Supreme Court No. 92545-3

COA Division One No. 729322-1

In the Supreme Court of the State of Washington

IN RE: THE MARRIAGE OF

JARED BRYAN KILLEY

Appellant

v

ELIZABETH KILLEY/RODRIQUEZ

Respondent

On Appeal From

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

No. 13-3-13106-8 SEA and No. 14-2-01611-5 SEA

Before the Honorable Judge Samuel S. Chung

PETITION FOR REVIEW

Jared Bryan Killey
Appellant Pro Se
6818-208th SW #5563
Lynnwood, WA 98046
(206) 468-7017

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CASES

WASHINGTON STATUTES

US CONSTITUTION

5th Fifth Amendment No person shall be deprived of life, liberty or property without due process of law

9th Ninth Amendment The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

14th Fourteenth Amendment guarantees due process and equal protection for all.

OTHER AUTHORITIES

A. IDENTITY OF THE PETITIONER

Jared Bryan Killey, whose address is *P. O. Box 5563, Lynnwood WA, 98036* and who is without benefit of counsel is the Petitioner.

Mr. Killey respectfully requests that the Supreme Court of the State of Washington accept and review his appeal of a judgment by the Superior Court of Washington for King County, Seattle, dated December 4, 2014 which interfered in Mr. Killey's fundamental liberties without due process of law and which was reviewed and affirmed by the Court of Appeals Division One 729322-1 on September 28, 2015. [Appendix G-1]

On October 8, 2015 Mr. Killey filed a timely Motion for Reconsideration; [Appendix G-2] which was denied on October 26, 2015. [Appendix G-3].

B. INTRODUCTION

The Supreme Court should review the decision of the Court of Appeals because the errors in its decision conflict with its own decisions in previous cases before it, the decision conflicts with decisions of this Supreme Court, conflicts with decisions by the U.S. District Courts and U.S. Courts of Appeals and is not consistent with WA State Statute.

Mr. Killey's Petition for Review concerns, in part, an issue of Statutory Interpretation of substantial public interest because it concerns issues of fundamental liberties guaranteed to citizens of the United States.

The Supreme Court should review the decision of the Court of Appeals, because its interpretation of Washington Statute RCW 26.09.191, if accepted, would render the Statute unconstitutional.

The Statute at RCW 26.09.191 should be declared void for vagueness because the language of the statute makes it vulnerable to incorrect interpretation.

The Supreme Court should review the opinions of the Court of Appeals because the majority upheld errors in a Parenting Plan that is internally inconsistent, incomplete, vague, and confusing.

The Supreme Court should review the errors of the Court of Appeals because the majority upheld concealment of evidence of child abuse and neglect and upheld perjury by judicial and non-judicial officers of the Trial Court, as discussed at length in Mr. Killey's Appellate briefs.

The Supreme Court should review the errors of the Court of Appeals because the majority interpreted the law according to their own opinion instead of upholding the meaning and intent of the legislature of Washington State.

If accepted for review, Mr. Killey intends to submit a supplemental brief to discuss important issues in more detail and to provide additional legal precedence and case law.

C. QUESTIONS PRESENTED FOR REVIEW

1) Did the Court of Appeals incorrectly interpret RCW 26.09.191 to impose a *mandate* where none was required or implied by the Statute?

2) Did a preponderance of the evidence support the Trial Court's findings of fact and conclusions of law as upheld by the Court of Appeals?

3) Did the Trial Court and Court of Appeals incorrectly rely on an inadmissible police report as proof of the facts alleged?

May the Court of Appeals accuse the Petitioner of crimes not found by the Trial Court and not alleged or litigated at trial based on an inadmissible police report even after Petitioner has been declared not guilty of alleged crime by jury trial?

4) Did the Court of Appeals err in upholding restrictions in the parenting plan in the absence of the required 'express findings'?

5) Did the Court of Appeals err when it upheld perjury by judicial and non-judicial officers of the Trial Court?

6) Did the Court of Appeals err when it upheld exclusion of materially relevant, admissible evidence and testimony of child abuse and neglect by the Trial Court?

7) Do the errors of the Trial Court and Court of Appeals entitle Mr. Killey to a new trial?

D. ARGUMENTS

It is beyond the scope of this limited Petition to argue the relevant issues of Constitutional law regarding a parent's custodial rights. Mr. Killey must assume that this Court is intimately familiar with those rights guaranteed to citizens as well as the restraints imposed on the State to take actions against a fit parent without a compelling State interest.

As noted by the Supreme Court, the interest of a parent in the companionship, care, and custody of his children has been traditionally held in high regard and zealously protected by State and Constitutional Law for many decades.[1]

It has never been suggested that a parent's interest in the society and companionship of his child suddenly disappears when the parent's marriage fails, or that one parent's liberty interests should be preserved while the other parent's should be violated. It has never been held that a child should unnecessarily suffer loss of the protection of a loving parent, which happened here.

The Trial Court imposed arbitrary restrictions in Mr. Killey's parenting plan without making an 'express finding' as required to support its ruling.

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[1] *Stanley v. Illinois,* 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *see also Santosky v. Kramer,* 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) *held; (natural parents desire for and right to companionship is an interest more precious than any property right).*

In any proceeding where custody of a child is in dispute the "*purpose of a custody hearing is to place custody where it seems to be in the best interest of the child under all the circumstances*"[2]

In the case presently before the Court the welfare of the child was never considered as Mr. Killey argued extensively on Appeal in his Opening Brief, Reply Brief and Motion for Reconsideration.

Mr. Killey argues that restrictions imposed in the Parenting Plan were not necessary or proper, and in fact, harmed his child.

1) Statutory Interpretation Of RCW 26.09.191(2) (a)

The WA Statute as written in RCW 26.09.191 (2) (a) should be declared void for vagueness[3] because it uses the term 'shall' which after careful consideration reveals that the word is open to misinterpretation, is often litigated, cannot be given its plain and ordinary meaning because the word is archaic and no longer ordinarily used. 'Shall' has several different meanings, such as 'May' 'Must' 'Should' or 'Will'. It may indicate intent, permission or as proposed by Court of Appeals, a mandate[4]. Court of Appeals proposes to interpret 'shall' as a mandate in RCW 26.09.191 (2) which renders the statute arbitrary, inconsistent with other sections of the statute and unconstitutional.

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[2] *Johnson v. Johnson,* 72 Wn,2d 415 WA Supreme Court (1967)
[3] *Smith v. Goguen* U.S. Supreme Court 415 U.S. 566 (1974)

[4] *Appendix G-7* Shall

In Chandola[5] this Supreme Court answered the question 'what type of adverse effect to the child's best interests a trial court must find before imposing parenting plan restrictions under the catchall provision RCW 26.09.191(3).' This Court ruled that restrictions imposed under that statute must *'be reasonably calculated to prevent relatively severe physical, mental or emotional harm to a child'.*

Consistent with the decision in Chandola, should restrictions in a parenting plan under RCW 26.09.191 (2) also be 'reasonably calculated to prevent relatively severe physical, mental or emotional harm to child'?

Or, as proposed by the Court of Appeals are restrictions under RCW 26.09.191 (2) mandatory or arbitrary?

In the case presently before the court, the Trial Court made no finding under RCW 26.09.191 (3) against Mr. Killey in this case. Careful examination of the Parenting Plan reveals that the Trial Court crossed out each and every risk factor and crossed out need for supervised visit proposed by the mother and did not make any finding under RCW 26.09.191(3) that restrictions were necessary to 'prevent relatively severe physical, mental or emotional harm' to the child or that Mr. Killey harmed or posed any risk of harm to the child.

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[5] *Chandola v. Chandola* 327 p.3d 644, 647

Restrictions in Parenting Plan were premised on unproven allegations of generic, undefined 'acts of domestic violence'.

Here, the Court of Appeals proposes that a finding of undefined history of generic 'acts of domestic violence' ***mandates*** restrictions in the Parenting Plan under RCW 26.09.191 (2)(a).

This interpretation would render the Statute unconstitutional under the prevailing case law in *Troxel v Granville*. *Custody of Smith*[6] and other[7] prevailing law that indicates that the state must show that it has a compelling interest when interfering in parental rights.

'Troxel' is a not only a case concerning grandparent's rights. 'Troxel' concerns who has the ultimate authority to determine what is in the best interest of the child; the parent or the State? WA State Supreme Court held, *inter alia*, that the statute [§ 26.10.160(3)] unconstitutionally infringes on parents' fundamental right to rear their children. Reasoning that the Federal Constitution permits a State to interfere with this right ***only to prevent harm or potential harm to the child,*** it found that WA

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[6] *In re Custody of Smith* The Supreme Court of Washington. En Banc. 137 Wn.2d 1 (Wash. 1998) The court noted that Washington courts allowed state interference with child-rearing decisions "only when `parental actions or decisions seriously conflict with the physical or mental health of the child.'

[7] There is a presumption that fit parents act in their children's best interests, *Parham* v. *J. R.*, 442 U.S. 584, 602; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, *e.g.*, *Reno* v. *Flores*, 507 U.S. 292, 304.

