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

BEVERLY YBARRA, Appellant,

Vs.

MANUEL YBARRA, Respondent

Reply Brief of Appellant (RAP 10.3)

ORIGINAL

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Opposing counsel failed to prove any of the statutory factors set forth in RCW 26.09.260 that would allow the court to permanently modify primary residential custody. The governing statute, RCW 26.09.260, allows a trial court to modify the original parenting plan only if one of three statutory bases has been proven by substantial evidence: a) agreement between the parties; b) consented integration; and c) a change in the custodial parent's environment that detrimentally impacts the minor children. RCW 26.09.260(1)(a) - (c). Manuel failed to prove the existence of any of these three requirements but he would have this Court believe that he proved them all.

1. RCW 26.09.260(2)(a). Manuel's attorney informed the court about an agreement between the parties that allegedly was embodied in a proposed parenting plan that was never adopted by the court. RP p13 l 19-25. The GAL called this plan the "new agreement" in the supplemental GAL report. Ex12. That aborted plan would have allowed Manuel the tax exemptions for the two children and give more visitation to Bev while leaving child custody temporarily in Manuel per the 2006 order proposed Ex 11. When the GAL identified this plan in her supplemental report, she

enthusiastically embraced the aborted and discarded plan and announced the writing was an agreement of the parties despite all evidence to the contrary. EX 12 p18 l 10-15.

The GAL in this case was apparently qualified to interview children and other family members and to evaluate the relationships to some extent in keeping with the pertinent literature. Ex12, p. 24/14 to p.25/25. The supplemental GAL report appears to be the only admissible evidence in the record to the effect that a proposed order from November 2007 constituted an agreement in place between the parties in 2008. Ex12, p. 18/10 to 15; p. 25/4-6. Manuel did not testify on this issue and Bev's testimony as well as her explanation as reported in the supplemental GAL report at page 4 did not support this conclusion and in fact was contrary. RP p51 L 18-20 Ex12 p. 4/21-24 The GAL report gives no source for her characterization of the proposed order as "new parenting plan." Ex12:25:9-15. The court used the existence of the proposed order to support its finding that Bev had consented to the integration of the children into Manuel's household and imposed it as a binding custody agreement on the parties.

The couple wrote the proposed order and they erroneously filed it in the court file due to lack of experience as pro se litigants. The court did not file the order, consider it or enter it proposed Ex 11. A mere inspection of the document itself reveals a conspicuous signature block intended for signature by a judge or commissioner. *Id.* Inspection of the document also reveals that there is no reference anywhere in it to an external, independent agreement between the parties that was to be approved vis-à-vis the order. The content of the proposed order indicates that the couple had attempted to work out an agreement that would modify one of part of the various orders in place at that time. *Id.* When the court wanted to enter other orders concomitant to the proposed order, Bev testified that the parties refused to continue. RP52:1-9. The trial court commented upon hearing this explanation from Bev, "I guess you decided not to go that way." RP52:10. The prior court order EX 10 had also only amended a part of the orders that were already in place "pending trial."¹ The parties appear to have attempted to copy that court's method. *Id.* The

¹ See Ex 10. The order states in part: "Adequate cause found for substantial change in circumstances. Father to remain as custodial parent on temporary basis pending trial. GAL to remain in case. . . . No visitation restrictions. . . . All other orders stay in place." Omitted language will be discussed in next sections. Emphasis added.

GAL spontaneously, without any basis that she revealed in her report, interpreted the abandoned piece of paper as a "new" parenting plan, furnishing no cites to law or testimony in support of this surprising characterization. Ex12:18:9-15. One wonders if her enthusiasm fueled her leap of hopefulness in this regard.

The GAL report suggested the proposed order arose out of a mediation that had failed to reach resolution over three months prior. "The parties have entered into a written parenting plan as recently as December of 2007, following mediation." Ex12:18:11-121. The supplemental report states, contrary to Bev's testimony at trial, as follows:

"We were going to come up with a mutually agreed upon parenting plan. We came up with an agreed parenting plan, we signed off on it, but about a month later, the kids said they wanted to come home so I noted it for trial." Ex12:4:21-24.

Significantly, this statement does not say that a "new," "written" parenting plan was in place between the parties.

