No. 92994-7

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

Rachelle K. Black

Appellant,

v.

Charles W. Black

Respondent.

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Petitioner Rachelle Black acknowledges that the process of coming to understand her sexual orientation was very difficult, due in considerable part to her conservative religious beliefs. Given their fundamentalist upbringing, the parties' three children were ill-equipped to understand the divorce and Rachelle's sexual orientation – taboo topics that were avoided. They shut down.

In Rachelle's absence, Chuck assumed many more parenting responsibilities, providing love and stability when the boys needed it most. In what could only have been a very difficult decision, the trial court designated Chuck the primary residential parent. The appellate court affirmed, holding that Rachelle's discrimination claims were unfounded.

Rachelle's argument continues to be that the residential schedule is impermissibly based on her sexual orientation. To so hold would require this Court to look behind the trial court's careful analysis and assume that its stated rationales are pretext for intentional discrimination. There is no basis for doing so.

The trial court's discretionary rulings were thoughtful and correct. This Court should deny review.

RESTATEMENT OF ISSUES

Rachelle's issue statements mischaracterize the trial court's orders and ignore the appellate court's opinion. Since Rachelle prevailed on her lead issue (which Chuck conceded), what's left is a typical family-law appeal, involving highly discretionary rulings.[1] The remaining issues are:

1. Whether the trial court had discretion to designate Chuck the primary residential parent based on his parenting in the years leading up to the dissolution, his history of active involvement with the children, and his ability to care for the children in the future?

2. Whether the trial court had discretion to award Chuck sole decision-making on education, where: (1) both parties requested sole decision-making on education; (2) history indicates the parents are not able to agree; and (3) Rachelle remains free to share her religious beliefs and practices with the children?

3. Whether the trial court had the discretion to deny maintenance where Chuck cannot afford to pay it?

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[1] This brief uses first names to avoid confusion. No disrespect is intended.

STATEMENT OF THE CASE

A. The children's fundamentalist upbringing gave them no "context" for divorce or homosexuality.

The Black children are the product of a "very dogmatic fundamentalist" upbringing. RP 346-47. The family attended a conservative Christian Church, and the children attended small, Christian schools. CP 73; RP 184, 276; RP 288-90. These were joint decisions, based on shared religious views. CP 39, 41; RP 145, 148-49, 288-89; Ex 40 at 13. The GAL, Kelley LeBlanc, described the children as "very introverted, very quiet, shy children," who are "insular" and "naïve." RP 26, 32. The children's therapist, Jennifer Knight, described them as so "very sheltered" that "they don't really have a grasp of what's going on in the real world." RP 346-47.

The parties did not talk to the children about homosexuality or divorce, which they considered "adult topics." RP 164, 165-66. Their eldest child, C. (who had entered high school at the time of trial), was taught only "biblical concepts of marriage." RP 164. The two younger boys had not been taught about "male-female relationships." *Id.*

The Blacks never taught their children to "hate" homosexuals, or to use homophobic insults or jokes. RP 165-66.

As Rachelle explained it in reference to the word "gay": "that wasn't a word we use in a derogatory form and . . . even if it wasn't what we believed in, . . . we don't judge people." RP 165. Despite repeated assertions that the children's schools teach that homosexuality is a sin, the record reveals little about the schools' teachings aside from Rachelle's speculation that C's school "taught that being gay is a sin, because that's what the [B]aptists believe and it's a [B]aptist school." RP 164; Pet. at 1, 3, 14, 15. She acknowledged that the younger boys' schools do not address sexual orientation. RP 164.

B. After 18-years of marriage, Rachelle came to understand that she is a lesbian.

Rachelle told Chuck that she believed she might be a lesbian in December 2011. RP 313, 409; CP 40. Despite being "heartbroken," "terrified," and "distraught," Chuck was, in Rachelle's words, "very supportive," telling her to "explore" and figure it out. RP 303-04, 311, 409. Rachelle then began dating the woman she intends to marry, Angela Van Hoose, whom she had met about five or six months earlier. RP 114-15, 409. This period was "very rough," as Rachelle was forced to question her beliefs (RP 410):

> That was a very rough short period of time for me. My whole life kind of got turned upside down. All the things I thought I

believed were now in question, and it was a little bit of a crisis for me for a little while.

C. Chuck assumed more parenting responsibilities while Rachelle was often absent.

Rachelle claims that leading up to the divorce, Chuck continued to work while she continued to be a stay-at-home mother. Pet. at 3. But from December 2011 forward, Rachelle spent more time away from home and less time at the children's schools. CP 40-41; RP 16-17, 107-11, 113, 115, 117-18, 303, 306, 325. The children reported that they saw Rachelle "a lot less" and were spending more time with Chuck. RP 16-17, 306, 362. The children "lost a considerable amount of time with their mother and did not have the means or ability to understand why she was no longer available to them." Ex 40 at 21.

