Supreme Court No. 92564-0

Court of Appeals No. 72562-9-1

In the Supreme Court of the State of Washington

SOLOMON MEKURIA

Appellant/Cross-Respondent

V.

ASTER MENFESU

Respondent/Cross-Appellant

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Solomon Mekuria, petitioner in the Superior Court and Appellant/Cross-Respondent in the Court of Appeals, requests this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEAL DECISION

Solomon Mekuria seeks review of the Court of Appeals' decision entered on September 28, 2015. Appendix A-1. A timely motion for reconsideration was denied on October 23, 2015. Appendix at A-20.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the State should replace parental responsibilities of educational upbringing of a fit parent with community. A fit parent is available to perform these vital parenting function but barred by limiting visitation right to only every other week ends while the parties' daughter need day to day attentions on these parenting function and this is against the Washington state statue.

2. Whether Court of Appeals erroneously interpreted Mekuria's fundamental appeal of the trial court's decision and used wrong standards which violates appellant's due process.

3. Whether depriving one parent his interest on his child major decision making authority violates his constitutional right under the equal

protection clause which guarantees that people similarly situated under the law receive similar treatment. U.S. Constitution Amendment XIV.

4. Whether the trial court is required to make findings of any disability under *RCW 26.09.191* in a parenting plan modification to allocate parenting responsibilities action according to the fitness of each parent.

5. Whether 100% transportation allocation for visitation purposes by one parent contradicts the statue *RCW 26.19.080(3)*

6. Whether allocation of private school fee without the showing of the need to attend private school, the availability of public school, and the mutual agreement to send to private school is against public policy RCW 26.19.080(3).

7. Whether Court of Appeals erred in awarding attorney fee to respondent, without proper consideration of the appellant's ability to pay and the merits of the case, respondent had no need for assistance in paying her costs of this proceeding because she was represented with free non-profit organization.

D. STATEMENT OF THE CASE

On April 23, 2009 the parties separated when Menfesu left the parties' residence in Snohomish County. On May 3, 2009 Menfesu

obtained Ex Parte temporary restraining order from King County Superior Court and removed the child from her father's custody to relocate her in Renton King County. Following this, on August. 19, 2009 Mekuria Petitioned for Dissolution. On August 18, 2010 King County Superior Court issued Final Permanent Parenting plan. On September 27, 2010 the court issued a changed Final Parenting Plan CP 654. On March 5, 2013 Mekuria petitioned for Major modification relying up on Menfesu's substantial change of circumstances because her alleged sight impairment which is not in the court record and the parties' daughter repeated injuries including burn. The court commissioner found adequate cause and appointed Guardian ad litem; later this ruling was reversed under revision filed by Menfesu. Mekuria appealed; the Appeal Court affirmed the Trial Court's decision. On July 11, 2014 the trial court issued a new final permanent parenting plan based on Menfesu's petition for minor modification. CP 369.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. Appeals Court's opinion contradicts itself and the statue *RCW 26.09*; its opinion prejudice Mekuria in light of using double standard in its opinion. It violates Equal Protection Clause under the State and Federal Constitutions.

Appeal Courts' presumption regarding Menfesu's sight impairment and the help from NFP for its decision is prejudicial to Mekuria. See A-13 First of all, the trial court's decision was not based on Menfesu's disability because it did not find any disability even though Menfesu testifies about her visual impairment. A-22, A-23. It is based on evidences brought before the trial court on the unavailability of regularly scheduled academic and administrative assistance for Eden. A-22. The trial court's statement on its Memorandum of Opinion indicates that the mother's testimony regarding her blindness was vague and somewhat contradictory. A-23. Therefore, the trial court did not make any disability findings on the permanent parenting plan. CP 370 at Section 2.2, CP 379. However, Appeal Court made additional findings unsupported by the record stating that: "...the trial court appears to have speculated that both Menfesu's vision further deteriorate and any such possible deterioration would negatively impact her ability to support E.M. academically." A-13 Again, the trial court's decision was not based on Menfesu's sight impairment. But the trial court acknowledged Menfesu's testimony of her sight impairment and found her testimony was vague and somewhat contradictory. A-22 and A-23.

In its opinion (page 2, foot note 8 & 9) Appeal Courts' review relied by citing *Sunnyside Valley Irrigation Dist. v. Dickie*. On this same case our Supreme Court, affirming Appeals Court decision, stated:

"Court Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). **If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved."**

But Appeal Court reversed the trial court's findings while there is substantial evidence to meet the standards of adequate cause findings. The trial court after over 5 days of trial made a threshold finding allowing Mekuria to petition for educational decision making authority in 2016 without a showing of adequate cause findings. The trial court's findings on its Memorandum of Opinion meets the standards of adequate cause requirements by the statues *RCW 26.09.260* and *RCW 26.09.270*. A-22. In this trial there is a showing of substantial change of circumstances of the child; communities replacing major parental functions of the parent while there is a fit parent available. Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. *RCW 26.09.002*.

The parties' daughter is visited by different people to meet her educational need. RP 385 at lines 12-15, RP 344 at lines 15-17, RP 184 at lines 23-25, RP 185 at lines 1-15, RP 192 at line25, RP 193 at lines 1-15. But this basic parenting function including providing transportation to the child is the responsibility of parents. RCW 26.09.004. When the trial court awarded the mother custody in 2010 dissolution trial this fact was not known to the court. The community involvement over the fit biological parent is not in the best interest of the child. The parties' daughter emotional and psychological condition has never been evaluated by child counselors or equivalent providers as to the consequences of involving outside people over her own parent. The mother brought a social worker and GAL to a witness stand to testify for her. But these witnesses have never seen the parties' daughter in person. (RP pg. 307 line 10)

They testified not knowing the condition of the child. *RCW 26.09.002* states in part: In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities.

There is substantial circumstantial change on the child. There is a finding by the trial court to meet the minimum threshold requirements for modification. More litigation is not in the best interest of the child. The

court has met the threshold requirements for adequate cause findings for modification.

Appeal Courts' decision contradicts with another Appeal Courts' decision. In unpublished opinion, Appeal Court stated:

"The primary purpose of the adequate cause requirement is to prevent movants from harassing non movants by obtaining a useless hearing. In *re Marriage of Adler*, 131Wn. App. 717, 724, 129P.3d2932006), review denied, 158Wn.2d1026 (2007). McKayla argues that there was no adequate cause hearing and no entry of findings of fact to support the conclusion that adequate cause for a full modification hearing existed. We disagree and conclude that the August 1 hearing was sufficient to satisfy the requirements of *RCW 26.09.270* as an adequate cause hearing. Written findings of fact and conclusions of law were not required. *In re the Marriage of Kinnan*, 131Wn. App. 738, 750, 129P.3d807 (2006).

