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Court of Appeals
Division III
State of Washington
4/15/2019 11:11 AM

97079-3

Nos. 353311, 354032 and 355900

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

Robert W. Parrish, Jr, Respondent,

v.

Alaxandria M. Von Hell , Petitioner.

PETITION FOR REVIEW

William Edelblute
Attorney for Petitioner WSBA 13808
1030 North Center Parkway
Kennewick WA 99336
Ph. 509-737-0073

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A. IDENTITY OF PETITIONER

Alaxandria Von Hell asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Review is sought of the Opinion filed by the Court of Appeals, Division III, on March 14th, 2019, which affirmed all rulings of the Superior Court of Benton County. A copy of the decision is in the Appendix at pages A-1 through 1-10.

C. ISSUES PRESENTED FOR REVIEW

No. 1 Did the trial court have the authority on April 11th, 2017, to find adequate cause for a petition to modify the final parenting plan entered December 13th, 2016, when Mr. Parrish had not petitioned to modify that parenting plan and no adequate cause hearing had been held or noted for the same date as the review hearing on the psychological evaluation? Or, did the trial court have advance authority to determine there will be a finding of adequate cause, after a trial on a petition that already required a finding of adequate cause?

No. 2 Did the trial court have authority to vacate the Final Parenting

Plan and the Findings and Order entered December 13th, 2016, based on its finding of adequate cause arising from the failure to comply with the psychological evaluation?

No. 3 Did the trial court have the authority, after finding there were no grounds to modify the parenting plan under RCW 26.09.261(1)(2), to order a psychological evaluation of Ms. Von Hell as a limitation on her residential time with the child?

No. 4 Did the trial court have the authority to enter a new final parenting plan after finding there were no grounds to modify the exiting plan?

No. 5 Does the record support adequate cause to modify the parenting plan entered December 13th, 2016?

No. 6 Does the Superior Court have subject matter jurisdiction to make custody decisions regarding the child of the parties?

No. 7 Whether the superior court, abused its discretion, by entry of the court's opinion, Findings, Conclusions, Judgment and Residential Schedules, for Temporary and Final Orders?

D. STATEMENT OF THE CASE

Robert Parrish petitioned to modify a parenting plan in the Superior Court of Benton County. CP 433-41. Following trial, the Superior Court Judge found there was no basis to change primary

custody, including the following remarks in his oral decision on August 4th, 2016:

> ... I find on this record applying the law as I must that there's not enough in this record to change custody to overcome the inherent harm caused by a change in environment. ... your attorneys ... have provided me everything I needed to make my decision they left nothing on the table. Again it's my decision." CP 492, 494.

But he ordered Ms. Von Hell to undergo a psychological evaluation, at her expense, and that a review hearing would be held later. CP 493-94, 496.

And that a new parenting plan would be entered with that condition. And that her failure to comply would be "good cause" for Mr. Parrish to move to change the primary custodian. CP 41-43.

Findings entered indicate no minor changes were requested and that a major change is denied. "The reasons (factual basis) for the requested major change do not qualify under the law." CP 74. It is ordered that the Petition is denied. Part 11, CP 75. Under part 10, "other findings," and part 12, "other orders," the Court indicated it had ordered the psychological evaluation as a condition of Ms. Von Hell being maintained as the primary custodian. CP 75.

The new parenting plan indicated neither parent had problems that required limitations. CP 62. It then sets forth the psychological

evaluation as a limitation on Ms. Von Hell and the review hearing was set for April 11th, 2017. A finding that Ms. Von Hell did not comply would be adequate cause for Mr. Parrish to move the Court to change the primary custodian of the child. CP 63.

At the review hearing, the Judge said he did not consider the evaluation performed by Dr. Mabee to be a "forensic evaluation" that he would "read every day on the criminal docket." RP 4/11/17, p. 25, lines 4-8. "Adequate cause has been established and that is --- that is my ruling." RP 4/11/17, p. 25, lines 15-16. A trial date in September of 2017. CP 249. A Notice of Appeal was timely filed on June 1st, 2017. CP 246-301.

On June 2nd, 2017, Mr. Parrish filed a motion to vacate the Parenting Plan and Final Order and Findings that had been entered December 13th, 2016, and for temporary custody to Mr. Parrish, and to amend the original order on adequate cause. CP 303-05. His counsel, Ms. Ellerd represented in the motion that the trial court still had authority "to act until an appeal is accepted by the Court of Appeals pursuant to RAP 7.1" CP 305.

On June 9th, 2017, the Superior Court entered "An Amended Order on Adequate Cause to Change a Parenting Plan/Custody Order." It found there was "adequate cause to hold a full hearing or

trial" in September 2017. RP 374-76. The Order also provides that the parenting plan entered December 13th, 2016 and the Order on Reconsideration entered February 23rd, 2017 would be temporary orders and remain in place until trial. CP 377-79.

