72927-6

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No. (72927-6-I)

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

BRUCE E. EKLUND, Respondent,

v.

ELISIA MARIE DALLUGE EKLUND, Appellant

FIRST RESPONSE BRIEF OF RESPONDENT, BRUCE E. EKLUND

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A. Statement of the Case

On March 16, 2015 the Court of Appeals entered an order determining the scope of what portions of the Appellant's notice of appeal would be under review in this case. That same day, the Court sent both parties notification of its ruling and order, clearly indicating that only the court record before the King County Superior Court when it entered the orders within this scope would be considered in its appellate review of this case.

In sum, that March 16, 2015 ruling stated that the Mother's Motion/Petition to Modify the Parenting Plan/Residential Schedule disposed of by the November 21, 2014 King County Superior Court order(s), and the subsequent order denying her Motion for Reconsideration are the only two orders from Ms. Dalluge's Notice of Appeal that this Court determined to be either timely filed or deemed to be within the scope of review from her notice of appeal. The November 21, 2014 order that is within the scope of this review herein, the Superior Court specifically stated the docket numbers that it considered at the November 19, 2014 hearing and in entering its November 21 order were docket numbers 458, 459, 464, 465, 466, 467, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 482, 486, and 486A (Sealed). [See Docket 487, Sec. 2.7, Page 10]

In the past five months since the March 16, 2015 order of this appellate court, either for the purposes of ensuring this Court's adequate review of the Superior Court record for her appeal or in preparing her Opening Brief, the Appellant failed to include or make arrangements to supplement any of the court record within this scope, or obtain a valid report of proceedings other than her own narrative (that already has been summarily rejected by the Trial Court as "not objective" and "lacking credibility").

Therefore, none of the court record within the scope of the Appellant's appeal is presently part of the appellate court record under review in this case. This can be shown by a cursory review of the Clerk's Papers the Appellant did have transmitted to this Court for review and comparing them to the docket numbers that were delineated in the November 21, 2014 Superior Court order being appealed. [Id.]

In the number of proceedings immediately leading up to the November 19, 2014 hearing, the court specifically stated it would not consider a major modification filed by the Appellant due to the RCW 26.09.191 restrictions and permanent restraining order prohibiting contact

between the Appellant and her children, and would only consider a minor adjustment aimed at reinstating contact and supervised visitations.

In these proceedings, the Superior Court even included in its orders the relevant processes and court rules to follow when initiating modification proceedings, which the Appellant refused to follow despite many opportunities to file and refile a proper petition before the court that followed this process and included evidence and a legal basis for the court to consider granting Ms. Dalluge's motions.

The Mother ignored the Superior Court, and filed for a major modification that would reverse custody and relocate the children, without addressing any of the statutory restrictions and permanent restraining order; in essence asking the Superior Court to ignore the statutory mandates restricting her contact with her children and reversing the many orders put in place to protect the children from such a volatile situation.

As promised, the Superior Court denied the Appellant's Petition for a Major Modification, and now Ms. Dalluge appeals to this Court requesting the same relief that the Superior Court has attempted to communicate to the Appellant is prohibited by state law until such time

she demonstrates a basis for the RCW 26.09.191 restrictions and restraining order prohibiting contact with her children to be lifted.

The Father/Respondent requests the appellate court deny the Mother's appeal on its merits, affirm the Superior Court order, and further sanction the Ms. Dalluge for filing a frivolous appeal that grossly mischaracterizes and misrepresents the court record in this case.

B. Background and history of this case

The litigation in this case commenced upon the filing of an agreed dissolution of marriage petition filed jointly by the parties on January 3, 2006 in the King County Superior Court; requiring the entry of a parenting plan because of the two minor children the Appellant and Respondent share.

Since the entry of the original parenting plan in December 2006, this case has accumulated over 500 docket entries, averaging over 1 entry per week for the past 9.5 years, while the Parenting Plan/Residential schedule has been modified twice in two separate trials (2009 and 2013), and countless motion, review, and adequate cause hearings for contempt filings.

Over 190 (approximately 20% of the filings in this court record for this case) have been entered since the second trial in 2013, and are almost entirely comprised of the Appellant's motions for contempt findings, modification petitions, then motions for reconsideration following their denial/dismissal; and, Mr. Eklund's responses thereto.

In other words, the filings and proceedings in this case continue to increase despite the finality expected through the final orders of two Trial Courts. Regardless of their admonitions for the Appellant to stop this course of conduct and continue the high level of conflict in this case.

At the conclusion of the first modification trial in December 2009, the Trial Court relocated the parties' children with the Respondent and placed RCW 26.09.191 restrictions and limitations on the Appellant's contact with her children under subsections (3)(e), (f), and (g) following 8 findings of contempt and violations of the parenting plan against Ms. Dalluge in less than a two year period of time.