Statute § 26.10.160 does not require a threshold showing of harm and sweeps too broadly by permitting any person to petition at any time with the only requirement being that the visitation serve the best interest of the child. (in the opinion of the State)

In this case, the Court of Appeals opinion dated September 28, 2015 is in sharp conflict with the foregoing Supreme Court rulings that Federal Constitution permits a State to interfere in Mr. Killey's parental right '*only to prevent harm or potential harm to the child*'.[8]

If the Court of Appeals opinion is correct, RCW 26.09.191(2) (a) is unconstitutional and must be revoked because the Statute does not require a threshold showing of harm; according to the opinion of the majority, the Statute arbitrarily (and unconstitutionally) mandates restrictions with no showing of harm or risk of harm to the child.

In formulating their opinion that the Statute at RCW 26.09.191(2) (a) requires a mandatory restriction with no showing of harm or risk to a child, the majority essentially rewrites the law when they replace the legislature's word ***'shall'*** with the Court of Appeals preferred interpretation of ***'must'***, thereby creating a mandate never intended by the legislature and not allowed consistent with prevailing case law or the Federal Constitution.

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[8] *Chandola v Chandola* 327 p.3d 644, 647

On page 12 of the Court of Appeals decision the majority states that RCW 26.09.191 (2) (a) (iii) '*requires*' limiting a parent's residential time with a child in a parenting plan if the court finds a 'history of acts of domestic violence'.

There are two [2] errors in this reasoning.

First, the Statute does not intend to impose any '*mandate*' on a Trial Court to limit residential time in a parenting plan.

Second, the majority quotes only half of the Statute which not only requires a finding of generic 'domestic violence' it requires a 'sufficiently specific' finding of 'domestic violence *as defined in RCW 26.50.010 as physical harm, bodily injury, assault, sexual assault or stalking.*'

This error is found in other opinions as well; the Court substitutes the legislative verbiage of the Statute with its opinion, thereby changing the meaning and intent of the Statute[9].

There are several sections of the Statute that clearly indicate that the legislature never intended the word '***shall***' to create a *mandate*.

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[9] The Supreme Court of Washington upheld an erroneous interpretation and ruling by the Court of Appeals Division 1 *In re Marriage of Caven*,136 Wn.2d 800,810,966 P.2d 1247 (1998) when the Appeals court changed verbiage of the Statute and replaced it with verbiage of the Courts interpretation. RCW 26.09.191(1) reads; (1) the permanent parenting plan shall not '***require***' mutual decision making... but the Appeals Court changed the statute to read shall not '***permit***' mutual decision-making... thereby changing the meaning of the Statute and imposing a mandate where none was intended by the legislature.

a) The legislature clearly states that RCW 26.09.191 (2) is intended to prevent harm or risk of harm to the child as expressed in RCW 26.09.191 (2) (n) which states that *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 harmful or abusive behavior will recur is so remote that it would not be in the child's best interests to apply the limitations of (2) (a)...or if the court expressly finds that the parent's conduct did not have an impact on the child,* ***the court need not apply the limitation of (2) (a).***

This section of the Statute is specifically included to remove any presumption of a mandate in RCW 26.09.191(2) (a).

b) Interpreting ***'shall'*** as ***'must'*** conflicts with other sections of the Statute as well, specifically, the legislature's policy statement in RCW 26.09.003 which says that 'Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.' This policy statement clearly indicates that the legislature did not intend to impose any mandate on the trial court but intended for the court to have full discretion and flexibility to make reasonable, not arbitrary rulings based on the best interests of the child.

The Court of Appeals interpretation would make this section of the statute superfluous.

c) The legislature's policy statement at RCW 26.09.002 clearly indicates that the legislature never intended to mandate arbitrary restrictions in a parenting plan, not even on the basis of a finding of a 'history of acts of domestic violence' unless the restrictions are reasonably calculated to prevent some adverse effect to the child's best interests.

Therefore, in the absence of any finding of harm, risk of harm, abuse of the child or adverse effect to the child, restrictions in this parenting plan are not 'mandated' or even authorized under the statute, under constitutional law or under prevailing case law, not even if domestic violence occurred between the parents.

Accordingly, restrictions in Mr. Killey's residential time with his child are not permitted under RCW 26.09.191 (2) (a) because the trial court did not make the necessary express finding to identify, and indeed, no one alleged that Mr. Killey ever harmed or posed any risk to the child.

2) Did A Preponderance Of The Evidence Support The Trial Court's Findings Of Fact And Conclusions Of Law As Upheld By The Court Of Appeals?

The Court of Appeals repeatedly proposed that there was 'sufficient evidence' 'submitted evidence' 'other evidences' 'was

presented with evidence', 'multiple incidents sufficient' 'conflicting evidence' etc. throughout the pages of its opinion.

This well-worn '*tactic*' of repeatedly using of the term 'evidence' without referencing any actual evidence is intended to create a fallacy that there is evidence, when in truth, there is not.

Although Social Workers and Ms. Rodriquez expounded multiple *allegations*[10] none equal 'evidence' by any definition, and even if their allegations could be considered evidence they did not allege assault, sexual assault or stalking *as required by Statute to* impose Parenting Plan restrictions under RCW 26.09.191(2) (a).

Here, the Court of Appeals relies on these allegations to support unauthorized restrictions on Mr. Killey's residential time with his child.

Reliance on these allegations in the absence of actual physical evidence of 'physical harm, bodily injury, assault, sexual assault or stalking' directly conflicts with prevailing case law and is not sufficient to invoke restrictions under the statute.

3) Did The Trial Court And Court Of Appeals Incorrectly Rely On An Inadmissible Police Report As Proof Of The Facts Alleged?

In addition to unsupported allegations and claims of generic acts of domestic violence made by Social Workers in unsworn out of court

[10] ***Caven v. Caven*** 136 Wn.2d at 809 [mere accusations, without proof, are not sufficient to invoke the restrictions under the statute]

reports, the Trial Court and Court of Appeals also relied upon a completely inadmissible police report that was not litigated at trial, was not properly admitted into evidence and does not equal any proof of multiple acts of domestic violence.

At no time was the police report mentioned or litigated at trial, the Court did not indicate that any police report was under consideration or that it would be admitted into evidence after trial and considered by the Judge post-trial. As discussed in his Motion for Reconsideration, the police report written by Officer Fenton in December, 2013 is inadmissible hearsay. *Crawford v Washington* U.S. Supreme Court 541 U.S. 36 (2004) held; a witness's testimony against a defendant is inadmissible unless the witness appears at trial or if the witness in unavailable, the defendant had a prior opportunity for cross-exam. Officer Fenton's written statement is not admissible because Mr. Killey did not have an opportunity to object to admittance at trial and because Mr. Killey did not have an opportunity to cross-examine Officer Fenton. Also, witness statements attached as Exhibits are inadmissible for the same reasons.

Both the Trial Court and Court of Appeals knew that the police report was not admissible but relied on it anyway because 'actual evidence' of required statutory finding of 'physical harm, bodily injury, assault, sexual assault, stalking' is absent.

Mr. Killey discusses in detail the events that lead to the December 4, 2013 police report and disposition of the case in his Appellant's Opening Brief to the Court of Appeals. There was no 'assault.' The jury determined that Mr. Killey performed a lawful eviction when Ms. Rodriquez trespassed on his private premises and forcibly removed the child from Mr.Killey's lawful custody. No witness testimony or evidence supports any other conclusion.

4) Did The Court of Appeals Err In Upholding Restrictions in the Parenting Plan In The Absence of an 'Express Findings' to support its ruling?

The Trial Court did not make an 'express finding' as required to support 'a history of acts of domestic violence' as defined in RCW 26.50.010 to support restrictions in the Parenting Plan.

The Court of Appeals erred by '*assuming*' that the Trial Court used the correct legal standard and correct definition of 'domestic violence' and that the 'domestic violence' found by the Trial Court meets the statutory requirements for restrictions in a parenting plan.

The Court of Appeals proposes that the Trial Court *'is not required to make findings of fact on all matters about which there is evidence in the*

record; only those which establish the existence or non-existence of determinative factual matters need be made. [11]

The Court of Appeals is wrong. The Trial Court is required by Statute and prevailing case law to make an 'express finding".

LaBelle does not excuse the Trial Court from making any express finding *at all* to support the reason for its' ultimate conclusions.

Indeed, LaBelle requires express findings 'sufficiently specific to permit meaningful review". [12] [13]

Mr. Killey objects to the Trial Court signing Ms. Rodriquez proposed parenting plan that alleged 'domestic violence' without making an 'express finding' specifically sufficient to permit meaningful review and assurance that Ms. Rodriquez's allegations were supported by sufficient evidence to meet the Statutory requirements for imposing her desired limitations on Mr. Killey's residential time with their child.

Because 'domestic violence' can be alleged for anything from name-calling to murder and just about any misbehavior in between, the Trial Court needs to ***specify*** what act of domestic violence it found and those acts must comply with the statutory definition at RCW 26.50.010 before imposing restrictions on an accused parent.