Ms. Von Hell also filed a Notice of Appeal from the June 9th, 2017 orders on June 23rd, 2017. CP 505-12.

Mr. Parrish filed a motion for temporary custody, based on Ms. Von Hell moving with the child to Wisconsin and based on alleged failure of Ms. Von Hell to provide him with Skype time with the child. CP (355900) 23-30. The Superior Court granted the motion, and entered an order on September 19th, 2017. CP (355900) 49-52.

On September 18th, 2017, Ms. Von Hell had filed a response for the hearing, objecting to the Court proceeding because of lack of subject matter jurisdiction; an Alaska Court having had jurisdiction which has not been relinquished to a Washington Court. CP (355900) 38-48.

In December of 2014, an order had been entered registering an Alaska order with the Benton County Superior Court for enforcement purposes, but not for modification purposes. CP 1-13.

Ms. Von Hell's attorney briefly argued the issue of subject matter

jurisdiction, and the Superior Court ruled against Ms. Von Hell on the jurisdiction issue without having seen the document filed by Ms. Von Hell on the issue. RP 9/18/17, p. 6, p. 7, lines 1-16. The matter then proceeded to trial on a later date.

On October 11, 2017 the mother filed a 3rd notice of appeal challenging the contempt order, modified 3rd Temporary Parenting Plan Order and Subject Matter Jurisdiction. On March 12, 2018, all three appeals were consolidated.

Ms. Von Hell, pro se, filed a Notice of Appeal from modification of child custody Order that was entered October 17th, 2017, but filed it with the Court of Appeals instead of the trial court. App. 14.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. <u>The trial court had no authority on April 11th, 2017, to find adequate cause for a petition to modify the final parenting plan entered December 13th, 2016, when Mr. Parrish had not petitioned to modify that parenting plan</u>.

The decision of the Court of Appeals is in conflict with *In re Marriage of Christel and Blanchard*, 101 Wn. App. 13, 1 P.3d 600, (Div. 1 2000).

> The language used by the court amounts to a modification of the parenting plan. No action for modification was

pending. The court abused its discretion …

101 Wn. App. at 23-24.

A final parenting plan had been entered on Mr. Parrish's petition for modification in December of 2016. With no new petition for modification, the Superior Court proceeded ahead with a number of procedures as though there was a modification action pending, this was an abuse of discretion.

This is the procedure that is supposed to be followed:

RCW 26.09.270 Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required.

> *A party* seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan *shall submit together with his or her motion, an affidavit setting forth facts* supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. *The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits*, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. (Emphasis added.)

Though the Court of Appeals decision references a petition for

review filed by Mr. Parrish filed after the December of 2016 parenting plan, disturbingly, the decision makes no mention of the fact that the petition was stricken. Opinion, p. 4, CP 376.

This Court should accept review because of the conflict between the Court of Appeals decision in this case and the Division I case cited above.

2. The trial court erred by vacating the Final Parenting Plan and the Findings and Order entered December 13th, 2016.

A motion filed by Mr. Parrish's counsel was entitled in part "... MOTION TO VACATE FINAL PARENTING PLAN ..." with no citation to CR 60(b). CP 303-05. It was on the basis that the parenting plan had been "contingent" upon compliance with the psychological evauation and the Ms. Von Hell had been noncompliant. *Id.* Vacation is appealable under RAP 2.2(a)(10).

The trial court, in response, entering an order that effectively vacated the final parenting plan entered in December of 2016, because its June 9, 2017 order provided that the final parenting plan was now somehow only a temporary order. CP 374-76. Ms. Von Hell made it very clear in her Notice of Appeal filed June 23rd, 2017 that she was appealing the vacation of the December 2016 parenting plan. CP 505-06.

As with the motion, the trial court does not reveal which ground under CR 60(b) it relied, if any, in vacating the parenting plan.

> In sum, the trial court had no tenable grounds on which to grant the relief requested by Linda Tang under CR 60(b).
>
> *In re Marriage of Tang*, 57 Wn. App. 648, 789 P.2d 118, (Div. 1 1990).

Disturbingly, the Court of Appeals makes no analysis of the vacation of the December 2016 parenting plan under CR 60(b), in holding the trial court "did not err in vacating the December 13 ruling." Opinion, p. 9. The Court of Appeals decision is in conflict with *Tang*, which generally provides a catch-all approach to throwing out any old reason will not suffice. Mr. Parrish never showed what grounds he had under CR 60(b) to set aside the final parenting plan, as argued elsewhere in this petition, that meant he and the Superior Court had to follow the procedures for modification of what should have remained the final parenting plan. The judge had said Ms. Von Hell was not truthful to the evaluator. But the evaluation was done post-judgment.