Thus, it appears that through inadvertence or inaccuracy the GAL report caused the proposed order to be perceived at trial as an "agreement" between the parties that Manuel's attorney exploited as a CR2A stipulation

or enforceable agreement.² RP 52:10-13 This writing had nothing to do with the proceedings at trial and was not otherwise an agreement or binding. See supra.

The document is not called an Agreement Between the Parties, a Custody Agreement or anything similar to that – it is merely a proposed order and nothing more. See, proposed exhibit 11. There is no document attached to the proposed order, signed by the parties, entitled a stipulation, agreement or "non-judicial CR2A stipulation."³ The fact that Bev noted the matter again for trial immediately⁴ after the aborted hearing is an objective manifestation that the rejected order was not considered a binding contract between the parties. Ex12:4/24.

² The purpose of CR 2A is not to impede without reason the enforcement of agreements intended to settle or narrow a cause of action; indeed, the compromise of litigation is to be encouraged. Rather, the purpose of CR 2A is to insure that negotiations undertaken to avert or simplify trial do not propagate additional disputes that then must be tried along with the original one. This purpose is served by barring enforcement of an alleged settlement agreement that is genuinely disputed, for such a dispute adds to the issues that must be tried. In re Marriage of Ferree, 71 Wash.App. 35, 41, 856 P.2d 706,709 (Div. 2 1993) (citations omitted).

³ CR2A states: No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

⁴ By "immediately" we are asking the court to allow some leeway in that concept for an adjustment to a sudden, unplanned move of residences in the first part of November, 2007 when Bev felt the first opportunity arose to safely vacate the residence and file for divorce from her second husband. Ex12,p.2, l.22-23; Ex12, p.9, l. 10 to p.10, l.2.

In contract analysis, the intent of the parties controls. Scott Galvanizing, Inc. v. N.W. EnviroServices, Inc., 120 Wn.2d 573, 580, 844 P.2d 428 (1993)⁵. Where there is no intent to form a binding agreement or contract, as manifested by the objective conduct or writings of the parties a binding contract does not exist and the agreement cannot be enforced. See, Martinez v. Miller Indust., Inc., 94 Wn. App. 935, 974 P.2d 1261 (Div 2 1999)⁶. The order was but one failed attempt in a series of attempts to work out the parties' differences since the spring of 2007. - a point in time when had substantially complied with the court ordered conditions for counseling, was employed and ready to go back to court to get her children back. Ex. 12:4, see infra. Manuel reacted to Bev setting a trial and the couple sought mediation through private services in August, 2007.

⁵ "The cardinal rule with which all interpretation begins is that its purpose is to ascertain the intention of the parties." Berg v. Hudesman, 115 Wn.2d 657, 663, 801 P.2d 222 (1990) (quoting Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50 *Cornell L.Q.* 161, 162 (1964-1965))." Scott Galvanizing, Inc. v. N.W. EnviroServices, Inc., 120 Wn.2d 573, 580, 844 P.2d 428 (1993).

⁶ "When a court order incorporates an agreement between parties, the "meaning of the order is the same as the meaning objectively manifested by the parties at the time they formed the agreement." Interstate Prod. Credit Ass'n v. MacHugh, 90 Wn. App. 650, 654, 953 P.2d 812 (1998); see also In re Marriage of Boisen, 87 Wn. App. 912, 920, 943 P.2d 682 (1997). [P]arol evidence is admissible to show the situation of the parties and the circumstances under which a written instrument was executed, for the purpose of ascertaining the intention of the parties and properly construing the writing. . . . Berg v. Hudesman, 115 Wn.2d 657, 669, 801 P.2d 222 (1990) (quoting J.W. Seavey Hop Corp. v. Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944))."

No agreement arose from mediation as evidenced by the lack of any agreement being offered in evidence or filed with the court.

Manuel's act of abandoning the November proceeding was a rejection of the agreed order altogether.⁷ Manuel agreed to participate in a proceeding to present the proposed order that they wrote only insofar as the court adopted it as-is, without change, and when that did not happen, even Manuel's attorney concedes Manuel abandoned the proceeding and the court adjourned without taking any action. RP 13:18 to p. 14:1; App. Ex 2, Entry #70, see Prop. Ex. 11. Under contract law, the abandonment by one party was a rejection of an offer to enter into a unilateral contract which had as its objective a narrow modification of the status quo and entry in the public record.⁸ The entry in the public record was essential to the parties' intent as evidenced by their complete abandonment of the agreement after it was not entered. See, RP 13:18-14:1, supra. The fact that visitation, one of the many elements of the proposed order, followed

⁷ See, supra at footnote 5.

