

FILED
NOVEMBER 25, 2014
Court of Appeals
Division III
State of Washington

No. 32367-6-III

IN THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION III

In re the Custody of S.F-T.C.,
Child,
Janet Carey, Nick Carey, Laura Carey,
Respondents,
and
Jasmine Rose Carey, Mother,
Kyle Carey, Father, Deceased
Appellant.

BRIEF OF APPELLANT

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033
Attorney for Appellant

TABLE OF CONTENTS

INTRODUCTION	1
ASSIGNMENTS OF ERROR.....	2
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	2
STATEMENT OF THE CASE	4
A. Jasmine Carey was married at age 16, had a daughter (S) at age 18, and divorced the father at age 21, largely due to domestic violence and abuse.	4
B. Jasmine had serious health issues that caused her a great deal of pain and debilitated her, and her failures to properly clean her home ultimately resulted in her loss of custody of daughters in 2009.	5
C. Kyle had custody of S for roughly three years, during which Jasmine failed to complete court-ordered services, failed drug tests, and failed to support S.	8
D. Jasmine began to turn her life around in 2012, successfully engaging in many services, developing a nurturing relationship with J, and succeeding in having J's dependency proceeding dismissed.	9
E. Kyle committed suicide in March 2012, but Jasmine did not relapse and gained custody of J, and has steadily increasing visitation with S.	13
F. Procedural History.....	14
ARGUMENT	15
A. The United States Constitution requires extraordinary circumstances in order to deprive a fit mother of her fundamental right to parent her daughter.	15
B. The petitioners have failed to show any extraordinary circumstances sufficient to justify this massive infringement upon Jasmine's fundamental rights.	21
C. The trial court's findings are in error both legally and factually, and do not justify its rulings.	22

D. If the evidence adduced here is sufficient, then the nonparent custody statute is unconstitutional as applied.....	29
CONCLUSION	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Custody of A.F.J.</i> , 179 Wn.2d 179, 314 P.3d 373 (2013).....	17, 18, 20, 29
<i>In re Custody of B.M.H.</i> , 179 Wn.2d 224, 315 P.3d 470 (2013).....	<i>passim</i>
<i>In re Custody of E.A.T.W.</i> , 168 Wn.2d 335, 227 P.3d 1284 (2010).....	15, 19
<i>In re Custody of R.R.B.</i> , 108 Wn. App. 602, 31 P.3d 1212 (2001)	16, 20, 21
<i>In re Custody of Shields</i> , 157 Wn.2d 126, 136 P.3d 117 (2006).....	15, 16, 19
<i>In re Custody of Smith</i> , 137 Wn.2d 1, 969 P.2d 21 (1998), <i>aff'd on narrower grounds sub nom. Troxel v. Granville</i> , 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)	16
<i>In re Custody of Stell</i> , 56 Wn. App. 356, 783 P.2d 615 (1989)	16, 19, 20, 21
<i>In re Marriage of Allen</i> , 28 Wn. App. 637, 626 P.2d 16 (1981)	16, 19, 20, 21
<i>In re Parentage of C.A.M.A.</i> , 154 Wn.2d 52, 109 P.3d 405 (2005).....	15
<i>In re Parentage of J.A.B.</i> , 146 Wn. App. 417, 191 P.3d 71 (2008)	29
<i>In re Welfare of Sumey</i> , 94 Wn.2d 757, 621 P.2d 108 (1980).....	20

Statutes

RCW 26.103, 4, 15, 29

Other Authorities

United States Constitution 15

INTRODUCTION

This is a story of tragedy and triumph. For the child, "S", she suffered abuse and neglect, and the suicide of her father, but is an amazingly resilient child who is doing very well despite it all. For her mother, Jasmine Carey, she too suffered abuse and neglect as a child, was introduced to methamphetamines at age 12, to sex at age 13, to marriage at age 16, and to parentage at age 18. But like her daughter, Jasmine has managed to triumph over these tragic circumstances and stands on the threshold of a new life.

But that is where the story ends. Despite Jasmine's extraordinary efforts, the trial court found in the tragic circumstances of the child's life a reason to deprive Jasmine of her only desired triumph: the right to parent her child. This action began when the child's father committed suicide, and when Jasmine was just beginning to overcome her addictions, in early 2012. Jasmine prevailed in her real-life battle, and achieved dismissal of the dependency action involving another child, "J."

As a result of this triumph, the trial court here found her fit and that she has the ability to safely parent her child. Yet it found that placing her child with her would cause actual detriment. There is no support for this conclusion. This Court should reverse.

ASSIGNMENTS OF ERROR

1. The trial court erred in denying a fit mother her fundamental right to parent her child. CP 341.
2. The trial court erred in concluding that the child would suffer actual detriment “if removed from Nick and Laura Carey and their home and their children and placed with Jasmine Carey.” CP 341.
3. The trial court erred in entering Finding 2.7A,¹ Best Interest of the Child, which does not apply in nonparent custody cases. CP 338.
4. The trial court erred in entering Finding 2.7C, Actual Detriment to the Child’s Growth and Development. CP 339-40.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Does a fit mother’s fundamental liberty interest in parenting her daughter require that the trial court find actual detriment to the child from being placed with her mother *as she is today*, not as she was in the past?

Are the extraordinary circumstances required to justify depriving a fit mother of her fundamental right to parent her daughter present where, as here, the child has suffered significant trauma, but

¹ The Findings & Conclusions are attached as Appendix A.

is by all accounts doing very well, and there is no evidence that the fit mother is presently incapable of meeting her child's needs?

Did the petitioner aunt and uncle establish actual detriment sufficient to deprive the fit mother of custody of her daughter, where a great deal of testimony was presented that the mother may "arguably" have been unfit in the past (see unchallenged F/F B.2, CP 338), but all of the testimony regarding the mother's current fitness indicates that she "has made great strides in dealing with those [past] issues and that she would be able to safely provide for her children" (unchallenged F/F B.4, CP 338)?

If such allegations are sufficient to deprive a fit parent of her fundamental right to parent, is the nonparent custody statute (RCW 26.10) unconstitutional as applied in this case?

