74018-1

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No. 74018-1

COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

In re the Parenting and Support of:

DANIEL RAINBOW;

NATHAN BRASFIELD,

Appellant,

and

LAUREN RAINBOW,

Respondent.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Suzanne R. Parisien

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

At a trial on modification of an existing parenting plan that contained no restrictions under RCW 26.09.191, no evidence was presented that the father, Nathan Brasfield, ever committed a single act of domestic violence, let alone had "a history of acts of domestic violence."

Despite this lack of evidence, the trial court adopted a permanent parenting plan that severely restricts Nathan's parenting of his now six-year-old son, Danny, based on supposed parental conduct—including an alleged but nonexistent history of acts of domestic violence. It also entered a *five-year* domestic violence protection order (DVPO). In doing so, the court rejected all recommendations of the court-appointed guardian ad litem (GAL) for Danny and applied broad notions of what constitutes domestic violence, contrary to the narrow statutory definition. The court premised the restrictions on findings that fail to identify conduct meeting the statutory definitions and which are in turn premised on inadmissible hearsay, mischaracterizations of testimony, and proven fabrications.

The trial court's orders effectively terminated Nathan's parental rights by denying all visitation for multiple years while Nathan is in prison for a non-violent crime (where it would be impossible to repeat the parental conduct found by the court). Thereafter, contrary to the GAL's recommendation in Danny's best interests to defer consideration of post-

incarceration issues, the court restricted Nathan's post-incarceration contact with Danny to just two hours of supervised visitation per week.

Litigants are entitled to proceedings that are fair and appear to be fair, in which the law is applied as written. A court is without authority to expand the conduct covered by the statutes. Absent findings of conduct meeting the statutory definitions, the parenting restrictions and DVPO must be vacated. The case should *not* be remanded for additional fact finding with regard to restrictions because the record does not contain substantial evidence to support new findings. The case should instead be remanded for entry of new orders to foster resumption of a normal father-son relationship as soon as possible. The case should be assigned to a different judge on remand because the appearance of fairness was violated through manifest judicial bias.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

A. Assignments of Error.

1. The trial court erred in entering the following decisions and orders dated September 1, 2015: (1) Findings of Fact and Conclusions of Law (Appendix A) and highlighted findings; (2) Order re Modification/Adjustment of Custody Decree/Parenting Plan/Residential Schedule and highlighted findings (Appendix B); (3) Final Parenting Plan and highlighted findings (Appendix C); and (4) Order on Renewal of Order for Protection (Appendix D).

2. The trial court erred in entering its Order Denying Petitioner's Motion for Partial Summary Judgment dated April 24, 2015, including the award of attorney's fees.

B. Issues.

1. Where the trial court's findings do not support its conclusions that Nathan has a history of acts of domestic violence, engaged in an abusive use of conflict, or otherwise engaged in parental conduct warranting restrictions under RCW 26.09.191, must those restrictions be vacated?

2. Where partial summary judgment should have been granted on the absence of a history of acts of domestic violence, must the award of fees on denial of summary judgment, without any legal basis or supporting findings of fact, be vacated?

3. Where many of the trial court's findings are not supported by substantial evidence, including those (1) underlying the trial court's denial of visitation during Nathan's four-year incarceration and (2) pertaining to a determination that Larry and Diane Brasfield are not suitable guardians or chaperones for Danny, must those findings be vacated?

4. Where a DVPO cannot affect a parenting plan and where the DVPO entered here mirrors the invalid parenting restrictions and is without evidentiary basis in that no evidence establishes that Nathan ever committed any acts of domestic violence, must the DVPO be vacated?

5. Where a DVPO that restricts contact with one's minor child may not extend beyond one year, must the five-year DVPO be vacated?

6. If the parenting restrictions are not otherwise vacated, must a new trial be granted because consolidation of the parenting action and DVPO hearing resulted in an unconstitutional denial of due process?

7. Where the trial judge violated the appearance of fairness by demonstrating judicial bias in multiple ways, including in assisting a pro se litigant and blatantly mischaracterizing testimony in its findings, should a different judge be assigned on remand?

8. Should this Court award attorney's fees to Nathan on appeal?

III. STATEMENT OF THE CASE

A. After their relationship ended in June 2011, Nathan Brasfield and Lauren Rainbow entered into an oral agreement for the parenting and support of their son, Danny.

Nathan Brasfield and Lauren Rainbow began a committed intimate relationship in 2008. RP 440. They had one child together, Daniel ("Danny") Rainbow, born in September 2009. CP 1139. They separated in June 2011. RP 441. Soon after, they reached an oral separation agreement that addressed parenting, child support, and distribution of property. CP 1033 (finding of fact (FOF) 20); RP 446, 448, 544-45.

The agreed residential schedule had Danny spend essentially half the time with each parent. RP 544-45; CP 275-76. Nathan and Lauren agreed that neither party would pay child support, but Lauren would have exclusive use of a Subaru Forester that Nathan's sister had given him in exchange for electrical work. CP 867, 1033 (FOF 20); RP 402-03, 544-45. (Both Nathan and Lauren had an ownership interest in the car. RP 39, 449.) Nathan considered the agreement binding. RP 544.

B. Nathan was an able, caring, and nurturing parent to Danny.

At the trial that led to this appeal, seven lay witnesses testified positively regarding Nathan's parenting and close relationship with Danny before contact between them was restricted in April 2014. *See* RP 277-81, 352-56, 369-71, 411-13, 416, 422-24, 432, 520. Nathan first met most of

these witnesses through his work as an electrical contractor, before becoming friends. Steve Hearon, who had known Nathan longest (10 years) and had observed him with Danny hundreds of times, testified that Nathan had a great relationship with Danny and was patient with him and attentive to his safety. RP 508, 510. In listing the witnesses who testified at trial, the trial court omitted four of the eight witnesses who testified in Nathan's case, including Mr. Hearon.[1] CP 1024.

C. In the summer of 2011, Lauren breached the separation agreement and made an unfounded CPS report against Nathan, leading Nathan to file this parenting action.

Lauren's actions in the summer of 2011 led Nathan to file this parenting action in late September 2011. RP 448; CP 276, 1139, 1213-19. First, within a few months after making the separation agreement, Lauren had refused to return Danny to Nathan's care for multiple days when Danny was scheduled to be with Nathan. RP 447. Second, Lauren reported to Child Protective Services (CPS) that Nathan had taken then two-year-old Danny to a home under construction and locked him in a room for half a day, checking on him only sporadically. Exh. 41 at 3. Nathan had actually taken Danny to a *finished* home and played with him in a carpeted bedroom, leaving him for only 10 to 15 minutes at a time (less than an hour total) while supervising a worker. RP 480-82. CPS

[1] The court omitted Franziska Edwards, Steve Hearon, Anne Hearon, and Josh Boyer.

investigated and determined that the report was unfounded.[2] Exh. 41 at 3. Nathan's testimony concerning this event was the only admissible evidence before the trial court. Yet the court would ultimately find that Nathan took Danny to an "active construction site" where "many contractors" were working and "placed Danny in a room and left him strapped in a car seat unaccompanied." CP 1036 (FOF 24(c)).

In May 2012, Lauren obtained temporary orders, including (despite the separation agreement) for child support. CP 1222-45. In June 2012, the parties agreed to a final parenting plan under which Danny would reside almost half time with Nathan. CP 2. Lauren raised no parental conduct issues, such as domestic violence, *see* CP 1220-21, and the parenting plan included no restrictions under RCW 26.09.191. CP 2. Child support was ultimately finalized by the court. CP 1262-74.

D. In April 2014, Lauren obtained an ex parte domestic violence protection order (DVPO) based on alleged threats occurring in 2012 and earlier, and filed a petition to modify the Parenting Plan. In June 2014, unable to testify due to a pending criminal matter, Nathan agreed to a one-year extension of the DVPO.

Nathan has a history of property crimes, all nonviolent. RP 263. In April 2014, he was arrested for felon-in-possession of a firearm. CP 1091. Police found three *unloaded* firearms on the top shelf of a closet in

[2] Lauren would later make a *second* report to CPS that was determined to be unfounded but nevertheless accepted as fact by the trial court. Exh. 41 at 3; CP 1035-36 (FOF 24(a)).

his home. RP 465; *see also* Exh. 11 at 9. Although he did not ordinarily keep firearms in his home, he had recently brought them in on a temporary basis because he believed an acquaintance wished him harm. RP 194, 464-65. Danny was not in the home at the time and never saw any firearm. RP 488-90, 576.

On April 29, 2014, the day Nathan was denied release from detention pending trial, CP 1092, 1094-96, Lauren obtained an ex parte, temporary DVPO, restricting Nathan from contact with Danny or Lauren for two weeks. CP 29-31, 45. Lauren alleged for the first time that Nathan had committed acts of domestic violence against her. CP 1108-37. She attested that Nathan had been "aggressive" toward her for the past two years and had "threatened me on multiple occasions." CP 1116.

Lauren alleged one specific instance of a threat. She attested that, during a telephone conversation about child support in the summer of 2012, Nathan had stated, "[I]f you don't drop this then just see if you come out of this unharmed." CP 1116. (At trial, she would testify that Nathan said, "[D]rop the child support or see what's coming to you." RP 44; 136-37. Nathan recalled demanding that she drop the child support or she would need to return the car. RP 449. The trial court did not resolve this conflict in the evidence, finding only that Nathan had made "direct and indirect threats." CP 1027 (FOF 6).) When Lauren asked if this was a

threat, Nathan told her to "figure that out." CP 1116. She further attested that Nathan then "stole my car out of my driveway" after she made a police report. CP 1116.

Nathan had a friend use his key to remove the Subaru from outside Lauren's residence on the night of August 14, 2012, while Lauren was asleep. RP 45, 171, 450-51. He believed this was justified due to her pursuit of child support in breach of their separation agreement. RP 451-52, 545. But the alleged "threat" actually occurred over a month later. Although Lauren testified that she reported it to police on September 15, the police report she referenced was from September 26, several weeks later. *See* RP 587; Exh. 33. The earlier report merely noted that she was suspicious that Nathan was involved in the car's disappearance because of a recent argument about child support in which Nathan said she should "be prepared to sign over the car." RP 589-90, 609-12.

In May 2014, Lauren filed a petition to modify the 2012 parenting plan and a declaration that alleged "threats" and "multiple ongoing incidents and events that have made me very concerned regarding my safety [and] the safety of Danny[.]" CP 12, 36. She filed a similar declaration in support of a request for a permanent DVPO. CP 1138-45.

In June 2014, while Nathan's criminal case was pending, a one-year DVPO was entered under chapter 26.50 RCW, by agreement. CP

1208-12. On the strict advice of his criminal defense attorney, Nathan did not testify at the DVPO hearing and felt he had no choice but to agree to its entry; he disputed having actually committed any act of domestic violence. RP 560; CP 426, 631-32.[3] The order restricted Nathan from in-person contact with Danny or Lauren for one year. CP 1209. It allowed Nathan to call Danny every two weeks, monitored by Lauren. CP 1211.

Ten days later, on June 13, 2014, in response to a motion to establish adequate cause to modify the parenting plan, Nathan acknowledged that adequate cause existed strictly due to his incarceration, but denied that he had a history of acts of domestic violence. CP 95-97.

In March 2015, a judgment was entered on Nathan's plea of guilty to the weapon-possession crime, resulting in a 48-month sentence at the Sea-Tac Federal Detention Center.[4] CP 550-51. He expects to be released in 2017. CP 552, 1025 (FOF 2).

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[3] The Reply Declaration of Christopher Carney, at CP 425-26, mistakenly states that the DVPO hearing occurred on June 26, 2014, rather than June 3, 2014. *See* CP 1208.

[4] Although the Detention Center is known as a relatively difficult place to serve time, Nathan requested to go there to facilitate visitation with Danny, as it was the closest location to Danny's home. RP 547; *see also* CP 551.

E. Based on the June 2014 DVPO, the trial court denied partial summary judgment to Nathan as to the existence of a history of acts of domestic violence. Without stating any legal basis or making any findings, the court awarded fees to Lauren.

At her deposition, Lauren was asked to list all acts she alleged to constitute domestic violence by Nathan. *See* CP 202-21. In March 2015, Nathan moved for a partial summary judgment that he did not have a history of acts of domestic violence for purposes of RCW 26.09.191(1) and (2). CP 183-98. Lauren responded that his agreement to the June 2014 DVPO was dispositive. CP 301-03; RP (4/24/15) 17.