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[11] *LaBelle*, 107 Wn.2d at 219
[12] *In re Det. Of LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986)
[13] *In re Marriage of Lawrence*, 105 Wn.App. 683, 686, 20 P .3d 972

At trial, [RP pg. 130@15] Social Worker Hunter testified that she was not presenting any evidence of assault, sexual assault or stalking as required under RCW 26.50.010 but instead testifies incorrectly that '*domestic violence'* includes not only 'allegations' of physical violence but emotional abuse, mental abuse, verbal abuse, attempts to control the other party. As argued in detail in his previous briefs, these allegations of humiliation, verbal abuse, mental abuse, emotional abuse do not meet the statutory requirements of RCW 26.50.010 to authorize restrictions in a Parenting Plan.

As argued in detail in his Motion for Reconsideration there are many crimes of 'domestic violence' but only those specifically included in *RCW 26.50.010* are a basis for residential time limitations in the Parenting Plan. A generic finding of 'domestic violence' as repeatedly suggested by the Court of Appeals is not sufficient to invoke restrictions on a fit parent.

As discussed at length in his Motion for Reconsideration, Domestic Violence is a ***crime*** of violence between family members and careful consideration of the statute suggests that the Legislature here is looking for a *criminal 'history' or pattern of domestic violence*, [not allegations of 'controlling behavior' as Hunter suggests]

The commentary to the proposed Parenting Act clearly indicates this when it stated that the term "history of domestic violence" was

intended to exclude "isolated, de minimus incidents which could technically be defined as domestic violence."[14]

Thus, the statute originally read (1) a single act of domestic violence that rose to the level of a felony or (2) a history, or pattern, of domestic violence that did not necessarily rise to the level of a felony. (Assault 4 DV) In 1989, the Legislature amended the statute, replacing the phrase "or an act of domestic violence which rises to the level of a felony" with the current phrase "or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

Nonetheless, the Commentary clearly indicates that legislature never intended restrictions on a fit parent's residential time with his child based on de minimus incidents between family members.[15]

Ms. Rodriquez has not shown that she suffered any injuries or damages, and frankly, in the absence of any injury has no standing to bring a claim of damages against Mr. Killey in response to his Petition for Dissolution of the marriage.

In the absence of any physical harm or risk to the child, Mr. Killey has equal right to custody of the child as does Ms. Rodriquez, and her

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[14] *1987Proposed Parenting Act*, replacing the concept of child Custody, *Commentary and Text* 29 (1987).

[15] *In re C.M.C.*, 87 Wn. App at 88

attempts to block his relationship with the child by making unsubstantiated claims of 'violence' against him violate Mr. Killey's parental rights and leaves Ms. Rodriquez libel to Mr. Killey and A.S.K. for damages.

In an almost identical case in WA State, Cynthia Burrill eventually lost custody of her children for making false claims of abuse against her husband and for blocking his access to the children, even though initially she had the support of Social Workers.[16]

The Parenting Statute, the U.S. Constitution and Federal law forbid Ms. Rodriquez or the State to interfere in the personal relationship between Mr. Killey's and A.S.K. *RCW 26.09.191 (3) (a) (e) (f)* without showing that Mr. Killey poses a risk of harm to the child.

Therefore, this Court must remand to the Trial Court for an 'express finding' to support the Trial Court unexpressed inference that Mr. Killey assaulted Ms. Rodriquez on multiple occasions or that he inflicted 'grievous bodily harm' on one occasion as required by the Statute.

E. CONCLUSION

The Trial Court erred by placing unauthorized restrictions on Mr. Killey's residential time with his child without making express findings to support its ultimate conclusions of law.

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[16] *Marriage of Burrill* the Court of Appeals of Washington, Division One. 113 Wn. App. 863 (Wash. Ct. App. 2002)

There are allegations but no 'evidence' of 'a history of acts of domestic violence as defined in RCW 26.50.010 as physical harm, bodily injury, assault, stalking.

In the absence of a finding of harm or risk of harm to a child, the State has no authority to place restrictions on Mr. Killey's residential time with his child.

Trial Court established a Parenting Plan that is internally inconsistent, and contains unauthorized restrictions on Mr. Killey's and A.S.K.'s constitutionally protected fundamental liberty interests in the absence of a compelling State interest. The State of WA violated Mr. Killey's right to due process of law and equal protection of the laws.

Orders of Restraint between Mr. Killey and his child are unlawful and Unconstitutional absent a finding of harm of risk of harm to the child.

As discussed at length in his Appellate Brief's the errors of the trial court prevented Mr. Killey from having a fair trial.

F. Relief Requested

1. Declare the Parenting Plan void for Constitutional violations of Mr. Killey's fundamental liberty interests in the control, care and companionship of his child.

2. Vacate all Orders of Restraint between Mr. Killey and his child.

3 Remand for a new trial and parenting plan without restrictions.

4. Order that A.S.K. should have a GAL to protect his best interests.

Dated this 25th day of November, 2015

Respectfully Submitted,

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Appellant Pro Se
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206-438-7017

G. APPENDIX

1) Court of Appeals Decision (September 28, 2015)

2) Motion for Reconsideration (October 8, 2015)

3) Order Denying Motion for Reconsideration (October 26, 2015)

4) Copies of Relevant Washington State Statutes

5) Constitutional Provisions Relevant to Appellant's Rights

6) Copy of the Parenting Plan under Appeal (December 4, 2014)

7) What is 'SHALL'?

RICHARD D. JOHNSON,
Court Administrator Clerk

The Court of Appeals
of the
State of Washington
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September 28, 2015

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CASE #: 72932-2-I
Jared Bryan Killey, Appellant v. Elizabeth Killey, Respondent
King County, Cause No. 13-3-13106-8 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days. The Supreme Court has determined that a filing fee of $200 is required.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived. Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

lls

Enclosure

c: The Honorable Samuel S. Chung

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	No. 72932-2-I
JARED KILLEY,	)	DIVISION ONE
Appellant,	)	
and	)	UNPUBLISHED
ELIZABETH KILLEY,	)	FILED: September 28, 2015
Respondent.	)	

Cox, J. – Jared Killey appeals the parenting plan entered in December 2014. He primarily argues that insufficient evidence supports the court's finding of a history of domestic violence underlying the restrictions it imposed. Because substantial evidence supports the court's finding of a history of domestic violence and the other challenges are without merit, it did not abuse its discretion in imposing restrictions in the plan. We affirm.

Killey and Elizabeth Rodriguez married in 2003.[1] In December 2013, Killey petitioned for dissolution of his marriage with Rodriguez. Killey and Rodriguez have one child together, A.S.K. During a three-day hearing, the court heard testimony from both parties and five witnesses. One witness conducted a domestic violence assessment and another witness conducted a parenting plan

[1] We adopt the naming convention that the parties use in their briefing.

evaluation. The court admitted both a domestic violence assessment as well as a parenting plan evaluation in addition to other exhibits.

In December 2014, the court entered a dissolution decree, findings of fact and conclusions of law, an order for child support, and a final parenting plan. In the parenting plan, the court restricted Killey's time with A.S.K. after finding a history of acts of domestic violence.

Killey appeals.

HISTORY OF ACTS OF DOMESTIC VIOLENCE

Killey argues that insufficient evidence supports the finding of a history of domestic violence. We disagree.

This court reviews for abuse of discretion a trial court's parenting plan.[2] The trial court abuses its discretion when its "'decision is manifestly unreasonable or based on untenable grounds or untenable reasons.'"[3] "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard."[4]

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[2] In re Marriage of Chandola, 180 Wn.2d 632, 642, 327 P.3d 644 (2014).

[3] Id. (quoting In re Marriage of Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012)).

[4] In re Marriage of Horner, 151 Wn.2d 884, 894, 93 P.3d 124 (2004) (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)).

Trial courts have "broad discretion when fashioning a permanent parenting plan."[5] But their "discretion must be guided by several provisions of the Parenting Act of 1987."[6] This court defers to the "trial judge's advantage in having the witnesses before him or her, which is particularly important in proceedings affecting the parent and child relationship."[7] This court does "not decide the credibility of witnesses or weigh the evidence" on appeal.[8]

RCW 26.09.191(2)(a)(iii) requires limiting a parent's residential time with a child in a parenting plan if the court finds "a history of acts of domestic violence . . . or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." Domestic violence is defined as "[p]hysical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members."[9] Family or household members include spouses or former spouses "who have a child in common."[10]

Although "a history of acts of domestic violence" is not defined, the phrase "was intended to exclude 'isolated, de minimus incidents which could technically

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[5] In re Marriage of Katare, 175 Wn.2d at 35.

[6] Id.

[7] In re Welfare of A.W., 182 Wn.2d 689, 711, 344 P.3d 1186 (2015).

[8] Id.

[9] RCW 26.50.010(1)(a).