Chuck took on greater parenting responsibilities, filling the void Rachelle left. CP 40; RP 294-95, 299.[2] This included adjusting his work schedule to be home before and after school, continuing to volunteer at school, and shopping, cooking, cleaning, playing with the kids, making sure homework was finished, and so on. CP 41;

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[2] Though Rachelle attempts to paint Chuck as little more than a breadwinner, he has always actively participated in homemaking and parenting. *Compare* Pet. at 2 *with* RP 294, 302-03.

RP 294-96, 299-303, 322-23. Of course, Chuck also provided the emotional support and love his boys need. RP 299-300, 353.

D. The children were utterly unprepared for their parents' divorce.

The parties did not mention divorce to the children until November 2013, but told them that nothing would change. RP 25, 27-29, 115, 352. The children began therapy in January 2014, still believing that the family would continue living together in the same home. RP 353, 358. The parties continued living together through the August 2014 trial. CP 42.

Knight explained the "concept" of what a divorced family looks like. RP 357-58. It was also in therapy that the children were first told that Rachelle is a lesbian. RP 349. Their reactions ranged from cuddling Rachelle to a complete lack of understanding, the youngest stating: "No, that's not how it goes. It's only between a man and a woman." RP 349-50. Knight suspended therapy pending entry of a parenting plan, where the children were so "closed down" that they "wouldn't even answer basic questions." RP 345, 355.

E. The trial court designated Chuck the primary residential parent.

After a three-day day trial, the court designated Chuck the primary residential parent. Rachelle largely ignores the extensive

findings, taking a few phrases out of context to suggest that they are the principal basis of the court's order. Pet. at 6-7. These are not facts, but arguments properly addressed below.

In brief here, LeBlanc recommended that Chuck "remain" the primary residential parent, opining that he "has been the most stable and consistent during a time that has turned into a pretty chaotic situation for the kids." RP 14, 16-17, 71. Knight agreed that Chuck was a stable parent who had been and would continue to remain actively involved in the children's daily lives. RP 352-53. The parenting plan is largely based on these opinions. CP 40-41.

Rachelle's assertion that Chuck sought to limit her speech and conduct is misleadingly incomplete. Pet. at 4. In truth, LeBlanc recommended that Rachelle "agree" to refrain from discussing her sexual orientation with the kids and from having Van Hoose at visitations until Knight determined that the children were ready. RP 14. Rachelle repeatedly testified that she and Van Hoose would follow Knight's recommendations, taking it "as slow as it needs to go." RP 170-71, 249-51, 261-62. The parenting-plan restrictions were based on concerns that Rachelle was not giving the kids time to adjust. RP 32-33. But again, Chuck conceded they were error.

REASONS THIS COURT SHOULD DENY REVIEW

A. The trial court was not prejudiced against Rachelle – a point she lost on appeal and does not directly challenge.

On appeal, Rachelle alleged judicial bias, arguing that the trial court improperly based the parenting plan on her sexual orientation and religious views. ***In re Marriage of Black***, No. 46788-7-II ("Unpub. Op.") at 8 (March 2016). Although her petition alleges discrimination, Rachelle fails to even mention the applicable law or the appellate court's holding on this point. Pet. 4-5, 9-12. She continues to discount the seriousness of alleging that a trial judge intentionally discriminated against her and that the appellate court "approved discrimination against LGBT parents." Pet. at 10.

Rachelle does not dispute that "[t]o overcome the presumption that a trial court is fair and free of bias or prejudice, there must be specific facts and evidence establishing the claimed bias." Unpub. Op. at 18 (citing ***In re Pers. Restraint of Davis***, 152 Wn.2d 647, 692, 101 P.3d 1 (2004)). "Judicial rulings alone almost never constitute valid evidence of bias." *Id.*

The appellate court unequivocally held that "[t]here is no evidence in the record to support Rachelle's or the amici's arguments that the trial court based its residential placement decision on Rachelle's sexual orientation or a preference for

Charles's religion." *Id.* at 18. The appellate even corrected one amici's assertion that the court referenced "'Rachelle's sexual orientation more than a dozen time,'" stating, "this is incorrect, and while the trial court's ruling does reference Rachelle's sexual orientation, it is in the context of providing the factual context of the Blacks' relationship, and is not a basis of any of the trial court's decisions." *Id.* at 19 n.8.