During the time between this first modification and the second modification trial in 2013, the Appellant continued to involve the children

in schemes to support the conflict and her litigation in ways the court ordered her not to, which ultimately resulted in the court refusing to appoint any more visit supervisors given the high level of conflict and animus occurring at the visits between herself, the children, and the visit supervisors.

The second modification trial was held in October 2013, after the Appellant was held in contempt of court, found intransigent, and/or in violation of court orders or CR 11 over 10 more times by filing frivolous and unsubstantiated pleadings. In making these rulings the court frequently entered findings that Ms. Dalluge acted against the best interest of her children by continued a pattern of an abusive use of conflict that endangered the emotional and psychological well-being of her children.

At the conclusion of the 2013 trial, the Superior Court further placed continued restrictions on Ms. Dalluge pursuant to RCW 26.09.191; and, on its own motion entered a restraining order between her and the parties' children that will not expire until after the 18th birthday of their youngest son.

Since the 2013 trial, Ms. Dalluge's motions for changes in custody not only have escalated in frequency but also in the vexatious, vindictive, and mean spirited nature of her filings the longer she has been allowed to file without having any standing or statutory basis to be granted the relief she will not compromise in pursuing – a complete unrestricted reversal of custody and relocation of the children. And, increasingly threatens the Respondent to take her campaign outside the courtroom if no judge or court will order this for her.

Ms. Dalluge has shown no regard for process or acting in good faith throughout the nearly 10 year history of this case, making her disdain for the Trial Court and Mr. Eklund increasingly obvious. Yet, there is no information that supports any of her claims or arguments, recycling the same allegations and motions that have already been disposed of as unfounded. Ms. Dalluge continues to ignore the fact that the issues she raises on appeal are not ripe, and has not focused any of her filings in this appeal within the scope defined by this Court's March 16, 2015 ruling; and, makes the same allegations that were subject to the findings, rulings, and orders of two trial courts in 2009 and 2013, which she did not appeal.

Throughout the history of this case, Ms. Dalluge has failed to appeal any of the issues or orders she attempts to resurrect here, years after the findings and orders of the trial court, and only does so after the Superior Court finally imposed Ms. Dalluge be required to post a $2,500 bond payable to the Respondent to deter her pursuit of any further modifications or petitions in this case that were without merit.

Within the scope of her appeal is the issue of whether or not the Superior Court should have granted the Mother a third trial in this case by finding that a statutory basis to both lift the RCW 26.09.191 restrictions and restraining order prohibiting Ms. Dalluge's contact with her children, and a substantial change of circumstances or exigent situation to set a trial for a major modification of a parenting plan existed pursuant to the mandates of RCW 26.09.260.

B. Argument

Ms. Dalluge lacks standing to request the relief she seeks from this Court, and even if a new trial is granted there is no different outcome that could be achieved due to both statutory mandates and the number of restrictions and limitations ordered by the trial court, which have been in place since 2009.

Case law has long upheld the view that residential changes are "highly disruptive" to children, and has adopted other similar longstanding policies that support this view, such as maximizing finality of residential placement, parents not being subjected to repeated litigation of the same custody issues, preventing "ping-pong" custody litigations, and generally protecting the best interest of the children involved in custody proceedings. *Matter of Marriage of Thompson, 32 WA.App 418, 421, 647, P.2d 1049 (1982)*

Washington State Law is also very clear about the process by which custodial and non-custodial parents may attempt to modify a parenting plan or residential schedule, and has set forth statutory mandates limiting the decision making ability of courts in certain situations where the court has already ordered restrictions against a parents contact with children as defined by RCW 26.09.191.

Further, it has been held that the "court may not remove 26.09.191 restrictions without proper findings." *Kinnan v. Jordan, 131 Wn.App. 738, 129 P.3d 807 (2006)*. So, the relief Ms. Dalluge seeks is not a switch flipped by the judge, nor will it come about by the Appellant continuing the same litigation, but only by a change in Ms. Dalluges attitudes and

behavior that would support findings to remove restrictions. [See also RCWA 26.09.191(2) and Washington Practice Volume 20, Chapter 33.24, 33.25, and generally throughout chapter 33].

The process and the criteria for expanding, reducing, or restricting residential time with parents subject to RCW 26.09.191 are outlined by RCW 26.09.260, which states in Section 7, "A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW **26.09.191** (2) or (3) **may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation** (bold added for emphasis)." This section alone, although supported by many other cases and statutes, exactly supports the order(s) entered by the Trial Court on November 21, 2014.