STATEMENT OF THE CASE

- A. Jasmine Carey was married at age 16, had a daughter (S) at age 18, and divorced the father at age 21, largely due to domestic violence and abuse.**

Jasmine Carey was born on January 1, 1986. 1RP² 76. Her daughter S was born on October 8, 2004. RP 1280. Jasmine³ was then 18 years old. RP 668. She had married the child's father, Kyle Carey, 18 days after her 16th birthday. *Id.* Their relationship began when he was 18, and she was 13. RP 667.

Their relationship was stormy. *See, e.g.,* RP 668-70. On various occasions Kyle punched her, slapped her, and threw a butcher knife at her, the latter two while she was holding S. RP 669. Kyle also stabbed Jasmine in the stomach with a fork. *Id.*

After about a year they separated. RP 670-71. Aside from the abuse, this was partly precipitated by Jasmine finding Kyle in bed with another woman. *Id.* But it did not help that Kyle's best friend, William Higgins, had come to live with them, together with Higgins' daughter, whom Kyle kept asking to "sleep" with. RP 670-72. Jasmine went to stay with her sister. RP 671.

² The 1/30 a.m. RP is numbered separately. We cite it 1RP ____.

³ First names are used to avoid confusion, intending no disrespect.

It also did not help that Kyle and Jasmine took drugs together, including methamphetamine. RP 674-75. Jasmine had started using meth at age 12. CP 210. This was around the same time that her father started beating her. CP 214-15.

Early in their relationship, Kyle was sent to a counseling center after he threatened to kill his mother (Janet Carey) and his brother (Nick Carey, one of the Petitioners). RP 674; Ex 73. Kyle failed to stay on his medications. RP 675. Jasmine sought protection orders at various times, though she did not carry through with them. CP 165-67; Ex 65.

Despite various efforts to save the relationship, Jasmine and Kyle were divorced in March 2007. RP 684. Despite testing positive for meth during the dissolution proceedings, Jasmine was awarded custody of S. *Id.*; RP 577; Ex 51 (Parenting Plan at 5).

B. Jasmine had serious health issues that caused her a great deal of pain and debilitated her, and her failures to properly clean her home ultimately resulted in her loss of custody of daughters in 2009.

Beginning in 2006, Jasmine began suffering from endometriosis, ovarian cysts, and interstitial cystitis. RP 1172-73. These conditions were very painful. *Id.* The cystitis caused her bladder to shrink, requiring numerous painful surgeries to stretch her

bladder. RP 1174-76. This lasted into 2009 and beyond, and was debilitating to her, leaving her unable to cope. CP 246; RP 1176-78.

During this difficult time, Jasmine became pregnant with her second daughter (B) who was born on February 4, 2008. RP 1174. While several people made allegations that B tested positive for meth, Jasmine denied this unsupported allegation. RP 1205. Daughter B was colicky. *Id.*; RP 730, 972. But Jasmine was on morphine, Dilaudid, Xanax, Amitryptiline, Hydroxyzine, and perhaps other drugs, due to her illness. CP 210, 221-22. B was born with prescription drugs in her system. CP 269-70.

Also during this difficult time, S disclosed to Jasmine on January 31, 2008 that Kyle's friend Higgins had sexually assaulted her. 1RP 46; RP 1181-82; Ex 97. The next day, Jasmine asked Higgins to leave, but had no way to force him to leave. RP 1184. Jasmine contacted her stepsister (Carrie) to stay with S while Jasmine went to her medical appointment. CP 160-61, 231-32;⁴ 1RP 48; RP 1184. Unfortunately, Carrie left S alone with Higgins, which concerned the investigating officer. 1RP 48-49. But Jasmine sought and obtained temporary and permanent protection orders for S in

⁴ This cite is to a transcript from the first trial, which ended in a mistrial.

February and March 2008. Ex 97. She initiated and cooperated with the investigation, and was concerned for S's safety. 1RP 61-62. Higgins was convicted. CP 160.

On December 20, 2008, the police received a report that led the same investigating officer visiting Jasmine's apartment. 1RP 51. The apartment was in disarray with trash on the floor, the smell of cat urine, and animal feces on the floor. *Id.* Jasmine was not there, and the children had a babysitter who did not seem to know where Jasmine was. 1RP 53. When the officer contacted Jasmine, she tried to explain her medical conditions. 1RP 54-55. The officer said he was filing a report with CPS. 1RP 55-56.

A different officer followed up on January 29, 2009. RP 84. The conditions at the apartment were essentially the same. RP 88-89. The children were placed in protective custody. RP 89-90.

Jasmine explained that she had been robbed and her home invaded. RP 92; *see also* RP 595-97, 1184-87. While the officer doubted this report, he came to realize that in fact a very dangerous person (Connor) had robbed her at gunpoint in order to steal methamphetamines. RP 96-97, 101. While Jasmine had not disclosed that she knew the perpetrators, the officer concluded that she had every reason to be afraid of retaliation. RP 100-01, 103.

C. Kyle had custody of S for roughly three years, during which Jasmine failed to complete court-ordered services, failed drug tests, and failed to support S.

Jasmine was attacked and threatened several more times by various people associated with Connor. RP 1191-94. She was so afraid that she lost contact with her family and failed to participate in Kyle's action to modify the parenting plan. RP 1194-95. She had a stillborn child. RP 1196-97, 1331-33.

Jasmine's fear, together with her ongoing drug use, kept her away from the court proceedings. RP 1195-97. She did attempt to contact Kyle on several occasions. RP 1197-98. The court gave Kyle custody of S, entering RCW 26.09.191 restrictions on Jasmine's visitation, including supervision, drug and mental health counseling, drug testing and various other services. Ex 52. The trial court found that she committed abuse and neglect attributable to her long-term physical or emotional impairment. *Id.* (Parenting Plan ¶ 2.2). Jasmine substantially failed to visit or support S thereafter. CP 190.

Jasmine tried to attend the services she was required to attend, but did not complete them in 2009 through 2011. CP 171-72; RP 1191. Jasmine tested positive for drugs in 2009 and 2011. CP 167-68. Her daughter J was born on January 4, 2012. *Id.* While undocumented allegations again were made that J tested positive for

drugs at birth, Jasmine denied this unsupported allegation. RP 1205.

But Jasmine was diagnosed as dependent on amphetamines, opioids, nicotine, and alcohol, on January 17, 2012. CP 175.

D. Jasmine began to turn her life around in 2012, successfully engaging in many services, developing a nurturing relationship with J, and succeeding in having J's dependency proceeding dismissed.