In assessing Rachelle's assertions of discrimination, it is crucial to note that Rachelle's appeal bore little resemblance to the case she put on at trial. On appeal, Rachelle and amici presented copious briefing addressing the complex interplay between a parenting plan that must protect children's best interests, and the parents' rights to free speech and free exercise. The upshot was a vociferous claim that Judge Orlando discriminated against Rachelle because she is a lesbian. Judge Orlando did not have the benefit of a single page of argument on this issue, nor a mention of any of the cases Rachelle relied on here and on appeal. Bias cannot be inferred from the failure to address arguments no one raised.

In short, Rachelle places the trial court in an impossible catch-22. While her sexual orientation and the parties' religious views were discussed at great length at trial, Rachelle now claims

they are "irrelevant." Pet. at 9. Certainly a court "may not restrict residential time because of the parent's sexual orientation" (or religious affiliation). ***In re Marriage of Wicklund***, 84 Wn. App. 763, 772, 932 P.2d 652 (1996). That does not mean that the trial court must ignore the evidence put before it.

B. Rachelle's attacks on the parenting plan are unsupported in law and fact.

1. The parenting plan correctly applies the controlling statute, most of which Rachelle ignores.

Rachelle argues that the court ignored the strength of her relationship with the children (RCW 26.09.187(3)(a)(i)) focusing instead on her sexual orientation and maintaining religious "continuity." Pet. at 9-10. As discussed above, the appellate court found "no evidence in the record" supporting Rachelle's claims. *Id.* at 18. Rachelle ignores that holding.

Recognizing, as she must, that there is no presumption in favor of placement with the primary caregiver, Rachelle argues that factor (i) must nonetheless be given the greatest weight. Pet. at 10 n.2 (citing ***In re Marriage of Kovacs***, 121 Wn.2d 795, 800, 854 P.2d 629 (1993); Unpub. Op. at 16 (same). It was.

As to factor (i), "the trial court found that both Charles and Rachelle 'have a strong and stable relationship with the children.'"

Unpub. Op. at 15 (quoting CP at 40). Recognizing that "[t]his factor is given the most weight," the appellate court held that "it weighed equally in favor of both parents." *Id.* That finding was supported by substantial evidence, where: "The GAL testified that . . . both parents have strong bonds with the children," "[b]oth parents were actively involved in their children's schooling and education, and both had a consistent presence in the children's lives, Charles as an involved father and Rachelle as a stay-at-home parent." *Id.*

Rachelle does not address the six other statutory factors. Those that apply are neutral or support placing the children with Chuck a majority of the time. *Id.* at 15-18. One neutral factor – even given the greatest weight – does not overcome the remaining factors in Chuck's favor.

2. The parenting plan is not based on sexual orientation.

Chuck agrees that parenting plans cannot be "based on" sexual orientation. Pet. at 10-13. This one is not. Unpub. Op. at 18.

Rachelle's argument on this point is two-fold: (1) the parenting-plan restrictions that were struck down (based in part on Chuck's concession) "cannot be segregated from the residential time decision"; and (2) the court relied "prominently on the GAL's

biased views." Pet. at 12. The first is addressed squarely by ***Wicklund***, rejecting the assertion that non-neutral limitation on father's conduct could not be segregated from the residential schedule. 84 Wn. App. at 772-73. There, the parties divorced after father came to realize that he is homosexual. 84 Wn. App. at 765-66. Despite both parties' request, the trial court declined to order counseling for the children, instead prohibiting the father from "practice[ing] homosexuality" – *i.e.*, displaying any affection toward a man – during his residential time. *Id.* at 768-69. The appellate court reversed that obviously improper restriction.

The appellate court nonetheless affirmed the residential schedule, holding that "the record does not support [father's] assertion that the trial court reduced [his] residential time solely because of his sexual orientation." *Id.* at 772-73. There is no conflict with ***Wicklund*** which plainly supports affirming the residential schedule. *Compare id. with* Pet. at 12.

In re Marriage of Cabalquinto is inapposite, so cannot present a conflict. Pet. at 10-12 (citing 100 Wn.2d 325, 329, 669 P.2d 886 (1983)). There, this Court appropriately admonished the trial court for its "strong antipathy to homosexual living arrangements," where the trial judge had stated, "'a child should be

led in the way of heterosexual preference, not be tolerant of this thing [homosexuality]' and that 'it can[not] do the boy any good to live in such an environment. It might do some harm.'" ***Cabalquinto***, 100 Wn.2d at 328. This Court remanded for the entry of findings, where it could not ascertain the basis of the trial court's decision. 100 Wn.2d at 329. Unlike the parenting plan in ***Cabalquinto***, this parenting plan is squarely focused on the children's best interest, discussed at length in the trial court's findings. *Id.* at 329.