At the summary judgment hearing, the court acknowledged that Nathan's counsel was "absolutely correct" that "the existence of [the DVPO] does not establish the presence of domestic violence as a matter of law for purposes of establishing a parenting plan." RP (4/24/15) 13. And while Nathan's counsel pointed out that "the facts have been as fully developed as they are ever going to be," including at trial, RP (4/24/15) 14, 31, the court nevertheless determined that the DVPO itself raised a material fact question. RP (4/24/15) 33. The court also expressed its view that "domestic violence...includes coercion and control," RP (4/24/15) 9, a theme repeated by Lauren during the trial and ultimately embodied in the trial court's post-trial findings of fact and conclusions of law. RP 58.

In denying summary judgment, the court awarded $3,651 in attorney's fees to Lauren (who was represented at that hearing), without

stating any legal basis for the award or making any supporting findings. CP 546-47. The judge stated only that the award was "appropriate" and "warranted," even as she praised the motion as a "laudable effort." RP (4/24/15) 34, 36.

F. Lauren petitioned to renew the June 2014 DVPO.

In May 2015, Lauren filed a petition to renew the June 2014 DVPO. CP 556-57. As grounds for renewal, she cited Nathan's *denial* that he had committed domestic violence and his "history of sending people to my house in the middle of the night to complete a threat he made to me the day before." CP 556-57. Responding to the petition, Nathan maintained his innocence of any acts of domestic violence. CP 628-38.

G. The trial court appointed an experienced guardian ad litem (GAL) to represent Danny's interests and investigate specific issues for trial. The GAL concluded that: (1) Nathan did not commit acts of domestic violence as defined in RCW 26.50.010(3); (2) Danny should visit Nathan during Nathan's four-year incarceration; and (3) the visits should be professionally supervised at first, but Danny's grandparents, Larry and Diane Brasfield, were suitable alternate chaperones.

In December 2014, an agreed order was entered appointing David L. Hodges as guardian ad litem[5] for Danny. CP 172-77; RP 184. Mr. Hodges is a licensed marriage and family therapist with a master's degree

[5] A guardian ad litem is an individual appointed by the court to represent the best interests of a child or incapacitated person involved in a case in superior court. *See* Superior Court GAL Rule 1(b)(2), 2(a).

in psychology and 40 years of experience in family court, working on child custody investigations and serving as a GAL. RP 183. Mr. Hodges was tasked with investigating and reporting on domestic violence, the suitability of having Danny visit Nathan in prison, and the suitability of Nathan's parents (Danny's grandparents), Larry and Diane Brasfield, to chaperone Danny on such visits. CP 173-74.

Following his investigation, which the trial court found was "thorough" and included "many collateral contacts," CP 1026 (FOF 6), Mr. Hodges determined that: (1) Nathan did not commit acts of domestic violence as defined in RCW 26.50.010(3); (2) it was in Danny's best interests to have an ongoing relationship with his father, including monthly in-person visits during Nathan's incarceration; and (3) the prison visits should be professionally supervised at first, but the supervisor should have discretion to determine that professional supervision is unnecessary, in which case Larry and Diane would be suitable and appropriate chaperones for Danny. RP 234, 237, 239, 243, 246, 265.

Children of all ages visit their parents at the Sea-Tac Federal Detention Center. RP 484, 534. Mr. Hodges observed that the visitation room was clean, spacious, and pleasant. RP 228. He testified that Danny would not see cell blocks or frightening things. RP 216. He saw no risks that would be harmful to Danny, but noted that there would be risks to

Danny if he were denied visitation with his father and that phone calls are not sufficient to maintain a strong emotional connection. RP 213, 222, 232. Mr. Hodges concluded that visiting Nathan could help dispel Danny's fears arising from being separated from his father. RP 214.

As Nathan's circumstances following release were uncertain, Mr. Hodges concluded that Danny's interests would best be served by deferring consideration of a post-incarceration parenting plan. RP 221-22.

H. After a trial, the trial court rejected the court-appointed GAL's recommendations. In the absence of sufficient evidence, the court found that Nathan had a history of acts of domestic violence and had engaged in an abusive use of conflict. The court imposed parenting restrictions, denied visitation during Nathan's four-year incarceration, and provided for limited, professionally supervised visitation thereafter. The court entered a final parenting plan and extended the DVPO five years. Nathan filed this appeal.

The pending actions on the parenting plan and renewal of the DVPO were consolidated for trial, CP 1275, and a five-day trial was held in July 2015. Lauren appeared pro se. In September 2015, the trial court entered (1) an order on modification of the parenting plan, CP 1017-23; (2) a final parenting plan, CP 1039-47; and (3) findings of fact and conclusions of law.[6] CP 1024-38. The court also renewed the DVPO, extending it five years, to September 2020. CP 1048-49.

[6] The issue of child support was resolved before trial. *See* RP 10.

The trial court explicitly "relied on the GAL's factual investigation" as reflected in Mr. Hodges' report, which consisted largely of hearsay. CP 1026 (FOF 6). Despite relying on his investigation summary, the court entirely rejected the court-appointed GAL's recommendations and granted—on every issue—precisely the relief Lauren had requested. *See* RP 15.

The trial court found that Nathan had a history of acts of violence and, accordingly, imposed parenting restrictions under RCW 26.09.191(1) and (2). CP 1027 (FOF 19), 1040 (item 2.1). The court emphasized that Nathan had agreed to entry of a DVPO in June 2015. CP 1026 (FOF 4). The court found that Nathan's "aggressive behavior, escalating criminal conduct, open fascination with fire arms, direct and indirect threats to Lauren and unrepentant animosity toward Lauren constitute domestic violence as a matter of law." CP 1026-27 (FOF 6). The only specific act the court mentioned was that Nathan "threatened Lauren and subsequently sent a strange man…over to her home in the middle of the night to take the car from her." CP 1033 (FOF 20).

As to other occurrences, the court stated that it "incorporated…by reference" Mr. Hodges' description of Lauren's allegations in his report. CP 1033 (FOF 20). In addition to the incident in which the car was taken, Mr. Hodges' report repeated allegations by Lauren that Nathan had

punched a hole in a wall, had been in a physical altercation with someone, and "used money to manipulate and coerce." Exh. 41 at 5-6.

The trial court found, as alternative bases for imposing restrictions under RCW 26.09.191, that Nathan engaged in "[t]he abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development" and that "considering the totality of circumstances in this case the father's conduct has an adverse effect upon the child." CP 1040 (item 2.2). The court made no findings of any specific parental conduct it determined would support restrictions on these grounds or of any specific adverse effect on Danny.

Based on purported expert testimony regarding a "potential risk" that visiting his father in prison could *worsen* Danny's anxiety, the court found that such visits would "*likely*" worsen his anxiety and on that basis rejected the GAL's determination that such visits were in Danny's best interests and should occur. CP 1038 (FOF 25) (emphasis added), *see also* CP 1027 (FOF 7), 1041 (item 3.2). While it barred visits to prison, the court nevertheless proceeded to find that Danny's grandparents were unsuitable guardians, "even for the limited purpose of escorting Danny to visit his father in prison." CP 1029 (FOF 12), 1032 (FOF 18).

Contrary to the GAL's recommendation to defer post-incarceration issues, and thus without any input from the GAL, the court restricted

Nathan's post-incarceration residential time to one professionally supervised visit per week, lasting up to two hours. CP 1040 (item 2.1), 1041 (item 3.2), 1043 (item 3.10). In renewing the DVPO and extending it five years per Lauren's request, the court imposed restrictions mirroring those contained in the parenting plan. CP 1048.

Nathan timely appealed from the September 2015 orders and the baseless granting of fees to Lauren on summary judgment. CP 1050-51.

IV. ARGUMENT

A. Standard of review.

Interpretation of a statute and its application to a set of facts are questions of law reviewed de novo by the appellate court. *Marriage of McCausland*, 159 Wn.2d 607, 615, 152 P.3d 1013 (2007); *In re Dependency of T.L.G.*, 139 Wn. App. 1, 16, 156 P.3d 222 (2007); *Sintra, Inc. v. City of Seattle*, 96 Wn. App. 757, 761, 980 P.2d 796 (1999).

The trial court must enter findings concerning the ultimate and material facts. CR 52; *Wold v. Wold*, 7 Wn. App. 872, 875, 503 P.2d 118 (1972). A material fact is one that is essential to the conclusions of law. *Wold*, 7 Wn. App. at 875. The court's findings of fact must support its conclusions of law and decree, *Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007), and whether they do so is reviewed de novo. *Ives v. Ramsden*, 142 Wn. App. 369, 382, 174 P.3d 1231 (2008).

The trial court's findings "must be sufficiently specific to permit meaningful review" in that they must at least indicate the factual bases for the court's ultimate conclusions. *Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007); *In re LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986). "The purpose of the requirement of findings and conclusions is to insure the trial judge 'has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully informed as to the bases of his decision when it is made.'" *LaBelle*, 107 Wn.2d at 218-19 (citations omitted).

In the absence of a finding on a material fact issue, the appellate court presumes that the party with the burden of proof failed to sustain its burden on that issue. *Smith v. King*, 106 Wn.2d 443, 451, 722 P.2d 796 (1986). Failure to make a required finding requires reversal. *Marriage of Scanlon*, 109 Wn. App. 167, 174, 34 P.3d 877 (2001); *Marriage of Stern*, 68 Wn. App. 922, 926-27, 846 P.2d 1387 (1993).

Findings of fact must be supported by substantial evidence in the record. *Rockwell*, 141 Wn. App. at 242. The appellate court will vacate a finding not supported by substantial evidence. *Marriage of Rideout*, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003). "Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-

minded, rational person of the truth of the declared premise." *Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

Discretionary rulings on the provisions of a permanent parenting plan are reviewed for abuse of discretion, which occurs where the decision is unreasonable or based on untenable grounds or reasons:

> 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.***

Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (emphasis added).

B. The parenting restrictions must be vacated because the trial court's conclusions regarding Nathan's conduct are not supported by adequate findings.

The Parenting Act embodies our state's policy favoring the maintenance of relationships between parents and children in setting residential schedules. First, the legislature expressed in a general policy statement that "[t]he state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests." RCW 26.09.002. Second, the legislature specifically required courts to "make residential provisions for

each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child." RCW 26.09.187(3).[7]

Accordingly, a court "may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191." *Marriage of Katare*, 125 Wn. App. 813, 826, 105 P.3d 44 (2004). Before imposing restrictions, the court must find a nexus between the parental conduct that is found to support the restriction and an actual or likely adverse impact of the conduct on the children. *Marriage of Watson*, 132 Wn. App. 222, 233-34, 130 P.3d 915 (1996). Further, the restrictions must 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." RCW 26.09.191(2)(m)(i); *see also Katare*, 125 Wn. App. at 826.

Here, the trial court's findings do not include conduct that would support imposition of restrictions. Nor did the court find a nexus between the conduct it did find occurred and any actual or likely adverse impact on Danny, nor could it based on the evidence admitted at trial. The restrictions must be vacated.

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[7] This action arises under the Uniform Parentage Act, chapter 26.26 RCW, which authorizes a court to enter a parenting plan "[o]n the same basis as provided in chapter 26.09 RCW" and to modify a parenting plan under RCW 26.09.260. RCW 26.26.130(7).

1. The trial court's conclusion that Nathan has "a history of acts of domestic violence" is not supported by adequate findings, nor is there substantial evidence to support additional findings.

(a) A "history of acts of domestic violence" means multiple acts of "physical harm" or "infliction of fear of imminent physical harm."

The Parenting Act presumptively requires a court to impose restrictions in a parenting plan where it finds that a parent has engaged in "a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous harm or the fear of such harm." RCW 26.09.191(1). In such a case, the court may not provide for mutual decision making or a dispute resolution process other than court action. RCW 26.09.191(1), .187(1), .187(2)(b)(i). In addition, the court must limit the parent's residential time with the child. RCW 26.09.191(2)(a); *see also* RCW 26.09.187(3)(a).[8]

Although the statute does not define "a history of acts of domestic violence," its use of the phrase "a history of acts," including the plural word "acts," means that a single act of domestic violence is not a sufficient basis to impose restrictions under RCW 26.09.191(1) or (2)(a).[9]

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[8] Restrictions are not mandatory if the court finds that contact between the parent and child will not cause harm. *See* RCW 26.09.191(2)(n).

[9] In interpreting a statute, "[t]he court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *State, Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

The phrase thus excludes "isolated, de minimus incidents which could technically be defined as domestic violence." *Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P.2d 669 (1997), *aff'd sub nom. Caven v. Caven*, 136 Wn.2d 800, 966 P.2d 1247 (1998). The court must find based on a preponderance of the evidence that there is "a history of acts of domestic violence"; mere accusations, without proof, are insufficient to impose restrictions under section .191. *Caven*, 136 Wn.2d at 810. "Domestic violence" is defined as follows:

> "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.