The dependency for S and J was a turning point for Jasmine. RP 1206-07. She began to work very hard at the services the court had ordered her to attend, including Safe Baby, Safe Moms, couples counseling (for her relationship with boyfriend Bringham Sandberg), drug counseling, AA, NA, and grief counseling. RP 1206-07. Each of the counselors from these various agencies who testified supported Jasmine's strong recovery. See, e.g., CP 338 (F/F 2.7B.4); RP 695, 786-87, 789, 803, 810-11, 819, 830-31, 869-70, 872, 876-77, 880, 901-02, 917-18, 1091-92.

Specifically, Stephanie Mooney is a counselor at Somerset Counseling with whom Jasmine attended individual and group therapy. RP 691-93. Jasmine attend all of her sessions, did very well, and was even considered a leader looked-up-to by other patients. RP 695. Her drug tests were all clean. RP 695-96. Jasmine was very motivated, developed insight into her problems, and is dedicated to

doing whatever is necessary to prevent a relapse. RP 697-98. She successfully completed her treatment, is a low risk for relapse, and has the tools and support system to maintain her new, clean and stable lifestyle. RP 699-700.

Tamara Tanninen is a private counselor who has a contract with the Children's Administration to provide family preservation services, which she has done for about 17 years. RP 1087-88. She provided services to Jasmine from April 2012 to August 2012. RP 1088-89. Tanninen was in Jasmine's home 21 times during this five-month period, and it was always clean, safe, and appropriate. RP 1090. After Jayce was returned to the home, Tanninen continued to do weekly visits, during which the home remained clean, safe and appropriate, Jasmine was always attentive to J's needs, and Tanninen had no concerns about her parenting. RP 1091-92. Jasmine is a good mom; Jayce is very bonded to her. RP 1092-93.

Petra Day worked as a Guardian ad Litem for the Family Drug Court in the Benton/Franklin County Juvenile Justice Center. RP 783. She was assigned to Jasmine's dependency case (regarding J) in May 2012. RP 785. Day saw Jasmine in her home six or seven times over six months. RP 786. Jasmine's home was always clean and neat and appropriate for the baby. *Id.* Day never had any

concerns that Jasmine could not meet J's needs. RP 787. Jasmine accepted and acknowledged her past and how it related to her future behavior. RP 803. Day made contacts with some of Jasmine's five or six other service providers, who raised no concerns. RP 788, 803. To the best of Day's knowledge, Jasmine complied with all required services. RP 810-11. Day recommended that the dependency be dismissed and it was. RP 789, 791.

Julie Chacon works with Safe Baby, Safe Mom through the Benton/Franklin County Health District. RP 812. Jasmine enrolled in the program in January 2012, and Chacon began working with her in January 2013. RP 815, 820. Safe Baby is a target-intensive case management program working with mothers with substance abuse issues in the past that have children under three. RP 813. They do case management, in-home visitations, groups, outreach advocacy, and similar services. RP 813-14. With Jasmine and J, they worked on "developmental screens," assessing the child's age-appropriate development. RP 814. Chacon also visited Jasmine's home. RP 815-16. While a prior counselor had some trouble developing a rapport with Jasmine, Chacon has no concerns about J's development in her mother's "very nurturing" care, working on all areas of development.

RP 816-17, 828-29. Chacon has no concerns about J's well-being with Jasmine. RP 819.

Julie Wilde works at Catholic Family & Child Services as a licensed mental health counselor. RP 863-64. Wilde first met with Jasmine in February 2012. RP 864. Jasmine was assessed as having (among other things) social phobia and amphetamine dependence in remission. RP 866. There were several delays in starting with Wilde for various reasons, but they began counseling in July 2012. RP 867-868. Jasmine had already improved, showing insight into her problems. RP 868-70. Jasmine acknowledged her relapses during her pregnancy and expressed remorse regarding them. RP 913. Through her treatment and services from February 2012 to February 2013, Wilde saw improvement as Jasmine's anxiety greatly reduced. RP 872. She is focused on improving her life and that of her family. RP 917. Her initial treatment course ended in October 2012, with no further recommendation for treatment because Jasmine was doing really well. RP 876-77. Wilde saw Jasmine for an assessment in February 2013, but Wilde did not see any further trouble with social phobia, thought her anxiety was appropriate to the situations she was coping with (like this case), and did not recommend any further counseling. RP 880.

Jasmine confirmed all of her providers' observations. See, e.g., 1222-28. She has learned from her mistakes. *Id.* As further discussed *infra*, the trial court found her a fit parent. CP 338.

E. Kyle committed suicide in March 2012, but Jasmine did not relapse and gained custody of J, and has steadily increasing visitation with S.

Kyle had committed suicide in March 2012. CP 81, 261-62. Kyle's mother, Janet Carey, and his brother Nick Carey, and Nick's wife Laura Carey (collectively, the petitioners) brought this action on March 15, 2012. CP 1-7. Despite Kyle's suicide, ongoing dependencies, illnesses and surgeries, and other ongoing stresses like this action, Jasmine stayed the course, completed her services, and maintained custody of J and her sobriety, as discussed above.

She also did this despite the hostility of the petitioners. There is much testimony in the record that reflects their hostility, but suffice it to say here that they steadfastly refused to allow visitation with S until February 2013. RP 1199-1200; CP 4, 27 (¶ 1.9), 173. Jasmine has successfully brought a series of motions in this action to increase her visitation. CP 74-75 (April 23, 2013 order granting increased visitation); 76-77 (July 2, 2013 order granting increased visitation and integration of Jasmine's family into visitations); 78-79 (amended order granting increased visitation and integrations of family).

Despite the massive evidence of her recovery that led the trial court to find that the petitioners failed to prove by clear and convincing evidence – or even by a preponderance of the evidence – that Jasmine is unfit, the petitioners continue to argue that she is unfit to parent her child and that placement with her would cause and actual detriment to her child. *See, e.g.*, CP 80-97.

F. Procedural History.

The case went to trial in March 2013, but that was a mistrial. Jasmine twice moved to dismiss because she is a fit parent and there is and can be no legally adequate showing of actual detriment to S from being placed with her now. CP 29-35, 68-72. The case went to trial again in late September 2013, lasting eight court days. CP 300-20. The court heard from roughly 40 witnesses. *Id.*

The trial court found Jasmine a fit parent – by any standard. CP 338. But it also so found that placing her child with her would cause actual detriment, based primarily on the testimony of Susan Holden, and school counselor, Michele Leifheit, a child counselor, and Lyn Lang, another child counselor. *See* CP 339-41. The inadequacy of their testimony is fully addressed *infra*.