⁸ An offer of unilateral contract is an offer to enter into a contract upon the doing of a bargained for act by the offeree. Cook v. Johnson, 37 Wn.2d 19, 23, 221 P.2d 525 (1950).

along under an oral agreement later on is not evidence that the couple's agreement referred in any way to a writing.

A similar situation where an objective of an agreement is entry in the court record is the plea bargain in criminal cases where a prosecutor offers a deal to a defendant in exchange for entry of a guilty plea. It is well established law that performance in the form of the defendant entering his plea is the only way the defendant can accept the offer. In Wheeler, the defendant objected when the prosecutor withdrew his plea offer, and the court held that since plea bargains are almost unanimously recognized as unilateral contracts across the nation, offers may be withdrawn at any point before performance completes the acceptance and a contract is formed. State v. Wheeler, 95 Wn.2d 799, 631 P.2d 376 (1981).⁹ In a unilateral contract, consideration, which is absolutely necessary to form a binding agreement, consists of the offeree's performance of the exact terms of the offer without deviation.¹⁰ When the court threatened to change things other than what was agreed by the

⁹ See, also, State v. Reed, 75 Wn. App. 742 (Div 1 1994); Higgins v. Maud, 28 Wn.2d 313 (1947); Knight v. Seattle First Nat'l Bank, 22 Wn. App. 493, 589 P.2d 1279 (1979).

¹⁰ Multicare Medical Ctr. v. DSHS, 114 Wn.2d 572 (1990) citing to Browning v. Johnson, 70 Wn.2d at 148-49; Higgins, supra, 28 Wn.2d at 317.

parties at the November proceeding, Manuel's abandonment of the proceedings destroyed the contract altogether and the writing was rendered a worthless scrap of paper. Prop. Ex. 11.

At trial, the court found the proposed order while thumbing through the court files. RP 51:14-15; RP 52:7-10. When the court inquired about it, Bev told the court it was rejected because Manuel refused to continue with the hearing after the judge raised the issue of child support. RP 51:24-25; RP 137:3-6. Bev stated that she prepared the documents for the hearing. RP 51:22 to 52:3. Manuel's attorney informed the judge that it was an agreement of the parties and moved that the court adopt it as a CR2A Stipulation. RP 52:10-13. Manuel's attorney did not present any evidence to the court other than the agreement itself to support his contention that it qualified as a CR2A agreement. Manuel's attorney could have no personal knowledge about the proposed order, because he had not even been hired at the time it was written. The record shows that an attorney appeared on behalf of Manuel in February of 2008. See, App.Ex. 2, #77 (2/14/08). Thus, the attorney could not have any personal information about the alleged "agreement" or circumstances of the

proceeding. See, ER602. The attorney significantly failed to call Manuel to the stand to testify on these issues. The attorney continued to reiterate the existence and meaning of the alleged agreement to the court, even in his response brief, as if he were stating fact established in evidence. RB p. 11-12; 20-21; RP 13:18-14:1; RP52:11-13. Certainly the attorney's assertions were not competent to establish any fact about the agreement. The court deferred its decision on the motion to a later time. RP52:14-18.¹¹

When faced with a similar situation in which an attorney testified by making unfounded assertions without personal knowledge, the Court of Appeals discarded the attorney's unfounded assertions. Ferree, supra. That court stated,

Mr. Ferree's new counsel, as advocate, orally asserted in open court that no agreement had been formed. These assertions were without any apparent basis, for new counsel had no personal knowledge regarding the events . . . Thus, with counsel's assertions but no more, there was no way to divine whether the existence and material terms of the alleged settlement agreement were genuinely disputed. Ferree, supra, at 41, 856 P.2d at 710.

¹¹ The court replied, "There should have been some . . . the motion should have been made before today with proper notice to the mother but I certainly am going to be taking it into account if it is a factor to be taken into account."