The trial court based its adequate cause finding on the pleadings and the "extensive record" in the file. Clerk's Papers (CP at 18). Given the history of this case, which included a temporary modification of the children's primary residential placement, the trial court did not abuse its discretion in making the adequate cause determination."

In Re Marriage Of Mckayla Smith.

Appeal court ruling conflicts in itself and applied a wrong standard. Appeal court cited *RCW 26.19.080(3)* to justify the trial court's ruling regarding allocation of private school tuition. The statue *RCW 26.19.080(3)* is for special child rearing expenses whereas the parties' daughter has no unusual needs the public schools could not meet. There is no evidence that Eden has unusual educational need that public school could not provide. But, the Trial Court issued a finding regarding Menfesu's alleged limitations with reading and assisting Eden with homework. *RCW 26.19.080(3)* does not apply to Menfesu's alleged limitations and does not support Menfesu's special need. The Trial Court and Appeal Court applied this standard in ordering Mekuria to pay a share of school fee in the future if the school fee is increased. In applying this standard Appeal court contradicted itself. In fact, *RCW 26.19.080(3)* warrants long-distance transportation costs to be shared to and from the parents for visitation purposes. The Appeal Court and Trial Court exercised double standard by not applying this statue in distributing transportation cost allocation whereas improperly applying it in school fee allocation. Menfesu did not allege the parties' daughter has unusual need to enroll her to private school. But Appeal Court relied on *RCW 26.19.080(3)* in support of its decision in affirming trial court's decision regarding school fee. This is prejudicial to Mekuria. The correct remedy

would have been to distribute parental responsibilities according to the fitness of each parent to meet the best interest of the child. *RCW 26. 09.002, RCW 26.09191(3)*. The court presumes that a fit parent acts in a child's best interests. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). The Fourteenth Amendment guarantees Due Process and Equal Protection to all. "[n]o state shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" *U.S. Const. Amend. XIV*

The state must meet a threshold prior to infringing upon fundamental rights.

2. Appeal Court decision conflicts with Washington State Supreme Court decisions.

Trial Court applied the correct legal standard when it allows Mekuria to petition for decision making modification in 2016 without a showing of adequate cause; Appeal Court reversed this ruling because the Trial Court abused its discretion by allowing Mekuria to petition for educational decision making authority hearing in 2016 without a showing of adequate cause. After five days of trial the Trial Court made evidentiary ruling regarding the parties' daughter education that meets the requirements of *RCW 26.09.260* and *RCW 26.09.270.* Decisions involving evidentiary

issues lie largely within the sound discretion of the trial court and will not be reversed on appeal absent a showing of abuse of discretion. *Maehren v. City of Seattle*, 92 Wn.2d 480, 488, 599 P.2d 1255 (1979). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *State v. Huelett*, 92 Wn.2d 967, 969, 603 P.2d 1258 (1979). Hence, the trial court finding should not be reversed on appeal because the facts are supported by the record and the facts meet the requirements of the correct standard. A trial court's ruling is made for untenable reasons if it is based on an incorrect legal standard or the facts of the case do not satisfy the requirements **of** the standard.

Marriage of Littlefield 33 Wn.2d 39.

3. Trial court and Appeal court erred in awarding private school costs without proper finding of the need for private school tuition and is in conflict with another Appeal and Supreme Court decisions.

On page of its opinion Appeal Court stated:

"Mekuria testified that he agreed with the decision to send E.M. to private school, though he preferred for her to attend a different private school that was closer to his home in Everett." A-6.

Mekuria never had any kind of agreement with Menfesu to send Eden to private school. In fact, his communication with Menfesu was

limited through her attorney in writing and emails. Appeal Court erroneously inserted this statement which is prejudicial to Mekuria.

In Mekuria's trial brief Mekuria argued that the mother should be limited to the relief requested in her original Petition. CP 80. In her petition for modification, the mother did not request either the need for private school or allocation of school fee. CP 379. However, after the mother petitioned for parenting plan modification, she placed the child in a private school without any kind of agreement and prior knowledge of Mekuria. RP 347, RP 348. Allocation of school fee became an issue in The Appeal Court because the trial court simply signed Menfesu's proposed child support worksheet which triggered the filing of reconsideration to correct this error. CP 408. But in response the trial court issued a new finding in support of school fee CP 523. Without giving chance Mekuria to cross-examine Menfesu for the need to private school, the trial court issued new findings. This violates Mekuria's due process.

...where acceptable public schools are available, and there is no showing of special circumstances justifying the need for private school education, the noncustodial parent should not be obligated to pay for the private education of his or her minor children. *In Re Marriage Of Stern*, 57 Wn. App. 707, 720, 789, P.2d 807 (1990).

Special circumstances that could support imposing such an obligation include "family tradition, religion, and past attendance at private school." *Stern*, 57 Wn. App. At 720. Also, when a parent objects to paying private school tuition, the court must consider and make findings as to paying private school tuition, the court must consider and make findings as to the objecting parent's ability to pay.

No evidence submitted concerning the availability of acceptable public schools. Menfesu does not allege the child has unusual educational needs the public schools could not meet. Nor does the record contain any evidence on Mekuria's ability to pay the tuition costs other than the amount of his income itself. The trial court did not explain its decision orally and entered no findings on the matter. Therefore, the evidence in the record is inadequate to persuade a rational, fair -minded person of the need for private schooling, and thus fails to provide an adequate basis for a finding of special circumstances justifying an obligation to pay such expenses. See *In re Marriage of Vander Veen*, 62 Wn. App. 861, 865-67, 815 p.2d 843 (1991) finding substantial

evidence supporting the trial court's award of private school tuition based on extensive testimony concerning several of the Stern factors).

The burden to show justifying assistance for private school fee tuition lays up on Menfesu. A sufficient showing would include not only

evidence of special circumstances, but also evidence of a lack of adequate public schools and evidence that Mekuria has the ability to pay.

In its opinion, Appeal court stated: "Though Mekuria contends that his economic-circumstances have since changed, this evidence he now relies was not before the trial court."

But the evidence Mekuria relied on was before the trial court. See CP 440.

4. The amicus brief filed by The National Federation of the Blind (NFB) contradicts the Federal and State rules when it testifies in support of Menfesu.

The Amicus brief is irrelevant in this case. There is no sight impairment finding by the trial court. There is no court record to support Menfesu's disability. Menfesu is not deprived of any right in parenting the parties' child. RCW 26.09.191(3)(b) requires the court to adjust the parenting plan in the best interest of the child If the court finds long term physical disability. But the Trial Court did not find any disability in the parenting plan Section 2.2. CP at 370, CP at 379. In fact the trial court orally expressed there is no court record to support Menfesu's sight impairment in the 2010 dissolution trial. RP 426 at lines 10-16, RP 427 at line 23, RP 453 at line 22, and RP 452 at line 17.