[10] RCW 26.50.010(2).

be defined as domestic violence.'"[11] Additionally, "the court may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191."[12] "Mere accusations, without proof, are not sufficient to invoke the restrictions under the statute."[13]

The trial court's findings "must be sufficiently specific to permit meaningful review."[14] More specifically, the trial court's findings of fact and conclusions of law must be "sufficient to suggest the factual basis for the ultimate conclusions."[15] But the court "is not required to make findings of fact on all matters about which there is evidence in the record; only those which establish the existence or nonexistence of determinative factual matters need be made."[16]

"The trial court's findings of fact are treated as verities on appeal, so long as they are supported by substantial evidence."[17] Substantial evidence consists of "evidence sufficient to persuade a fair-minded person of the truth of the matter

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[11] In re Marriage of C.M.C., 87 Wn. App. 84, 88, 940 P.2d 669 (1997) (quoting 1987 PROPOSED PARENTING ACT, REPLACING THE CONCEPT OF CHILD CUSTODY, COMMENTARY AND TEXT 29 (1987)), aff'd sub nom., In re Marriage of Caven, 136 Wn.2d 800, 966 P.2d 1247 (1998).

[12] In re Marriage of Katare, 125 Wn. App. 813, 826, 105 P.3d 44 (2004).

[13] In re Marriage of Caven, 136 Wn.2d at 809.

[14] In re Det. of LaBelle, 107 Wn.2d 196, 218, 728 P.2d 138 (1986) (internal citation omitted).

[15] In re Marriage of Lawrence, 105 Wn. App. 683, 686, 20 P.3d 972 (2001).

[16] LaBelle, 107 Wn.2d at 219.

[17] Chandola, 180 Wn.2d at 642.

asserted."[18] More specifically, "[s]ubstantial evidence exists so long as a rational trier of fact could find the necessary facts were shown by a preponderance of the evidence."[19] "The fact that the evidence may be subject to different interpretations does not authorize this court to substitute its findings for those of the trial court."[20]

Here, substantial evidence supports the trial court's finding of a history of acts of domestic violence. The court heard testimony from the parties and other witnesses. Moreover, it admitted several exhibits, including a police report, a petition and order for temporary protection, a domestic violence assessment, and a parenting plan evaluation.

Social worker Debra Hunter was a witness who completed the domestic violence assessment in May 2014. According to her assessment, the first police report was taken in February 2010 after a physical altercation between Rodriguez and Killey. The second police report was taken in December 2013, when Rodriguez reported multiple physical assaults.

Rodriquez obtained a temporary order for protection in January 2014. The order was reissued in February 2014, and the case was transferred to family court services for a domestic violence assessment. The order was later modified, and the last protection order was entered in May 2014.

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[18] Id.

[19] A.W., 182 Wn.2d at 711.

[20] Peter L. Redburn, Inc. v. Alaska Airlines, Inc., 20 Wn. App. 315, 318, 579 P.2d 1354 (1978).

Hunter's assessment included Rodriguez's description of several domestic violence incidents. Although Killey generally denied assaulting Rodriguez, Hunter reported that Rodriguez's statements were consistent and testified that Killey contradicted himself. Hunter also believed Killey's description of the 2010 altercation not credible.

Hunter also found several examples of a "pattern of control" "that were very concerning and troubling."[21] Based on her assessment, Hunter recommended that Killey obtain "domestic violence perpetrator treatment."[22]

Another social worker, Emily Brewer, testified about her October 2014 parenting plan evaluation. Based on her evaluation, Brewer recommended that Killey "comply with the court order and that his [residential] time be contingent upon his participation in services."[23]

Rodriguez's boyfriend, Kurt Krinke, also testified that Killey became violent during the December 2013 altercation between Killey and Rodriguez, although he did not witness any physical assault. But Krinke stated that Killey pushed A.S.K. in that altercation.

This evidence shows by a clear preponderance of the evidence substantial evidence of a history of acts of domestic violence that the statute requires as a condition for imposing restrictions. Accordingly, the court was required to restrict Killey's residential time in the parenting plan. Thus, the trial

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[21] Report of Proceedings (November 13, 2014) at 120.

[22] Id. at 117, 120.

[23] Id. at 146-47.

court did not abuse its discretion when it included this provision in the parenting plan.

Killey makes numerous arguments, alleging that insufficient evidence supports the parenting plan restrictions. He essentially argues about witness credibility and the weight of the evidence. Because this court does not reweigh evidence or review witness credibility, these arguments are unpersuasive.

First, Killey relies on In re Marriage of Katare[24] to argue that the court failed to make express findings to support the restrictions because it "simply checked a box" and did not specify the acts of domestic violence. But he cites that case out of context. In that case, this court found that it was ambiguous "whether the [trial] court found . . a risk of abduction that justified the imposition of limitations."[25] This court remanded the case for the trial court "to clarify the legal basis for its decision to impose restrictions."[26] This case is not analogous to Katare because there is no ambiguity as to the trial court's finding of a history of domestic violence.

The parenting plan is sufficiently specific because it explicitly restricts Killey's residential time with A.S.K. due to "[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."[27] Although the court checked the

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[24] 125 Wn. App. 813, 830, 105 P.3d 44 (2004).

[25] Id. at 830-31.

[26] Id. at 831.

[27] Clerk's Papers at 385.

box on this form, the plan clearly states the statute the court relied on and includes additional language stating that Killey "must comply with his domestic violence classes, parenting classes, drug and alcohol evaluations, and . . . [comply] with any and all recommendations of the aforementioned programs."[28] The parenting plan also details Killey's treatment requirements. This is sufficient under the controlling statutes.

To support his first argument, Killey argues that the court imposed restrictions without evidence of domestic violence because the 2010 case was dismissed, he acted lawfully that day, and other allegations of domestic violence were not proven. This ignores the other evidence before the court at the time of trial of this matter. At that time, the court was presented with evidence of multiple incidents sufficient to meet the definition of a history of domestic violence under RCW 26.50.010(1)(a). Thus, his argument is unpersuasive.

Second, Killey argues that the court erred by ordering batterer's treatment based on Hunter's opinion, inconsistent with RCW 26.09.191(6). RCW 26.09.191(6) provides "[i]n determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure." Killey argues that Hunter's opinion is irrelevant and inadmissible because she was not an expert and her opinion was unsupported by documentation and contained false statements.

The court did not abuse its discretion in admitting the challenged evidence. Hunter's testimony and her domestic violence assessment are

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[28] Id.

relevant because the assessment was ordered after the February reissuance of the temporary protection order. Moreover, this court does not reweigh the evidence or decide witness credibility. As previously stated, conflicting evidence "does not authorize this court to substitute its findings for those of the trial court."[29] Thus, Killey's claims of allegedly false statements in the domestic violence assessment do not demonstrate that insufficient evidence supported the trial court's finding.

To support this argument, Killey alleges that Hunter misapplied the law in finding domestic violence because she did not understand the definitions of domestic violence and physical force. This mischaracterizes her function as a witness at trial. She provided evidence from which the court, not Hunter, found a history of acts of domestic violence.

Killey also argues that a "de minimus incident from 2010" did not qualify as a basis to restrict his time with A.S.K. because RCW 26.50.010 requires "multiple acts of assault." This ignores evidence of multiple acts of domestic violence that was admitted at trial. Thus, Killey's argument is unpersuasive.

Additionally, Killey argues that Hunter's interview violated his right to due process. Specifically, he argues that Hunter's interviews with the parties, outside the presence of a court reporter or witnesses, were inconsistent with RCW 26.09.191(6) and CR 43. This argument has absolutely no merit.

As previously stated, RCW 26.09.191(6) provides that the court "shall apply the civil rules of evidence, proof, and procedure" when "determining

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[29] Peter L. Redburn, Inc., 20 Wn. App. at 318.

whether any conduct described in this section has occurred." There is simply no rule that requires these types of interviews to be conducted before a court reporter.

Killey also argues that the parenting plan restrictions and treatment requirements violate his right to due process because the court "acted upon" Hunter's "inadmissible opinion." This claim is not a constitutional claim. Rather, it is a challenge to the admissibility of evidence. As previously discussed, the admission of Hunter's testimony was not an abuse of discretion.

Third, Killey argues that Rodriguez's claim for assault was barred. This is irrelevant. The issue in this case is whether substantial evidence supports the trial court's finding of a history of acts of domestic violence to impose residential time restrictions in the parenting plan. Assault is an alternate basis for restriction that is not at issue here.

Fourth, Killey argues that there is no basis for the parenting plan's restrictions because no eye witness testified to any domestic violence and Rodriguez's allegations were unsupported. He cites no authority for this argument, and we need not further consider it.[30]

Fifth, Killey argues that the parenting plan is manifestly unreasonable. Specifically, he argues that trial court did not apply the "best interests of the child" standard under RCW 26.09.002. He is wrong.

Killey ignores RCW 26.09.003, which provides:

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[30] See Darkenwald v. Emp't Sec. Dep't, 183 Wn.2d 237, 248, 350 P.3d 647 (2015); see also RAP 10.3(a)(6).