Even if the moving party demonstrates that the other party engaged in misrepresentation, a trial court may grant relief under CR 60(b)(4) only if the moving party presents clear and convincing

evidence of at least two additional elements. *Peoples State Bank v. Hickey*, 55 Wn. App. 367, 371, 777 P.2d 1056 (Div.1 1989).

See id. at 371-72. First, the moving party must have relied on or been misled by the misrepresentation. See *id.* Second, there must be some connection between the misrepresentation and obtaining the judgment. See *Hickey*, 55 Wn.App. at 372. To permit supposed post-judgment misrepresentation as grounds to vacate the parenting plan, conflicts with *Hickey*.

3. <u>The trial court had no authority to order a psychological evaluation of Ms. Von Hell as a limitation on her residential time with the child</u>.

Assuming *arguendo* that the December 2016 parenting plan was validly vacated, and transformed into a temporary order, then its provisions are pre-trial rulings impacting the final result, that may be appealed.

On June 9th, 2017, the December 13th, 2016 final parenting plan magically became temporary. Note that RCW 26.09.191 governs "Restrictions in *temporary* or permanent parenting plans" (emphasis added). If the psychological exam condition was placed in the temporary parenting plan without a valid basis, then violation of that condition could not validly form the basis to modify the plan.

RCW 26.09.191 (3) provides a list of factors that may limit provisions of a parenting plan.

> (3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist: ...

Under part 3. of the Final Parenting Plan entered December 13th, 2016, the Superior Court found there were no problems that were "Reasons for putting limitations on a parent (under RCW 26.09.191)." CP 62. The Final Order and Findings said that as to "Limitations ... " "Does not apply." CP 74. So the statutory factors for limitations are irrelevant.

Part. 4 of the Parenting Plan then places the forensic evaluation as a limit or condition upon Ms. Von Hell. CP 63.

> In the absence of substantial evidence establishing a nexus between [the father's] "involvement or conduct" and the impairment of his emotional ties with [the child], the trial court erred in imposing visitation restrictions under RCW 26.09.191(3)(d).
>
> *In re Marriage of Watson*, 132 Wn. App. 222, 234, 130 P.3d 915 (Div II 2006). (Trial court exceeded authority by imposing limitations after finding the basis for the petition to modify was unproven.)
>
> We conclude the court may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191. We also conclude that any limitations or restrictions imposed must be reasonably calculated to address the identified harm.

In re Marriage of Katare, 125 Wn. App. 813, 826, 105 P.3d 44 (Div I 2004). (Trial court's imposition of limitations reversed for abuse of discretion.)

Because the trial court's imposition of a condition upon Ms. Von Hell's residential time was limited without a nexus between any harm to the child and the need for the evaluation, the decision of the Court of Appeals conflict with the cited decisions from Divisions I and II. The Court of Appeals in *Watson* held: "The trial court abused its discretion when it imposed continued visitation restrictions after concluding that the sexual abuse allegations were unproven." 132 Wn. App. at 235. This abuse of discretion should not escape review.

4. <u>The trial court had no authority to enter a new final parenting plan after finding there were no grounds to modify the existing plan</u>.

Assuming *arguendo* that the December 2016 parenting plan was validly vacated, and transformed into a temporary order, then it is a pre-trial ruling impacting the final result, that may be appealed.

> Watson further argues that the court had no authority to modify the parenting plan through temporary orders after it determined that Boling's petition should be denied for failure of proof. We agree.
>
> *In re Marriage of Watson*, 132 Wn.App. at 235.

RCW 26.09.260 sets forth the criteria and procedures

> for modifying a parenting plan and contains varying standards depending on the parties' circumstances and the kind of modification requested. These criteria and procedures limit a court's range of discretion. *In re the Custody of Halls*, 126 Wn. App. 599, 606, 109 P.3d 15 (2005). Thus, a court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. *Halls*, 126 Wn. App. at 606, 109 P.3d 15.
>
> *In re Marriage of Watson*, 132 Wn. App. 222, 230, 130 P.3d 915 (Div. 2 2006).

> But on its own motion, the trial court ordered visitation restrictions on grounds that neither of the parties had contemplated. Once it denied the underlying modification petition, the trial court lacked statutory authority either to modify the parenting plan on its own motion or to order continued visitation restrictions as it did here in an amended temporary parenting plan.
>
> We reverse and remand for reinstatement of the original parenting plan.
>
> *In re Marriage of Watson*, 132 Wn.App. at 238-39

In this case, viewed at the juncture of the improper entry of the December 2016 parenting plan, which later was made a temporary parenting plan, reinstatement of the "original parenting plan" would be the one from the State of Alaska. Review should be accepted because the decision of the Court of Appeals conflicts with the Division II decision in *Watson*.

