

SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Marriage of:

ROBERT W. COONEY,

Respondent,

and

HILLARY A. BROOKS,

Appellant.

No. 104365-1

PETITIONER’S  
STATEMENT OF  
ADDITIONAL  
AUTHORITIES UNDER  
RAP 10.8

Brooks cites *Evitts v. Lucey*, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985), RAP 2.5(a)(2), and *Roberson v. Perez*, 156 Wn.2d 33, 123 P.3d 844 (2005), as additional authorities which show her petition’s first issue (PFR 3) satisfies RAP 13.4(b)(3). While there is no constitutional right to appeal, a position Brooks did not advance, *Evitts* demonstrates that where a state provides an appeal of right, as Washington does, its courts “must nonetheless act in accord with the dictates of the Constitution-and, in particular, in accord with the Due Process Clause.” *Evitts*, at 401; PFR 7-8. If appellate courts are free to select which issues framed

for appeal they decide and which controlling statutes they give effect to, the concept of an “appeal of right” before a neutral arbiter is rendered illusory. PFR 7-19.

Second, while Brooks raised the parties’ contractual non-waiver provision before the trial court (CP 451), and neither Cooney nor the appellate court raised as an issue that she did not (Answer 15), RAP 2.5(a)(2) expressly provides that failure to establish facts upon which relief can be granted, interchangeable with failure to state a claim, can be raised for the first time on appeal. *Roberson*, 156 Wn.2d at 40 ¶17. Where, as here, a contract provides for non-waiver of the right to arbitrate, a party cannot state a claim for waiver of that right by conduct. PFR 13-14 (Issue 5); CP 475 ¶2.6, 486 § XIII. Because the waiver defense was not available to Cooney, it cannot serve as a basis to deny arbitration.

Division 1 demonstrably did not decide Brooks’ issues raised for appeal (PFR 7-14), nor did it explain why it failed to do so. Opinion, *throughout*. Because due process requires that

issues raised for appeal be decided by a neutral arbiter, a biased party's attempt to explain away the court's failures after the fact cannot meet constitutional due process requirements.

This document contains 314 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 20th day of August 2025.

Respectfully submitted,

/s/ Hillary A. Brooks

Hillary A. Brooks

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Appellant

DECLARATION OF SERVICE

I electronically served a true and accurate copy of the *Petitioner's Statement of Additional Authorities* in Supreme Court Cause No. 104365-1 to the following:

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Original electronically delivered via appellate portal to:  
Supreme Court  
Clerk's Office

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: August 20, 2025 at Bend, Oregon.

/s/ Hillary Brooks  
Hillary Brooks

**HILLARY ANNE BROOKS**

**August 20, 2025 - 10:19 AM**

**Transmittal Information**

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