No. 103830-5

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

JOHN TORSTEN LOOP,

Petitioner,

and

LISA MICHELE LOOP,

Respondent.

RESPONDENT'S ANSWER TO AMICUS CURIAE MEMORANDUM

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I. INTRODUCTION

Respondent Lisa Loop submits this answer to the amicus memorandum filed by Parents for a Constitutional Judiciary ("Amicus") in support of petitioner John Loop's petition for review.

II. RESPONSE TO AMICUS' ARGUMENT

This Court should deny review of Division One's unpublished opinion affirming the trial court's order confirming an arbitrated restraining order protecting the parties' then-minor daughter, who is now an adult, from contact with her father. Contrary to Amicus's assertion, review of the court's unpublished opinion is not warranted because it does not involve a "significant question of law under the Constitution of the State of Washington or of the United States." RAP 13.4(b)(3).

A. Review is not warranted because Amicus's argument in support of father's petition is based on a misrepresentation of the record.

Amicus's argument that father's due process rights were purportedly violated by the trial court entering the arbitrated restraining order does not warrant review of Division One's unpublished opinion because this argument is based entirely on a fundamental misrepresentation of the record. It is simply **untrue** that it is "uncontested and agreed by all parties" that the confirmed restraining order protecting the daughter from contact with father was issued by the arbitrator "*sua sponte*, from the mind of the Arbitrator, alone, who of her own accord, decided that there was both a need for an order, and such an order should be issued." (Amicus Memo. 10) It is also **untrue** that "it is uncontested by all parties that [father] never had actual notice that a restraining order was an issue that would potentially be decided by the Arbitrator, nor that the

issue was even being contemplated by the Arbitrator." (Amicus Memo. 9; *see also* Amicus Memo. 4-5, 12, 15)

Father had actual notice that a restraining order may be approved by the arbitrator because mother had proposed a restraining order during arbitration. (*See* CP 223, 261-65, 412, 486) In support of entering a restraining order, mother testified during arbitration that if her request was granted, "she will assist [the daughter] in lifting or modifying the restraining order" in the future if circumstances change and the daughter desires contact with father. (CP 222, 411)

The arbitrator approved the restraining order "in the form proposed by [mother]" (CP 223, 412) after making specific and detailed findings of fact regarding mother's "request for RCW 26.09.191 restrictions for a restraining

order protecting [the daughter]."[1] (*See* CP 267-84, 486-503) The arbitrator agreed with mother that a restraining order, in addition to restrictions in the parenting plan, was warranted (CP 505) after considering that the daughter "has been gravely impacted by the endless barrage of [father]'s unwanted contact and has been made to feel powerless because this contact occurred even though there are court orders in place prohibiting it." (CP 506) As the arbitrator stated, "no sixteen-year-old child should suffer from severe stress disorder, including the need to take anti-depressants, as a result of bad decisions made by a parent." (CP 506) Further, due to the daughter's age, the arbitrator recognized "there simply is not enough time to put any

[1] RCW 26.09.191(4)(d)(iii) authorizes a court to order "no contact" between a parent and child "[i]f, based on the evidence, the court expressly finds that limitations on the residential time with a child will not adequately protect a child from the harm or abuse that could result if a child has contact with the parent requesting residential time."

reasonable step-up plan into effect, before she turns eighteen." (CP 506)

Based on this record, Division One properly affirmed entry of the arbitrated restraining order because father "was both legally and factually on notice that the arbitrator might authorize a restraining order in conjunction with a parenting plan." (Op. 9) Contrary to Amicus's claim (Amicus Memo. 5, 6-7, 10-11), the court's decision was not based solely on father having "constructive notice" that a restraining order may be entered. As the court stated, and the record supports, "the procedural history of this case demonstrates that [father] had *actual notice* of the possibility of a restraining order." (Op. 9, emphasis added)

As the record establishes that father had actual notice that a restraining order may be approved by the arbitrator, his due process rights were not violated by the trial court's order confirming the arbitrated restraining order. Therefore, Division One's unpublished opinion affirming

the trial court's order raises no significant question of constitutional law warranting review. RAP 13.4(b)(4).

B. Review is not warranted because father failed to preserve his purported constitutional argument for appellate review by failing to timely raise it in the trial court.

Amicus's claim that father was "denied the ability to present evidence in opposition" to the restraining order (Amicus Memo. 15) does not warrant review of Division One's unpublished opinion. As the court stated, to the extent father argued that "he was not afforded an opportunity during the arbitration to contest the basis for the restraining order, this assertion is not reviewable because [father] did not provide a copy of any records from the arbitration proceedings." (Op. 9)

Despite being given the opportunity do so, father never filed a written response to mother's motion to confirm the arbitrated restraining order. In fact, mother initially asked Division One not to review father's due process challenge because he raised this issue only *after*

the trial court had already made its oral ruling confirming the arbitrated restraining order. (Resp. Br. 31-33; *see* RP 3, 5, 8) As mother asserted, had father properly preserved this issue for appellate review by raising it sooner in the trial court, she could have provided additional records disputing father's claim that he lacked notice and an opportunity to be heard on whether a restraining order should be entered. (Resp. Br. 32-33)

While RAP 2.5(a)(3) allows this Court to consider a "manifest error affecting a constitutional right" raised for the first time on appeal, if "the record from the trial court is insufficient to determine the merits of the constitutional claim, then the claimed error is not manifest and review is not warranted." *State v. WWJ Corp.*, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999) (cited source omitted). Therefore, to the extent, the record is insufficient to address whether father had the opportunity to contest entry of a restraining

order, despite having actual notice that a restraining order might be entered, this Court should deny review.

III. CONCLUSION

This Court should deny review for the reasons stated in this answer and in mother's answer to father's petition for review.

I certify that this answer is in 14-point Georgia font and contains 1,080 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 5th day of August, 2025.

SMITH GOODFRIEND, P.S.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 5, 2025, I arranged for service of the foregoing Respondent's Answer to Amicus Curiae Memorandum, to the court and to the parties to this action as follows:

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DATED at Everett, Washington this 5th day of August, 2025.

/s/ Victoria K. Vigoren
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SMITH GOODFRIEND, PS

August 05, 2025 - 9:58 AM

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