5. The record does not support adequate cause to modify the parenting plan entered December 13th, 2016.

The Superior Court constantly changed the basis for allowing Mr. Parrish to proceed to modify the December 2016 parenting plan. First it was Ms. Von Hell's alleged post-parenting plan failure to comply with the unlawful condition of a psychological exam.

In *Wildermuth v. Wildermuth*, 14 Wn. App. 442, 445, 542 P.2d 463 (Div I 1975), it was stated:

> We find that the controlling statute requires more than a showing of illicit conduct by the parent who has custody. There must be a showing of the effect of that conduct upon the minor child or children. See *McDaniel v. McDaniel*, 14 Wn. App. 194, 197-98, 539 P.2d 699 (1975). Unless the record contains evidence from which the trier of fact can reasonably conclude that the child's environment is detrimental to his or her physical, mental, or emotional health and, further, that the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child, the court errs in entering an order changing custody. ... While the court's prediction of probable harm to the children by their exposure to the misconduct might be accurate, the record here is deficient in that there is no evidence of the effect of the mother's living arrangement upon the children.

No. 6. The Superior Court does not have subject matter jurisdiction to make custody decisions regarding the child of the parties.

Compliance with the UCCJEA is required for subject matter

jurisdiction:

> We conclude then that the UCCJEA's procedural requirements are jurisdictional and Mr. Knickerbocker's consent could not have given Washington jurisdiction. Not only is jurisdiction not something that can be consented to generally, but nowhere in the UCCJEA is there a provision for the parties to waive the jurisdiction of one state in favor of another by their conduct or their agreement. Indeed, the comments to the UCCJEA and the court's reading of those comments in A.C. suggest just the opposite.
>
> *In re Ruff*, 168 Wn. App. 109, 118, 275 P.3d 1175, (2012).

Because this issue presents a significant question of law under the Constitution of the State of Washington, Wash. Const. art. IV, § 6, review should be accepted. Our Supreme Court has noted that, notwithstanding the manner in which the UCCJEA uses the term " jurisdiction," " Washington courts d[o], in fact, have subject matter jurisdiction over the parties and the issues" in a case implicating the UCCJEA. *In re Custody of A.C.*, 165 Wn.2d 568, 573 n. 3, 200 P.3d 689 (2009). However, since this was stated only in a footnote, and since the subsequent decision in *Ruff* appears to treat "jurisdiction" under the UCCJEA as "subject matter" jurisdiction.

No. 7. <u>The superior court abused its discretion, by entry of the court's opinion, Findings, Conclusions, Judgment and Residential Schedules, for Temporary and Final Orders</u>.

As established above, the Superior Court never followed the proper procedure for a modification, there was no new petition for modification before the Superior Court after the entry of a final parenting plan in December of 2016, and the Superior Court did have grounds to vacate that parenting plan, and the ruling vacating the December of 2016 parenting plan was timely appealed. These errors result in the final orders entered into in October of 2017 as reversible for errors and abuse of discretion.

RCW 26.09.260 sets forth the procedures and criteria to modify a parenting plan. *In re Marriage of Hoseth,* 115 Wn. App. 563, 569, 63 P.3d 164 (citing *In re Marriage of Shryock,* 76 Wn. App. 848, 852, 888 P.2d 750(1995)), *review denied,* 150 Wn.2d 1011, 79 P.3d 445 (2003). Accordingly, a court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. *Hoseth,* 115 Wn. App. at 569, 63 P.3d 164.

As far as the findings of contempt:

> Even in cases of contempt and parental misconduct, authority to modify a final parenting plan derives solely from RCW 26.09.260. Neither the statute governing contempt of parenting plans, RCW 26.09.160, nor a Superior Court's inherent contempt power conveys authority to modify a final parenting plan as a sanction for contempt. A court's statutory contempt powers are

expressly limited to awarding make-up residential time. . . (RCW 26.09.160(2*)).*

In Re Marriage of Frasier, 33 Wn.App 445, 450, 655 P.2d 718 (1982).

"Once a court enters a parenting plan and neither party appeals it, the plan can only be modified pursuant to RCW 26.09.260.*" In re Marriage of Schroeder*, 106 Wn. App. 343, 350, 22 P.3d 1280 (Div II 2001) (holding that two findings of contempt against custodial parent did not automatically justify modification of final parenting plan and that compliance with statutory criteria of RCW 26.09.260 was mandatory).