> [T]he legislature finds that the identification of domestic violence as defined in RCW 26.50.010 and the treatment needs of the parties to dissolutions are necessary to improve outcomes for children. When judicial officers have the discretion to tailor individualized resolutions, the legislative intent expressed in RCW 26.09.002 can more readily be achieved. Judicial officers should have the discretion and flexibility to assess each case based on the merits of the individual cases before them.

"When interpreting a statute, our purpose is to determine and carry out the intent of the legislature and avoid an interpretation that would produce an unlikely, absurd, or strained result."[31] Each statutory provision must be read in relation to others "to 'achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes.'"[32] In other words, "'[a]n act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous.'"[33]

Although RCW 26.09.002 generally states that the "best interests of the child shall be the standard" for determining and allocating parental responsibilities, RCW 26.09.187(3)(a) provides that "[t]he child's residential schedule shall be consistent with RCW 26.09.191." We must construe these statutes in harmony. Adopting Killey's interpretation of RCW 26.09.002 would render RCW 26.09.003 and RCW 26.09.187(3)(a) superfluous. We decline to adopt such an unreasonable reading of these statutes. Because the parenting

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[31] State v. W.S., 176 Wn. App. 231, 236, 309 P.3d 589 (2013).

[32] Id. at 237 (quoting State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000)).

[33] State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010) (quoting State v. George, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007)).

plan restrictions are based on substantial evidence of a history of acts of domestic violence, the trial court correctly applied RCW 26.09.191.

Killey also argues that the court did not apply RCW 26.09.191(2)(n), which provides circumstances where the court does not have to apply time restrictions under subsection (2)(a). Specifically, Killey argues that the court should have found that the alleged 2010 assault did not provide a basis for the parenting plan restrictions. There is no merit to this argument.

As previously discussed, RCW 26.09.191(2)(a)(iii) requires limiting a parent's residential time with a child in a parenting plan if the court finds "a history of acts of domestic violence." A finding that a statutory alternative of assault is simply not required.

Sixth, Killey states that the court testified from the bench when it described, for the record, the evidence Killey presented. At the trial, Killey played a 2-minute video, without audio, which showed two exchanges of A.S.K. Killey also showed photographs of himself with the child.

Here, the judge did not testify, as Killey asserts. Rather, the court described the evidence for the record. Had the judge failed to do so, the record on appeal would not have been complete.

Similarly, Killey states that the court "admonished" him for commenting on the video. Although he cites rule 2.6(A) of the code of judicial conduct in a

footnote, he makes no argument that the judge violated his right to be heard. In the absence of cogent argument, we need not further address this claim.[34]

Seventh, Killey argues that the court denied his right to be heard by excluding expert testimony from his mother. He argues that she was qualified to testify to A.S.K.'s medical records. Because there is no merit in this argument, we disagree.

Expert witness qualifications are within the trial court's discretion, and "'will not be disturbed unless there is a manifest abuse of discretion.'"[35] "'Practical experience is sufficient to qualify a witness as an expert.'"[36]

Although Killey's mother had experience in the medical field, her experience with childhood illness as a mother and grandmother does not constitute practical experience or "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence."[37] Thus, the trial court did not abuse its discretion by not accepting Killey's mother as an expert and excluding her medical record testimony.

Killey also argues that the court abused its discretion by ruling that the social workers were qualified to review and interpret medical records and give

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[34] Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

[35] In re Det. of A.S., 138 Wn.2d 898, 917, 982 P.2d 1156 (1999) (quoting Oliver v. Pac. Nw. Bell Tel. Co., 106 Wn.2d 675, 683, 724 P.2d 1003 (1986)).

[36] State v. Weaville, 162 Wn. App. 801, 824, 256 P.3d 426 (2011) (quoting State v. Ortiz, 119 Wn.2d 294, 310, 831 P.2d 1060 (1992)).

[37] ER 702.

expert testimony as to A.S.K.'s condition. However, the court did not qualify either Brewer or Hunter as experts and neither of them testified as to A.S.K.'s medical records.

Eighth, Killey argues that Brewer had no basis to recommend parenting plan restrictions, arguing that the information she considered was based on false testimony. He also states that Brewer did not interview him, visit his home, or observe his interactions with A.S.K. He cites no authority for this argument and we need not consider this claim any further.[38]

Ninth, Killey argues that the court could have imposed restrictions on Rodriguez's residential time with A.S.K. under RCW 26.09.191(3). This argument makes no sense. The trial court properly determined from this record and the law that she is the custodial parent. Nothing in this record shows the court abused its discretion in this respect.

Tenth, Killey cites In re Welfare of Kirsten Key[39] to support his argument that the court's process of entering the parenting plan was unconstitutional. But that case involved a dependency order, where the child's mother argued that a dependency finding violated her due process rights.[40] Thus, that case is not analogous to this case.

Lastly, Killey argues that this court should vacate the May 2014 protection order because the commissioner allowed Rodriguez's allegedly false testimony

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[38] See Darkenwald, 183 Wn.2d at 248; see also RAP 10.3(a)(6).

[39] 119 Wn.2d 600, 611, 836 P.2d 200 (1992).

[40] Id. at 609.

during the February 2014 protection order hearing. We need not address this argument because the evidence of a history of acts of domestic violence at trial supports the parenting plan.

Killey also states that the commissioner testified during the hearing on behalf of Rodriguez. Because the trial proceedings are the relevant proceedings before us, we need not address this claim dealing with an earlier hearing.

Here, the commissioner did not testify on behalf of Rodriguez. Rather, she merely explained her decision. At that hearing, Killey alleged that Rodriguez lied to the court, but the commissioner determined that she told the truth.

We affirm the final parenting plan and decree of dissolution.

COX, J.

WE CONCUR:

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

In re the Marriage of:

JARED KILLEY,

Appellant,

and

ELIZABETH KILLEY,

Respondent.

No. 72932-2-I

ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Jared Killey, 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 26th day of October, 2015.

For the Court:

Cox, J.

Judge

No.72932-2-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE: THE MARRIAGE OF

JARED BRYAN KILLEY

Appellant

V

ELIZABETH KILLEY/RODRIQUEZ

Respondent

ON APPEAL FROM SUPERIOR COURT OF WASHINGTON

FOR KING COUNTY

No. 13-3-13106-8 SEA and No. 14-2-01611-5 SEA

Before the Honorable Judge Samuel S. Chung

APPELLANT'S MOTION FOR RECONSIDERATION

Jared Bryan Killey

Appellant Pro Se

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Lynnwood, WA 98046

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1. INTRODUCTION

In the interest of putting this case to rest and to avoid additional litigation between parties who desire and are entitled to finality, to reduce the financial and time burdens on the Courts and in the interest of upholding the rule of law with a view to protecting the 'best interests' of a minor child, Mr. Killey respectfully moves that the majority reconsider their reasoning and the law as it applies here.

2. ARGUMENT

A. The Majority Correctly Concedes That There Is Insufficient Evidence To Support The Trial Court's Finding Of Multiple Acts Of 'Assault'.

This decides the case. All else is dicta. The majority must reverse and declare the Parenting Plan void.

B. The Majority uses The Term 'Domestic Violence' When It Really Means 'Misbehavior'

The majority reasons that it is not necessary for the trial court to find 'assault' because 'other evidences' of domestic violence support the trial court's finding; that assault is an alternative to undefined allegations of 'a history of acts of domestic violence' and that no finding of assault is required, that assault is not the issue; assault is an alternative. NO it is not.

The only issue under consideration is whether Mr. Killey has a history of multiple acts of assault, sexual assault or stalking or in the alternative one serious assault.

The majority reasons that 'a history of acts of domestic violence' is not defined. Of course it is.

While the public (and social workers) may use whatever definitions of domestic violence they choose, the majority is required to declare the law. In law domestic violence is not 'misbehavior' as it might be used by the public. Domestic Violence is a serious crime committed by one family member against another. It is clearly defined in the criminal code and the majority must uphold the legal definition as clearly stated at:

RCW 10.99.020 (5) "Domestic violence" includes any of the following crimes committed by one family or household member against another:

(a) Assault in the first degree (RCW 9A.36.011);

(b) Assault in the second degree (RCW 9A.36.021);

(c) Assault in the third degree (RCW 9A.36.031);

(d) Assault in the fourth degree (RCW 9A.36.041);

(e) Drive-by shooting (RCW 9A.36.045);

(f) Reckless endangerment (RCW 9A.36

(g) Coercion (RCW 9A.36.070);

(h) Burglary in the first degree (RCW 9A.52.020);

(i) Burglary in the second degree (RCW 9A.52.030);

(j) Criminal trespass in the first degree (RCW 9A.52.070);

(k) Criminal trespass in the second degree (RCW 9A.52.080);

(l) Malicious mischief in the first degree (RCW 9A.48.070);

(m) Malicious mischief in the second degree (RCW 9A.48.080);

(n) Malicious mischief in the third degree (RCW 9A.48.090);

(o) Kidnapping in the first degree (RCW 9A.40.020);

(p) Kidnapping in the second degree (RCW 9A.40.030);

(q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order, no-contact order, (RCW 10.99.040,)

(s) Rape in the first degree (RCW 9A.44.040);

(t) Rape in the second degree (RCW 9A.44.050);

(u) Residential burglary (RCW 9A.52.025);

(v) Stalking (RCW 9A.46.110); and

(w) Interference with the reporting of domestic violence (RCW 9A.36.150).