The trial court made findings supported by evidences that the mother needs help in parenting function (the child's education) CP 405. All these contradicts Appeal Courts' presumption of Menfesu's sight impairment without court record and findings by the trial court. Therefore, NFB's amicus brief is misplaced and moot.

"...(a) When Allowed by Motion. The appellate court may, on motion, grant permission to file an amicus curiae brief only if all parties consent or if the filing of the brief would assist the appellate court." RAP 10.6

"When the party seeking to appear as amicus curiae is perceived to be an interested party or to be an advocate of one of the parties to the litigation, leave to appear amicus curiae should be denied."

Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65, 82

5. Appeal Court's attorney fee award contradicts with another Appeal Court attorney fee award.

Appeal Court's discretion to award attorney fee based on RCW 26.09.140 gives the court discretion of awarding attorney fee in order a party to pay for the cost of the other party to maintain the appeal and attorney fees in addition to statutory costs.

But Menfesu has not had any kind of burden maintaining attorney and cannot show she has a need for attorney fee award because she is represented by a free nonprofit legal aid throughout the dissolution trial.

NW Justice project is public and state funded nonprofit legal service provider to represent low income litigants exclusive to marriage dissolution representations.

On his appeal Mekuria showed he has no ability to pay because of the change of circumstances. But Appeal Court concluded Mekuria has ability to pay and that Menfesu has a need. In deciding whether to award costs or attorney fees under *RCW 26.09.140* in a divorce-related proceeding, a court balances the needs of the requesting party against the other party's ability to pay. *Marriage of Leslie* 90 Wn. App. 796, 797.

Appeal Courts' conclusion regarding Menfesu's entitlement to an award of reasonable attorney fees and costs on appeal, conflicts with another Appeal Courts' decision. see A-19. "In General. An award of costs or attorney fees under *RCW 26.09.140* in a divorce-related proceeding is a matter addressed to the trial court's discretion; neither party is entitled to costs or attorney fees as a matter of right under the statute. *Marriage Of Leslie* 90 Wn. App. 796, 797."

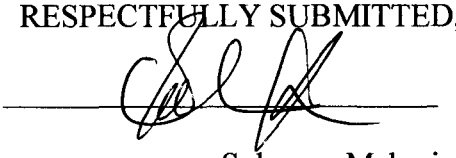
F. CONCLUSION

Mekuria's constitutional right and interest on his daughter parenting could not be substituted by the community. Mekuria asks this court to reverse Appeal Court's and Trial Court's decision allowing the community to control over his child educational upbringing while he is a

fit and available and a willing parent. It is uncontested fact that the mother is not able to help the parties' daughter schooling herself. If the mother cannot the father can. Most importantly it is not in the best interest of the child that a number of people visit the child's residence to help with her homework and follow up in her schooling while the child has a father who loves her and is able to help. It is the future of the child not the future of her parents that is affected by today's decision. If this child could not cope up in her education as she progresses in her grades, her bright future would be at stake. Mekuria asks this court to reverse the Appeal Courts decision so that Mekuria will be able to help his daughter with her education. This court should also reverse attorney fees and private school fee including transportation fee awards to from the transfer location; they are not supported by the public policy as argued in this petition.

Dated this 23th day of November 2015

RESPECTFULLY SUBMITTED,



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Appendix 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of	)	No. 72562-9-I
SOLOMON M. MEKURIA,	)	DIVISION ONE
Appellant/Cross-Respondent,	)	
and	)	
ASTER MENFESU,	)	UNPUBLISHED
Respondent/Cross-Appellant.	)	FILED: September 28, 2015

Cox, J. — Solomon Mekuria appeals from trial court orders modifying a parenting plan and order of child support. He contends the trial court abused its discretion in ordering him to pay his daughter's private school tuition, allocating sole decision-making authority for health care decisions to the mother, and changing the location for exchanging their daughter. He also claims the trial court should have imposed restrictions pursuant to RCW 26.09.191(3)(a) because the mother's visual impairment allegedly constituted "neglect or substantial nonperformance of parenting functions."

Aster Menfesu cross-appeals the trial court's orders allowing Mekuria to petition for a modification of educational decision-making authority without a showing of adequate cause. She also contends the court abused its discretion by giving Mekuria custody of their daughter's passport.

A-1

The trial court abused its discretion by prospectively permitting Mekuria to petition for modification of the parenting plan without a showing of adequate cause. Accordingly, we reverse and remand to the trial court with instructions to strike this provision. In all other respects, we affirm.

Mekuria and Menfesu were married in 2007. The parties have one daughter, E.M., who was born on April 23, 2008.

In 2002, Menfesu was diagnosed with multifocal chorioretinitis, an inflammatory eye disease resulting in significant vision impairment. In 2005, Menfesu left her job as a nursing assistant. Since 2006, Menfesu has received social security disability benefits for her condition.

In 2009, Menfesu petitioned for dissolution. The parties proceeded to trial on the dissolution in 2010. Menfesu testified regarding her medical condition and the limitations to her sight. The trial court entered a decree of dissolution and a final parenting plan. The parenting plan provided that E.M., then two years old, would reside four days per week with Menfesu and three days per week with Mekuria until she reached school age. Once E.M. started kindergarten, E.M. would reside with Menfesu except for every other weekend, when Mekuria would pick her up from school on Friday afternoon and return her to school on Monday morning. Any exchanges that did not take place at school were to occur at the Beacon Hill police station. The parenting plan provided that the parties had joint decision-making authority regarding E.M.'s non-emergency health care but that Menfesu had sole decision-making authority for E.M.'s education. Neither party appealed.

A-2

On March 5, 2013, Mekuria petitioned for a major modification of the parenting plan. Mekuria sought to become E.M.'s primary residential parent and to limit Menfesu's residential time to supervised visits on Saturday afternoon, claiming that E.M. had received minor cuts and injuries in Menfesu's care due to Menfesu's vision impairment. A superior court judge dismissed Mekuria's modification petition, finding there was not adequate cause to proceed with the modification because the trial court judge in the dissolution proceeding was "well aware of the vision impairment and after hearing all of the evidence decided that the mother was the appropriate person to have custody of the child." Mekuria appealed the dismissal.

This court affirmed in an unpublished opinion. This court decided that Mekuria had not established adequate cause because the mother's medical condition "was known to the trial court [in the dissolution proceeding] at the time it established the parenting plan" and "[t]here was no evidence of any worsening of the condition." There was no further review by the supreme court.

On April 4, 2013, Menfesu filed a petition for a minor modification of the parenting plan, commencing this proceeding. She sought changes to the provisions regarding health care decision-making and the exchange location. She also sought custody of E.M.'s passport. A superior court commissioner found adequate cause to modify the parenting plan.