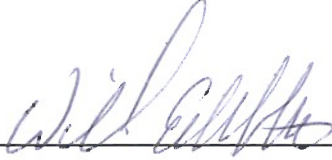
Review should be accepted because the decision of the Superior Court which upholds the Superior's court use of the contempts as adequate cause is in conflict with *Schroeder*.

F. CONCLUSION

This Court should accept review, vacate all modification proceedings in the Superior Court, or in the alternative, reverse the Superior Court's vacation of the December 13th, 2016 final parenting plan and reinstate that plan as the final plan, with no limitations or conditions upon Ms. Von Hell.

April 14, 2019

Respectfully submitted,



William Edelblute

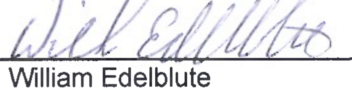
Attorney for Petitioner WSBA 13808

APPENDIX

Decision of Court of Appeals	A1-A10
Amended Order on Adequate Cause	
to Change a Parenting Plan/Custody Order	A11-13
"Notice of Appeal" 11/13/17	A14

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that I mailed a copy of the foregoing Petition for Review, via U.S. Mail First Class, postage prepaid, to Kenneth Kato, Attorney for Respondent , on April 15th, 2019 to at: 1020 N. Washington St. Spokane, WA 99201.



William Edelblute

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MARCH 14, 2019
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WA State Court of Appeals, Division III

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

ROBERT PARRISH, JR., Appellant,	)	No. 35331-1-III (Consolidated with No. 35403-2-III and No. 35590-0-III)
v.	)	
MELISSA PARRISH, A/K/A ALAXANDRIA VON HELL, Respondent.	)	UNPUBLISHED OPINION

KORSMO, J. — Alaxandria Von Hell appeals, *inter alia*, from orders modifying child custody that transfers primary custody of her son to her former husband. Concluding that the trial court had jurisdiction over the case, which originated with an Alaska divorce decree, and that the remainder of the appeal is an untimely attack on an unchallenged order modifying the parenting plan, we affirm. Respondent is awarded his attorney fees.

PROCEDURAL HISTORY

The primary issue in this appeal concerns the trial court's authority to consider the husband's request, and thus, the relevant facts are procedural in nature. Robert Parrish,

Jr., and Melissa Parrish (now known as Alaxandria Von Hell) divorced in Alaska in 2011. The couple had one child, T.P., born in 2009.

The divorce decree gave primary custody of the child to Von Hell, with Parrish having visitation rights. Sometime during 2011 or 2012, the mother and child moved to Washington. Litigation continued after the divorce decree, with child custody constituting the primary issue. After the move to Washington, the Alaska Superior Court reaffirmed Von Hell's primary custody in January 2013, although the visitation schedule was changed to reflect the new residence.

Parrish filed additional motions in Alaska in early 2013, and then pursued appeals in the Alaska court system in 2013 and 2014. He also filed an action in the Kittitas County Superior Court in April 2013. That action was dismissed in June 2014.

On December 16, 2014, the Benton County Superior Court entered an order registering the 2011 settlement decree and the 2013 order in Benton County; both Von Hell and Parrish stipulated to the order, which recognized that Alaska no longer had exclusive jurisdiction of the case. The court also found that Von Hell and T.P. were residents of Benton County, Washington, and that Parrish was a resident of West Virginia.

Parrish filed a petition in Benton County Superior Court to modify the custody decree on February 11, 2015. He asserted jurisdiction existed based on T.P. and Von Hell residing in the county. The following year, the court appointed a guardian ad litem

(GAL) to represent the child. In August 2016, the trial court found that it was in the child's best interest for Von Hell to undergo a psychological evaluation as recommended by the GAL. On October 17, 2016, the court entered an order modifying the parenting plan and directing Von Hell to undergo a mental health evaluation with Dr. Scott Mabee no later than November 14. The order, effective immediately, noted that failure to comply with the evaluation would constitute good cause to change custody of the child. The court left custody of T.P. with Von Hell, but expressed concerns that the mother's mental health issues affected the child's best interests. The order also indicated that a new parenting plan was required after the evaluation was completed. Clerk's Papers at 41-43.

No appeal was taken from the October 17 order. Dr. Mabee conducted an evaluation. On December 13, 2016, the court entered a new parenting plan in accordance with the October 17 order. The new plan provided for Skype and telephone visitation between Parrish and T.P. At a review hearing four months later, the GAL advised the court that Von Hell had made false statements to Dr. Mabee, preventing a proper forensic evaluation. The GAL recommended that custody be given to Parrish. Parrish advised the court that Von Hell had not allowed the Skype and telephone contact directed in the December order.