The majority sites no other legal authority therefore this seems like the obvious definition.

A criminal 'history' is created upon conviction of a crime of 'domestic violence'. In the absence of a conviction there is no 'history' to find or identify.

The Legislature in RCW 26.09.003 authorizes the Trial Court to identify these types of cases where there is a 'history' of 'domestic violence' within the family for the purpose of 'improving the outcome for children'. This statute does not authorize social workers to frame parents for histories that do not exist or to call controlling behaviors 'domestic violence' to support the sale of their classes. The legislature intends to improve the outcome for children, not to hold children hostage until the parent pays the necessary ransom in supervised visits, drug and alcohol assessment, batterer classes, parenting classes, mental evaluations, anger management and other services sold by the court. Social Workers tried to sell Mr. Killey every single one of these classes in exchange for time with his child.

The Trial Court made no express finding that Mr. Killey has any 'history' of any acts of 'domestic violence' as defined in the criminal code, did not identify a history of any assaults, sexual assaults or stalking as required by RCW 26.50.010. It is an error to accuse Mr. Killey of having such a history.

C. The Majority Upholds Restrictions In The Parenting Plan On 'Other Evidences' Not Found By The Trial Court

The majority reasons that the Trial Court does not need to find 'assault' because there are 'other evidences of domestic violence'.

This is completely irrelevant. The Statute does not authorize restrictions for all acts of domestic violence. Kidnapping, Trespass, Vandalism, Burglary are all acts of domestic violence but the statute does not authorize restrictions in the Parenting Plan based on a finding of a history of these other serious crimes of domestic violence and does not authorize restrictions in parenting plans on minor transgressions not defined in RCW 26.50.010.

Arguing that the court found 'other evidences' of irrelevant and undefined acts of 'domestic violence' the majority specifically sites Krinke's testimony that Mr. Killey 'pushed' ASK.

By what definition is 'pushing' an act of domestic violence and by what authority does the State place restraints on the father/child relationship for an allegation of 'pushing' in the absence of any physical harm, bodily injury or assault? There is no legal authority.

There is no authority to impose restrictions in a Parenting Plan under RCW 26.09.191 (1) (2) for any other acts of 'domestic violence' other than those specifically defined by Statute RCW 26.50.010 as

"**physical harm, bodily injury, assault, sexual assault or stalking.**

There is no evidence to support a finding consistent with this definition.

D. The Trial Court Did Not Make a Finding to Authorize Restrictions under RCW 26.09.191 (3)

In Chandola[1] the Supreme Court answered the question 'what type of adverse effect to the child's best interests a trial court must find before imposing parenting plan restrictions under the catchall provision RCW 26.09.191(3).' The Supreme Court ruled that restrictions imposed under that statute must *'be reasonably calculated to prevent relatively severe physical, mental or emotional harm to a child'.*

The Trial Court made no finding under RCW 26.09.191 (3) against Mr. Killey in this case. Careful examination of the Parenting Plan reveals that the Trial Court crossed out each and every risk factor and crossed out need for supervised visit and did not make any finding under RCW 26.09.191(3) that restrictions were necessary to 'prevent relatively severe physical, mental or emotional harm' to the child or that Mr. Killey posed any risk to the child. Finding no risk of harm, and no parenting deficiency, restrictions are not authorized under this Statute, nor are parenting classes.

E. Orders in the Parenting Plan under 'II Basis for Restrictions 2.2 Are a Clerical Error

[1] Chandola v Chandola 327 P.3d 644, 647

It appears that when crafting a Proposed Parenting Plan [which the Court signed after significant cross-outs and corrections] Ms. Rodriquez's attorney requested supervised visits which were denied and scratched out. Drug and alcohol treatment were granted under 'Other Factors' but were denied and scratched out under 'Restrictions' 3.10 (B) making the Parenting Plan internally inconsistent and unclear as to what the Court's express findings really are.

Other inconsistencies include granting mutual decision-making under IV. 4.2 but sole decision-making to the mother under 4.3.

Inconsistencies also exist in the visitation schedule under III 3.1 which orders the first and third week of the month but under 3.10 orders every other week.

These inconsistencies suggest that the trial court gave little thought to the establishment of this parenting plan or the best interest of the child living in its aftermath.

F. Restrictions In This Parenting Plan Are Not Authorized In The Absence Of An Express Finding of 'Assault' 'Sexual Assault' or 'Stalking' as defined in RCW 26.50.010.

It appears that the Trial Court did not make any express finding in the Parenting Plan of 'assault, sexual assault or stalking" but instead carelessly left this box checked and upheld the pretrial orders issued by

Bonnie Canada-Thurston. The Trial Court made no independent express finding to uphold this order or to clarify its findings and basis for granting restrictions requested by the mother and her attorney.

G. The Majority Uses The Term 'Evidence' When It Really Means 'Allegations'.

In Caven[2] the Court found that mere accusations, without proof, are not sufficient to invoke restrictions under the Statute.

Mr. Killey's argument is that, if it were true that Ms. Rodriquez had been repeatedly beaten, bruised and raped for 10 years as she alleges, there would be some proof somewhere in the form of a criminal conviction (which she tried but failed on evidentiary grounds) or a medical record showing that she sought treatment for physical injury or a witness from this family's community of friends, relatives and co-workers who at some time saw Ms. Rodriquez abused or who spoke to Ms. Rodriquez or counseled her in the aftermath of alleged violence. There is no evidence of this, there are only allegations.

Ms. Rodriquez claims she told mama about all kinds of violence but this claim was rebutted. The neighbor also rebutted this claim that Ms. Rodriquez was ever known to be abused by Mr. Killey. There is no evidence here to support Ms. Rodriquez's allegations.

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[2] In re Marriage of Caven 136 Wn.2d at 809

Hunter cannot be considered a 'witness' by any stretch of the imagination. She witnessed no assault and found no evidence of any assault and she did not interview any person who confirmed Ms. Rodriquez's complaints. She did not order medical or psychological records to support her opinion. She merely repeated Ms. Rodriquez's allegations in an effort to create a fallacy where there is no evidence.

Hunter's job is to sell classes for the Family Court Services and she accomplished that assignment by lying and conspiring with others at the expense of ASK's health and safety. Other employees of the State and individuals are also implicated in violation of Constitutional Law.[3]

Mr. Killey reserves this argument for the Federal Court.[4]

The majority references police reports as 'evidence'. These reports, in fact, are unproven allegations. Mr. Killey did not deny that he was arrested and charged with assault 4.

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[3] **18 U.S. Code § 241 - Conspiracy against rights**

[4] **A state's sovereign immunity from suit in federal court normally extends to suits against its officers in their official capacities. The Supreme Court set forth an exception, however, in *Ex parte Young*. Under the *Ex parte Young* doctrine, a plaintiff may maintain a suit for prospective relief against a state official in his official capacity, when that suit seeks to correct an ongoing violation of the Constitution or federal law ADIBI V. CALIFORNIA STATE BD. OF PHARMACY.□ United States District Court, N.D. California. 393 F. Supp.2d 999 (N.D. Cal. 2005)**

When Ms. Rodriquez and the City of Kirkland accused Mr. Killey of 'assault 4 DV' jury instructions at trial provided legal definitions of 'assault'; a legal definition not understood or considered by police officers, Debra Hunter, Emily Brewer or Ms. Rodriquez. If Ms. Rodriquez wished to rely on the testimony of police she should have subpoenaed officer Fenton so that Mr. Killey could cross examine him. But she did not. These police reports are inadmissible hearsay[5]. Crawford v WA

Officer Fenton had nothing helpful to offer during jury trial which resulted in a 'not guilty' verdict and there is nothing here that can be legitimately considered 'proof' of any assault.

In the absence of any supporting evidence, Caven[6] stands as Mr. Killey's authority that the Court lacked sufficient evidence to support a finding of 'a history of acts of domestic violence' as defined in RCW 26.50.010 as physical harm, bodily injury, assault or stalking.

Although the Trial Court relied entirely on allegations by Hunter and Rodriquez, Mr. Killey presented '***actual physical evidence***' of domestic violence by Ms. Rodriquez toward Mr. Killey and A.S.K.

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[5] Under *Crawford*, a witness's testimony against a defendant is inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. 541 U.S., at 54, 124 S.Ct. 1354.

[6] Mere accusations, without proof, are not sufficient to invoke the restrictions under the statute. In re the Marriage of Caven 136 Wn.2d at 809

'**Actual physical evidence**' included medical records, video evidence and Mr. Killey's testimony that Ms. Rodriquez committed multiple acts of 'domestic violence' when she inflicted grievous bodily harm and the fear of such harm on ASK [VR 175 @18- 176 @11] as defined in RCW 26.50.010 and when she trespassed and conspired with Mr. Krinke to threaten Mr. Killey in his apartment on 12/4/2013 (RCW 9A.52.070) [VR 153] and when Mr. Krinke and Ms. Rodriquez vandalized Mr. Killey's condo (RCW 9A.48.070) leaving Mr. Killey with thousands of dollars in damages.