Rachelle next claims that the "only" support for the trial court's decision is the "unsupported assumptions and bias of a GAL, who obviously held Rachelle's homosexuality against her." Pet. at 12-13; 4-5. Rachelle's attacks on LeBlanc's character ignore her testimony on this point, as well as the appellate court's holding.

When Rachelle informed LeBlanc that she "took issue" with the use of "lifestyle choice" in her preliminary report, LeBlanc explained that did not intend to suggest that sexual orientation was or was not a choice. RP 43-44; Ex 40 at 21. Rather, "choice" referred to Rachelle's decisions to spend significant time away from the home and kids, to divorce, and to move in with Ms. Van Hoose, all things that are "inconsistent with the teachings and principals that she and Mr. Black elected to share with their children." Ex 40

at 21. LeBlanc was not suggesting that Rachelle should not have made these choices, but candidly acknowledging that they had created controversy and confusion for the children "given the family's faith and historical belief system." RP 43-44; Ex 40 at 21-22. While it was undoubtedly painful to hear, it is not surprising that children with no reference point for divorce or homosexuality struggled to accept both. RP 43-44, 164, 165-66, 349-50, 357-58; Ex 40 at 21-22.

In short, LeBlanc was asked to explain her word choice and did. The trial court's acceptance of her explanations does not indicate prejudice.

Finally, Rachelle's assumption that Chuck "disapprov[es]" of her is troubling. Pet. at 11. Rachelle addresses at great length her changed religious views in light of discovering her sexual orientation, yet insists that Chuck's views have not changed. The mother of his children is a lesbian – it's not so difficult to imagine that his thoughts on the subject have evolved.

3. The parenting plan is not based on either party's religious views on homosexuality.

Here, Rachelle asserts a conflict with ***Munoz***, ***Hadeen*** and ***Jensen-Branch***, claiming that the trial court impermissibly favored

Chuck's "religious views" in finding that Chuck "is clearly the more stable parent in terms of the ability to provide for the needs of these children, both financially, as well as emotionally, and in maintaining their religious upbringing." CP 40; Pet at 13 (citing ***Munoz v. Munoz***, 79 Wn.2d 810, 812-13, 489 P.2d 1133 (1971); ***In re Marriage of Jensen-Branch***, 78 Wn. App. 482, 490, 899 P.2d 803 (1995); and ***In re Marriage of Hadeen***, 27 Wn. App. 566, 581, 619 P.2d 374 (1980)). As addressed below, these cases address sole decision-making on religion. *Infra*, Argument C. They do not support Rachelle's claim.

The court's ruling makes very clear that it was endeavoring to provide stability for the children whose "sheltered" upbringing included "significant time spent on religious education." CP 40. The trial court was not, as Rachelle suggests, addressing Chuck's religion, but the children's. *Compare* Pet. at 13 *with* CP 40-41. That is permissible under RCW 26.09.184(3). Unpub. Op. at 17.

4. The court may consider the children's religious beliefs, but that is not the basis of the parenting plan in any event.

Accepting, as she must, that the trial court may consider the children's religious beliefs, Rachelle argues that the record does not reflect children's beliefs, but only what they were "taught." Pet.

at 14. The children did not testify or otherwise address the court. CP 40; Unpub. Op. 17. They had minimal contacts with the GAL, and therapeutic sessions were canceled because the children were shut down and unprepared to talk RP 345, 355. Certainly though, what they have been taught their entire lives is circumstantial evidence of their beliefs, especially when uncontroverted.

Rachelle argues that "there is evidence however that the children no longer believe what they were taught," citing Knight's statement that the children were getting "more used to [the] idea" of Rachelle being in a lesbian relationship. Pet. at 15 n. 4 (citing RP 350). While that is certainly a positive development, it is not a suggestion that the children have rejected their religious beliefs.

This speaks to a larger point Rachelle has missed throughout this matter. After acknowledging her sexual orientation, Rachelle had nearly three years before the divorce to work through the admittedly difficult process of reconciling her faith with her sexual orientation and divorce. The kids did not. The assertion that their views had dramatically changed in a few months is unfounded.

5. The parenting plan does not penalize Rachelle for having been a stay-at-home parent.

Rachelle complains that the appellate court "endorsed" the trial court's concern that "Rachelle had no articulable plans for employment or education, other than to have her partner support her." Unpub. Op. at 17; CP 40-41; Pet. at 16-17. This concern is based on substantial evidence – testimony from Knight and LeBlanc expressing the same concern. CP 40-41; RP 352-53. And the court expressly stated that it would have the same concern regardless of the gender of Rachelle's partner. CP 41.