The burden is on the party seeking to assert the agreement under CR2A "to prove there is no genuine dispute regarding the existence . . . of an agreement that is alleged to bind the parties." Ferree, 71 Wash.App. at 41, 856 P.2d at 709.¹² Even if the document itself was sufficient to sustain the prima facie case for Manuel's attorney, with the docket and a blank signature block where the judge was to have signed as corroboration, Bev's testimony was enough to successfully rebut that unexamined evidence. Prop. Ex. 11. See, regarding burdens of proof in this context, In re Matter of Patterson & Taylor, 93 Wash.App. 579, 969 P.2d 1106 (Div. 1, 1999).¹³

¹² This is but a specific application of the general rule that one who would recover on a contract must prove its existence and terms. Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc., 96 Wash.2d 939, 944, 640 P.2d 1051 (1982) (proponent of contract must prove its existence) . . . Peoples Mortgage Co. v. Vista View Builders, 6 Wash.App. 744, 747, 496 P.2d 354 (1972) (proponent of contract has burden of proving promise, consideration, breach and damages). Ferree, 71 Wash.App. 35, 41, 856 P.2d 706, 709.

¹³ Court affirmed enforceability of an express CR2A agreement entered into following mediation regarding title to property after applying a summary judgment analysis to determine if there was a genuine dispute as to existence or purport of the agreement. See, also, In re Marriage of Ferree, 71 Wash.App. 35, 39, 856 P.2d 706 (1993). CR 2A applies only when (1) the agreement was made by the parties "in respect to the proceedings in a cause" and (2) the existence or material terms of the agreement are in dispute. A summary judgment analysis was applied where the moving party must prove that no genuine issue of fact exists and he merits judgment as a matter of law, viewing the facts in light most favorable to non-moving party. The nonmoving party then must rebut any such evidence produced by showing there is a material factual dispute. These cases did not involve custody of children.

In fact, the courts cannot be bound to enforce parenting plans in Washington as a matter of public policy. Campbell v. Campbell, 19 Wash.2d 410, 143 P.2d 534 (1943);¹⁴ see, e.g., RCW 26.09.270(3) which excludes parenting plans from the binding provisions of separation contracts. In the context of property agreements, courts have refused to hold that stipulations are binding where the offer was revoked for failure to comply with a condition. In re Marriage of Langham, 153 Wn.2d 553 (2005).

Additionally, asserting the rejected proposed order is contradictory and inconsistent with Manuel's prior conduct in walking out on the proceeding held to consider it and this inconsistency should be estopped.¹⁵ Board of Regents of UW v. Seattle, 108 Wn.2d 545, 741 P.2d 11 (1987) (Silence after notice of a setting a proceeding justified court's application of equitable estoppel). In order to prevent an injustice, the court should

¹⁴ Citing Delle v. Delle, 112 Wash. 512, 514, 192 P. 966, 967, 193 P. 569 (1920) where a prior court's adoption of a stipulated custody agreement was held not to be binding.

¹⁵ "The elements of equitable estoppel are (1) an admission, statement or act inconsistent with a claim afterwards asserted, (2) action by another in reliance upon that act, statement or admission, and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission."

estop Manuel from asserting the rejected proposed order as an agreement between the parties after he admits he repudiated and destroyed the consideration for any agreement by walking out on the proceedings.

For the above reasons, Manuel's attempt to establish the existence of a CR2A stipulation, or other binding agreement that would satisfy RCW 26.09.206(2)(a), fails on all levels of analysis. While the court initially seemed to understand and accept Bev's testimony that the parties abandoned the proposed parenting plan,¹⁶ the trial court yielded to assertions from Manuel's attorney that had no basis in evidence and enforced it as binding on the parties. See, RP 162:21-24, RP 163:13-17, RP 164:11-15. The court deferred ruling outright on Manuel's motion, although it noted that the motion should have been brought prior to trial. Manuel did not offer any law or legal analysis in support of his oral motion. The court fails to articulate its reasoning, whether CR2A was involved, or to state any other the basis for imposing the agreement on the parties.

Despite the fact that it was not actually entered by the court, the court finds the agreed parenting plan is a complete settlement of

¹⁶ "I guess you decided not to go that way." RP 52 L10.

the parenting issues between the parents and should be enforced. Unless the court finds the agreement not to be in the best interests of the children, which in my experience, is the only reason that an agreed parenting is not entered" RP 164:7-15.