ARGUMENT

A. The United States Constitution requires extraordinary circumstances in order to deprive a fit mother of her fundamental right to parent her daughter.

Our Supreme Court has held that “under chapter 26.10 RCW, a third party can petition for child custody, but the State cannot interfere with the liberty interest of parents in the custody of their children unless a parent is unfit or custody with a parent would result in ‘actual detriment to the child’s growth and development.’” *In re Custody of B.M.H.*, 179 Wn.2d 224, 235, 315 P.3d 470 (2013) (citing *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 338, 227 P.3d 1284 (2010); *In re Custody of Shields*, 157 Wn.2d 126, 128, 136 P.3d 117 (2006)). The actual detriment standard, properly applied, requires a “substantial” showing by the nonparent. *Shields*, 157 Wn.2d at 145. This “heightened standard” is met “only if the nonparent demonstrates that placement of the child with the fit parent will result in actual detriment to the child’s growth and development.” *Id.* at 144.

This heightened standard is required because, in Washington, “state interference with a fit parent’s fundamental right to autonomy in child-rearing decisions is subject to strict scrutiny.” *Id.* (citing *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 109 P.3d 405 (2005) (citing

In re Custody of Smith, 137 Wn.2d 1, 13, 969 P.2d 21 (1998), *aff'd on narrower grounds sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000))). Thus, "only under 'extraordinary circumstances' does there exist a compelling state interest that justifies interference with the integrity of the family and with parental rights." *B.M.H.*, 179 Wn.2d at 235 (citing *Shields*, 157 Wn.2d at 145 (quoting *In re Marriage of Allen*, 28 Wn. App. 637, 649, 626 P.2d 16 (1981))).

In explaining when such extraordinary circumstances may exist, the *B.M.H.* court cited as examples *Allen*, *supra*; *In re Custody of R.R.B.*, 108 Wn. App. 602, 31 P.3d 1212 (2001); and *In re Custody of Stell*, 56 Wn. App. 356, 783 P.2d 615 (1989). 179 Wn.2d at 236. In *Allen*, the nonparent had undertaken extraordinary efforts to assist a child blind from birth, whereas the trial court found that the birth father could not even sign adequately. *Id.* (citing *Allen*, 28 Wn. App. at 640-41). In *R.R.B.*, a suicidal child required therapy and stability that the trial court found the parents could not provide. *Id.* (citing *R.R.B.*, *supra*). In *Stell*, a child who had been sexually abused required extensive therapy and stability that the trial court found the parent could not provide. *Id.* (citing *Stell*, *supra*).

In contrast to these extreme cases, the Court considered a case with facts more similar to this case, but where the trial court properly dismissed the third-party custody petition, in the *B.M.H* companion case *In re Custody of A.F.J.*, 179 Wn.2d 179, 183-84, 314 P.3d 373 (2013). There, the birth mother (Johnston) had a very severe addiction to crack cocaine, but much more serious than Jasmine's addiction: Johnston got pregnant while using crack; her intimate companion (Franklin) "rescued" her and got her into treatment; Johnston relapsed and attempted to commit suicide: she got more treatment; she relapsed again (this time passed-out on her bed with a broken-glass crack-cocaine pipe and the child); at Franklin's request, CPS removed the child, but then returned him to Franklin's care at Johnston's request; and then over the next few years, Johnston relapsed "many" more times, such that DSHS finally moved to terminate her parental rights. 179 Wn.2d at 183. Franklin then sought a nonparental custody determination. *Id.*

Despite Johnston's dangerous history, by the time of the hearing on nonparental custody, the trial court found – much as the trial court found in this case – that Johnston had "made remarkable progress, despite very onerous requirements by this Court and the dependency court." *Id.* at 184. The trial court therefore dismissed

the nonparent custody petition. *Id.*⁵ But in **A.F.J.** (unlike here) Johnston had encouraged – even insisted upon – Franklin developing a parental relationship with the child over many years, so the trial court found Franklin a de facto parent. *Id.* The petitioners have no such history, and have never sought de facto parent status.

And in **B.M.H.** itself, the Court considered a stepfather’s allegations that the mother had serial relationships with numerous men (including marrying and divorcing in short order), bringing them into her home in a manner that was negatively impacting the child, who wanted to live with the stepfather. **B.M.H.**, 179 Wn.2d 230. The mother also wanted to move away from the stepfather, threatening to harm his long-standing and strong relationship with the child. *Id.* at 230-31. She also threatened or tried to limit the stepfather’s contact with the child. *Id.* at 238.

“At the adequate cause hearing, [the stepfather] informed the trial court that ‘removing [him] from [the child’s] life as his father’ would be detrimental to the child’s growth and development.” *Id.* at 233. The trial court found adequate cause to proceed to a hearing

⁵ In **A.F.J.**, the trial court’s dismissal of the nonparental custody petition was not at issue in the Supreme Court. But as discussed *infra*, **A.F.J.** stands at a persuasive example of the proper way to deal with the common problem of drug addiction and recovery affecting parent-child relationships.

on nonparent custody. *Id.* It found that “if the Respondent/mother denies contact between Petitioner and minor child it would cause actual detriment to the minor child’s growth and development.” *Id.*

The Court of Appeals accepted discretionary review of the trial court’s rulings finding adequate cause, and the stepfather appealed its ruling denying his de facto parenting claim. 179 Wn.2d at 233-34. The appellate court reinstated the de facto parentage claim, and affirmed the adequate cause finding. *Id.* at 234. The Supreme Court granted review. *Id.*

The ***B.M.H.*** Court affirmed on the de facto parentage claim, but it reversed the trial court’s adequate cause finding for lack of extraordinary circumstances, where all that was alleged was the possibility of future negative actions:

[W]ithout more extraordinary facts bearing on B.M.H.’s welfare, the prerequisites for a nonparental custody action have not been met. The concern that Ms. Holt might interfere with Mr. Holt and B.M.H.’s relationship is insufficient to show actual detriment under *Shields* and to meet the burden of production for adequate cause under *E.A.T.W.*

179 Wn.2d at 239 (footnote omitted). Nor was preserving existing relationships sufficient, absent extreme and unusual circumstances:

Although the importance of preserving fundamental psychological relationships and family units was part of the court’s analysis in *Allen* and *Stell*, there were more extreme and unusual circumstances that contributed to the finding of

actual detriment. In each case, the child had significant special needs that would not be met if the child were in the custody of the parent. Continuity of psychological relationships and family units was particularly important where a child had these special needs. Here, additional circumstances have not been alleged.