The court found that adequate cause existed for a major modification of the parenting plan because of a substantial change in circumstances due to Ms. Von Hell not

complying with the forensic evaluation it had ordered. Ms. Von Hell moved for reconsideration, but the court denied the request on May 17, 2017. Parrish filed an amended petition to modify the parenting plan on May 19, 2017. Two weeks later he moved to vacate the December parenting plan and receive custody of T.P. until trial.

Ms. Von Hell appealed the adequate cause ruling and the denial of reconsideration on June 5, 2017. This court assigned cause no. 35331-1-III to that appeal. Four days later, the court entered an amended order finding adequate cause to hold a trial and directing that the December parenting plan remain in place until trial. Ms. Von Hell appealed that order on June 27; this court assigned file number 35403-2-III to that appeal.

On August 11, 2017, the trial court granted temporary custody of T.P to Parrish. This court granted a brief stay of that order pending trial the following month. On motion of Parrish, the trial court found Von Hell in contempt of court for failing to comply with the December 2016 parenting plan and for moving to Wisconsin with the child. The court, on September 19, 2017, again granted temporary custody of T.P. to the father.[1] Trial was scheduled for October 16, 2017. Ms. Von Hell appealed the September order to this court, which assigned the matter cause no. 35590-0-III.

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[1] It appears that the father retrieved T.P. in Wisconsin and now lives with the child in West Virginia.

Trial was held in October, and a new parenting plan was entered October 17, 2017, that granted custody of T.P. to Parrish with Von Hell receiving visitation rights. No notice of appeal was taken from the trial.

This court consolidated the three appeals. Ms. Von Hell represents herself[2] in the appeal from the September 2017 temporary order, while she is represented by counsel in the other cases. A panel considered the cases without hearing oral argument.

ANALYSIS

We first address the argument, posed by the pro se appeal, that Washington courts did not have jurisdiction over the case due to the Alaska decree. We then address the trial court's authority to enter the temporary orders and to consider the modification of custody petition.[3]

Washington Jurisdiction

Ms. Von Hell argues pro se that Washington courts never obtained jurisdiction to modify the Alaska custody decree. We disagree. She and T.P. lived in this state, and she stipulated that Alaska no longer had jurisdiction. Under the terms of the Uniform Child

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[2] To the extent that her brief addresses issues presented by the other appeals where she is represented by counsel, we ignore her arguments because there is no authorization for pro se briefs in a civil case.

[3] The parties do not address whether the results of the October 2017 trial have rendered moot any of these other issues, so we do not address that possibility.

Custody Jurisdiction and Enforcement Act (UCCJEA), ch. 26.27 RCW, Washington had jurisdiction over the case.

The UCCJEA is codified in chapter 26.27 RCW. As relevant here, RCW 26.27.221 permits a Washington court to modify an existing custody determination if it would have the jurisdiction to make an initial determination and either (a) the other state determines it no longer has jurisdiction or (b) the child and parents no longer live in the other state. In turn, an initial child custody determination can be made if, among other reasons, Washington is the home state of the child when the proceeding is filed. RCW 26.27.201(1)(a).

Washington thus had jurisdiction. Because T.P. lived in this state at the time of the modification petition, Washington could have exercised original jurisdiction. *Id.* Because neither T.P. nor his parents lived in Alaska at that time, Alaska no longer had exclusive jurisdiction. RCW 26.27.201(1)(b).

Washington properly had jurisdiction to entertain proceedings relating to the custody of T.P. Appellant's argument to the contrary is without merit.

Authority to Modify

In addition to the pro se lack of jurisdiction argument, appellant argues through counsel that the trial court lacked statutory authority to entertain the motions to change custody and for temporary custody. The trial court did have authority to act under the

statute and Ms. Von Hell's failure to challenge the October 17, 2016 modification precludes her challenge.

The ability to modify a parenting plan is strictly controlled by statute. RCW 26.09.260 lists several different bases on which a parenting plan or custody ruling is subject to modification. This court considers a challenge to a modification ruling under well-settled standards. The modification order is reviewed for abuse of discretion. *In re Marriage of Zigler*, 154 Wn. App. 803, 808, 226 P.3d 202, *review denied*, 169 Wn.2d 1015 (2010). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). There is a strong presumption against modification. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

Modification follows a two stage process. First, the party seeking modification must establish adequate cause to alter the existing plan—typically that requires evidence of a significant change of circumstances unknown at the time of the original parenting plan. *Zigler*, 154 Wn. App. at 809. If adequate cause is established, the matter will proceed to a hearing. *Id.*

RCW 26.09.260(1) provides in part that

> the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the

> child or nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

In turn, RCW 26.09.260(2) states in part:

> In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
> (a) The parents agree to the modification;
> (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
> (c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

Thus, modification is available when a substantial change in circumstances and the best interests of the child require it, and either (a) the parents agree, (b) the child has already integrated into another family, or (c) a detrimental environment dictates that change is necessary.[4] Parental behavior that is detrimental to the child's best interests can result in the court modifying terms of a parenting plan. RCW 26.09.191(3).