A-3

In his trial brief, Mekuria objected to Menfesu holding E.M.'s passport. He claimed he would present evidence that "the mother can easily and permanently hide the child from me if she is ever permitted to go to Ethiopia."[1]

Trial on Menfesu's modification petition took place over five days. The court heard testimony from eight witnesses and admitted 18 exhibits. On July 11, 2014, the trial court entered a modified parenting plan and child support order. The parenting plan provided that Menfesu would have sole decision-making authority for both E.M.'s education and health care. The parenting plan changed the location of exchanges of E.M. from the police station to the Walmart store in Renton. The parenting plan gave Mekuria authority to obtain a passport for E.M. and provided that he would be the custodian of the passport. The parenting plan also specified that if Menfesu "proposes to travel out of the country she shall give the father 10 days notice so that he can provide her with the child's passport," which Menfesu would be required to return to Mekuria within five days of return to the United States.[2] The parenting plan also contained minor changes to the residential schedule that are not challenged by either of the parties. The parenting plan did not impose any restrictions under RCW 26.09.191.

The child support order provided that Menfesu would pay E.M.'s private school tuition expenses but that "[i]f [Menfesu] becomes ineligible for the tuition reduction that she currently receives, or if the tuition due increases by more than 25% this order shall be modified without the need for a showing of substantial

[1] Clerk's Papers at 88.
[2] Id. at 371-72.

A-4

change in circumstances to order [Mekuria] to pay his proportional share of the tuition."[3]

In a memorandum opinion, the trial court stated that "[E.M.] appears to be doing well in Kindergarten" but that it had "concerns regarding her future academic success given the testimony regarding the mother's ability to help the child with lessons given that she is legally blind."[4] The trial court stated that, due to this concern, "the father may petition the court to modify the decision making on educational issues without a showing of adequate cause any time after June 1, 2016."[5]

Mekuria moved for reconsideration, which the trial court granted by entering findings on the issue of private school tuition. Mekuria sought reconsideration of the trial court's findings, which the trial court denied.

Proceeding pro se, Mekuria appeals. Menfesu cross-appeals.

STANDARD OF REVIEW

We review a trial court's decision to modify a parenting plan or an order of child support for an abuse of discretion.[6] "A trial court's decision will not be reversed on appeal unless the court exercised its discretion in an untenable or manifestly unreasonable way."[7]

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[3] Id. at 392.
[4] Id. at 404.
[5] Id. at 406.
[6] In re Marriage of Zigler and Sidwell, 154 Wn. App. 803, 808, 226 P.3d 202 (2010) (parenting plan); McCausland v. McCausland, 159 Wn.2d 607, 615, 152 P.3d 1013 (2007) (child support order).
[7] In re Marriage of McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

A-5

We review the trial court's findings of fact to determine whether substantial evidence supports the findings.[8] Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.[9] However, we do not review the trial court's credibility determinations, nor do we weigh conflicting evidence.[10] Unchallenged findings of fact are verities on appeal.[11]

PRIVATE SCHOOL TUITION

Mekuria contends that the trial court abused its discretion in ordering him to pay a proportional share of E.M.'s private school tuition. A trial court may exercise its discretion to determine the necessity for and the reasonableness of all expenses in excess of the basic child support obligation, including private school tuition.[12] Once a trial court determines such expenses are reasonable and necessary, they "shall be shared by the parents in the same proportion as the basic child support obligation."[13]

At the time of the trial on Menfesu's modification petition, E.M. was attending kindergarten at St. Anthony's, a private school in Renton within walking distance of Menfesu's home. Menfesu testified that she paid E.M.'s tuition and received a discounted rate based on her income. Mekuria testified that he

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[8] Sunnyside Valley Irrigation Dist. v. Dickie, 111 Wn. App. 209, 214, 43 P.3d 1277 (2002).

[9] Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

[10] In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996).

[11] In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

[12] RCW 26.19.080(4).

[13] RCW 26.19.080(3).

A-6

agreed with the decision to send E.M. to private school, though he preferred for her to attend a different private school that was closer to his home in Everett.

The trial court made the following findings regarding the reasonableness and necessity of private school tuition:

> [T]he parties should share in the private school tuition cost, based on the expressed desire of both parties that the child attend private school, the father's argument that public school would be detrimental to the child, the fact that the child has been attending private school for the past year, and that the father has sufficient income to contribute to the costs. The court further finds that given the mother's alleged limitations with reading and assisting [E.M.] with homework, it is in [E.M.'s] best interest to attend private school where the student to teacher ratio is smaller.[14]

Mekuria contends that "private school tuition cannot be ordered by a court without certain requisite factors, including a pattern of private school[ing] being used for a substantial period of time and that a change from that pattern would be detrimental to the child."[15] Mekuria also argues that a trial court is excluded from considering a parent's income or ability to pay. Mekuria is incorrect. In In re Marriage of Stern, cited by Mekuria, this court held that relevant factors presenting a legitimate reason for ordering payment of private school tuition include, but are not limited to, "family tradition, religion, and past attendance at a private school."[16] But this is a non-exclusive list and a trial court may consider

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[14] Clerk's Papers at 523-24.
[15] Appellant's Amended Opening Brief at 6.
[16] 57 Wn. App. 707, 720, 789 P.2d 807 (1990).

additional factors in making its determination whether private school tuition is a reasonable and necessary expense.[17] The trial court must also consider a parent's ability to pay.[18]

Mekuria assigns error to the trial court's finding regarding his ability to pay. But substantial evidence in the record supported this finding. The child support worksheet record shows that Mekuria's monthly gross income was $7,547.73, as compared to Menfesu's monthly gross income of $1,410.00. Mekuria does not challenge this calculation. The trial court did not abuse its discretion in determining that Mekuria had the ability to pay a proportionate share of private school tuition. Though Mekuria contends that his economic circumstances have since changed, this evidence on which he now relies was not before the trial court. We consider only the evidence that was before the trial court at the time it made its decisions.[19]

Substantial evidence supported the trial court's finding regarding Mekuria's ability to pay. This finding, in conjunction with the remaining unchallenged findings, adequately support the trial court's order. The trial court did not abuse its discretion in ordering Mekuria to pay a proportional share of E.M.'s tuition should Menfesu cease to receive a tuition reduction or if the cost of tuition increases by more than 25 percent.

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[17] State ex rel. J.V.G. v. Van Guilder, 137 Wn. App. 417, 428, 154 P.3d 243 (2007).

[18] Id. at 429-30.

[19] RAP 9.1; RAP 9.11.