RCW 26.50.010(1) (emphasis added).[10]

(b) The trial court made no finding, nor is there any evidence, that Nathan ever physically harmed Lauren.

The trial court made no finding that Nathan ever caused physical harm, bodily injury, or assault to any family or household member, including Lauren or Danny, nor any sexual assault or stalking. Nor does the record contain evidence of such conduct or harm. Indeed, Lauren has

[10] This "legal definition" is narrower than the clinical or "behavioral definition" used in the field of domestic violence treatment. *See* D.V. MANUAL FOR JUDGES 2-2 (Wash. State Admin. Office of the Courts, 2006); *see also* RP 203 (GAL Hodges).

never alleged that any such conduct or harm ever occurred. *See* RP 88-89, 147. Absent evidence that Nathan ever caused physical harm to any family or household member, the restrictions imposed by the trial court under RCW 26.09.191(1) and (2) can only be premised on a finding that Nathan "inflict[ed]…fear of imminent physical harm."[11]

(c) The trial court made no finding, nor is there any evidence, that Nathan inflicted fear of imminent physical harm.

"[A]ggressive behavior, escalating criminal conduct, open fascination with fire arms, direct and indirect threats to Lauren and unrepentant animosity toward Lauren," CP 1026-27 (FOF 6), are not domestic violence absent a threat of "imminent physical harm," and the court did not find that such a threat had ever been made. Absent such a finding, this Court must presume that Lauren failed to sustain her burden of proof on this issue. *Smith*, 106 Wn.2d at 451. And consistent with the court-appointed GAL's conclusion, RP 246-47, the record contains no evidence to support such a finding had it been made.

Few Washington cases interpret the phrase "infliction of fear of imminent physical harm." Recently, this Court affirmed a one-year DVPO where the father had assaulted the mother and threatened to kill

[11] There is no allegation, evidence, or finding that Nathan ever inflicted physical harm or fear of imminent physical harm upon Danny.

her. *In re Parentage of T.W.J.*, _ Wn. App. _, _ P.3d _, 2016 WL 374791 (2016). Nothing similar occurred here, and this case presents this Court an opportunity to confirm, consistent with the decisions of courts in other states that have the same statutory definition, that the statute does not encompass events of the type alleged in this case. Those courts have held that there must be evidence that the alleged aggressor *intended* to cause fear in the alleged victim. *Kass v. Kass*, 355 N.W.2d 335, 337 (Minn. Ct. App. 1984); *see also Bjergum v. Bjergum*, 392 N.W.2d 604, 605-06 (Minn. Ct. App. 1986). Further, with regard to imminence, the alleged victim must have been put "in fear of *immediate or soon to be inflicted* physical harm." *Lawrence v. Delkamp*, 620 N.W.2d 151, 155 (N.D. 2000) (emphasis added). In addition, a threat must be specific as to intention to inflict *physical* harm. *Newhouse v. Williams*, 167 Ohio App. 3d 215, 854 N.E.2d 565, 570 (2006).[12]

(i) Having the car taken was not domestic violence.

Although she swore under oath that Nathan "threatened me on multiple occasions," CP 1116, the only direct threat ever alleged by

[12] The Washington Supreme Court has held that a fear of *imminent* physical harm means a reasonable likelihood of harm in the present. *Freeman v. Freeman*, 169 Wn.2d 664, 674, 239 P.3d 557 (2010). The issue in *Freeman* was whether the former wife's fear of her former husband, eight years after a protection order was entered, was based on a reasonable threat of imminent harm where there had been no ongoing relationship in the meantime. *Id.* at 676. The Supreme Court held that it was not and that the order should be terminated. *Id.* at 676.

Lauren was the incident in which the court found that Nathan "threatened Lauren and subsequently sent a strange man…over to her home in the middle of the night to take the car from her." CP 1033 (FOF 20). Significantly, however, the court did not find that Nathan threatened "imminent physical harm." Nor could it have made such a finding because, even according to Lauren's testimony, Nathan's supposed threat was neither specific nor imminent.

At trial, Lauren testified that Nathan warned that she should "stop pursuing child support or I would see what's coming to me." RP 136. But "what's coming" cannot be presumed to be physical harm, particularly absent any history of physical abuse. *See, e.g., Newhouse*, 854 N.E.2d at 570 (holding that, in context, a threat that "things could get really, really bad for everybody involved" if the mother went to court over visitation was "not a threat of imminent serious physical harm, but rather a threat of the use of a legal process designed specifically to handle this type of dispute"). Even assuming that "what's coming" meant taking the car (which had already occurred), that is not a physical harm. Nor was there any *imminent* threat. *See, e.g., Lawrence*, 620 N.W.2d at 155 (holding that a threat to have someone "beat the crap out of" the mother if she pursued

child support was a "threat of future conduct and did not denote immediacy so as to place [her] in fear of harm occurring without delay").[13]

The trial court found that "it was an obvious safety risk for [Lauren] and Danny to have a strange man coming onto her property in the middle of the night." CP 1034 (FOF 20). But there was no evidence of any actual safety risk or physical harm, and Lauren could not have experienced fear of any *imminent* harm from subsequently learning that someone had come onto her property while she was asleep.[14] RP 171. This was not domestic violence.

(ii) Vague statements to third parties in social media and e-mail were not domestic violence.

The trial court found that "there was substantial credible evidence of Nate's threatening behavior toward Lauren, both directly, and indirectly in various social media posts and email correspondence to his mother in which he admitted to his thoughts of physically harming Lauren (Exhibit 12)." CP 1034 (FOF 21).

The "social media posts" were messages in a private Facebook forum to which Lauren had no access; one of Nathan's sisters shared them

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[13] *See also Ficklin v. Ficklin*, 710 N.W.2d 387, 392 (N.D. 2006) (holding that the husband's threat to burn down the family home if he did not get to keep it was a threat of future conduct, not of imminent physical harm).

[14] Furthermore, an act by a "strange man," even if it caused physical harm, is not an act "between household or family members" for purposes of the statutory definition of domestic violence. RCW 26.50.010(1)(a).

with Lauren. RP 144-45. In these posts, Nathan said, in reference to taking the car, that "[c]onsidering what she tried to do, she's lucky that's all I did." Exh. 3 at 000019. This statement to third parties was not a threat of imminent physical harm. Nathan considered repossessing the car to be a legal action in response to a breach of contract. RP 451-52, 545. One cannot reasonably infer that he was threatening anything other than additional legal action.[15] *See Newhouse*, 854 N.E.2d at 570.

In the referenced e-mail correspondence (Exhibit 12), Nathan did write that he had thought about harming Lauren. But thoughts cannot constitute domestic violence. Moreover, Nathan disclosed his past thoughts only in a private e-mail to his mother, not to Lauren. Demonstrating bias, the trial court ignored the context of the e-mail (sent from prison just eight days after his arrest and upon learning that Lauren had just obtained a DVPO), in which Nathan said that every time he had thought about harming Lauren, he thought better of it and realized that he could *never* actually harm Danny's mother. Exh. 12; *see also* RP 491-92.

[15] Indeed, when asked at trial what he meant by "she's lucky that's all I did," (referring to the repossession), Nathan testified that he had been "thinking about initiating a bunch more legal action." RP 458. And he had attempted such. Several weeks after repossessing the car, Nathan unsuccessfully petitioned for an ex parte protection order against Lauren for making unfounded reports to CPS and the police. CP 1249-61.

(iii) Allegedly punching a hole in a wall, wrestling with a friend, and financial coercion were not domestic violence.

The trial court incorporated into its findings the GAL's summary of Lauren's unsworn allegations of domestic violence. But the court did not find that these allegations were proven, and mere allegations are insufficient to impose restrictions under section .191. *Caven*, 136 Wn.2d at 810. Nor did any of the three alleged acts of domestic violence mentioned in the GAL report (in addition to the incident involving taking the car) meet the statutory definition of domestic violence.

First, Lauren attested in her DVPO petition that Nathan had "punched holes in walls when angry." CP 1116; *see also* Exh. 41 at 5. But at trial, Lauren admitted that she did not witness the (single) alleged event and that she was in no danger. RP 141-42. Nor could she recall whether Nathan was angry at her. RP 142. Nathan denied punching the wall and testified that he made the hole to access wiring inside the wall. RP 445; *see also* RP 312-14. Even accepting Lauren's testimony, this event could not have inflicted a fear of imminent physical harm.

Second, Mr. Hodges' report referenced Lauren's allegation that Nathan got into "a physical fight with Dave [Bemel]." Exh. 41 at 6. In response to Mr. Bemel's taking a swing at Nathan, Nathan wrestled him to the ground and held him there until he calmed down, and then let him go.

RP 499-01. Lauren acknowledged that even Mr. Bemel recognizes that he was the aggressor and that neither man was angry with her or put her in danger. RP 138. This incident between non-family members (which predated the relationship) could not have inflicted upon Lauren a fear of imminent physical harm.

Third, Mr. Hodges' report referenced Lauren's allegation that Nathan "used money to manipulate and coerce." Exh. 41 at 6. The plain language of the statutory definition of domestic violence does not include financial coercion, nor does any case law support such a reading.

(iv) Additional unproven allegations do not constitute domestic violence.

Lauren testified to a few additional alleged incidents not mentioned in the trial court's findings *or* in the GAL report, which thus remain unproven allegations, but in any event were not domestic violence.

First, Lauren attested in her DVPO petition that she had "seen [Nathan] throw a large television set into our front yard when he was angry, it shattered into pieces and it scared me." CP 1116. At trial, Lauren admitted she did not in fact witness the alleged event and did not know whether Nathan had been angry when it supposedly occurred or, if he was, whether it had anything to do with her. RP 139. She further admitted it was not her television and she was not put in physical danger. RP 140. Nathan denied throwing a television. RP 445.

Second, Lauren testified that Nathan had once nearly run over a neighbor, Josh Boyer, in anger. RP 90-91, 136. But Lauren admitted that she was not put in danger of physical harm as she was not in the car, nor was she near Mr. Boyer (a non-family member), nor was Nathan angry with her. RP 141. Mr. Boyer testified that he walked up to the side of Nathan's car as Nathan was getting ready to drive away and asked him about some "unfinished business." RP 601. Unreceptive to having the conversation at that time, Nathan asked Mr. Boyer to step away, rolled up the window, and backed out of the driveway. RP 601. Mr. Boyer testified that the vehicle did not come close to running over him, and he did not feel that Nathan was trying to put him in physical danger. RP 602-03.

Finally, after attesting to "uncountable" incidents of "road rage" in her DVPO petition, CP 1116, Lauren testified there were two incidents allegedly occurring over five years earlier, in which Nathan sped up and drove aggressively after someone had cut him off or drove slowly. RP 143-44. Although Lauren testified Nathan was unhappy with her criticism of his driving, she stopped short of claiming that he acted out of anger toward her, so there was no evidence of intent to inflict fear. RP 144.

In sum, there is no evidence that Nathan inflicted upon Lauren a fear of imminent physical harm in any of the alleged incidents, let alone

had "a history of acts of domestic violence."[16] Lauren's generalized claim of fear because Nathan is "scary" or "aggressive" (*see* RP 58, 61, 78; CP 1116) does not suffice. The trial court's findings of domestic violence must be vacated. And because no evidence was presented from which a trier of fact could have found that Nathan had a history of acts of domestic violence, the baseless award of fees upon denial of Nathan's motion for partial summary judgment on that issue should also be vacated.

2. The trial court's conclusion that Nathan engaged in "an abusive use of conflict which creates the danger of serious damage to the child's psychological development" is not supported by adequate findings, nor is there substantial evidence to support additional findings.

A court *may* include restrictions in a parenting plan if it finds "[t]he abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development." RCW 26.09.191(3)(e). Although the Parenting Act does not define the phrase "abusive use of conflict," its meaning is illuminated by the requirement that the use of conflict was such that it "create[d] the danger of serious damage to the child's psychological development," RCW 26.09.191(3)(e), which the trial court must find before imposing restrictions under that

[16] The trial court found additionally that restrictions should be imposed under RCW 26.09.191(1) and (2) because Nathan "poses a credible threat to the safety and well-being of the mother" because of hostility toward Lauren for serving as an "informant to the FBI." CP 1040 (item 2.1). This is not a finding of domestic violence and cannot justify restricting Nathan's relationship with *Danny*.

subsection. *Marriage of Burrill*, 113 Wn. App. 863, 871, 56 P.3d 993 (2002). This brings to mind exposing children to or involving them in parental disputes, including using the child to manipulate the other parent or "coaching" the child to make a false report of abuse.