The courts have routinely supported this concept and have unequivocally decided that the procedures to modifying a parenting plan are mandated by statutes and that failure to follow these statutory requirements is error, and courts may not modify a parenting plan unless a statutory factor exists. *In Re: Marriage of Shyrock, 76 Wn.App.848, 852,*

888 P2d 750 (1995); and also *In Re: Parentage of M.F., 141 WA.App. 558, 170 P.3rd 601 (2007)*

Here, these exact principles apply. Where many other arguments could be made that would compound the many reasons why the court properly denied her motion/petition and the November 21, 2014 order under review should be affirmed – The Mother's lack of standing to seek the type of modification requested in her motion/petition is the most simple reason; because, Washington State Law prohibited the court from making any other decision, which the King County judge in this case tried to telegraph to Ms. Dalluge many times over the several months leading to these orders under review.

The Mother's continued pattern of misconduct and countless motions based on the same unsubstantiated or patently false allegations against the Father has been the focus of this Superior Court case since its first finding her in contempt of court in 2008. The Superios Court has repeatedly found the Appellant is either unwilling or unable to understand or follow the court's orders; or act in the best interest of her children, and has filed unsubstantiated or false pleadings leading to many sanctions and CR 11 violations.

Here, it seems Ms. Dalluge's appeal is another continuation of having no personal stake or financial investment in the outcome of these proceedings. Understandably, she could argue that what is at stake is her relationship with her children, but she would have already acquired the relaxation of restrictions and relationship with her children she claims is her priority had she simply followed the guidance of the court and the many professionals involved in this case; and, complied with the orders and Parenting Plan/Residential Schedules in effect at any time in the history of this case.

At all relevant times within the scope of this appeal (and still presently) Ms. Dalluge has been found by the Trial Court to be a threat to the emotional and psychological well-being of her children, refusing to allow any finality to these proceedings in a way that the court (and the Respondent) find to be threatening, and still continues to perpetuate an inordinate amount of litigation in this case, shown in the Superior Court record.

The Father's interpretation of what has been filed by Ms. Dalluge indicates that she still confuses her disagreement with the Trial Court, and

also the Respondent (the Respondent reserves voicing his disagreement with the Trial Court on other matters when appropriate, including but not limited to the lack of equitable intervention by the courts or enforcement of its own orders in this case should it become relevant within the scope of this appeal).

What the Mother has filed with this appellate court is pages more of the same vexatious litigation wanting to punish the Respondent, Judges, or anyone else that disagrees with her position, rather than any attempt to follow any path that will result in stability for the parties' children.

Contrary to the beliefs and obscure legal theories offered by Ms. Dalluge, having no nexus to her requested relief she requests of this Court by ignoring the statutory mandates of RCW 26.09.260 and reversing the Superior Court order denying her Petition for Modification and order a third trial in this case without any finding of adequate cause.

The relief sought by Ms. Dalluge in her appeal is in itself a basis for this Court to affirm the order(s) of the Superior Court that are within the scope of this appeal. Her pleadings are rife with mean spirited animus toward the most recent trial court judge and the Respondent, choosing to

adopt a far-fetched conspiracy theory that somehow Mr. Eklund has the foresight to predict and control Ms. Dalluge's own behavior years in advance to start a domino effect of events that are the driving influence behind the findings and orders of nearly 10 court commissioners and judges that have presided over the proceedings in this case that have often been held at the request of Ms. Dalluge's ill-advised legal strategies.

Her theory does not make any sense whatsoever, because if the Respondent really had such influence he would have had the ability to relieve himself from continually having to endure the courts' requirement he defend himself against endless false allegations and unsubstantiated claims by Ms. Dalluge that have tarnished his reputation in the public record and caused irreparable damages to himself and his family – the same allegations she continues to bring no matter how many times they have been disposed of.

None of her filings in this appeal make any mention or discuss any statutory, legal, or procedural basis showing how the court erred in entering its November 21, 2014 order, and completely ignores her inability to have requested relief in the her petition that was the subject of this order based on her RCW 26.09.191 and RCW 26.09.260(7) prohibiting such the

expansion of residential time and modification of the Parenting Plan she sought at the November 19, 2014 hearing.

Despite many attempts of the Superior Court to coerce Ms. Dalluge to comply with its orders and the Parenting Plan, all efforts have been unsuccessful while the Appellant tirelessly pursues the same course of conduct the court has warned her against, while not maintaining any employment to finance any of the court fees or penalties she routinely ignores, incurred by consequences ordered in court proceedings she largely has initiated herself. Nor has the Appellant suffered any of these financial consequences she incurs due to her "in forma pauperis" status and refusal to pay any of the sanctions the court has ordered she pay over the course of this case.

