibits). *See also, In re Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131, *review denied*, 148 Wn.2d 1011 (2002) (at trial); *In re Marriage of Mattson*, 95 Wn. App. 592, 976 P.2d 157 (1999) (post-dissolution child support proceedings); *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997) (pre-trial conduct).

Lynn has been forced to respond to Roderick, Jr.'s hurtful accusations and baseless arguments, unsupported by the record below or the legal authorities he cites. She is not a person of means, yet took responsibility to hire counsel to defend the parenting plan at trial and on appeal, and responsibility that Roderick, Jr. did not undertake himself. He has had to pay no attorney fees, and he should not be allowed to run up Lynn's attorney fees without compensating her. Her fees should be awarded.

#### E. CONCLUSION

Roderick, Jr. had a fair and proper hearing in which he was allowed to raise his arguments and present his evidence regarding the parenting plan. The trial court violated no statute, contravened no constitutional provision, and did not abuse its discretion in entering a fair and reasonable parenting plan. The trial court's order should be affirmed, and Lynn should be awarded her reasonable attorney fees on appeal.

DATED this 15<sup>th</sup> day of October, 2014.

Respectfully submitted,



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Sidney Tribe, WSBA #33160  
Talmadge/Fitzpatrick  
2775 Harbor Avenue SW, 3rd Floor  
Seattle, WA 98126  
(206) 574-6661

Beverly Nored, WSBA #34055  
Nored Law  
15 S. Grady Way, Suite 400  
Renton, WA 98057  
(425) 954-7714

Attorneys for Respondent  
Brenda Jeanne Lynn

# APPENDIX

*The Court of Appeals*  
of the  
*State of Washington*

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

August 22, 2014

Philip Albert Talmadge  
Talmadge/Fitzpatrick  
2775 Harbor Ave SW  
Seattle, WA, 98126-2138  
phil@tal-fitzlaw.com

Brenda Jeanne Lynn  
12904 SE 160th Street  
Renton, WA, 98058  
brendy171@yahoo.com

Laura Marie Groves  
Groves Law Offices, LLP  
1008 Yakima Ave Ste 201  
Tacoma, WA, 98405-4850  
laura@groveslawoffices.com

Sidney Charlotte Tribe  
Talmadge/Fitzpatrick  
2775 Harbor Ave SW  
Third Floor Ste C  
Seattle, WA, 98126-2138  
sidney@tal-fitzlaw.com

Michael John Roderick, Jr.  
PO Box 684  
Tacoma, WA, 98401  
elliesdad723@gmail.com

CASE #: 70531-8-1

In re the Parentage of EJR: Michael John Roderick, Jr. Appellant v. Brenda Jean Lynn, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on August 21, 2014, regarding Appellant's Motion for Indigency:

On April 23, 2014, appellant Michael Roderick, Jr. filed a motion to "have court declare he is indigent and provide for a transcript of the trial audiofile record to be entered into record[.]" Roderick states he is indigent and cannot pay for a transcript. But only the Supreme Court may authorize expenditure of public funds for this civil appeal. See RAP 15.2. Also, Roderick does not specify what "trial audiofile record" he wants transcribed at public expense. He filed a statement of arrangements in December 2013, designating no trial court proceedings to be transcribed, and has already filed his opening brief. Roderick presents no basis for the requested relief.

Therefore, it is

ORDERED that Roderick's motion to "have court declare he is indigent and provide for a transcript of the trial audiofile record to be entered into record" is denied to the extent it seeks provision of a transcript at public expense.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

lls

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Brief of Respondent in Court of Appeals, Cause No. 70531-8 to the following:

Michael Roderick Jr.  
PO Box 684  
Tacoma, WA 98401

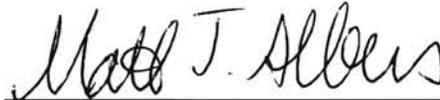
Beverly Nored  
Nored Law  
15 S Grady Way, Suite 400  
Renton, WA 98057

Original and a copy delivered by ABC messenger:

Court of Appeals, Division I  
Clerk's Office  
600 University Street  
Seattle, WA 98101-1176

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

DATED: October 15<sup>th</sup>, 2014, at Seattle, Washington.



\_\_\_\_\_  
Matt J. Albers, Legal Assistant  
Talmadge/Fitzpatrick

2014 OCT 15 PM 2:55  
COURT OF APPEALS  
STATE OF WASHINGTON