179 Wn.2d at 239. Rather than mere allegations that negatively impacting an existing relationship is sufficient, the Court required a serious conflict with the child's physical or mental health, and a substantial and extraordinary circumstance to justify state interference with a fit parent's rights:

This court has consistently held that the interests of parents yield to state interests only where "parental actions or decisions seriously conflict with the physical or mental health of the child." *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980) (citing *Parham*, 442 U.S. at 603). Other facts in the affidavits point to Ms. Holt's dating patterns and her decision to move to Castle Rock. These are not the kind of substantial and extraordinary circumstances that justify state intervention with parental rights.

179 Wn.2d at 239.

As further discussed below, this case is like *B.M.H.* and *A.F.J.*, which involved unfortunate, but quite common, problems like promiscuity and drug use. The trial court made no findings of extraordinary circumstances like those present in *Allen*, *Stell*, and *R.R.B.* Rather, it expressly found that Jasmine is a fit parent who is able to safely provide for her children. The Court should reverse.

B. The petitioners have failed to show any extraordinary circumstances sufficient to justify this massive infringement upon Jasmine's fundamental rights.

The trial court found that the petitioners did not show that Jasmine was unfit, even by a preponderance of the evidence, much less by clear, cogent and convincing evidence. CP 338. The court carefully and appropriately noted that it must assess Jasmine's fitness now, and not (where most the petitioners' evidence focused) at some point in the past. *Id.* While she may "arguably" have been unfit at some past point, the court found that she "has made great strides in dealing with those issues and that ***she would be able to safely provide for her children.***" *Id.* (emphasis added).

This is a far cry from the situations presented in ***Allen, Stell,*** and ***R.R.B.*** Indeed, it is difficult to conceive of how a court finding that a fit parent can "safely provide for her children" may properly deprive her of her constitutional right to do so. The trial court erred.

Simply put, there are no extraordinary circumstances present here that justify this massive intrusion on a fit parent's rights. The parenting plan in this case gives *all* major decision-making authority *solely* to the nonparents. CP 331. Perhaps most troubling, while Jasmine is "allowed to take [S] to church during her regular scheduled visitation," she "does not have the authority to have the

child engage or participate (in any way and to any degree) in any religious rights of passage of any kind [for S].” *Id.* While this phrasing is as obtuse as it is insulting, it nonetheless is an egregiously intrusive condition: not only does it violate Jasmine’s fundamental right to parent, but it infringes upon her religious freedom, presumptuously “allowing” her to share her faith with her child, yet placing derisively-worded limits *on how she practices her religion*.

C. The trial court’s findings are in error both legally and factually, and do not justify its rulings.

To justify these gross intrusions, the trial court apparently relied on the fact that S has been subjected to many traumatic events in her young life. CP 339-40. Yet while the court was careful not to use a rearview mirror to assess Jasmine’s current fitness, as to actual detriment it focused solely and expressly on the past, primarily relying on the testimony of Holden, Leifheit, and Lang, each of whom could criticize only Jasmine’s past behaviors. *Id.* Indeed, the court expressly noted that school-counselor Holden limited her testimony to detriment occurring if the child was removed from the petitioners in “June of 2012” – three months after Kyle’s suicide. *Id.* at 339 (F/F 2.7C 2 & 10). Yet the trial court felt that her judgment would “apply

equally to this time frame [22 months after his suicide] as it did” back then. *Id.* But Ms. Holden said no such thing.

On the contrary, she testified that she had not seen or spoken with S since June 2012. RP 278. She had no information about the child’s well-being since then, much less her current status. *Id.* And she expressly limited her testimony to “that point in her life,” which is when she apparently wrote a letter – in *April* 2012, two months after Kyle’s suicide. RP 277. The trial court’s finding regarding Ms. Holden is as unsupported as its assumptions are unjustified. In fact, Ms. Holden had no opinion at all on *actual* detriment, which can only occur now or in the future.

The trial court also relied on Ms. Lang, a mental health counselor to whom Jasmine brought S when she disclosed abuse by Kyle’s friend Higgins in 2008. RP 437. Lang treated S for about six months at that time. *Id.* But Lang and Jasmine lost contact after about 11 visits, so the counseling was not completed. RP 445. S made no disclosures regarding concerns with Jasmine’s home. RP 446.

Lang next saw S in 2009, when she transitioned into Kyles’ home. RP 446. S was having visits with Jasmine and was very concerned about her situation at that time. RP 446-47. S knew that Jasmine was sick and troubled and could not care for her. RP 447-

49. When Jasmine's visits stopped, S was disappointed. RP 449-50. But she reported no neglect by Jasmine. RP 450. Although Lang recommended to Kyle that S receive further treatment, she had only three sessions with S in 2009. RP 448-49, 450.

Lang next saw S in 2012, right after Kyle killed himself. RP 450. They had about 30 sessions. *Id.* By December 2012, S was doing well enough in grief counseling at Cork's Place that Lang made their own sessions less frequent. RP 455-56. During 2012, S did not think about or remember her mother much. *Id.* Yet Jasmine brought gifts for S, which Lang decided were "overwhelming for a child and a bit too much." RP 456.

As discussed above, during 2012 Jasmine was establishing her stability and seeking visitation with S, but Lang resisted it because she "didn't know how [S] would be able to conceptualize a life of stability with Jasmine. It was a new experience that she didn't really have a context for, so I was afraid that that would make . . . her feel more unstable – or maybe I should say make her feel less stable to have that reintroduced into her life at that time." RP 458.