This type of behavior was found in *Burrill*, the only published decision reviewing restrictions based on an abusive use of conflict. This Court affirmed the conclusion that the mother created a danger of serious psychological damage by using a false child-rape charge to obtain restrictions on the father's residential time, coaching a child to make false claims of abuse, and subjecting the child to interviews regarding abuse allegations determined to be unfounded. *Burrill*, 113 Wn. App. at 873.

Here, in contrast, the court made no specific findings regarding any abusive use of conflict, including no finding of the nature of the conduct or that it posed a danger of serious damage to Danny's psychological development.[17] Absent such findings, this Court must presume that Lauren failed to sustain her burden of proof on this issue. *Smith*, 106 Wn.2d at 451.

[17] Although the trial court found there was evidence that Nathan could "make co-parenting extremely difficult," the court did not find that this would have any impact on Danny, but only that it could be "potentially harmful to *Lauren*." CP 1037 (FOF 25) (emphasis added).

Nor is there substantial evidence in the record from which the court could have found that Nathan ever involved Danny in parental conflict. Lauren testified Nathan had never falsely accused her of hurting Danny or failed to return Danny according to the residential schedule. RP 155. She further testified that she had listened to all telephone conversations between Nathan and Danny, and she never heard Nathan say anything negative about her, nor had Danny ever said anything to her to indicate that Nathan had spoken poorly of her. RP 151-52.

Lauren did testify that Danny said to Nathan during a telephone conversation, "You hate my mom," Nathan then asked, "Who told you that," and Danny answered, "*You did.*" RP 149 (emphasis added). Even assuming Nathan made such a statement to Danny (and it would need to have occurred more than a year earlier—before Lauren started monitoring all conversations between them), this hearsay[18] would not alone be a sufficient basis to find an abusive use of conflict by Nathan. Significantly, no evidence was offered to suggest that such an isolated statement could cause serious damage to Danny's psychological development.

[18] It was offered to prove the matter asserted, *i.e.*, that Nathan said to Danny that he hated Lauren.

3. The trial court's general conclusion that Nathan's conduct has an adverse effect on Danny "considering the totality of circumstances" is not supported by adequate findings, nor is there substantial evidence to support restrictions under RCW 26.09.191(3)(g).

A court may include restrictions in a parenting plan if it finds "[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child." RCW 26.09.191(3)(g). Imposing such restrictions "require[s] more than the normal...hardships which predictably result" from parents' separation. *Littlefield*, 133 Wn.2d at 55. The "'adverse effect' necessary to sustain parenting plan restrictions under RCW 26.09.191(3)(g)'s catchall provision…must be similar in severity to the adversity illustrated by that subsection's neighboring provisions, RCW 26.09.191(a)-(f)." *Marriage of Chandola*, 180 Wn.2d 632, 643, 327 P.3d 644 (2014). The restrictions must be "necessary" to protect the child from "a specific, and fairly severe, harm to the child." *Id.* at 648.

Here, the trial court cited the "catchall" provision in the parenting plan and stated Nathan's conduct has an adverse effect on Danny "considering the totality of the circumstances." CP 1040 (item 2.2). But since the court made no findings identifying any specific circumstances or conduct that would support applying section .191(3)(g) to protect Danny from any identified risk of harm, *Chandola* requires that this asserted basis for restrictions be vacated.

4. Absent adequate supporting findings, the parenting restrictions must be vacated. Remand for additional fact finding would be futile because the record does not contain substantial evidence to support such findings.

Absent findings of any conduct meeting the statutory thresholds for imposition of restrictions under any subsection of RCW 26.09.191, all such restrictions must be vacated. And because the record does not contain substantial evidence to support new findings, remand for additional findings would be futile. *See Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 32, 864 P.2d 921 (1993).

C. The findings underlying the trial court's denial of visitation during Nathan's incarceration are not supported by substantial evidence and must be vacated.

The trial court rejected the court-appointed GAL's recommendation for in-person visits during Nathan's incarceration based on a finding that "prison visits will likely derail Danny's progress and worsen his anxiety considerably." CP 1038 (FOF 25). As support for this finding, the court cited the testimony of Lauren, Candace Mangum, and Jenna Genzale. Their testimony does not provide substantial evidence for the court's finding.

Although Lauren objected to prison visits because "[y]ou have to walk through metal detectors [and] it's loud" and "it's hard to get Danny to sit down and focus on something for longer than a couple minutes," she admitted she had never visited the detention center or seen the room where

visits would occur. RP 66, 97, 163. Ms. Mangum testified only that Danny seemed calmer after Nathan became incarcerated and stopped having any residential time with his dad; she did not speak to prison visits. RP 119. The court's finding appears premised mainly on the purported expert testimony of Jenna Genzale, a therapist who had met with Danny no more than a dozen times. RP 18, 33.

A witness may testify to expert opinions only after the trial court has found that the witness is qualified by "knowledge, skill, experience, training or education." ER 702. Medical expert testimony must be based on a reasonable degree of medical certainty or probability. *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 609-10, 260 P.3d 857 (2011). Diagnosis of a health condition is the practice of medicine, which requires a license not possessed by a marriage and family therapist such as Ms. Genzale. RCW 18.71.011(1), .021.

Despite an objection to Ms. Genzale's being allowed to testify as an expert, RP 18, the trial court never found her to be qualified before allowing her to give medical expert opinion testimony and render a diagnosis. Without citing any factors indicating why Danny should be considered more anxious than a typical five year old, Ms. Genzale testified that she diagnosed Danny with generalized anxiety disorder—an opinion the court evidently accepted. RP 21; CP 1027 (FOF 7).

Even accepting her diagnosis as fact, Ms. Genzale did not testify that prison visits would "likely" worsen Danny's anxiety. CP 1038 (FOF 25). She testified only to a "potential risk" that visiting his father in prison could worsen Danny's anxiety and cause PTSD. RP 23. She acknowledged that she could not testify to a reasonable degree of certainty that this would occur and that she "cannot predict that it will or will not." RP 28-19. Tellingly, the trial court elsewhere found that Ms. Genzale merely "fears" that Danny could develop PSTD from visiting his father in prison.[19] CP 1027 (FOF 7). Her opinion was clearly speculative.

Furthermore, Ms. Genzale's testimony was without foundation. She had never met Nathan, nor had she ever visited a federal detention center. RP 27-28. She knew nothing about the room in which visits would take place. RP 27-28. There is no indication that she considered the adverse effects of Danny's not seeing his father for up to four years. She testified that she did not know if Danny wanted to visit his father and did not consider this relevant to her opinion that visits would cause

[19] Curiously, while Lauren testified that she "fear[ed]" that prison visits would reverse Danny's progress with disruptive behaviors, RP 163, Ms. Genzale never used that term with regard to her views on prison visits.

anxiety.[20] RP 33. She was unaware that the GAL had determined that visitation was in Danny's best interests.[21] RP 29.

The trial court's finding that prison visits were not in Danny's best interests because they would likely worsen Danny's anxiety was not supported by substantial evidence and must be vacated.

D. The critical findings pertaining to Nathan's conduct are not supported by substantial evidence and must be vacated.

The trial court made numerous findings of fact critical of Nathan's conduct or judgment as a parent that are not supported by substantial evidence and must be vacated. These findings also demonstrate the court's bias. For example:

- The court found based on triple hearsay[22] that the FBI found "loaded guns in a duffle bag on the floor" in Nathan's home. CP 1037 (FOF 24(d)); Exh. 41 at 7. But the criminal complaint against Nathan stated that guns were found on the top shelf of a hall closet (as Nathan

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[20] Contrary to her testimony, Ms. Genzale evidently told the GAL that Danny misses his father and wants to see him. Exh. 41 at 20. Danny also *volunteered* to Mr. Hodges that he wanted to see his dad. RP 217.

[21] Far from establishing that prison visits would worsen Danny's anxiety, Ms. Genzale's testimony instead established that being separated from his father and wondering if his father was okay were actual sources of anxiety for Danny. RP 20, 26, 30-31. This is understandable given the close relationship that Nathan and Danny previously enjoyed. Visiting his father would more likely ameliorate Danny's anxiety than increase it. *See* RP 26, 213-17.

[22] The court adopted the GAL's summary of Lauren's statement based on what an FBI agent supposedly told her.

testified). Exh. 11 at 9; RP 465. No competent evidence established that Nathan had guns elsewhere in the house.

- The trial court found based on quintuple hearsay[23] that Nathan had firearms "unlocked and/or otherwise secured from Danny" and that "could have been accessible to the child during visits." CP 1031 (FOF 15), 1037 (FOF 24(d)). No competent evidence established that Nathan had firearms in the house when Danny was there.

- The court found Nathan testified that Lauren knew he had firearms in his house and "*she* was a shitty parent for not doing anything about it." CP 1035 (FOF 23) (court's emphasis). This mischaracterized Nathan's testimony. In bashing Lauren's parenting only "*if*" she actually believed he had unsecured firearms when Danny was there and still let him visit, Nathan actually implicated her veracity, not her parenting. RP 476; *see also* RP 461.

- The court found that Nathan was growing marijuana in his basement and had "chemicals and plants that were not secured from the child." CP 1036-37 (FOF 24(d)); *see also* CP 1029-30 (FOF 12). No evidence was presented regarding any unusual safety risks involved in having a grow room versus another type of hobby room or an unlocked

[23] The court adopted the GAL's summary of a CPS summary of an FBI agent's report, which itself was based on Lauren's repetition of statements by Danny.

garage containing chemicals and tools. The basement was separate from the rest of the house and off-limits to Danny. RP 495-96.

- The court cited the fact that Nathan's home was burglarized as evidence that the legal marijuana growing in his basement was "a tempting venue for criminal behavior such as burglary and/or armed robbery," when the court knew that the only burglaries occurred shortly after the details of Nathan's arrest and location of his home were publicized in newspapers. *See* CP 1030 (FOF 12); *see also* CP 1118-20; Exhs. 5 & 6 (not admitted but seen by the court); RP 69-70.

- The court found that the Subaru was "stolen" from Lauren, adopting her characterization while ignoring the undisputed facts that Nathan had an ownership interest in the car and that Lauren's exclusive use of the car was conditioned on the contract she breached. CP 1034 (FOF 20); RP 39, 83, 449, 544-45.

- The court found based on no evidence at all that when Nathan took Danny to work, it was an "active construction site," there were "many contractors working at the site," and Nathan "placed Danny in a room and left him strapped in a car seat unaccompanied while Nate worked." CP 1036 (FOF 24(c)).

E. The findings pertaining to Larry and Diane Brasfield being unsuitable guardians or chaperones are not supported by substantial evidence and must be vacated.

The trial court unnecessarily entered detailed findings that Danny's grandparents were not suitable chaperones for prison visits when the court denied any such visits. These findings are not supported by substantial evidence and further demonstrate the court's bias.

No evidence supports the trial court's finding that Larry Brasfield "minimiz[ed] his son's conduct and criminal behavior." CP 1029 (FOF 12); *see also* CP 1029 (FOF 11). As the court also found, Larry acknowledged Nathan's past and even notified the police once that Nathan had stolen property in his possession. CP 1029 (FOF 11); *see* RP 288. The court quoted Larry as having testified that "it may or may not have concerned him" had he known about "the felons who were rooming with Nate." CP 1030 (FOF 14). Larry made no such statement. And contrary to this invented quotation, Larry expressed concern over the possibility Nathan's house guest (singular) may have been a heroin user. RP 309.

Although the court quoted Larry near accurately as testifying that he does "not believe Nate was reckless with Danny's safety" with regard to having unloaded but unsecured firearms in the house, CP 1031 (FOF 15), it ignored the sentence's leading clause and context, which completely alter its implication: "Now, I know some other things that I've

been told that lead me to believe that [having guns in the house] was a very short term situation. And for that reason, I have not come to believe that Nathan was reckless[.]"[24] RP 338. In fact, Larry considered it unsafe for Nathan to have guns in an unsecured location indefinitely. RP 341.

Contrary to the court's findings, Larry did not request that Nathan "facilitate" his purchase of a firearm, and Nathan did not "introduce[]" Larry to the seller. CP 1030 (FOF 13). Nathan only referred Larry to the seller. RP 340-41. There was nothing illegal or improper about this. Further demonstrating bias, the court characterized the firearm as "*unregistered*" (emphasis by the court), uncritically adopting Lauren's innuendo, even after being informed that there is no firearm registration requirement in Washington. CP 1030 (FOF 13); *see* RP 341.