A-8

TRANSPORTATION

Mekuria argues that the trial court abused its discretion by changing the exchange location from the Beacon Hill police station to the Renton Walmart. He argues that this requires him "to do 100% of transportation for visitation purposes, meeting [Menfesu] near her home instead of a mid-point," and that the trial court should have allocated this responsibility more equally with Menfesu.[20]

Menfesu testified that it took 30 to 40 minutes to reach the police station on the bus from her house. Menfesu also testified that Mekuria was typically at least an hour late to the exchanges and she and E.M. once had to wait three hours for him to arrive. Menfesu testified that the police station was sometimes closed at the time of the exchange and she and E.M. would have to wait outside in the cold or rain. Menfesu testified that Walmart would be a more convenient location because it was a ten minute walk from her house, was open long hours, and had things to amuse E.M. while she waited.

Mekuria testified that he had no objection to changing the exchange location to Walmart. The trial court admitted copies of maps showing that the Walmart location resulted in only five additional minutes of travel time for Mekuria.

Substantial evidence in the record supported the trial court's order modifying the exchange location, including the fact that it was significantly easier

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[20] Appellant's Amended Opening Brief at 1.

for Menfesu to reach and was open longer hours. Moreover, Mekuria expressly consented to the change. The trial court did not abuse its discretion.

DECISION-MAKING

Health Care

Mekuria contends that the trial court erred in allocating sole decision-making authority regarding E.M.'s health care to Menfesu. There was no abuse of discretion in this respect.

A parenting plan must allocate decision-making authority to one or both parents regarding the child's education, health care, and religious upbringing.[21] Pursuant to RCW 26.09.187(2), a trial court must order sole decision-making to one parent when it finds that (1) a limitation on the other parent's decision-making authority is mandated by RCW 26.09.191; (2) both parents are opposed to mutual decision-making; or (3) one parent is opposed to mutual decision-making and the opposition is reasonable based on the following criteria:

> (i) The existence of a limitation under RCW 26.09.191;
> (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);
> (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and
> (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.[22]

Mekuria argues that a trial court may not restrict his right to participate in decision-making in the absence of express findings that a parent has engaged in conduct outlined in RCW 26.09.191. But that is only one of the factors a trial

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[21] RCW 26.09.184(5)(a).
[22] RCW 26.09.187(2)(b), (c).

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court must consider. The remaining facts support the trial court's order giving Menfesu sole decision-making authority regarding E.M.'s health care.

Menfesu testified that that she took E.M. to a clinic in Renton for her yearly well-child visits but that Mekuria did not tell her that he was simultaneously taking E.M. to a different clinic in Everett. Menfesu testified that when she learned this, she contacted the Everett clinic to get E.M.'s immunization records but that the clinic would only release them to Mekuria. As a result, E.M. received duplicate vaccinations at her five-year-old well-child visit. Menfesu also testified that she had difficulty obtaining E.M.'s medical and dental insurance cards from Mekuria. Finally, Menfesu testified that it would take her approximately three or four hours to take E.M. to well-child visits at the Everett clinic. Both the guardian ad litem and a social worker recommended that Menfesu be granted sole decision-making authority because of the parents' inability to communicate and cooperate regarding E.M.'s health care.

Education

Menfesu cross-appeals the provision allowing Mekuria to petition for a modification of educational decision-making authority in 2016 without a showing of adequate cause. We agree with Menfesu that this was an abuse of discretion.

A court may "modify a parenting plan or custody decree pursuant only to RCW 26.09.260 and .270."[23] RCW 26.09.260(1) provides that a trial court may not modify a parenting plan unless it finds that (1) there has been a substantial

[23] In re the Parentage of C.M.F., 179 Wn.2d 411, 419, 314 P.3d 1109 (2013).

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change of circumstances of either parent or of a child, and (2) the adjustment is in the best interest of the child. A "substantial change in circumstances" is a fact that is unknown to the trial court at the time it entered the original parenting plan or an unanticipated fact that arises after entry of the original plan.[24] RCW 26.09.270 requires a party seeking to modify a parenting plan to submit "an affidavit setting forth facts supporting the requested order or modification." The court "shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits."[25] "Adequate cause" means, at a minimum, evidence sufficient to support a finding on each fact that the moving party must prove in order to modify the parenting plan.[26] A court abuses its discretion if it fails to follow these procedures.[27]

The trial court abused its discretion by ruling that Mekuria may petition in the future to modify the educational decision-making provision in 2016 without a showing of adequate cause. This ruling disregards the mandatory provisions of controlling statutes. RCW 26.09.260 requires Mekuria to make a prima facie showing that there has been a substantial change in circumstances since the time of the original parenting plan and that the modification is in E.M.'s best interests. On this basis alone, the court abused its discretion.

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[24] In re Marriage of Tomsovic, 118 Wn. App. 96, 105, 74 P.3d 692 (2003).
[25] RCW 26.09.270.
[26] In re Marriage of Lemke, 120 Wn. App. 536, 540, 85 P.3d 966 (2004).
[27] In re Parentage of M.F., 141 Wn. App. 558, 572, 170 P.3d 601 (2007).

Moreover, the basis of the court's decision is not within the range of acceptable choices that the proper exercise of discretion requires.[28] Specifically, the trial court appears to have speculated that both Menfesu's vision would further deteriorate and any such possible deterioration would negatively impact her ability to support E.M. academically. There is no evidence in this record supporting either factual premise. No evidence was presented regarding whether Menfesu's vision had changed since the 2010 dissolution trial. Moreover, the evidence showed that Menfesu was more than capable of ensuring E.M.'s educational needs were met. A family friend came over to Menfesu's house every Tuesday afternoon for approximately two hours to go over E.M.'s homework for the week and read any notes from the school. Menfesu's friend also read to E.M. and helped her with school projects. On Wednesdays, Thursdays and Fridays, Menfesu arranged for E.M. to attend a local afterschool homework assistance program. Menfesu also checked out audiobook versions of books E.M. was assigned at school so that they could listen to them together. E.M.'s teachers were aware of Menfesu's vision impairment and would give her information in verbal rather than written form. The principal of St. Anthony's testified that E.M. was doing "very well" in school and "exemplary" in some subjects.

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[28] In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

We have held that a parent's disability "is not, in and of itself, proof that a parent is unfit or incapable."[29] As amicus curiae, the National Federation of the Blind notes, visually impaired parents throughout the country "successfully care for their children and provide them with educational support and guidance at all ages," and that for parents with disabilities, "[n]egative speculations about the future are common and often seem to be based on stereotypes rather than on evidence."[30] Applying these principles here, even if we assumed both that the mother's vision deteriorated further, there is absolutely no evidence here that would adversely impact her ability to parent successfully. We decline to speculate otherwise.

Finally, it is difficult to see how in the absence of the required showing that the mother's vision adversely impacted her ability to parent, a decision depriving her of decision-making authority would be in the best interest of the child. After all, that is the proper focus of the relevant inquiry a court must make under the circumstances of this case.