During their 11 sessions in February through June, 2013 – roughly a year after Kyle's suicide – S "seemed to be settling in comfortably in her Uncle Nick's home." RP 460. She felt part of the

family and seemed to be doing fairly well. *Id.* She was able to express her feelings at Cork's Place. RP 461. And significantly, S "said she enjoyed" Jasmine's visitations. *Id.* "She was enjoying it a lot." *Id.*

At this point, Jasmine (through her attorney) was asking to introduce S to the rest of her family, like B and J. RP 462-63. Lang was resistant. RP 462-65. Lang apparently believed that putting off these meetings would somehow contribute to S's stability. *Id.*

Between June 2013 and the trial (October 2013) Lang had six sessions with S. RP 466. While she suffered "trauma" when the petitioners' daughter Bobby was away from home for some time, the last time Lang saw S "she was looking very happy." RP 466-67. "She's recovered from that episode." RP 467. Nonetheless, Lang opined that if the "bond is broken" and S is "removed from" the petitioners' care, that would cause "trauma" to S. RP 469. Such trauma – combined with the other traumas she has experienced – could have long-term affects like heart disease, obesity, diabetes, and other chronic illnesses. RP 470.

It is important to emphasize that Lang is talking here about the total effects of the "cumulative trauma" that S has suffered over her lifetime. RP 469-70. The trial court identified four specific traumas: (1) the removal from her mother and placement with her father

(although the court expressly found that S “appeared to do well in that circumstance”, CP 339, F/F 2.7C.6); (2) Jasmine’s failure to support S for the next three years; (3) the sexual assault; and (4) Kyle’s suicide. CP 339. Of these, Jasmine was responsible for the first two. *Id.* But unless one erroneously believes that it is appropriate to punish a mother by withholding her child, placing blame is unproductive.

More importantly, Jasmine has never even remotely suggested that she would break the petitioners’ bonds with S or exclude them from S’s life. Rather, Jasmine acknowledges the importance of that bond and would foster their relationship. RP 1286-87. Lang’s opinion assumes facts that are contrary to the evidence.

In sum, Lang did not testify that simply placing S in Jasmine’s primary care would cause actual detriment to S. Rather, she thought it could be a last straw, though she provided no evidence or support in the psychological literature for her fears. This sort of vague apprehension – which is contradicted by S’s extraordinary resilience and demonstrated ability to recover from her past traumas⁶ – is insufficient to meet the heightened standard required to violate

⁶ See, e.g., CP 340, F/F 2.7C.18: “[S] is doing amazingly well for everything that she has been through”

Jasmine's fundamental right to parent her child. Many people suffer repeated traumas. Sadly, in the real world this is not extraordinary. But Jasmine has no intention of severing their bonds, so Lang's actual testimony is essentially irrelevant.

But there is a bigger problem with Ms. Lang:

The court feels that it did appear that Ms. Lang did, perhaps at times lack some objectivity in regards to some of her opinions and positions in her actions with regard to this case.

CP 340. This is, of course, laudable judicial understatement. During the course of 2012, Ms. Lang had no fewer than 12 contacts with petitioner Janet Carey. RP 1084-85, 1114-15, 1117-21. In 2013, Lang had no fewer than 16 contacts with Janet. RP 1123-27, 1130-31. During this same two-year period, Ms. Lang had a grand total of four (4) contacts with Jasmine. RP 1122, 1128-29. At the two 2013 meetings Lang promised to call Jasmine, but never did. RP 1128-29. Jasmine also left Ms. Lang a message after the first meeting, and twice tried to call her after the second meeting, leaving another voice mail. RP 1254-56. Ms. Lang never returned Jasmine's calls. RP 1169-70, 1254-56.

And as discussed above, Lang's opinions were highly biased in favor of the petitioners. She never gave Jasmine a chance. Her bias undercuts her opinions.

The trial court also relied on testimony from mental health counselor Michele Leifhelt. CP 339. As if to outstrip Lang's apparent bias, Ms. Leifhelt had *no* contact with Jasmine. RP 371-72. It should be impossible for Ms. Leifhelt to determine whether placing S with Jasmine would cause actual detriment to S without ever even speaking to – much less visiting with – Jasmine herself. But she just accepted Ms. Lang's foregone conclusions about Jasmine. RP 356.

Ms. Leifhelt's contact with S and the petitioners is not much more impressive: she spent two hours in the aunt and uncle's home, and about two hours in her office, if you include S (15 or 20 minutes) and Janet (15 or 20 minutes). RP 354, 372. Despite never seeing or speaking with Jasmine, she admitted that establishing a bond between S and her aunt and uncle – which no one disputes – does not rule out bonding with others, like Jasmine. *Id.* Indeed, S told Liefhelt that she has three mothers, Holly Barnes, Laura Carey, and Jasmine. RP 353. Although the trial court appeared to place great confidence in Ms. Liefhelt's opinion, it certainly does not satisfy the heightened constitutional requirement of extraordinary circumstances. The trial court's finding of actual detriment is not supported by substantial evidence under the heightened standard required by the strict scrutiny our Constitution demands.

And briefly, the trial court entered a "Best Interest of the Child" finding. CP 338 (F/F 2.7A). This is obviously just a form entry, and it is equally obviously improper in a nonparent custody case under many cases cited above. This Court should strike it.

D. If the evidence adduced here is sufficient, then the nonparent custody statute is unconstitutional as applied.

Jasmine has been clean and sober since October 2011. RP 1226. Jasmine's child J came back into her care on May 17, 2012. RP 620. There have been no problems since. RP . The trial court found not only that Jasmine is a fit parent, but that "she would be able to safely provide for her children." CP 338.

If these facts are sufficient to deprive Jasmine of her strongly protected constitutional right to parent her child, then RCW 26.10 is unconstitutional as applied. Our Supreme Court recently reiterated that third-party custody is by its very nature temporary. **A.F.J.**, 179 Wn.2d at 186 (quoting *In re Parentage of J.A.B.*, 146 Wn. App. 417, 426, 191 P.3d 71 (2008)). It defies common sense to say that S needs stability, so it is a good idea to put her into yet another unstable, temporary status. Such a ruling does not come close to meeting the heightened protection our Constitution requires.

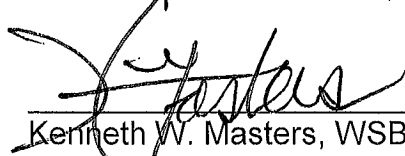
This Court should reverse and remand for an order that sensitively, and with due time and regard for S's stability, reintegrates her into her mother's home. This is the only way that S will find true stability. And it is the only way that Jasmine will find peace.

CONCLUSION

For the reasons stated, this Court should reverse and remand for an order to carefully and sensitively reintegrate S into her mother's home.