The court quoted Larry as having testified that growing marijuana in the basement of the house where Danny was staying was "per se not a problem." CP 1030 (FOF 12). Larry made no such statement. In fact, he testified that he had significant concerns and discussed them with Nathan. RP 330-33. That Larry inspected the grow room and found it "safe for a kid to at least walk into," RP 307, does not show disregard for Danny's

[24] Plainly, Larry was attempting carefully to obey the court's instruction to avoid hearsay testimony, *see* RP 305, 311, perhaps not realizing that what he had "been told" about Nathan's having guns in the house would have not have been hearsay because it would not have been offered to prove the truth of the matter asserted. *See* ER 801(c).

safety. Nathan had assured Larry that the basement was off limits to Danny, and the layout of the house facilitated keeping it as such. RP 330, 495-96. Larry recommended that Nathan put a lock on the basement door to enhance Danny's safety. RP 329.

The court found that Larry "did not acknowledge any safety concerns that a large (and profitable) marijuana grow operation might be a tempting venue for criminal behavior such as burglary and/or armed robbery," CP 1030 (FOF 12), but ignored Larry's testimony that he had precisely such concerns, which were assuaged after Nathan explained the grow was a closed, legal cooperative and there would be no outside sales. RP 331-33, 342-43; *see also* RP 493-94.

As to Diane Brasfield, the trial court focused on a time when Lauren had asked for Nathan's address, and Diane responded that Lauren would have to ask Nathan because she had promised not to disclose it. CP 1032 (FOF 18), RP 387-88. The court found that Diane "was willing to put her 'word' to her son *above the safety and well-being of Danny*." CP 1032 (FOF 18) (emphasis added). But there was no evidence Diane was aware of any safety risk to Danny from her refusal to break a confidence with her son (which likely would have damaged their relationship). Nor was there any evidence of any existing risk to Danny. Absent such evidence, the court's finding has no basis in fact and must be vacated.

F. The five-year DVPO mirrors the invalid parenting restrictions, is without any evidentiary basis, and must be vacated.

A protection order may not affect the terms of a parenting plan. *Marriage of Stewart*, 133 Wn. App. 545, 554, 137 P.3d 25 (2006); *see also Marriage of Watson*, 132 Wn. App. 222, 234, 130 P.3d 915 (2006), citing *Marriage of Barone*, 100 Wn. App. 241, 247, 996 P.2d 654 (2000). The legislature did not "incorporate the full panoply of procedures and decision factors from the Parenting Act into the protection order proceeding." *Stewart*, 133 Wn. App. at 552. "[T]he legislature intentionally made it easy to obtain a protection order but difficult to modify a parenting plan; a parent may not take advantage of the former to evade the latter." *Watson*, 132 Wn. App. at 234, citing *Barone*, 100 Wn. App. at 247.[25]

The provisions of the September 2015 DVPO mirror the restrictions imposed in the parenting plan under RCW 26.09.191. CP 1048. Because those restrictions must be vacated, and because a protection order may not affect the terms of a parenting plan, the DVPO must also be vacated. In addition, the DVPO is without evidentiary basis

[25] Although the trial court purported to acknowledge that the issuance of a protection order cannot ultimately determine any issue in a parenting plan, the court denied summary judgment based on the June 2014 DVPO, RP (4/24/15) 33, and it emphasized the DVPO's existence in its post-trial findings on domestic violence. CP 1026 (FOF 4). Under *Stewart*, the June 2014 DVPO is not properly considered in determining whether to impose restrictions under RCW 26.09.191. Furthermore, its nonspecific finding could never establish a history of (multiple) acts of domestic violence.

in that, as already shown, no evidence established that Nathan committed any acts of domestic violence.

Even if the DVPO could otherwise be sustained, it must be vacated for exceeding the one-year limit on a DVPO that "restrains the respondent from contacting the respondent's minor children." RCW 26.50.060(2). Here, the trial court renewed the original one-year DVPO, which restrained Nathan from contact with Danny and, per Lauren's request, extended it *five* years.[26] The DVPO must be vacated.

G. If the parenting restrictions and DVPO are not otherwise vacated, a new trial is required because consolidation of the proceedings to (1) modify the parenting plan and (2) renew the DVPO resulted in an unconstitutional denial of due process.

In determining whether to grant or renew an application for a protective order under chapter 26.50 RCW, the court "need not" apply the rules of evidence. ER 1101(c)(4). But under the Parenting Act, in determining whether any of the conduct described in RCW 26.09.191 occurred, the court "shall apply the civil rules of evidence, proof, and procedure." RCW 26.09.191(6).

The Parenting Act's mandate to apply the evidence rules is plainly intended to prevent a denial of due process. The interests of parents in the

[26] Although the statute provides that the one-year limitation does not apply to an order issued under chapter 26.09 RCW, the trial court renewed an order that was entered under chapter 26.50 RCW.

care, custody, and control of their children are fundamental liberty interests that the U.S. Supreme Court has repeatedly deemed "'essential,' 'basic civil rights of man,' and '[r]ights far more precious…than property rights.'" *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) (citations omitted). They are guaranteed by the Fourteenth Amendment, including its due process clause. *Id.*; *see also In re Parentage of L.B.*, 155 Wn.2d 679, 709-10, 122 P.3d 161 (2005).

Here, the trial court's decision to combine the DVPO renewal hearing with the parenting plan action denied due process through consideration of hearsay evidence in determining issues affecting the parenting plan. The court explicitly "relied on the GAL's factual investigation," CP 1026 (FOF 6), which was largely hearsay as it consisted of summaries of interviews and CPS reports. *See* Exh. 41.

The court adopted multiple hearsay statements from the GAL report, including purported out-of-court statements: (1) by Nathan's sister, Alicia, to the GAL that she felt bullied and intimidated by Nathan throughout her childhood, CP 1029 (FOF 11); (2) by Nathan's sister, Kim, to the GAL that she had concerns with Nathan's parenting, judgment, and implicit threats to Lauren, CP 1029 (FOF 11); (3) by Lauren, to the GAL, that Danny returned from visits smelling like "the fertilizer aisle at Home Depot" and that she was concerned that Danny was being exposed to

chemicals at Nathan's home, CP 1036 (FOF 24(b)); Exh. 41 at 7; (4) by an FBI agent, supposedly repeated by Lauren to the GAL, regarding "loaded guns" supposedly found in Nathan's home, CP 1036-37 (FOF 24(d)), Exh. 41 at 7; and (5) by Lauren, to CPS, summarized by the GAL, that Nathan took Danny a construction site and locked him in the room, checking on him only sporadically.[27] CP 1036 (FOF 24(c)); Exh. 41 at 3.

The court also adopted a hearsay statement by Danny to Ms. Mangum that "[b]ad things happen at Daddy's house," CP 1028 (FOF 9), RP 113, inexplicably deeming it admissible as an excited utterance absent any basis to find spontaneity. *See* ER 803(a)(2); *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 370-71, 966 P.2d 921 (1998). The court meanwhile ignored that Danny had also told Ms. Mangum he was going to do bad things *so he could go to jail and see his dad.* Exh. 41 at 18.[28]

Nathan had no advance notice and thus no opportunity to object to the court's use of hearsay in its findings. In addition, this constitutional issue may be raised for the first time on appeal. RAP 2.5(a)(3). Not only should these findings be vacated, but this denial of due process requires a

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[27] The court sustained an objection to Lauren's testimony about this occurrence as she lacked personal knowledge. RP 59.

[28] The court also selectively enforced the hearsay rule, repeatedly admitting hearsay during the trial, including in exhibits such as police and FBI reports, *see* RP 53-55, 64-65, and purported out-of-court statements by Danny, *see* RP 113, 149, while refusing other evidence on hearsay grounds. *See* RP 305, 311, 362, 386.

new trial if the parenting restrictions and DVPO are not otherwise vacated. *See In re Det. of Black*, 189 Wn. App. 641, 647, 357 P.3d 91 (2015).

H. This Court should remand to a different judge to restore fairness in light of manifest judicial bias.

"It is fundamental to our system of justice that judges be fair and unbiased." *Chicago, Milwaukee, St. Paul & Pac. R. Co. v. Wash. State Human Rights Comm'n*, 87 Wn.2d 802, 807, 557 P.2d 307 (1976); *see also* Code of Judicial Conduct, Preamble & Rules 2.2, 2.3(A). A trial before an unbiased judge is an essential element of due process. *In re Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). A trial before a biased judge violates the federal and state constitutions. *State ex rel. McFerran v. Justice Ct. of Evangeline Starr*, 32 Wn.2d 544, 550, 202 P.2d 927 (1949).

Litigants are entitled to a judge that not only is, but appears to be, impartial. *Brister v. Council of City of Tacoma*, 27 Wn. App. 474, 486, 619 P.2d 982 (1980). "The appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice." *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972). The "critical concern" in determining whether a proceeding appears to be fair is how it would appear to a "reasonably prudent and disinterested person." *Brister*, 27 Wn. App. at 486-87; *see also Sherman v. State*, 128 Wn.2d 164, 205-06, 905 P.2d 355 (1995).

Washington courts will remand to a different judge "to assure preservation of the appearance of fairness." *Marriage of Muhammad*, 153 Wn.2d 795, 807, 103 P.3d 779 (2005).

Here, the appearance of fairness was breached in multiple ways.

First, as shown throughout this brief, the court mischaracterized testimony, used facts out of context, made unsupported findings, and adopted inadmissible, unsworn hearsay evidence. *See also* Appendix E.

Second, a trial court must hold pro se parties to the same standards to which it holds attorneys and not take sides during the trial. *Edwards v. Le Duc*, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010) (remanding for trial before a different judge where the first judge assisted the pro se litigant in direct examination of witnesses). Here, the court repeatedly advocated on Lauren's behalf by *objecting* to testimony and questions. RP 52, 92, 95-96, 140, 159, 162, 305, 311, 362, 386.

Third, the trial court found that Lauren testified "very credibly" when in fact her credibility had been called into question severely. As already shown, she repeatedly changed her testimony regarding claimed domestic violence incidents, first asserting she had witnessed events and then admitting she had not, and falsely asserting that Nathan had "threatened me on multiple occasions." CP 1116; *see also* CP 633-37. As another specific example, the trial court admitted a log of events offered

by Lauren, overruling a hearsay objection based on Lauren's assertion that she made the entries "most often same day, absolutely within 24 hours of occurrence." RP 80-81. It was then shown that for the only event where her assertion could be checked, she had made the log entry five days after the event. RP 156-59. Fairness cannot be maintained in any proceeding before a judge who has already found, contrary to clear evidence, that one party is credible and, at least by implication, that the other is not.

Finally, the appearance of fairness was breached by the court's (1) taking "judicial notice" that Lauren's car was taken while a DVPO was in effect, when a DVPO was first entered 20 months *after* the occurrence, RP 85, 87-88 (court declining to recuse for bias); and (2) rejecting all of the court-appointed GAL's recommendations and entering a permanent parenting plan without any input from the GAL on post-incarceration issues. On remand, a different judge should be assigned to restore both the appearance of, and actual, fairness to the proceeding.

I. This Court should award attorney's fees to Nathan on appeal.

This Court should award fees to Nathan as the prevailing party under RCW 26.26.140, which authorizes the court to order "that all or a portion of a party's reasonable attorney's fees be paid by another party[.]" Alternatively, the court may award fees and costs under RCW 26.09.260(13) if it finds that a motion to modify a parenting plan was

"brought in bad faith." RCW 26.09.260(13). The record establishes that Lauren lacked a good faith basis to allege that Nathan had committed any acts of domestic violence—let alone had a history of acts of domestic violence—and to seek parenting and contact restrictions on that basis. Lauren's fabrications in her DVPO petition underscore her bad faith and knowledge that her domestic violence story was a concoction.

V. CONCLUSION

Nathan is attempting to preserve a father-son relationship that is valuable to him and Danny, is favored by law, and to which they have a right absent serious abuse. Danny has clearly expressed his desire to see his father. RP 217; Exh. 41 at 16, 18, 20. Whatever reasons Lauren may have for wanting effectively to end the father-son relationship, the trial court exceeded its authority in granting her requests. This Court should vacate the trial court's orders and remand to a different judge for entry of new orders to foster timely resumption of a normal father-son relationship.

Respectfully submitted this 30th day of March, 2016.

CARNEY GILLESPIE ISITT, PLLP

By _____
for Christopher R. Carney, WSBA No. 30325

CARNEY BADLEY SPELLMAN, P.S.

By _____
Jason W. Anderson, WSBA No. 30512

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document *along with a CD containing the VRP Transcripts* on the below-listed attorney(s) of record by the method(s) noted:

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2016 MAR 30 PM 4:42

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DATED this 30th day of March, 2016.