It does not "penalize" divorcing parents to consider what they have or have not done to prepare to single-parent. Pet. at 17. Nor is it a penalty to state the obvious fact that that Rachelle's future employment will "impact her ability to be a full-time parent." *Id.*

In sum, the trial court carefully considered the children's best interest, in what was plainly a complex and undoubtedly difficult case. The appellate court correctly affirmed the residential schedule. This Court should deny review.

C. Granting Chuck sole decision-making on education does not affront Rachelle's right to free exercise of religion.

There is no authority for Rachelle's proposition that her right to free exercise of religion mandates joint decision-making on

education. Pet. at 17-18. Rachelle misrepresents the basis of the trial court's ruling on this point and fundamentally misunderstands her free-exercise rights. This Court should deny review.

RCW 26.09.187(2)(b) permits sole decision-making when both parents are opposed to joint decision-making, or when one parent is reasonably opposed to joint decision-making. The court may consider the parents' ability and desire to cooperate. RCW 26.09.187(2)(c)(iii).

"[B]oth parties opposed mutual decision-making over education" and both sought sole decision-making. Unpub. Op. at 2. The parties had "very different goals concerning the children's education," and a "'recent history of lack of communication." *Id.* (quoting CP at 75). Awarding Chuck sole decision-making was well within the court's discretion.

Nonetheless, Rachelle asserts a conflict with her free-exercise rights because the children attend religious schools. Pet. at 17-18. ***Jensen-Branch***, ***Hadeen*** and ***Munoz***, *supra*, do not address this point, so cannot present a conflict. *Id.*

Rachelle's right to free exercise entitles her to share her faith and religious practices with the children. *See* ***Munoz***. 79 Wn.2d at 812-13. Granting one parent sole decision-making on religious

upbringing necessarily infringes on the other parent's free-exercise right. *Id.* Awarding sole decision-making on education does not have the same effect. Rachelle remains free to share her faith with the children regardless of where they go to school.

There is no basis for the proposed unprecedented expansion of the free-exercise right. This Court should deny review.

D. The trial court correctly declined to award Rachelle maintenance where Chuck cannot afford to pay it.

Rachelle argues that the trial court incorrectly focused only in Chuck's inability to pay maintenance, and "miscalculate[d]" his ability to pay. Pet. 18-20. Neither contention merits review.

The appellate court correctly affirmed the trial court's finding that Chuck cannot pay maintenance. CP 69, FF 2.12; Unpub. Op. at 25-26. The trial court's gross monthly income calculation, $8,179, adopts Rachelle's erroneously high calculation. BR 40-42. But even using that inflated figure, Chuck's monthly household expenses exceed his net income. Unpub. Op. at 26; Ex 46 at 1.

Rachelle's argument is essentially a list of things the trial court supposedly "ignored," and the appellate court supposedly "failed to address." Pet. at 19-20. The court did not "ignore" Chuck's one-time 2013 bonus, but intentionally excluded it from the income

calculation. CP 42; CP 74, FF 24. That is appropriate for a one-time bonus, particularly where the court ordered the parties to split any 2014 bonus. CP 77 ¶ 3.2.

The trial court was also well aware that the grandparents have historically helped with the children's tuition. CP 69, FF 2.12; CP 73, FF 14. It cannot require them to do so.

And Rachelle falsely claims that the trial court "incorrectly included as a monthly expense" community debts paid off when Chuck – after trial – refinanced the parties' home. Pet. at 19. Although the court referenced this debt, it is not included in Chuck's financial declaration. Ex 46 at 1. Again, Chuck's monthly expenses – absent this debt – exceeds his net income. *Id.*

CONCLUSION

This Court should deny review.

RESPECTFULLY SUBMITTED this 7th day of June, 2016.

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RCW 26.09.184

Permanent parenting plan.

(1) OBJECTIVES. The objectives of the permanent parenting plan are to:

(a) Provide for the child's physical care;

(b) Maintain the child's emotional stability;

(c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

(d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;

(e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;

(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 prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) 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.

(6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section.

[2007 c 496 § 601; 1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

NOTES:

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

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

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction—Obligations not suspended: RCW 26.09.160.

RCW 26.09.187

Criteria for establishing permanent parenting plan.

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and

economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

NOTES:

***Reviser's note:** RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

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

Custody, designation of for purposes of other statutes: RCW 26.09.285.

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Subject: RE: Black v. Black / WA Supreme Court No. 92994-7 / Respondent's Answer to Petition for Review

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Attached please find the following document filed on behalf of Respondent Charles W. Black:

Answer to Petition for Review

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Thank you,
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