Ms. Von Hell argues that the December 13 order could not require her to undergo an evaluation because it expressly indicates that no limitations were required; she presents several derivative arguments that follow from that contention. All of the contentions fail because her primary problem is that it was the October 17 order, not the December 13 order, that directed her to complete the evaluation. That order is unchallenged and constitutes the law of this case. *In re Marriage of Trichak*, 72 Wn.

[4] Multiple prior contempt findings and criminal convictions for interfering with custody provide a fourth method for modification. RCW 26.09.260(2)(d).

App. 21, 23-24, 863 P.2d 585 (1993). Any alleged deficiencies in the December 13 order, or in following up that order, are of no consequence because it is not the operative document.

The December 13 order was entered because the court did not know that Ms. Von Hell had failed to be candid with Dr. Mabee. It was only after that information came to light that there was a basis to petition the court to vacate the December ruling and enforce the October ruling by setting the case for trial. The October 17 finding that it was in the best interests of T.P. for his mother to have a mental health evaluation, and follow treatment recommendations, served as the basis for a major modification of the parenting plan once her duplicity was discovered. Ms. Von Hell's mental health problems were a significant change in circumstances that provided adequate cause to reopen child custody.

The trial court had statutory authority to revisit the child custody arrangements. The court did not err in vacating the December 13 ruling and enforcing its October 17 ruling. Appellant's arguments to the contrary are not availing.

Attorney Fees

Both parties seek attorney fees. Under the UCCJEA:

> The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the

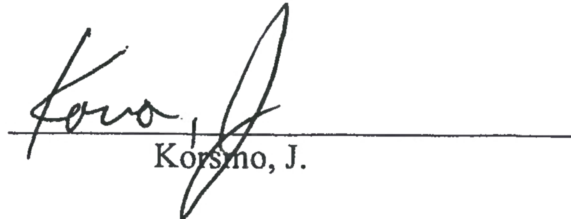
> proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

RCW 26.27.511(1).

Here, the father is the prevailing party and is entitled to his fees on this appeal. Our commissioner will consider a timely filed application. RAP 18.1.

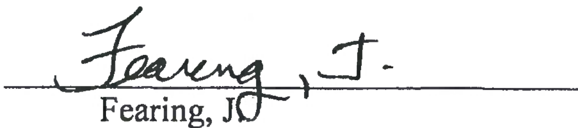
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Korsmo, J.

WE CONCUR:



Fearing, J.

Lawrence-Berrey, C.J.

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FILED
BENTON COUNTY CLERK
2017 JUN -9 A 10:36
JOSIE DELVIN

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

In re:
Petitioner:
ROBERT WILLIAM PARRISH, JR.
And Respondent:
ALAXANDRIA MELISSA VON HELL

No. 14-3-00847-4
Amended
Order on Adequate Cause to Change a Parenting/Custody Order
(ORRACG / ORRACD / ORH: see **6**)

Order on Adequate Cause to Change a Parenting/Custody Order

1. A review hearing was held in this matter on April 11, 2017 and the court found *Adequate Cause* and the court finds there is reason to approve this order.

The court found adequate cause at the review hearing on April 11, 2017 because of Respondent's failure to comply with the provisos set forth in the final parenting plan entered on December 13, 2016. The Respondent was given the notice necessary in regards to a finding of adequate cause on April 11, 2017. The notice was in the form of the the oral ruling of the court Aug. 4, 2016 and final parenting plan entered on Dec. 13, 2016.

The Court Finds:

2. Jurisdiction

This court has jurisdiction over this case. The court retained jurisdiction over the final parenting plan in this matter. to determine whether this matter would continue forward with an amended order on adequate cause. ~~with further~~

3. Timing of Adequate Cause Decision

The court **can** decide adequate cause because: The court ordered a review hearing (for April 11, 2017) to determine if Respondent failed to comply with either the evaluation or

Kuffel, Hultgrenn, Klashke, Shea & Ellerd, LLP
1915 Sun Willows Blvd Suite A
Pasco, WA 99301
(509) 545-8531
fax (509)

FamilySoft FormPAK PL 2017

1 any recommended treatment as set forth in the final parenting plan entered on December 13, 2016. Notice of this review hearing was given to Respondent when the final parenting
2 plan was entered on December 13, 2016. and through oral ruling of the court on Aug. 4, 2016

3 **4. Adequate Cause**

4 There **is** adequate cause to hold a full hearing or trial about the *Petition in September*
5 *2017.*

6 **5. Other Findings (if any)**

7 Respondent affirmatively mislead the evaluator in reciting her personal history by making demonstrably untrue statements during her interview and thus did not comply with the
8 evaluation as ordered by this court in the final parenting plan entered on December 13, 2016.