There has been no finality in this case, which should have been obtained in the 2009 and 2013 trials. Presently the litigation in this case is beyond repetitious and is harassing to the Respondent. Due to the Appellant's refusal to follow any lawful court order, which has led to the unfortunate situation for Ms. Dalluge and her relationship with the parties' children, the proceeding held in this case since 2013 have not served any legal purpose that would change the status quo of this case.

C. Conclusion

The Respondent requests the following relief:

1) This Court affirms the Superior Court orders within the scope of this case pursuant to RCW 26.09 and King County Local Rules LFLR 6 and 13(b); finding the Trial Court followed the established laws and court rules, and afforded due process to the Appellant when considering her Motion for Adequate Cause for a [Major] Modification of a Parenting Plan/Residential Schedule (hereafter "Motion for Adequate Cause").
2) This Court affirms the Superior Court orders within the scope of this case, because the Appellant's contact with the parties' children in the existing court ordered Parenting Plan/Residential schedule is restricted under RCW 26.09.191 1(b), 2(a)(ii), and 3 (e, f, and g), and there is also an existing restraining order entered by the Trial Court on its own motion in December 2013. Pursuant to the statutory mandates of RCW 26.09.260 (1), (2), (4), (7), and (9), the Trial Court properly denied the Appellant's Motion for Adequate Cause.
3) This Court deny the relief requested by the Appellant or ordering a new (3rd) trial in this Superior Court case, as sought by the Appellant, on the basis that a new trial would not result in a

different outcome and is prohibited by the statutory mandates in section 2 above, and pursuant to RAP 9.11, granting the relief she requests would lead to overly burdensome and unnecessary costs for the courts, the Respondent, and continue to harm the parties' children as outlined in the Superior Court's November 21, 2014 order on the Appellant's Motion for Adequate Cause. [See DKT 487 pp. 2-10; Clerk's Papers Pages 37-45].

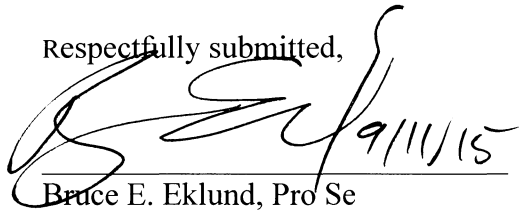
4) This Court enter sanctions against the Appellant based on the reasons below and explained throughout the Respondent's Brief, including but not limited to her failure to provide any meaningful report of proceedings or transmit clerk's papers for this Court to review that are relevant to what was before the Trial Court within the scope of this appeal; and, failure to follow or attempt to follow RAP 10.3 establishing the format and content of Appellant's Brief; or provide any statutory or factual basis within the scope of this appeal in a way that wastes both this Court's and the Respondent's time and resources and serves no meaningful legal purpose.
5) This Court further sanction the Appellant for filing frivolous and unsubstantiated pleadings that grossly misrepresent and mischaracterize the Trial Court record in a way that has caused the Respondent and the parties' children undue delay in a resolution to

this case, and has already cost the Respondent several days off work and time away from his family while researching and preparing this Response Brief. The Appellant has gone to great lengths to avoid paying both the costs of this appeal, any sanctions and penalties ordered by the Trial Court, and the bond ordered by the Trial Court for the Appellant to continue seeking this same relief that has already resulted in many sanctions against her. [See DKT 487 pp. 6-7; Clerks Papers Pages 42-43].

6) The Court enter the findings and sanctions above, and any other equitable relief available to the Respondent to bring the finality, predictability, and stability intended by the statutes and rules established to protect the best interest and well-being of the parties children, and cooperation of the parents in conducting themselves in ways that support this public policy.

Signed: September 11, 2015 (Originally August 31, 2015)

Respectfully submitted,



Bruce E. Eklund, Pro Se

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

(In Re: EKLUND V.	)	No. (72927-6-I)
(DALLUGE-EKLUND	)	
(KING COUNTY SUPERIOR COURT	)	AFFIDAVIT OF SERVICE
(NO: 06-3-01385-2 SEA	)	

To: Elisa M. Dalluge-Eklund, pro se; and, the Clerk of the Court

On September 12, 2015 I (Bruce E. Eklund, Respondent, pro se) caused my resubmitted Response Brief filed with this appellate court to be served upon the Appellant, Elisia M. Dalluge, via certified FedEx guaranteed expedited elivery to her address of record:

211 E. 7th Avenue #18-B

Moses Lake, WA 98837

On September 11, 2015 I sent an electronic copy of same to the Appellant's e-mail address of record:

lisa.eklund@yahoo.com.

I swear under penalty of perjury that the statements above are ~~true~~ and correct.

9/14/2015

Bruce E. Eklund, Respondent, pro se
September 14, 2015