Patti Saiden

Patti Saiden, Legal Assistant

APPENDIX A

FILED
KING COUNTY, WASHINGTON
SEP 01 2015
SUPERIOR COURT CLERK
BY Shelly Jones
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

In Re the Parenting and Support of: Daniel Rainbow NATHAN BRASFIELD Petitioner, and LAUREN RAINBOW Respondent.	NO. 11-3-06434-8 SEA FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Respondent/Mother, Lauren Rainbow[1] filed a Petition for Modification of the Parenting Plan which proceeded to trial on July 20-22, 2015. The Father was represented by Christopher Carney. The GAL, David Hodges also testified. The Mother represented herself. On behalf of the Mother, Jenna Genzale and Candace Magnum testified. On behalf of the Father, the following witnesses testified: Laurence Brasfield; Diane Brasfield; Diana Chesterfield, and; John Roark.

The court makes the following Findings of Fact and Conclusions of Law:

[1] The court refers to the parents as Lauren and Nate and intends no disrespect.

ORIGINAL

1. By way of procedure, on 5-13-14, Lauren petitioned the court to modify the parenting plan in this matter. An Order Re Adequate Cause was granted on 6-16-14. On 12-26-14 Commissioner Pro Tem Brad Moore appointed David Hodges as guardian ad litem to investigate and report factual information to the court regarding the criminal history of the father; substance abuse of the father; domestic violence of the father; mental health issues of the father; the suitability of the child visiting the father in federal prison during the father's period of incarceration; the availability of other methods of maintaining the father-son bond (phone calls, letters, etc.) during the father's period of incarceration, and the mental, physical and emotional suitability of the paternal grandparents to provide transportation of the child to effectuate the father's visitation with the child.

2. The father is currently incarcerated at the Federal Detention Center in Tukwila and he is expected to be released in the Spring of 2017 to a half-way house and then on to home confinement until he is totally released and on probation sometime around October 15, 2017.

3. The parties met in 2008 and began living together in February 2009. They separated in June 2010. The parents were not married and neither reports any prior marriages. They have one child together, Daniel (Danny) who is five (5) years old. The mother is employed as a medical social worker in the Emergency Department at Harborview Medical Center.

4. On 4-29-14, the mother petitioned for a Domestic Violence Protection Order and on 6-3-14 an agreed full order was entered. That order expired 6-2-15. The father's criminal history began in 2000 if not before and culminated with his arrest on 4-22-14. Although the father, who had private counsel at the hearing **agreed** to the entry of the DVPO, he later filed a Motion for Summary Judgment seeking a determination as a matter of law **that the incidents giving rise to the agreed upon DVPO in June 2014 do not constitute domestic violence.**[2]

5. Much of the trial was focused on the allegations giving rise to the 2014 DVPO. The relief requested by the father was to have a short term parenting plan, devoid of RCW 26.09.191 restrictions, lasting only until the father is released from incarceration. The father requests that his parents be able to pick up Danny and bring him for regular visits at the detention center.

6. The GAL conducted a thorough investigation with many collateral contacts. The court relied on the GAL's factual investigation but for many reasons that follow, *does not* adopt the GAL's recommendations. Similarly, the court does not accept the GAL's equivocal characterization of events between the parties. **This court finds that Nate's**

[2] The Motion was denied on April 24, 2015.

aggressive behavior, escalating criminal conduct, open fascination with fire arms, direct and indirect threats to Lauren and unrepentant animosity toward Lauren constitute domestic violence as a matter of law.

7. On behalf of the mother, Jenna Genzale, who has been Danny's therapist for approximately four months, testified. The court found her to be credible. She testified that Danny has a generalized anxiety disorder; worries more than he should as a child; is fearful, and; has difficulty coping with new situations. She fears that if Danny is permitted to visit his father at the detention facility, his anxiety disorder could move to PTSD (post-traumatic stress disorder). She testified that "Danny is not a typical child going to see his parent in jail."

8. On behalf of the mother, Candace Mangum testified. She was Danny's preschool teacher at the Perkins School where she worked for 35 years. She has extensive experience in working with young children and of course, their parents as well. The court found her to be very credible. She described the changes she witnessed with Danny during his time with his father (before the father was incarcerated the parents had a shared residential schedule). She testified that on a "Dad Day" (a school day on which the father was going to be picking him up from school and/or return him to school following his residential time) he would get angry and very agitated at school. He would throw things around, act aggressively toward other kids and hurt them. He

would also talk about guns. His behavior was so difficult on "Dad Days" that his pre-school schedule had to be scaled back.

9. Ms. Mangum testified that his behavior on "Dad Days" was so disruptive that he would get sent out of the classroom and would spend anywhere between half an hour to three hours a day in her office. As a result, she knows Danny well. She testified that when Danny was with his father he frequently came to school without his lunch; his clothing was soiled and it appeared that he had had urine accidents and returned to school in the same clothing. Danny once told her that "[b]ad things happen at Daddy's house." When she or other teachers tried to discuss Danny's behavior at school with the father he (father) was "hostile and angry." Lastly, Ms. Magnum testified that once Danny began to live 100% with the mother, the positive behavioral changes in Danny were "like night and day."

10. Both Mss. Genzale and Mangum testified that the Mother was an excellent caretaker for Danny who was always guided by his best interests. Ms. Mangum testified that the Mother was "doing an exceptional job under the weight and stressors of these facts."

11. On behalf of the father, the paternal grandparents, Larry and Diane Brasfield testified. Larry Brasfield, an electrical engineer employed as a consultant testified about his son Nate Brasfield. Clearly the grandparents love Danny and became attached to him when

Nate and Danny lived with them following the parties' separation. The grandfather acknowledged Nate's involvement in criminal activities beginning at a young age. At one point he even notified the police when it was clear that Nate had stolen property in his possession. **Larry Brasfield's minimization of his son's actions over the years** was very troubling to the court. He emphasized that Nate would never hurt anyone—in **direct contrast to the information received from his daughter,** Alicia Brasfiel (Nate's sister) who told the GAL (and Lauren) that all through her childhood she felt bullied by Nate and intimidated by him. Kim Brasfield, Nate's other sister, also reported her significant concerns with Nate's judgment; his threats against the mother (Lauren); and the parenting and life choices that her brother has made.

12. In addition to **Mr. Brasfield's minimization of his son's conduct and criminal behavior,** his testimony on two key points lead to the court's conclusion that **he is not a suitable guardian for Danny, even for the limited purpose** of **escorting Danny to visit his father in prison.** First, Mr. Brasfield testified that he was fully aware that Nate was operating **a rather large** "grow operation" out of his rental home in Lake Forest Park where he had many marijuana plants. By all accounts, **the grow operation was rather sophisticated** with special irrigation and lighting systems in place. In fact, Nate asked his father to "inspect" the grow room to make sure it was "safe" for Danny. Mr. Brasfield said, he saw the grow room on several occasions and it was "in good shape" and was "safe for Danny to walk into it." It is undisputed that the grow operation was located in the basement of the home that Nate was renting. **It is also undisputed that** the basement

door was unlocked and Danny—and anyone else, could access the grow room from the rest of the house. Mr. Brasfield saw nothing unsafe about a four year old living in a home with a large grow operation. His exact words were that the very fact that there was a grow operation was "per se not a problem." He did not acknowledge any safety concerns that a large (and profitable) marijuana grow operation might be a tempting venue for criminal behavior such as burglary and/or armed robbery.

13. The second concerning testimony from Mr. Brasfield relates to his request that Nate, *a convicted felon* facilitate his purchase of an *unregistered semi-automatic fire arm*. Mr. Brasfield acknowledged that his son was prohibited by law from possessing fire arms but seemed to feel that since Nate didn't actually touch the semi-automatic—and merely introduced him to the seller—that it wasn't a problem.

14. When questioned on cross-examination about the felons who were rooming with Nate, Mr. Brasfield said he was unaware that they were living there but that "*it may or may not have concerned him.*" With regard to the heroin which was discovered in Nate's house during the raid leading to his arrest, Mr. Brasfield was similarly cavalier. Specifically, he testified "I wouldn't have been upset just knowing the fact that heroin was in the house but might have been upset if heroin users were in the house." As it turns out, both heroin users and heroin (and cocaine) were found in Nate's home.

15. With regard to the large arsenal of firearms found in Nate's home—***unlocked and/or otherwise secured from Danny***—Mr. Brasfield testified that he was "surprised" they weren't locked. **Incredulously**, when asked on cross examination, Mr. Brasfield stated that he "does not believe Nate was reckless with Danny's safety."

16. Diane Brasfield, paternal grandmother testified on behalf of Nate as well. Nate and Danny lived with her and her husband periodically before Nate's incarceration and testified that she had a lot of opportunity to observe Nate's parenting. She stated that "*most of the time*," Nate was capable of meeting Danny's needs. **Nate "was not good at feeding Danny at consistent times."** Nate showed Mrs. Brasfield the grow operation in the basement **on many occasions.** She testified that she did not think it was dangerous for Danny because he "didn't have access to the basement." However, upon further questioning, she admitted that she didn't know whether there was a lock on the basement door (there wasn't). Prior to the raid on Nate's home, she did not know there were unsecured firearms, drugs or felons living in the home.

17. **Mrs. Brasfield was similarly cavalier in her view of Nate's home. She would not acknowledge any safety concerns that a large (and profitable) marijuana grow operation might be a tempting venue for criminal behavior such as burglary and/or armed robbery.** Even when confronted with the fact that the house (grow operation) was ransacked two times right after Nate was arrested (presumably to steal the profitable

marijuana plants), Ms. Brasfield would not acknowledge that having Danny live there posed a safety risk to the child. Ms. Brasfield was completely unwilling to accept the undisputed facts about her son and the dangerous situations to which Danny was persistently exposed.

18. Most troubling to this court was the fact that Mrs. Brasfield deliberately withheld her son's address from the mother. Lauren testified that upon learning that Nate had moved out of his parents' home, she tried unsuccessfully from Nate to get his new address. Nate did not want Lauren to know where he lived or presumably that he was running a marijuana grow operation. Nate specifically asked his mother not to tell the mother where he was living with Danny, and she agreed. When Lauren asked Mrs. Brasfield if she would give her the home address because she wanted to know where Danny was living when with Nate, Ms. Brasfield refused. As to why she wouldn't reveal the address to Lauren, Mrs. Brasfield stated that she "did not want to break her word to her son." This unequivocally indicates to the court that she was willing to put her "word" to her son above the safety and well-being of Danny, making her an unsuitable guardian for Danny, even for the limited purpose of escorting Danny to visit his father in prison.

19. Lauren testified very credibly on her own behalf. Throughout the proceedings, which were tense at many times, the court was struck by the mother's calm, well-reasoned and

extremely articulate presentation. **All of the witnesses, except (in-part) for the father, testified that Lauren is an excellent care provider for Danny and acts at all times in his best interests.** To her immense credit, the mother managed to attend school for her Masters Degree while simultaneously caring for Danny, working part-time and navigating the father's criminal matters in which she became reluctantly involved. Given some of Danny's sensitivities and behavioral challenges at his pre-school, the mother enrolled him in a more therapeutic learning environment at the UW in which he appears to be thriving.

20. Lauren testified to a number of occurrences **which caused her fear** and for which she successfully sought a Domestic Violence Protection Order and now seeks an extension. They are explained in more detail in the GAL Report and incorporated herein by reference. **While all are concerning, several in particular highlight Nate's unabating hatred toward the mother and unrepentant aggression.** Specifically, shortly after the parties separated while the mother had primary custody of Danny (then aged two), was going to school for her MSW and working part-time, the parties informally agreed that the mother would not seek child support in exchange for her continued use of the car they jointly owned. Upon learning that she could not legally "waive" child support for Danny, Lauren informed Nate that she would be pursuing child support from the court. **In response, Nate threatened Lauren and subsequently** sent a strange man (a "friend" of Nate's) over to her home in the middle of the night to take the car from her. Lauren awoke the next morning to find her car and its contents -- including her school

books, Danny's stroller and car-seat—stolen. This left her with no way of getting to work, school or transporting Danny. Additionally, it was an obvious safety risk for her and Danny to have a strange man coming onto her property in the middle of the night.

21. There was substantial and credible evidence of Nate's threatening behavior toward Lauren, both directly, and indirectly in various social media posts and email correspondence to his mother in which he admitted to his thoughts of physically harming Lauren (Exhibit 12).

22. Nate unabashedly blames Lauren for his arrest and accuses her of lying to the FBI. Lauren expressed continuing fears for her personal safety based on the incidents discussed above and others referenced in the GAL report. This court finds Lauren's fears to be reasonable in light of the very credible evidence at trial. The evidence which best corroborated Lauren's continuing fears was the testimony of Nate at trial. Though he is incarcerated, he requested, and the court permitted him to participate telephonically. With regard to Lauren, though he was physically absent from the courtroom. his anger could not have been any more apparent to the court.