All of these crimes were well documented at trial and all are defined above under the criminal code as 'domestic violence'.

Additionally, Hunter testified that Ms. Rodriquez perpetrated both the cell phone incident and the trespass/abduction incident but recommends that Mr. Killey be the one to attend batterer perpetrator classes.

Why does the Court penalize the father and child but not the perpetrator?

The majority reasons that the mother's mistreatment of A.S.K. is permissible and no restrictions are required because 'she is the custodial parent'. This reasoning leaves Mr. Killey speechless and frankly, horrifies

the community. It puts the lie to the claim that the best interests of the child were considered by the trial court or by the majority.

3. CONCLUSION

The Statute [RCW 26.09.191] is very clear and the legal definition of 'a history of acts of domestic violence as defined in RCW 26.50.010' is very clear. The Court must ***prove by a preponderance of the evidence*** that Mr. Killey has a history of multiple acts of assault, sexual assault or stalking or in the alternative one serious assault. There is no proof of this.

The majority concedes that there is insufficient evidence for a finding of multiple acts of assault, sexual assault or stalking as defined in the Statute and as required to authorize residential time limitations.

The majority should concede that there is no legal authority on the basis of other 'undefined acts of domestic violence' for restrictions and the State of Washington has no legal authority to place restrictions on Mr. Killey's residential time with A.S.K.

Constitutional challenges are reserved for US District Court Western District of Washington.

4. RELIEF REQUESTED

The Trial Court has broad discretion when establishing a Parenting Plan in a dissolution action. However, violations of Constitutional rights or crimes of perjury, extortion or fraud for profit are not within the discretion of the trial court[7] and are not protected by judicial immunity.

Mr. Killey respectfully requests a remand to the trail court for additional proceedings to reconsider inconsistencies in the Parenting Plan and unauthorized violations of the father's constitutional right to maintain a meaningful relationship with his child.

Date 10/8 2015

Respectfully Submitted,

Jared Bryan Killey
Appellant Pro Se
P.O. Box 5563
Lynnwood WA 98036
206-468-7017

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[7] U.S. Code › Title 18 › Part I › Chapter 13 › § 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section... shall be fined under this title or imprisoned not more than ten years, or both;...

RCW 10.99.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

(3) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(4) "Dating relationship" has the same meaning as in RCW 26.50.010.

(5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault in the first degree (RCW 9A.36.011);

(b) Assault in the second degree (RCW 9A.36.021);

(c) Assault in the third degree (RCW 9A.36.031);

(d) Assault in the fourth degree (RCW 9A.36.041);

(e) Drive-by shooting (RCW 9A.36.045);

(f) Reckless endangerment (RCW 9A.36.050);

(g) Coercion (RCW 9A.36.070);

(h) Burglary in the first degree (RCW 9A.52.020);

(i) Burglary in the second degree (RCW 9A.52.030);

(j) Criminal trespass in the first degree (RCW 9A.52.070);

(k) Criminal trespass in the second degree (RCW 9A.52.080);

(l) Malicious mischief in the first degree (RCW 9A.48.070);

(m) Malicious mischief in the second degree (RCW 9A.48.080);

(n) Malicious mischief in the third degree (RCW 9A.48.090);

(o) Kidnapping in the first degree (RCW 9A.40.020);

(p) Kidnapping in the second degree (RCW 9A.40.030);

(q) Unlawful imprisonment (RCW 9A.40.040);

(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);

(s) Rape in the first degree (RCW 9A.44.040);

(t) Rape in the second degree (RCW 9A.44.050);

(u) Residential burglary (RCW 9A.52.025);

(v) Stalking (RCW 9A.46.110); and

(w) Interference with the reporting of domestic violence (RCW 9A.36.150).

(6) "Employee" means any person currently employed with an agency.

(7) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

(8) "Victim" means a family or household member who has been subjected to domestic violence.

[2004 c 18 § 2; 2000 c 119 § 5; 1997 c 338 § 53; 1996 c 248 § 5; 1995 c 246 § 21; 1994 c 121 § 4; 1991 c 301 § 3; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.]

Notes:

Findings -- Intent--2004 c 18: "The legislature reaffirms its determination to reduce the incident rate of domestic violence. The legislature finds it is appropriate to help reduce the incident rate of domestic violence by addressing the need for improved coordination and accountability among general authority Washington law enforcement agencies and general authority Washington peace officers when reports of domestic violence are made and the alleged perpetrator is a general authority Washington peace officer. The legislature finds that coordination and accountability will be improved if general authority Washington law enforcement agencies adopt policies that meet statewide minimum requirements for training, reporting, interagency cooperation, investigation, and collaboration with groups serving victims of domestic violence. The legislature intends to provide maximum flexibility to general authority Washington law enforcement agencies, consistent with the purposes of this act, in their efforts to improve coordination and accountability when incidents of domestic violence committed or allegedly committed by general authority Washington peace officers are reported." [2004 c 18 § 1.]

Application -- 2000 c 119: See note following RCW 26.50.021.

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Severability -- 1995 c 246: See note following RCW 26.50.010.

Finding -- 1991 c 301: "The legislature finds that:

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs.

Children growing up in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims.

Many communities have made headway in addressing the effects of domestic violence and have devoted energy and resources to stopping this violence. However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself.

An integrated system has not been adequately funded and structured to assure access to a wide range of services, including those of the law/safety/justice system, human service system, and health care system. These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes.

Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and prevent future violence. Clear standards of quality are needed so that perpetrator treatment programs receiving public funds or court-ordered referrals can be required to comply with these standards.

While incidents of domestic violence are not caused by perpetrator's use of alcohol and illegal substances, substance abuse may be a contributing factor to domestic violence and the injuries and deaths that result from it.

There is a need for consistent training of professionals who deal frequently with domestic violence or are in a position to identify domestic violence and provide support and information.

Much has been learned about effective interventions in domestic violence situations; however, much is not yet known and further study is required to know how to best stop this violence." [1991 c 301 § 1.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.

Effective date -- 1986 c 257 §§ 3-10: See note following RCW 9A.04.110.

Effective date -- Severability -- 1984 c 263: See RCW 26.50.901 and 26.50.902.

Domestic violence defined under the Domestic Violence Prevention Act: RCW 26.50.010.

RCW 26.50.010

Definitions.

*** CHANGE IN 2015 *** (SEE 1943.SL) ***

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items. [2008 c 6 § 406; 1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.

[2008 c 6 § 406; 1999 c 184 § 13; 1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

NOTES:

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

Short title—Severability—1999 c 184: See RCW 26.52.900 and 26.52.902.

Severability—1995 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 246 § 40.]

Findings—1992 c 111: See note following RCW 26.50.030.

Finding—1991 c 301: See note following RCW 10.99.020.

Domestic violence offenses defined: RCW 10.99.020.

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 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;

(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;

(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 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 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.]

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.]

US CONSTITUTION

5th Fifth Amendment No person shall be deprived of life, liberty or property without due process of law

9th Ninth Amendment The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

14th Fourteenth Amendment guarantees due process and equal protection for all.

Superior Court of Washington
County of KING

[X] In re the Marriage of: [ ] In re the Domestic Partnership of: JARED KILLEY, Petitioner, and ELIZABETH KILLEY, Respondent.	**No. 13-3-13106-8 SEA** **Parenting Plan** **[ ] Proposed (PPP)** **[ ] Temporary (PPT)** **[X] Final Order (PP)**

This parenting plan is:

[X] the final parenting plan signed by the court pursuant to a decree of dissolution, legal separation, or declaration concerning validity signed by the court on this date or dated _____.

[ ] the final parenting plan signed by the court pursuant to an order signed by the court on this date or dated _____, which modifies a previous parenting plan or custody decree.

[ ] a temporary parenting plan signed by the court.

[ ] proposed by (name) _____.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name	Age
Aaron Samuel Killey	4 yrs (08/13/2010)

II. Basis for Restrictions

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child(ren) and the right to make decisions for the child(ren).

2.1 Parental Conduct (RCW 26.09.191(1), (2))

[ ] Does not apply.
[X] The [X] petitioner's [ ] respondent's residential time with the child(ren) shall be limited or restrained completely, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required, because [ ] this parent [ ] a person residing with this parent has engaged in the conduct which follows:

[ ] Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions (this applies only to parents, not to a person who resides with a parent).
~~[X] Physical, sexual or a pattern of emotional abuse of a child.~~
[X] 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.