For these reasons, the court abused its discretion in this respect.

RESTRICTIONS

Finally, Mekuria contends that the trial court erred by failing to impose restrictions against Menfesu pursuant to RCW 26.09.191(3)(a), which provides that "the court may preclude or limit any provisions of the parenting plan" in the

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[29] In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

[30] Megan Kirshbaum, Daniel Taube and Rosalind Lasian Baer, Parents with Disabilities: Problems in Family Court Practice, 4 J. Ctr. for Families, Child. & Cts. 38 (2003).

event of "[a] parent's neglect or substantial nonperformance of parenting functions." Mekuria argues that Menfesu "neglected" her parental duties because she sought community assistance for help with E.M.'s homework instead of helping E.M. by herself. But RCW 26.09.191 limitations were not at issue in this modification proceeding, and Mekuria's previous attempt to modify the parenting plan on these grounds was denied.

PASSPORT

Menfesu contends the trial court abused its discretion by giving Mekuria custody of E.M.'s passport. We hold that under the circumstances of this case that are currently before us, the trial court acted within its discretion.

The guardian ad litem recommended that Menfesu be authorized to obtain and hold E.M.'s passport, based on her opinion that "[i]t would be beneficial for [E.M.] to have provisions related to International travel to avoid conflicts in the future."[31] The guardian ad litem testified she had no basis to believe either parent would abscond with E.M. from the United States.

Mekuria, who appeared pro se, did not present evidence or testimony regarding the passport issue. During closing argument, Mekuria frequently addressed subjects that were not at issue in the proceeding. After redirecting Mekuria several times, the trial court proceeded to ask Mekuria questions regarding several subjects, including the exchange location, his employment, and E.M.'s health insurance. The trial court also prompted Mekuria to address his objections regarding the passport. Mekuria responded:

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[31] Exhibit 1.

> I was in the other room, overheard her talking about – she's coming to Ethiopia, going back to Ethiopia, and I think they asked her for some reason – "You don't drive a car, so" – and things like that – and she answered, "No, no, no, I can drive when I come back, when I am back in my country, but I cannot drive in this – in the US, I can drive in my country."
>
> So now that – I remember that now – became clear – she wanted the passport. She wanted – she has the – this income from Social Security and probably child-support goes direct to her bank account, so she can secure all of this. She can go back home and – to take the child and I never see the child. That was my concern.[32]

When asked if he wanted E.M. to have a passport, Mekuria responded,

> I would like to have that, yes – both of us control it – with the understanding – not 100%, like she stated on her statement, she wants to have control and she wants to travel whenever she wants to, things like that – I will object.[33]

The trial court gave Menfesu's attorney the opportunity to address any of the issues raised in her questioning of Mekuria. Menfesu's attorney did not address the passport issue.

Menfesu now argues that by making Mekuria the custodian of E.M.'s passport, the trial court improperly modified the parenting plan without complying with RCW 26.09.260. But Barton recommended that the trial court give one parent custody over E.M.'s passport "to avoid conflicts in the future." Furthermore, Mekuria testified that he overheard a telephone conversation in which Menfesu discussed "going back to Ethiopia." Based on this evidence, the trial court found there had been a substantial change of circumstances and the modification was in E.M.'s best interest. Though Menfesu challenges the

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[32] Report of Proceedings (April 7, 2014) at 570.
[33] Id. at 570-71.

credibility of Mekuria's testimony, we note that the trial court expressly found that Mekuria "testified credibly to a telephone conversation the mother had indicating her potential plan to move out of the country at some point."[34] A trial court's credibility determinations are not subject to review on appeal.

Relying on Katare v. Katare, Menfesu argues that, in order to restrict her ability to travel, it must make a finding that she was a flight risk.[35] But Katare is inapposite. In Katare, following evidence that the children's father had threatened to abscond with the children to India, the trial court imposed travel restrictions pursuant to RCW 26.09.191(3)(g).[36] The parenting plan prohibited the father from taking the children out of the country until they turned 18 and denied him access to their passports or birth certificates; the father was also required to surrender his own passport when the children visited with him.[37] Here, in contrast, nothing restricts Menfesu's right to travel internationally with E.M. The parenting plan makes Mekuria the custodian of E.M.'s passport. If Menfesu wishes to travel internationally with E.M., she must request the passport from Mekuria with at least 10 days' notice and must return it to him within five days of returning to the United States. Though Menfesu argues that giving Mekuria custody of E.M.'s passport will generate future conflict between the parties, we decline to speculate on what may happen in the future.

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[34] Clerk's Papers at 407.
[35] Katare v. Katare, 175 Wn.2d 23, 283 P.3d 546 (2012).
[36] Id. at 33-34.
[37] Id. at 31.

Finally, Menfesu argues that she was denied due process because she was not provided with notice and an ability to cross-examine Mekuria's statement, which he made after the close of evidence. But Mekuria asserted in his trial brief that he would present evidence that Menfesu planned to take E.M. to Ethiopia. Furthermore, the trial court noted that it had elicited additional testimony from Mekuria after the close of evidence and offered Menfesu's attorney an opportunity to follow up. The trial court's consideration of Mekuria's statement did not violate Menfesu's due process rights.

ATTORNEY FEES

Menfesu requests attorney fees on appeal under RCW 26.09.140. Mekuria opposes the request, claiming that he does not have the ability to pay. We exercise our discretion and award reasonable attorney fees and costs to Menfesu.

RCW 26.09.140 provides in relevant part as follows:

...

> Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.
>
> The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

Determining whether a fee award is appropriate under this statute requires this court to consider the parties' relative ability to pay and the arguable merits of the issues raised on appeal.[38] Here, both parties have provided updated

[38] In re Marriage of Leslie, 90 Wn. App. 796, 807, 954 P.2d 330 (1998).

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financial declarations, as required. Having considered the merits of this appeal as well as the financial resources data contained in the required filings, we conclude that it is undisputed that Menfesu has the required need. Although Mekuria contends he does not have the ability to pay, our review of his updated financial declaration shows that he does. Accordingly, Menfesu is entitled to an award of reasonable attorney fees and costs on appeal.

Northwest Justice Project, as the proper assignee of her right to fees and costs, is entitled under the statute to receive these amounts and to enforce the order in its own name. It is so ordered, subject to its compliance with RAP 18.1(d).

We affirm the modified parenting plan in all aspects except for the provision permitting Mekuria to seek to modify decision-making authority for E.M.'s education without a showing of adequate cause. We remand to the trial court with instructions to strike this provision. We award reasonable attorney fees and costs to Menfesu, subject to its compliance with RAP 18.1(d).

COX, J.