23. When asked by Lauren whether he had given any thought at all to how the late-night car theft would impact her he stated "I don't care how it impacted your life. I did not give it any thought at all." He denied entirely that the situation could have been

dangerous for Lauren and Danny if she had tried to intercept the theft in progress. When asked whether he believed Lauren was responsible for his arrest, he stated "absolutely." When asked whether the unsecured firearms in the home posed a threat to Danny's safety, he testified "I see no safety issue with it." With regard to his (non-rent paying) roommate, Craig, Nate testified that he "knew Craig had a criminal history but had no idea what crimes he was convicted of." With regard to the multiple firearms in his house, he testified that Lauren knew about them and that "*she* was a shitty parent for not doing anything about it."

24. With regard to Nate's relationship to Danny, the Brasfields, Ms. Chesterfield and Mr. Roark testified that they had a good one and that Nate was patient and loving with his son. The court found this testimony to be generally credible though notes that other than the Brasfields, these individuals had infrequent and brief opportunities to make observations. These casual observations cannot overcome the voluminous evidence of persistent and increasingly dangerous situations that Nate created for Danny. In addition to those previously discussed, the following events, which were supported by credible evidence at trial are extremely concerning:

    a. On or about 2-23-14 while visiting a "friend" of Nate's who they went to assist with trimming marijuana plants, Danny drank rubbing alcohol. The rubbing alcohol was being used in the trimming process and a glass of it was left on a table. Danny was apparently left alone in the room and drank the

alcohol presumably believing it to be water. The father did not take Danny to the emergency room despite the fact that Danny threw up. Instead, the next day the father contacted poison control and followed their recommendations. He testified that "taking Danny to the hospital would have been overkill because Danny was just fine."

b. Lauren testified that Danny came home from visits at least five times reeking of a very strong odor. One time he vomited. Lauren likened the smell to the fertilizer aisle at Home Depot. She expressed concern that Danny was being exposed to chemicals at Nate's home. Danny would regularly return from Nate's with dirty clothes and on one occasion, came home without underwear or shoes on.

c. Nate took Danny to an active construction site where he was doing electrical work because he could not find childcare for the day. There were many contractors working at the site and Nate placed Danny in a room and left him strapped in his car seat unaccompanied while Nate worked.

d. Following the FBI raid on Nate's home, an FBI agent contacted CPS alleging child neglect. He reported that the father had been arrested. He described the marijuana grow operation and the presence of chemicals and

plants that were not secured from the child. The father also had firearms that were on a shelf in a closet which could have been accessible to the child during visits. When they raided Nate's house, they found loaded guns in a duffle bag on the floor. There were hundreds of rounds of door breeching ammunition, an Iraqi sniper rifle, and a modified rifle. Also in the home were drug paraphernalia (syringes and a pipe on a coffee table) as well as drugs.

e. One of Nate's early arrests included charges of Possession of Burglary Tools and Possession of Depictions of Minors engaged in explicit sexual conduct. At the time, Nate told the arresting officers that the child pornographic photos belonged to his parents. When recently (May 2015) questioned by the GAL about the pornographic photos, Nate reported that the photos belonged to a girlfriend at the time. This incident is disconcerting at best.

25. In addition to the above, Lauren testified that supervised telephone communication between Nate and Danny often did not go well. Danny has some behavioral issues that Nate does not appear to deal well with. Lauren introduced credible evidence consisting of a log she kept during their conversations which revealed concerning conversations between Nate and Danny. Credible evidence consisting of testimony and Nate's emails and social media posts unequivocally indicate that if allowed, Nate will make co-parenting extremely difficult and potentially harmful to Lauren. Lastly, the

testimony of Lauren, Jenna Genzale and Candace Mangum indicate that prison visits will likely derail Danny's progress and worsen his anxiety considerably.

Based on all of the above findings, restrictions under RCW 26.09.191 are appropriate and necessary as to Nate Brasfield. Similarly, the paternal grandparents are not appropriate supervisors for Danny.

DATED this 1st day of September 2015.

JUDGE SUZANNE PARISIEN

APPENDIX B

FILED
KING COUNTY, WASHINGTON
SEP 01 2015
SUPERIOR COURT CLERK
BY Shelly Jones
DEPUTY

Superior Court of Washington
County of KING

In re the Parenting and Support of: DANIEL RAINBOW NATHAN BRASFIELD Petitioner, and LAUREN RAINBOW Respondent.	No. 11-3-06434-8 SEA **Order Re Modification/Adjustment Of Custody Decree/Parenting Plan/Residential Schedule (ORMDD/ORDYMT)**

I. Basis

This order is based on:

A petition for an order modifying the prior custody decree/parenting plan/residential schedule/judgment establishing parentage; and:

[X] a finding that adequate cause had been established for hearing the petition.
[ ] an agreement of the parties.
[ ] an order of default signed by the court on this date or dated _____.

II. Findings

The Court Finds:

2.1 Jurisdiction

This court has jurisdiction over this proceeding for the reasons below.

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

ORIGINAL

[X] This state is the home state of the children because:

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

[ ] the children are less than six months old and have lived in Washington with a parent or a person acting as parent since birth.

[ ] any absences from Washington have been only temporary.

[ ] Washington was the home state of the children within six months before the commencement of this proceeding and the children are absent from the state but a parent or person acting as a parent continues to live in this state.

[ ] The children and the parents or the children and at least one parent or a person acting as a parent have significant connection with the state other than mere physical presence, and substantial evidence is available in this state concerning the children's care, protection, training and personal relationships, and:

[ ] The children have no home state elsewhere.

[ ] The children's home state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or .271.

[ ] All courts in the children's home state have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the children under RCW 26.27.261 or .271.

[ ] No other state has jurisdiction.

[ ] This court has temporary emergency jurisdiction over this proceeding because the children are present in this state and the children have been abandoned or it is necessary in an emergency to protect the children because the children, or a sibling or parent of the children, are subjected to or threatened with abuse. RCW 26.27.231.

[ ] There is a previous custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. The requirements of RCW 26.27.231(3) apply to this matter. This state's jurisdiction over the children shall last until (date) _____.

[ ] There is no previous custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221. If an action is not filed in (potential home state) _____ by the time the child has been in Washington for six months, (date) _____, then Washington's jurisdiction will be final and continuing.

[ ] Other:

2.2 Modification Under RCW 26.09.260(1), (2)

[ ] Does not apply.

[ ] The custody decree/parenting plan/residential schedule should not be modified because none of the statutory reasons in RCW 26.09.260(1) and (2) apply.

[X] The custody decree/parenting plan/residential schedule should be modified because a substantial change of circumstances has occurred in the circumstances of the children or the nonmoving party and the modification is in the best interest of the children and is necessary to serve the best interest of the children. This finding is based on the factors below:

[ ] The parties agree to the modification.

[ ] The children have been integrated into the moving party's family with the consent of the other party in substantial deviation from the decree or parenting plan/residential schedule.

[X] The children's environment under the custody decree/parenting plan/residential schedule is detrimental to the children's physical, mental or emotional health and the harm likely to be caused by a change in environment is outweighed by the advantage of a change to the children.

[ ] The other party has been found in contempt of court at least twice within three years because the person failed to comply with the residential time provisions in the court-ordered parenting plan, or the person has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

The following facts, supporting the requested modification, have arisen since the decree or plan/schedule or were unknown to the court at the time of the decree or plan/schedule:

See Findings of Fact and Conclusions of Law filed separately.

2.3 Modification or Adjustment Under RCW 26.09.260(4) or (8)

[ ] Does not apply.

[ ] The custody decree/parenting plan/residential schedule should not be modified because:

[ ] none of the statutory reasons in RCW 26.09.260(4) apply.
[ ] none of the statutory reasons in RCW 26.09.260(8) apply.

[X] The custody decree/parenting plan/residential schedule should be modified because the reduction or restriction of the residential time for the person with whom the children do not reside a majority of the time would serve and protect the best interests of the children using the criteria in RCW 26.09.191. The following facts support the request for modification:

See Findings of Fact and Conclusions of Law filed separately.

[ ] The custody decree/parenting plan/residential schedule should be adjusted because the nonresidential party has voluntarily failed to exercise residential time for one year or more and the adjustment is in the best interest of the children.

2.4 Adjustments to Residential Provisions Under RCW 26.09.260(5)(a) and (b)

[X] Does not apply.

[ ] The custody decree/parenting plan/residential schedule should not be adjusted because none of the statutory reasons in RCW 26.09.260(5)(a) and (b) apply.

[ ] The custody decree/parenting plan/residential schedule should be adjusted because a substantial change in circumstances of either parent or of the child has occurred and the proposed modification to the custody decree/parenting plan/residential schedule is in the best interest of the children. It is a minor modification in the residential schedule that does not change the residence at which the children are scheduled to reside the majority of the time and:

[ ] is not more than 24 full days in a calendar year.
[ ] is based on a change of residence of the parent with whom the child does not reside a majority of the time or an involuntary change in work schedule by a party which makes the residential schedule in the custody decree/parenting plan/residential schedule impractical to follow.

2.5 Adjustments to Residential Provisions Under RCW 26.09.260(5)(c), (7), (9)

[X] Does not apply.

This section only applies to a person with whom the child does not reside a majority of the time who is seeking to increase residential time.

2.5.1 Parent subject to limitations under RCW 26.09.191(2) or (3)

[ ] The residential time of (name) _____ is not subject to limitations.

[ ] The residential time of (name) _____ is subject to limitations. This parent [ ] has [ ] has not demonstrated a substantial change in circumstances specifically related to the basis for the limitations.

2.5.2 Parent Required to Complete Evaluations, Treatment, Parenting or Other Classes

[X] (Name) Nic Bransfield is not required under the existing parenting plan/residential schedule to complete evaluations, treatment, parenting or other classes.

[ ] (Name) _____ is required by the existing parenting plan/residential schedule to complete evaluations, treatment, parenting or other classes. The following facts show this parent [ ] has [ ] has not fully complied with such requirements:

2.5.3 Adjustment to Residential Provision Under RCW 26.09.260(5)(c)

Does Not Apply

[ ] The custody decree/parenting plan/residential schedule should not be adjusted because none of the statutory reasons in RCW 26.09.260(5)(c) apply.

[ ] The custody decree/parenting plan/residential schedule should be adjusted because a substantial change in circumstances of [ ] (parent's name) _____ [ ] (child(ren)'s name(s)) _____ _____ has occurred. The proposed modification to the custody decree/parenting plan/residential schedule is in the best interest of the children. It is a minor modification in the residential schedule that does not change the residence at which the children are scheduled to reside the majority of the time. The increase is more than 24 full days but less than 90 overnights per year total. The custody decree/parenting plan/residential schedule does not provide reasonable time with the nonprimary residential party.

2.6 Adjustments to Nonresidential Provisions Under RCW 26.09.260(10)

[X] Does not apply.

[ ] The custody decree/parenting plan/residential schedule should not be adjusted because none of the statutory reasons set forth in RCW 26.09.260(10) apply.

[ ] The following nonresidential aspects of the parenting plan/residential schedule should be adjusted because there is a substantial change of circumstances of either party or of the children and the adjustment is in the best interest of the children:

[ ] Dispute resolution.
[ ] Decision making.
[ ] Transportation arrangements.

[ ] Other:

2.7 Substantial Change in Circumstances

(Complete this part if a modification or adjustment is based on paragraphs 2.2, 2.4, 2.5.1, 2.5.3 or 2.6).

The following substantial change has occurred in the circumstances of either party or of the children:

See ~~[illegible]~~ Findings of Fact and Conclusions of Law filed separately.

2.8 Protection Order

[ ] Does not apply.

[X] The [X] domestic violence [ ] antiharassment Order for Protection signed by the court on this date or dated _____, is approved and incorporated as part of these findings.

III. Order

It Is Ordered:

[ ] The petition to modify/adjust the custody decree or parenting plan/residential schedule is denied.

[X] The petition to modify/adjust the custody decree or parenting plan/residential schedule is granted. The custody decree or parenting plan/residential schedule signed by the court on this dated or dated _____, is approved and incorporated as part of this order. This decree or parenting plan/residential schedule supersedes all previous decrees or parenting plans/residential schedules.

[X] Child support shall be modified in accordance with the custody decree or parenting plan/residential schedule approved by the court. The order of child support signed by the court on this date or

dated _____, is approved and incorporated as part of this order. This order of child support supersedes all previous child support orders.