2.2 Other Factors (RCW 26.09.191(3))

[ ] Does not apply.
[X] The [X] petitioner's [ ] respondent's involvement or conduct may have an adverse effect on the child(ren)'s best interests because of the existence of the factors which follow:

[X] Neglect or substantial nonperformance of parenting functions.
[X] A long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.
[X] A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.
[ ] The absence or substantial impairment of emotional ties between the parent and child.
[X] The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.
[ ] A parent has withheld from the other parent access to the child for a protracted period without good cause.
[X] Other:

~~Respondent/wife requests that Petitioner and the child have~~ supervised visitations at the ~~Petitioner's costs until such~~ time as the Petitioner complies with his domestic violence classes, parenting classes, drug and alcohol evaluations, and complies with any and all recommendations of the aforementioned programs.

III. Residential Schedule

The residential schedule must set forth where the child(ren) shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child(ren) shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child(ren) and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School Age

[ ] There are no children under school age.

[X] Prior to enrollment in school, the child(ren) shall reside with the [ ] petitioner [X] respondent, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (day and time) Saturday 9:00 a.m._ to (day and time) Saturday 7:00 p.m.

[ ] every week [ ] every other week [X] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

from (day and time) _____ to (day and time) _____

[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

3.2 School Schedule

Upon enrollment in school, the child(ren) shall reside with the [ ] petitioner [X] respondent, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (day and time) Saturday 9:00 a.m. to (day and time) Saturday 7:00 p.m.

[ ] every week [ ] every other week [X] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

From (day and time) _____ to (day and time) _____

[ ] every week [ ] every other week [ ] the first and third week of the month
[ ] the second and fourth week of the month [ ] other:

[X] The school schedule will start when each child begins [ ] kindergarten [X] first grade
[ ] other:

3.3 Schedule for Winter Vacation

The child(ren) shall reside with the [ ] petitioner [X] respondent during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.4 Schedule for Other School Breaks

The child(ren) shall reside with the [ ] petitioner [X] respondent during other school breaks, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.5 Summer Schedule

Upon completion of the school year, the child(ren) shall reside with the [ ] petitioner [X] respondent, except for the following days and times when the child(ren) will reside with or be with the other parent:

[X] Same as school year schedule.
[ ] Other:

3.6 Vacation With Parents

[X] Does not apply.
[ ] The schedule for vacation with parents is as follows:

3.7 Schedule for Holidays

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
New Year's Day	_____	every_____
Martin Luther King Day	_____	every_____
Presidents' Day	_____	every_____
Memorial Day	_____	every_____
July 4th	_____	every_____
Labor Day	_____	every_____
Veterans' Day	_____	every_____
Thanksgiving Day	_____	every_____
Christmas Eve	_____	every_____
Christmas Day	_____	every_____
_____	_____	_____
_____	_____	_____

[ ] For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

[ ] Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

[ ] Other:

3.8 Schedule for Special Occasions

The residential schedule for the child(ren) for the following special occasions (for example, birthdays) is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
Mother's Day	_____	every_____
Father's Day	_____	every_____
Aaron's Birthday	_____	every_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[ ] Other:

3.9 Priorities Under the Residential Schedule

[X] Does not apply because one parent has no visitation or restricted visitation.
[ ] Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

[ ] Rank the order of priority, with 1 being given the highest priority:

____winter vacation (3.3)
____school breaks (3.4)
____summer schedule (3.5)
____holidays (3.7)
____special occasions (3.8)
____vacation with parents (3.6)

[ ] Other:

3.10 Restrictions

[ ] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.
[X] The [ ] petitioner's [X] respondent's residential time with the children shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the children spend time with this parent:

The father's residential time is restricted to daytime visits only every other week from 9:00 am to 7:00 pm.

A. The father shall enroll in and complete a state certified domestic violence treatment program at Wellspring Family Services. He shall provide the treatment provider with the necessary waivers so that the program can communicate with the court, Family Court Services, the mother, and any other collateral sources, and so that the program can release status reports, a final report, and a certificate of completion to the mother, the mother's attorney and to the court. The father shall provide or direct the treatment provider to provide documentation that the program is fully compliant with the regulations and standards contained in WAC 388.60, upon request from the mother's attorney or the court. If the program is not in compliance with the provisions of WAC 388.60, the father shall be required to re-enroll and complete a program that is in compliance with the provisions of WAC 388.60. The father shall provide the treatment provider with a copy of the mother's declarations and of any evaluations or assessments which have been completed.

B. The father shall ~~enroll in and complete a drug and alcohol evaluation~~ by a provider approved by the court or Family Court Services. The father shall provide

the evaluator with the appropriate waivers so that the evaluator can obtain all necessary collateral contacts. At a minimum the evaluation shall include random UA's and interviews with collateral sources including the mother. If the evaluation relies primarily on the self-reporting of the father the resulting conclusions shall be presumptively invalid. The father shall also provide the evaluator with a copy of the mother's declarations and of any Family Court Services' Parenting Plan Evaluation and Domestic Violence Assessment which have been completed. The father shall follow all treatment recommendations and shall provide the mother and the mother's attorney and the court with proof of enrollment and completion of any recommended treatment.

C. Upon successful completion of his State Certified Domestic Violence Treatment Program the father shall enroll in the parenting class entitled DV Dads at Wellspring.

[ ] There are limiting factors in paragraph 2.2, but there are no restrictions on the [ ] petitioner's [ ] respondent's residential time with the children for the following reasons:

3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child(ren), between parents shall be as follows:

Parties will meet at the Kirkland Police Department for drop off and pick up of the child.

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with the [ ] petitioner [X] respondent. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 Other

3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. Decision Making

4.1 Day-to-Day Decisions

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions	[ ]	petitioner	[X]	respondent	[ ]	joint
Non-emergency health care	[ ]	petitioner	[X]	respondent	[ ]	joint
Religious upbringing	[ ]	petitioner	[X]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint
_____	[ ]	petitioner	[ ]	respondent	[ ]	joint

4.3 Restrictions in Decision Making

[ ] Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

[X] Sole decision making shall be ordered to the [ ] petitioner [X] respondent for the following reasons:

[X] A limitation on the other parent's decision making authority is mandated by RCW 26.09.191 (See paragraph 2.1).

[ ] Both parents are opposed to mutual decision making.

[ ] One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:

(a) The existence of a limitation under RCW 26.09.191;
(b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);
(c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a); and
(d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

[ ] There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons:

V. Dispute Resolution

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

[ ] Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

[ ] counseling by _____, or

[X] mediation by [illegible] if this box is checked and issues of domestic violence or child abuse are present, then the court finds that the victim requested mediation, that mediation is appropriate and that the victim is permitted to have a supporting person present during the mediation proceedings, or

[ ] arbitration by _____.

The cost of this process shall be allocated between the parties as follows:

[ ] _____% petitioner _____% respondent.
[X] based on each party's proportional share of income from line 6 of the child support worksheets.
[ ] as determined in the dispute resolution process.

The dispute resolution process shall be commenced by notifying the other party by [X] written request [ ] certified mail [ ] other:

In the dispute resolution process:

(a) Preference shall be given to carrying out this Parenting Plan.
(b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
(e) The parties have the right of review from the dispute resolution process to the superior court.

[ ] No dispute resolution process, except court action is ordered.

VI. Other Provisions

[X] There are no other provisions.
[ ] There are the following other provisions:

VII. Declaration for Proposed Parenting Plan

[X] Does not apply.
[ ] (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the state of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

_____ _____
Petitioner Date and Place of Signature

_____ _____
Respondent Date and Place of Signature

VIII. Order by the Court

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: _____

_____
Judge/~~Commissioner~~
Samuel S. Chung

Presented by:

_____
Signature of Party or Lawyer/WSBA No.

_____
Elizabeth Killey

Approved for entry:

_____
Signature of Party or Lawyer/WSBA No.

_____
Print Name

What is SHALL? [1]

As used in statutes and similar instruments, this word is generally imperative or mandatory;

but it may be construed as merely permissive or directory, (as equivalent to "may,") to carry out the legislative intention and In cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense.

Also, as against the government, "shall" is to be construed as "may," unless a contrary intention is manifest.
See *Wheeler v. Chicago*, 24 111. 105, 76 Am. Dec. 736;
People v. Chicago Sanitary Dist., 184 111. 597, 56 N. E. 9.".:;:
Madison v. Daley (C. C.) 58 Fed. 753;
Cairo & F. R. Co. v. Ilecht, 95 U. S. 170, 24 L. Ed. 423. SHAM PLEA. See PLEA. SHARE 1082 SHERIFF

As used in RCW 26.09.191 the only interpretation that can be given to 'shall' is the equivalent of 'may' because a right or benefit to Mr. Killey and his child depends on it being taken in the imperative sense and because a private right is impaired by its interpretation as a mandate, making the Court of Appeals interpretation incorrect.

The primary objective of statutory construction is to carry out the Legislature's intent by examining the language of the statute. *Stone v. Chelan County Sheriff's* *8888 *Dep's.* 110 Wn.2d 806, 809-10, 756 P.2d 736 (1988). Statutes should not be construed so as to render any portion meaningless or superfluous. *Id.* at 810.

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[1] Black's Law Dictionary Free Online Legal Dictionary 2nd Edition