WE CONCUR:

Appendix 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of	)	No. 72562-9-I
SOLOMAN M. MEKURIA,	)	ORDER CORRECTING OPINION
Appellant/Cross-Respondent,	)	
And	)	
ASTER MENFESU,	)	
Respondent/Cross-Appellant.	)	

IT IS HEREBY ORDERED that the unpublished opinion in the above-entitled case, filed on September 28, 2015, shall be corrected as follows:

On page 14 of the slip opinion, second line, the name "National Federation for the Blind" should be corrected to read "National Federation of the Blind."

DATED this 8th day of October 2015.

COX, J.

Spearman, C.J.

Appendix 3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of SOLOMON M. MEKURIA, Appellant/Cross-Respondent, and ASTER MENFESU, Respondent/Cross-Appellant.	No. 72562-9-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Solomon Mekuria, has moved for reconsideration of the opinion filed in this case on September 28, 2015. The court having considered the motion has determined that the motion for reconsideration should be denied. The court hereby ORDERS that the motion for reconsideration is denied.

Dated this 23rd day of October 2015.

For the Court:

Cox, J.
Judge

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Appendix 4

Superior Court of Washington
County of King

In Re the Marriage of: SOLOMON MEKURIA, Petitioner, and ASTER MENFESU, Respondent.	**No.** 09-3-05584-3 KNT MEMORANDUM OF OPINION

This matter came on for trial on the Respondent Mother's Petition for Minor Modification. The Mother sought modification to the existing parenting plan given some vagueness and difficulties with shared decision making for non-emergency medical care. Additionally, she sought an increase in child support as well as attorney fees.

The parties have one child, Eden, who is six years old and attending Kindergarten at St. Anthony. Eden appears to be doing well in Kindergarten but the court has concerns regarding her future academic success given the testimony regarding the mother's ability to help the child with lessons given that she is legally blind (by her testimony). The court is concerned about the unavailability of regularly scheduled academic and administrative assistance for Eden.

Judge Suzanne Parisien
King County Superior Court
401 4th Avenue North
Kent, WA 98032

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The testimony at trial indicated that the mother lives alone. She speaks Amharic, as does the father. She is legally blind and became eligible for Social Security benefits for this condition in April 2006. The mother's testimony regarding her blindness was vague and somewhat contradictory. She testified that she is able to shop, clean, cook and do laundry without any assistance. She also testified that she has never had any in-home assistance by any organization (governmental or private) specializing in providing services to the blind. Additionally, she testified that she did not have any low-vision products in her home to assist her in her daily living, nor was her cell phone adapted in any way. At trial, the mother was noted to move about the courtroom confidently and without any assistance.

The mother testified that due to her blindness, she has not driven since 2006; but the father testified that the mother drove in 2009. In response to the father's testimony that she drove, the mother explained that the father had tricked her by persuading her to drive and that she reluctantly got behind the wheel but it was a momentary drive down the length of her driveway at which time she stopped the car and refused to drive any further. In rebuttal, the father produced a video of that occasion which he shot from the passenger seat depicting the mother driving for an extended period of time in traffic while singing and talking to Eden (then a baby) who was seated in the rear of the car. The father also provided additional photographs of the mother driving and playing simulated driving games at an arcade.

Because of the mother's visual disability, she relies on a friend, Jean Chin, to assist Eden with schoolwork. Ms. Chin testified that she assists the mother with sorting her mail, paying bills and writing checks. She comes over to the house one day a week (Tuesday) for about 1.5 to 2.0 hours and goes through Eden's school work and reading assignments and then tells the mother what Eden needs to do homework-wise for the week. She reads to Eden and Eden reads to her. While this plan appears to be working

for Eden as a Kindergartner, the court is concerned about how Eden will fare academically when the homework is more difficult and voluminous and the limited, once per week assistance from Ms. Chin may prove insufficient.

There was troubling testimony regarding Eden's non-emergency healthcare which had been subject to joint decision making. Specifically, the father was taking her to medical appointments in Everett (where she has historically received medical care) while the mother was taking her to a physician in Renton. The parties were not communicating with one another and testimony indicated that as a result, Eden received the same vaccine from two doctors (Everett with the father and Renton with the mother). Testimony from the GAL and Seth Ellner, MSW (retained by the mother) indicate that the parties are not able to communicate sufficiently well to have joint decision making. Given this, the court is granting sole making on non-emergency medical and educational issues to the mother. Mother is to update the father regularly on any and all pertinent medical and educational issues. Due to the court's concern (as stated above) regarding Eden's need for academic assistance as she gets older, the father may petition the court to modify the decision making on educational issues without a showing of adequate cause any time after June 1, 2016. The father will need to show the court that he has been actively involved with Eden's school (including fulfilling any required volunteer hours and participating in parent-teacher conferences). It was troubling to the court that the father could not name one friend of Eden's either from church or school. Father is encouraged to take a more active role in Eden's social life as well as her educational life.

Pursuant to RCW 26.09.260(5), the court has granted the father increased residential time in the summer upon a finding that it is in Eden's best interest to have additional time with her father and step-mother. The additional time does not exceed twenty-four full days in a calendar year.

RCW 26.09.260 (10) authorizes the court to order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section. The father testified credibly to a telephone conversation the mother had indicating her potential plan to move out of the country at some point. Given this, the court has changed the provisions in the parenting plan with regard to the passport giving the father custody of Eden's passport.

The mother's request for attorney fees is denied.

Dated: 7/10/14

Judge Suzanne Parisien

Appendix 5

RCW 26.09.002

Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

[2007 c 496 § 101; 1987 c 460 § 2.]

Notes:

Part headings not law -- 2007 c 496: "Part headings used in this act are not any part of the law." [2007 c 496 § 801.]

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RCW 26.19.080

Allocation of child support obligation between parents — Court-ordered day care or special child rearing expenses.

(1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.

(2) Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment.

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

(4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

[2009 c 84 § 5; 1996 c 216 § 1; 1990 1st ex.s. c 2 § 7.]

Notes:

Effective date – 2009 c 84: See note following RCW **26.19.020**.

Effective dates – Severability – 1990 1st ex.s. c 2: See notes following RCW **26.09.100**.

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26.09.004
Definitions.

The definitions in this section apply throughout this chapter.

(1) "Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to perform his or her parenting functions under a temporary or permanent parenting plan. Military duties potentially impacting parenting functions include, but are not limited to:

(a) "Deployment," which means the temporary transfer of a service member serving in an active-duty status to another location in support of a military operation, to include any tour of duty classified by the member's branch of the armed forces as "remote" or "unaccompanied";

(b) "Activation" or "mobilization," which means the call-up of a national guard or reserve service member to extended active-duty status. For purposes of this definition, "mobilization" does not include national guard or reserve annual training, inactive duty days, or drill weekends; or

(c) "Temporary duty," which means the transfer of a service member from one military base or the service member's home to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

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(3) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation.