RESPECTFULLY SUBMITTED this [#]25 day of November,
2014.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 25th day of November 2014, to the following counsel of record at the following addresses:

Jacqueline Shea Brown
Tri-Cities Law Group P.S.
719 Jadwin Avenue
Richland, WA 99352-4217

Patricia S. Novotny
3418 NE 65th Street, Suite A
Seattle, WA 98115-7397

Kari L. Hayles-Davenport
Law Office of Kari L. Hayles-Davenport, PLLC
8927 West Tucannon Ave., Suite A108
Kennewick, WA 99336



Kenneth W. Masters, WSBA 22278
Counsel for Appellant

FEB 20 2014

FILED

COPY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

In re the Custody of:
S.F-T.C.,

Child,

No. 12-3-00255-1

Janet Carey,
Nick Carey,
Laura Carey,

Co-Petitioners,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
(NONPARENTAL CUSTODY)
(FNFCL)

And

Jasmine Rose Carey, Mother,
Kyle Carey, Father, Deceased



ORIGINAL

Respondent.

I. Basis for Findings

The findings are based on: trial. The following parties and lawyers attended: JANET CAREY, NICK CAREY AND LAURA CAREY with their attorney JACKIE SHEA BROWN, and JASMINE CAREY, with her attorney, KARI HAYLES-DAVENPORT.

II. Findings of Fact

Upon the basis of the court record, the court finds:

2.1 Children for Whom Custody Is Sought

The petitioners are seeking custody of the following child:

SERENITY FEY-TROUBLE CAREY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2.2 County Where Children Reside

The child named in paragraph 2.1 permanently resides in this county or can be found in this county.

2.3 Indian Child Welfare Act

Child's Indian status:

The petitioners have made a good faith effort to determine whether the child is an Indian Child.

Based upon the following, the child is not an Indian child as defined in Laws of 2011, ch. 309, §4, and the federal and Washington State Indian Child Welfare Acts do not apply to these proceedings: there is no documentation received or located to date to show that the child is an Indian child. Mother took no formal action, although she fully participated in this case, to demonstrate that the child was an Indian child.

2.4 Basis of Jurisdiction

This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and: retains jurisdiction under RCW 26.27.211.

This state is the home state of the child because:

the child lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

2.5 Background Records Check

The court has consulted the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child. The court has also directed the Department of Social and Health Services to release information as provided under RCW 13.50.100; and has required the petitioner to provide the results of an examination of state criminal identification data provided by the Washington State Patrol criminal identification system as described in chapter 43.43 RCW for the petitioner and adult members of the petitioner's household.

2.6 Standing

At the beginning of the case, the child had not been in the physical custody of her mother for approximately 3 years. At the beginning of the case, the child had not been in the physical custody of her father because he had passed away on or about March 1, 2012.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The father was deceased at the beginning of the case. The mother was not a suitable custodian at the beginning of the case.

2.7 Best Interest of the Child

A. It is in the best interest of the child to be placed in the custody of the petitioner(s), and at this time:

The child has not been in the physical custody of her biological mother since approximately 01/29/2009 because the mother had abandoned the child from 2009 to 2012. The mother was not given custody of the child during this proceeding nor was she awarded custody of the child after a lengthy trial.

The child has not been in the physical custody of her biological father since approximately 03/01/2012 because he died on that date.

B. UNFITNESS. The court makes the following findings relative to the mother's fitness and ability to parent the child at this time.

1. It is important to note that the court is assessing whether, at this point, Ms. Carey is an unfit parent.
2. There is certainly a great deal of information regarding things that have occurred in Ms. Carey's past, some of which involve this child, that the court would find that, at those times, certainly that Ms. Carey was, arguably, an unfit parent.
3. A lot of testimony and evidence that has been presented regarding the time period from 2006 and even before up through the filing of the dependency involving Jayce in 2011, and even some information regarding potential drug use or admitted drug use during the period of time that Ms. Carey was pregnant with Jayce.
4. The evidence also shows that Ms. Carey was involved in a significant number of services through the dependency of Jayce where she was provided opportunity and information regarding how to improve her parenting and how to better protect her children from some of the issues that have risen in her past and all the reports from those experts and providers involved in those situations indicate that Ms. Carey has made great strides in dealing with those issues and that she would be able to safely provide for her children. Most of the evidence to the contrary has to deal with information from well before today's date and the time period the Court is considering for Ms. Jasmine Carey's fitness as a parent.
5. The court doesn't believe that it has been established by clear and convincing evidence, nor even by a preponderance of the evidence, that Ms. Carey is an unfit parent.
6. The court finds that the Petitioners have failed to establish that prong of the 3rd party custody statute.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

*JMB
WJB*

C. ACTUAL DETRIMENT TO THE CHILD'S GROWTH AND DEVELOPMENT.

While the mother is no longer unfit, there would be actual detriment to Serenity's growth and development if placed in the mother's care because:

removed from Nick & Laura Carey

1. Unlike the information regarding the unfitness of Ms. Carey there were or there is testimony in the record establishing concerns that Serenity would face actual detriment if returned to Ms. Jasmine Carey at this time.
2. There was testimony from Susan Holden, who's a counselor at the school, that stability for Serenity is very important at this time and that she believed it would be detrimental to Serenity's health and well-being if she were returned to her mother's care. The court acknowledges that Susan Holden said "at that time" which would have been June of 2012. Some things have changed but that is some evidence that the court has considered in making its decision.
3. If returned to her mother's care, Ms. Holden indicated that at that time, which was June of 2012, that that would be detrimental to Serenity's health and well-being and I think her comments regarding stability being very important for Serenity and her development and healing, I think would apply equally to this time frame as it did back in June of 2012. So that is some evidence the Court has considered.
4. Also, there was testimony from the counselor, Michele Leifheit, who works with children regarding trauma and has worked with Serenity in regard to the various traumas that she has experienced during her short life and the court thinks that that is very significant because, unfortunately and sadly, Serenity has experienced in her 9 years trauma that we would hope no one would experience in the course of their entire lifetime and quite frankly part of that trauma was the failure of her mother, Jasmine Carey, during a significant period of her life, to provide the parenting and the parental guidance and support that she very much needed.
5. There is the issue of the unfortunate sexual assault on Serenity which, the court doesn't think the Court can attribute to Ms. Jasmine Carey or to anyone other than the perpetrator, but it was a trauma that Serenity had suffered during her short life.
6. Serenity was removed from her mother's care, which is traumatic and placed with her father and appeared to do well in that circumstance.
7. Unfortunately her father took his own life, which was another significant trauma in this young child's life.
8. The Court thinks that the testimony from Ms. Holden and from Ms. Leifheit regarding the need for stability in Serenity's life is very well taken and raises concern regarding detriment to Serenity if she were to be, now removed from a home which Ms. Leifheit indicated she considers to be her permanent home and has identified Nick and Laura and their children as her family. The Court doesn't think that is necessarily to the exclusion of Jasmine, Jayce and Bella or the other siblings that Serenity has. But the court thinks that is very important, how she sees that as her stable home and her stable family.
9. The testimony from Ms. Holden was regarding the period of time that she was dealing with Serenity back in June 2012.
10. The testimony from Ms. Leifheit was specifically that removal could be very detrimental to Serenity's well-being, emotionally, psychologically and even possibly physically.
11. The Court recognizes that the case law is very clear that possible detriment is not the standard but that is evidence the court considers to determine whether or not there will be actual detriment to the child.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 12. Lyn Lang who had extensive ongoing contact with Serenity and some contact with Jasmine Carey and is one of the few professionals that had an opportunity to converse with and have discussions with both Serenity and Jasmine.
- 13. The court feels that it did appear that Ms. Lang did, perhaps at times lack some objectivity in regards to some of her opinions and positions in her actions in regard to this case.
- 14. In looking at Lyn Lang's testimony, her ongoing contact with Serenity, the relationship that she has with Serenity, information that she gathered, in conjunction with that of Ms. Holden and Ms. Leifheit, this court does find that the evidence establishes by clear, cogent and convincing evidence that removing Serenity from her current home at this time would cause actual detriment to her stability, well-being, growth and development.
- 15. The court finds that primary custody of Serenity, residential placement should be with Nick and Laura Carey.
- 16. The court feels that it's extremely important that Serenity be allowed to continue to have contact with Jasmine Carey and to help develop that relationship.
- 17. The court thinks that it is important to her emotional and psychological well-being for her to remain where she is and that to remove her, considering all of the traumas that she has undergone to this point in her life, would be an actual detriment to her.
- 18. Serenity is doing amazingly well for everything that she has been through and the court thinks that stability and security are very important to her continued well-being and that to remove her from the home that she is in at this time would detrimentally affect that security and safety and her well-being.
- 19. The mandatory parenting seminar is waived for the mother, given all of the services that she has gone through over the last few years, regarding those issues through the dependency and Jasmine seemed to have demonstrated to this court that she has embraced those opportunities and has learned from those things.
- 20. The mandatory parenting seminar is waived for Janet Carey.
- 21. Prior to entry of final papers in this matter, Nick and Laura Carey shall be enrolled in the mandatory parenting seminar.

JCB
2.8

22. Serenity clearly is bonded to Nick & Laura Carey and they are bonded to her.

Adequate cause for this proceeding has been found in an order signed by the court dated April 19, 2012.

2.9 Limitations on Visitation

Does not apply. (OR)

The following reasons exist for limiting visitation of

JCB
KAS

~~Respondent: JASMINE CAREY:~~

~~Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.~~

~~However, contact between JASMINE CAREY and the child will not cause physical, sexual, or emotional abuse or harm to the children and the probability that the parent's~~

1 harmful or abusive conduct will recur is so remote that it would not be in the child's
2 best interest to apply the limitations of RCW 26.10.160(1)(a) and (b).

3 **2.10 Child Support**

4 RESERVED.

5 **2.11 Continuing Restraining Order**

6 Does not apply.

7 **2.12 Attorney Fees, Other Professions Fees and Costs**

8 Does not apply.

9 **2.13 Other**

10 Does not apply.

11 **III. Conclusions of Law**

12 The court makes the following conclusions of law from the foregoing findings of fact:

13 **3.1 Jurisdiction**

14 The court has jurisdiction over the children.

15 **3.2 Disposition**

16 The evidence at trial, from exhibits and from the witnesses, including but not limited to Susan
17 Holden, Michelle Leifheit and Lyn Lang establish by clear, cogent and convincing standard
18 that Serenity would suffer actual detriment to her stability, well-being, growth and
19 development if removed from Nick and Laura Carey and their home and their children and
20 placed with Jasmine Carey.

19 THEREFORE, it is in the best interest of the child to reside with:

20 NICK AND LAURA CAREY, CO-PETITIONERS, IN THEIR HOME, **AS CUSTODIANS**
21 **OF THE CHILD.**

21 ~~JANET CAREY, A CO-PETITIONER, LIVES OUTSIDE OF NICK AND LAURA~~
22 ~~CAREY'S HOME, BUT WILL REMAIN A CO-CUSTODIAN OF SERENITY CAREY.~~

22 **Janet Carey retains her status as a co-**
23 **petitioner.**

23 **3.3 Child Support**

24 RESERVED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3.4 Visitation

Respondent: JASMINE CAREY: Visitation shall be as set forth in the Parenting Plan/Residential Schedule signed by the court on this date and approved by the court and incorporated as part of these findings.

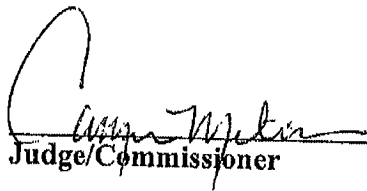
3.5 Continuing Restraining Order

Does not apply.

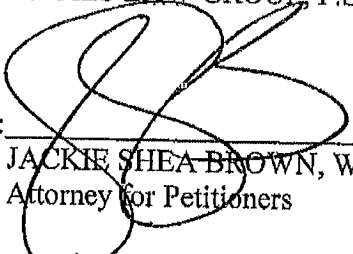
3.6 Attorney Fees, Other Professional Fees and Costs

Does not apply.

3.7 Other

Dated: 2/20/14 
Judge/Commissioner

Presented by:
TRI-CITIES LAW GROUP, P.S.


By: _____
JACKIE SHEA-BROWN, WSBA# 23885
Attorney for Petitioners

Approved as to form; Notice of Presentment waived.


By: _____
KARI HAYLES-DAVENPORT, WSBA #37860
Attorney for Respondent Mother

Approved as to form; Notice of presentment waived.

Laura Scaper, GAL