[ ] The parties shall comply with the [ ] domestic violence [ ] antiharassment Order for Protection signed by the court on this date or dated _____, in this cause number. The Order for Protection signed by the court is approved and incorporated as part of this decree.

[ ] Other:

Dated: 9/1/15

Judge Suzanne Parisien

Presented by:

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

Approved by:

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

Signature of Party or Lawyer/WSBA No.

Print or Type Name Date

APPENDIX C

FILED
KING COUNTY WASHINGTON
SEP 01 2015
SUPERIOR COURT CLERK
BY Shelly Jones
DEPUTY

Superior Court of Washington
County of KING

In re the Parenting and Support of: DANIEL RAINBOW NATHAN BRASFIELD, Petitioner, and LAUREN ELIZABETH RAINBOW, Respondent.	**No.** 11-3-06434-8 SEA **Final Parenting Plan**

This parenting plan is:

The final parenting plan signed by the court following trial on the Petition for Modification filed by the Mother, Lauren Rainbow. Trial was conducted on July 20, 21 and 22, 2015.

It is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following parents: Nathan Brasfield and Lauren Rainbow, and to the following child:

Name	Age
DR	5

II. Basis for Restrictions

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

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

Nathan Brasfield's residential time with the child 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 has engaged in the conduct which follows:

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.

Additionally, given the particular facts of this case wherein the mother served as an informant to the FBI and the respondent's open hostility and anger toward the mother for assuming this role, the respondent poses a credible threat to the safety and well-being of the mother.

2.2 Other Factors (RCW 26.09.191(3))

Nathan Brasfield's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow.

The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

The court finds that in considering the totality of circumstances in this case the father's conduct has an adverse effect upon the child such that RCW 26.09.191(3)(g) restrictions are warranted.

III. Residential Schedule

The residential schedule must set forth where the child 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 shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child 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.

3.2 School Schedule

Upon enrollment in school, the child shall reside with Lauren Rainbow, except for the following days and times when the child will reside with or be with the other parent:

So long as the father is incarcerated, there shall be no in person visitation with the child.

Once the father is released from incarceration and at least one month (30 days) have passed to allow him to obtain housing, meet with his parole officer, set up mandatory release requirements and other matters then visitations shall be as follows:

> The father may have professionally supervised visitation once every week for a period of two hours. The parties shall agree to a supervisor that is near the mother's residence. The visitation shall occur on a weekday evening to be agreed to by the parties. If the parties cannot agree, it will occur on Wednesday evening from 5:30pm to 7:30pm. The father shall pay all costs of the professionally supervised visitation.

The father may contact the child twice per week via phone at times to be determined by the detention facility and the parties. The father may also send one letter to the child each week. The mother shall be allowed to read the letter and all calls from the father to the child shall be on speakerphone.

The school schedule will start when the child begins kindergarten

3.3 Schedule for Winter Vacation

The child shall reside with Lauren Rainbow during winter vacation, except for the following days and times when the child will reside with or be with the other parent:

> Does not apply. The father has no visitation with the child.

3.4 Schedule for Other School Breaks

The child shall reside with Lauren Rainbow during other school breaks, except for the following days and times when the child will reside with or be with the other parent:

> Does not apply. The father has no visitation with the child.

3.5 Summer Schedule

Upon completion of the school year, the child shall reside with Lauren Rainbow, except for the following days and times when the child will reside with or be with the other parent:

Same as school year schedule.

3.6 Vacation With Parents

The mother may take vacation with the child during her residential time. Does not apply with regards to the father as the father has no visitation with the child while incarcerated.

3.7 Schedule for Holidays

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

	With Mother (Specify Year Odd/Even/Every)	With Father (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):

Does not apply as the father has no residential time with the child while incarcerated.

3.8 Schedule for Special Occasions

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

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
Mother's Day	every	-
Father's Day	-	see below

Once the father is released from incarceration, he shall have supervised visitation with the child for up to four hours on Father's Day. The father shall pay the costs of the supervised visitation.

3.9 Priorities Under the Residential Schedule

Does not apply because one parent has no visitation or restricted visitation.

3.10 Restrictions

Nathan Brasfield's residential time with the child shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the child spends time with this parent:

The father shall have no visitation while he is incarcerated. Once the father is no longer incarcerated, his visitation shall be professionally supervised only.

3.11 Transportation Arrangements

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

Transportation arrangements for the child between parents shall be as follows:

Does not apply while the father is incarcerated as the father has no visitation while incarcerated. Once the father is no longer incarcerated, the father shall have supervised visitation as per section 3.2 herein and the mother shall transport the child to and from the supervised visitation.

3.12 Designation of Custodian

The child named in this parenting plan is scheduled to reside the majority of the time with Lauren Rainbow. This parent is designated the custodian of the child 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

Does not apply.

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 five 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 child.

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

	Lauren Rainbow has sole decision making for:
Education decisions	X
Non-emergency health care	X
Religious upbringing	X
Extracurricular Activities	X

4.3 Restrictions in Decision Making

Sole decision making shall be ordered for the following reasons:

A limitation on a parent's decision making authority is mandated by RCW 26.09.191 (See paragraph 2.1).

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.

No dispute resolution process, except court action is ordered.

VI. Other Provisions

There are the following other provisions:

Enrichment Activities: Each parent shall be responsible for keeping himself/herself advised of athletic and social events in which the child participates.

Child's Involvement: Neither parent shall ask the child to make decisions or requests involving the residential schedule. Neither parent shall discuss with the child changes to the residential schedule which have not been agreed to by both parents in advance. Neither parent shall advise the child of the status of child support payments or other legal matters regarding the parents' relationship. Neither parent shall use the child, directly or indirectly, to gather information about the other parent or to take verbal messages to the other parent.

Derogatory Comments: Neither parent shall make derogatory comments about the other parent or allow anyone else, including but not limited to relatives, to do the same in the child's presence. Neither parent shall discuss the personal life of the other parent or their actions with

the child nor shall they permit a third party to do so. Neither parent shall allow, encourage or permit the child to make derogatory comments about the other parent or relatives.

Discussion of Grievances: Each parent agrees to encourage the child to discuss a grievance with a parent directly with the parent in question. It is the intent of both parents to encourage a direct child-parent bond.

VII. Declaration for 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.

Lauren Rainbow
Signature of Party

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.040.060(2) or RCW 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: 9/1/15

Judge Suzanne Parisien

Presented by:

Lauren Rainbow, Respondent
Pro Se

Approved for entry:

Christopher Carney, WSBA # 30325
Attorney for Nathan Brasfield

Nathan Brasfield, Petitioner

APPENDIX D

SAD

FILED
KING COUNTY, WASHINGTON
SEP 01 2015
SUPERIOR COURT CLERK
BY Shelly Jones
DEPUTY

The filing party or attorney didn't provide the Clerk with the Law Enforcement Info Sheet.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ISSUED

LAUREN RAINBOW	05/28/1982	NO. 11-3-06434-8 SEA
Petitioner	DOB	ORDER ON RENEWAL OF ORDER FOR PROTECTION (ORPRTR) (Clerk's Action Required)
vs.		
NATHAN BRASFIELD	03/08/1978	
Respondent	DOB	

Notice of this hearing was served on the respondent by ☐ personal service ☐ service by publication or mail pursuant to court order ☒ other TRIAL was conducted on July 20-22nd, 2015.

The Petition for Renewal dated 5/18/2015 is:

☒ **Granted.** The terms of the Order for Protection entered on 6/3/2014 are renewed* and shall expire on 9/1/2020.

* The visitation provisions contained in the 9/1/2015 Final Parenting Plan (copied below) replace Section 19 of the original Order for Protection.

So long as the father is incarcerated, there shall be no in person visitation with the child.

Once the father is released from incarceration and at least one month (30 days) have passed to allow him to obtain housing, meet with his parole officer, set up mandatory release requirements and other matters then visitations shall be as follows:

The father may have professionally supervised visitation once every week for a period of two hours. The parties shall agree to a supervisor that is near the mother's residence. The visitation shall occur on a weekday evening to be agreed to by the parties. If the parties cannot agree, it will occur on Wednesday evening from 5:30pm to 7:30pm. The father shall pay all costs of the professionally supervised visitation.

The father may contact the child twice per week via phone at times to be determined by the detention facility and the parties. The father may also send one letter to the child each week. The mother shall be allowed to read the letter and all calls from the father to the child shall be on speakerphone.

ORIGINAL

If the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts of domestic violence.

☐ **Denied.** Respondent has proved by a preponderance of the evidence that when the order expires respondent will not resume acts of violence against ☐ petitioner ☐ petitioner's children or family or household members.

The clerk of the court shall forward a copy of this order on or before the next judicial day to the:

☒ _____ County Sheriff's Office or Seattle Police Department where petitioner lives which shall enter this order in any computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

☐ _____ County Sheriff's Office or _____ Police Department where respondent lives which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

☒ Respondent appeared ~~and was informed~~ by counsel of the order by the court; further service is not ~~required~~ necessary as the respondent is currently incarcerated and can be served through his counsel. - SRP

☐ This order is issued following service by publication, and petitioner may serve this order by publication.

DATED 9/1/15 at 2:30 a.m./p.m.

JUDGE SUZANNE PARISIEN

Presented by:

_____
Petitioner Date

I acknowledge receipt of a copy of this Order.

_____
Respondent Date

APPENDIX

E

Appendix E

Additional Examples of Trial Court Errors Demonstrating Bias

This appendix identifies certain errors by the trial court as examples, in addition to those identified in Appellant's Opening Brief, that particularly demonstrate the court's bias toward Lauren Rainbow. It is not intended to be a comprehensive list of errors.

A. Erroneous Conclusions.

1. "Nate's...aggressive behavior...constitute[s] domestic violence as a matter of law." CP 1026-27 (FOF 6).

2. "Nate's...open fascination with firearms...constitute[s] domestic violence as a matter of law." CP 1026-27 (FOF 6).

B. Baseless Findings.

1. "Danny...worries more than he should as a child..." CP 1027 (FOF 7).

2. "When [Ms. Mangum] or other teachers tried to discuss Danny's behavior with the father he (father) was 'hostile and angry.'" CP 1028 (FOF 9).

3. "Ms. Mangum testified that the Mother was 'doing an exceptional job under the weight and stressors of these facts.'" CP 1028 (FOF 10).

4. "[Larry Brasfield] emphasized that Nate would never hurt anyone—*in direct contrast to the information received from his daughter*, Alicia Brasfiel[d] (Nate's sister) who told the GAL (and Lauren) that all through her childhood she felt bullied by Nate and intimidated by him." CP 1029 (FOF 11) (emphasis added).

5. "Kim Brasfield, Nate's other sister, also reported her significant concerns with...[Nathan's] threats against the mother (Lauren)..." CP 1029 (FOF 11).

6. "...Mr. Brasfield's minimization of his son's conduct and criminal behavior..." CP 1029 (FOF 12).

7. "Nate showed Mrs. Brasfield the grow operation in the basement on many occasions." CP 1031 (FOF 16).

C. Incorrect Findings.

1. "...[Nathan] filed a Motion for Summary Judgment seeking a determination as a matter of law that the incidents giving rise to the agreed upon DVPO in June 2014 do **not** constitute domestic violence." CP 1026 (FOF 4). (The motion sought a ruling that Nathan did not have a history of acts of domestic violence under RCW 26.09.191(1) and (2). CP 183.)

2. "[Ms. Mangum] was Danny's preschool teacher..." CP 1027 (FOF 8). (She was not his teacher; she was the school director. RP 110.)

3. "[Danny] would...act aggressively toward other kids and hurt them." CP 1027 (FOF 8). (The testimony was that Danny would jump off of a structure, "kind of hurting" kids he landed on. RP 114.)

4. "...the large arsenal of firearms found in Nate's home..." CP 1031 (FOF 15). (The evidence was that he possessed three firearms. RP 465-66.)

D. Incorrect or Capricious Rulings.

1. Lay opinion allowed over objection on what constitutes "domestic violence." RP 46, 57-58.

2. Hearsay admitted because "[it is] the factual basis upon which [Lauren] wants me to enter [RCW 26.09.191] restrictions." RP 52.

3. Hearsay police report admitted over objection because a different police report was admitted without objection. RP 48-51.

4. Hearsay FBI report admitted over objection because "it's a court pleading," RP 53-54, and then to show "motive by [Nathan] against [Lauren]." RP 54-55.

5. Hearsay Independent Educational Plan (IEP) for Danny admitted because "it's...not being admitted for the truth of the matter asserted. It's being admitted for—to give this Court historical information. And it's also a public record—oh, not public, it can't be. It's an official record." RP 64.