(4) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation which is incorporated in a temporary order.

[2009 c 502 § 1; 2008 c 6 § 1003; 1987 c 460 § 3.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW **1.08.015**(2)(k).

Part headings not law -- Severability -- 2008 c 6: See RCW**26.60.900** and **26.60.901**.

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RCW 26.09.140

Payment of costs, attorneys' fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

[2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]

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RCW 26.09.191

Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW **26.50.010**(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW **26.50.010**(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW **9A.44.076** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW **9A.44.079** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW **9A.44.086** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW **9A.44.089**;

(E) RCW **9A.44.093**;

(F) RCW **9A.44.096**;

(G) RCW **9A.64.020** (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter **9.68A** RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of

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emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW **26.50.010**(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW **9A.44.076** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW **9A.44.079** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW **9A.44.086** if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW **9A.44.089**;

(E) RCW **9A.44.093**;

(F) RCW **9A.44.096**;

(G) RCW **9A.64.020** (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter **9.68A** RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter **71.09** RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter **71.09** RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW **9A.64.020** (1) or (2), provided that the person convicted was at least five years older than the other person;

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(ii) RCW **9A.44.073**;

(iii) RCW **9A.44.076**, provided that the person convicted was at least eight years older than the victim;

(iv) RCW **9A.44.079**, provided that the person convicted was at least eight years older than the victim;

(v) RCW **9A.44.083**;

(vi) RCW **9A.44.086**, provided that the person convicted was at least eight years older than the victim;

(vii) RCW **9A.44.100**;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW **9A.64.020** (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW **9A.44.073**;

(iii) RCW **9A.44.076**, provided that the person convicted was at least eight years older than the victim;

(iv) RCW **9A.44.079**, provided that the person convicted was at least eight years older than the victim;

(v) RCW **9A.44.083**;

(vi) RCW **9A.44.086**, provided that the person convicted was at least eight years older than the victim;

(vii) RCW **9A.44.100**;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

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(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless

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the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter **9A.44** RCW, RCW **9A.64.020**, or chapter **9.68A** RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children

under chapter **9A.44** RCW, RCW **9A.64.020**, or chapter **9.68A** RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this

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subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter **26.50** RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW **26.09.004**;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW **18.320.010**.

[2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

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Notes:

Effective date -- 2011 c 89: See note following RCW **18.320.005**.

Findings -- 2011 c 89: See RCW **18.320.005**.

Part headings not law -- 2007 c 496: See note following RCW **26.09.002**.

Effective date -- 2004 c 38: See note following RCW **18.155.075**.

Effective date -- 1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date -- 1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

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RCW 26.09.260

Modification of parenting plan or custody decree.

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW **9A.40.060** or **9A.40.070**.

(3) A conviction of custodial interference in the first or second degree under RCW **9A.40.060** or **9A.40.070** shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW **26.09.191**.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

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(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW **26.09.405** through **26.09.560**. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW **26.09.191** (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial

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distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW **26.09.191**. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

[2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

Notes:

Applicability -- 2000 c 21: See RCW **26.09.405**.

Intent -- Captions not law -- 2000 c 21: See notes following RCW **26.09.405**.

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW **26.09.015**.

Severability -- 1989 c 318: See note following RCW **26.09.160**.

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RCW 26.09.270

Child custody — Temporary custody order, temporary parenting plan, or modification of custody decree — Affidavits required.

A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

[2011 c 336 § 691; 1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

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RAP
RULE 10.6
AMICUS CURIAE BRIEF

(a) When Allowed by Motion. The appellate court may, on motion, grant permission to file an amicus curiae brief only if all parties consent or if the filing of the brief would assist the appellate court. An amicus curiae brief may be filed only by an attorney authorized to practice law in this state, or by a member in good standing of the Bar of another state in association with an attorney authorized to practice law in this state.

(b) Motion. A motion to file an amicus curiae brief must include a statement of (1) applicants interest and the person or group applicant represents, (2) applicants familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties, (3) specific issues to which the amicus curiae brief will be directed, and (4) applicants reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion.

(c) On Request of the Appellate Court. The appellate court may ask for an amicus brief at any stage of review, and establish appropriate timelines for the filing of the amicus brief and answer thereto.

(d) Objection to Motion. An objection to a motion to file an amicus curiae brief must be received by the appellate court and counsel of record for the parties and the applicant not later than 5 business days after receipt of the motion.

(e) Disposition of Motions. The Supreme Court and each division of the Court of Appeals shall establish by general order the manner of disposition of a motion to file an amicus curiae brief, including whether such disposition is reviewable or subject to reconsideration by the particular court.

(Amended September 1, 1999.)

□

The US Constitution: 14th Amendment

Fourteenth Amendment to the US Constitution - Rights Guaranteed Privileges and Immunities of Citizenship, Due Process and Equal Protection

AMENDMENT XIV of the UNITED STATES CONSTITUTION

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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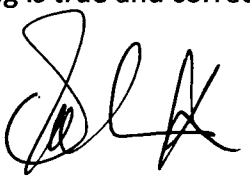
PROOF OF SERVICE

Solomon Mekuria declares under penalty of perjury : On November 23, 2015 I served by certified mail a true copy of Supreme Court Petition for Review to:

Katrin E. Frank
Macdonald House & Byless
705 Second Ave. Suite 1500
Seattle, Washington 98104.

Elizabeth A. Helm
Northwest Justice Project
401 2nd Ave. S Suite 407
Seattle, WA 98104.

I declare under penality of perjury that the foregoing is true and correct.



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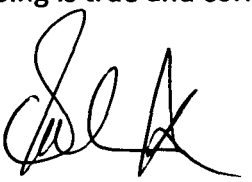
Seattle, WA 98104.

I declare under penality of perjury that the foregoing is true and correct.



November 23, 2015

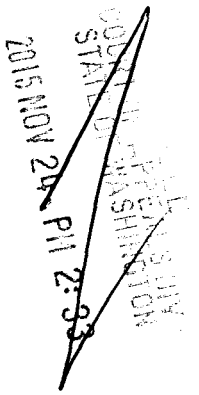
APPEAL COURT # 72562-9-I

PROOF OF SERVICE

Solomon Mekuria declares under penalty of perjury : On November ~~20~~ 23, 2015, I served by certified mail a true copy of Supreme Court Petition for Review to:

Katrin E . Frank
Macdonald House & Byless
705 Second Ave. Suite 1500
Seattle, Washington 98104.

Elizabeth A. Helm
Northwest Justice Project
401 2nd Ave. S Suite 407
Seattle, WA 98104.



I declare under penalty of perjury that the foregoing is true and correct.

November ~~20~~ 23. 2015.