9

10 The court retained jurisdiction in this matter to determine Respondent's compliance with the provisos set forth in the final parenting plan.

11 The guardian ad litem, Jeff Little, will remain on this matter until further order of the court. This matter may be revisited if further issues arise, by either party. Jeff Little
12 **The Court Orders:** shall disclose any issues that arise that could impact his ability to continue.

13 **6. Decision**

14

15 **Adequate Cause Found** – This matter will move on to a full hearing or trial. The hearing or trial will take begin on September 13 or September 18, 2017 at 9:00 a.m. in a courtroom TBD.

16 **7. Other orders (if any)**
17 The final parenting plan [entered 12/13/16] and order on reconsideration [entered 2/23/17] will be * temporary
~~Starting on June 22, 2017 the child will reside with the father until the trial in this matter.~~
18 orders and will remain in place until further order of the court.

Ordered. * **

19

20 06/29/17
Date

[signature]
Judge or Commissioner

21 **Petitioner and Respondent or their lawyers fill out below.**

22 This order:
Is presented by me

23 [signature: Midi Ellerd] 31515
24 *Petitioner signs here or lawyer signs here + WSBA #*

This order: Approved as to form

[signature] 37860
Respondent signs here or lawyer signs here + WSBA #

Kuffel, Hultgrenn, Klashke, Shea & Ellerd, LLP
1915 Sun Willows Blvd Suite A
Pasco, WA 99301
(509) 545-8531
fax (509)

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HEIDI ELLERD	6/9/17	KARI HAYLES DAVENPORT	
Print Name	*Date*	*Print Name*	*Date*

[signature]
GAL

* Further GAL fees shall be paid 50/50 by the parties with a cap of $2,000 absent additional approval from the court.

The GAL will be paid ~~by both parties by~~ $1000 by Petitioner by 6/16/17 and $500.00 by July 21, 2017 and $500 by August 25, 2017 by Respondent. Other financial information may be supplemented by Respondent ~~[illegible]~~ at a later date for review of this ruling. ~~by motion~~ and Petitioner may respond within 5 days with his material. This will be reviewed ex-parte. If Mr. Little speaks with Dr. Freedman this time will be billed specifically to Mr. Parrish.

The GAL will issue a supplemental report by August 14, 2017.

** The Amended Petition filed on 5/19/17 is stricken.

Kuffel, Hultgrenn, Klashke, Shea & Ellerd, LLP
1915 Sun Willows Blvd Suite A
Pasco, WA 99301
(509) 545-8531
fax (509)

FILED
Court of Appeals
Division III
State of Washington
11/13/2017 8:00 AM

SUPERIOR [illegible] ON FOR BENTON COUNTY

In re:
Robert W. Parrish, Jr.

Plaintiff,

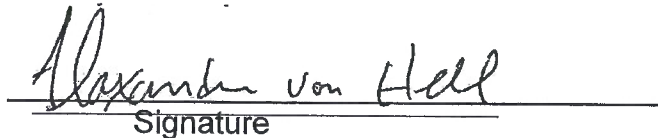
Alaxandria M. Von Hell,
Defendant

Trial Case No.: 14-3-00847-4
NOTICE OF APPEAL TO
COURT OF APPEALS
DISTRICT III

Alaxandria von Hell, defendant, seeks review as a matter of right by the designated appellate court of the modification of child custody order, order on child support and fee judgements issued by the Superior Court on 10-17-2017.

A copy of the decision (s) are attached

11-11-2017



Signature

Defendant

On November 11, 2017 I Mailed First Class, postage prepaid a copy to:

Heidi Ellerd, Attorney for Respondent, at 1915 Sun Willows Blvd.,Ste.A Pasco, WA 99301 and emailed to: hellerd@khkslaw.com

Certificate of Service

Notice of new appeal of modification of custody, child support and judgment of fees.

I certify under penalty of perjury under the laws of the State of Washington that I served a copy of the foregoing document, via the efiling portal on November 11, 2017 to Heidi Ellerd, Attorney for Respondent, US Mail First Class, postage prepaid at 1915 Sun Willows Blvd.,Ste.A Pasco, WA 99301 and emailed to: hellerd@khkslaw.com

s/ Alaxandria von Hell Alaxandria von Hell
November 11, 2017

WILLIAM EDELBLUTE PLLC

April 15, 2019 - 11:11 AM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	35331-1
Appellate Court Case Title:	Robert W. Parrish, Jr. v. Alaxandria M. Von Hell
Superior Court Case Number:	14-3-00847-4

The following documents have been uploaded:

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