This finding of the court is not supported by substantial evidence and may be a conclusion of law mislabeled as a finding. See, Miles v. Miles, 128 Wash.App. 64; 69-70, 114 P.3d 671 (Div 2 2005); In re Marriage of Velickoff, 95 Wn. App. 346, 968 P.2d 20 (Div 2 1998). The appellate court does not reverse the trial court's decision under RCW 26.09 unless the result is manifestly unreasonable or based on untenable grounds. Marriage of McDole, 122 Wn.2d 604, 859 P.2d 1239 (1993). Without more, the court's reliance on assertions by persons without personal knowledge is untenable and unreasonable and the finding should be vacated and the matter reversed for that reason.

2. RCW 26.09.260(2)(b). Manuel's attorney argued that the two children had been integrated into Manuel's household. RP137:3-6. As a threshold matter, the court must first address the issue of whether Bev consented or acquiesced in a change in legal custody. Without consent to the surrender of legal (permanent) custody, there can be no integration. In

re Marriage of Taddeo-Smith and Smith, 127 Wn. App. 400, 110 P.3d 1192 (Div. 1, 2005)

In its findings, the court found that Bev had consented because it felt consent was shown by an agreed temporary parenting plan and that the children had been "integrated into the father's home for two-and-a-half years" RP 170:13-15. Bev had no control over the arrangement. The court's decision in 2006 had the force of law. That court conditioned setting a trial on Bev's completion of counseling and alcohol evaluation. Ex10. Bev sought help immediately after the November incident. See, App 1 letter form Dr McClincy.

The law states that when a party must tolerate a change in custody due to court order or impossibility, this tolerance is involuntary and does not constitute consent. See, Taddeo-Smith, 127 Wn. App. 400, 110 P.3d 1192 (Div. 1, 2005) where a mother actually agreed to place temporary custody with the father in an agreed order. Agreement to a temporary order did not constitute consent under RCW 26.09.260(2)(b) in that case where the court stated, ""Consent" refers to a voluntary acquiescence to surrender of legal custody." Id. at 402. See OB p. 20.

The court ignored the established facts to the effect that Bev set contested trial on at least two occasions and participated in mediation and numerous counseling and evaluation sessions with professionals under force of conditions contained in a court order during the interim. Ex 12:4, l. 23-24; App. Ex 2. The court observed in summing up the case that "to some extent" one could argue the children had been integrated into the other parent's household since the filing of the petition. RP 161:2. The passage of time seems to be an issue involved in the court's ultimate analysis when it cites the two and one-half years that had passed since the incident in November 2005. RP170. Bev, while holding down a full-time job, obtained professional evaluation and help for the child who was believed to be a mental health risk by Manuel. Ex 6, p. 8, l. 3-5. Bev set the matter for trial in June of 2007 after Manuel refused to honor certain promises to return custody to her. Bev agreed to strike the trial date so that the couple could pursue mediation. When mediation failed, Bev again set the matter for trial. App.Ex. 2, Ex 12:4, l. 23-24. The first trial date after the aborted November hearing was in May 2008. Thus, with restrictions from the court and significant upheaval in her personal

situation at several junctures in 2007, Bev did not just acquiesce or consent to the status quo but fought to get her children back actively and with constant pressure.

3. **RCW 26.09.260(2)(c)**. As a threshold matter, the court must find that the present environment at the custodial parent's house is detrimental to the welfare of the children before conducting further analysis. George v. Helliar, 62 Wn. App. 378, 814 P.2d 238 (Div. 1 1991) ("Present environment" necessarily means the environment existing when original decree was entered.) Marriage of Velickoff, 95 Wn. App. 346 (Div. 2, 1998) The court's findings, however, discuss the environment that existed in 2005 and early 2006 and brush off the present environment with the comment "and I find that still to be true." Application of the evidence about these time periods to the state of affairs in 2008, given the amount of change that occurred in 2007 and counseling in 2006, is unreasonable.

Because the term "child's present environment" is not defined in the statute, we must attempt to ascertain its meaning. Interpreting the meaning of a statute is a question of law. (Cites omitted.) The trial court's holding on a question of law is reviewed de novo. Marriage of Ambrose, 67 Wash.App. 103, 106.

The court had a duty under law to inquire into the present condition of Bev's home environment. While Bev testified about certain aspects of her new home as a separated woman, the court's actual rejection of evidence about recent mental health evaluations in the form of sustaining the objection to the introduction of evidence of collaterals was unreasonable under the circumstances RP p 95 L 1-24.

Letters from professionals to the effect that Bev's depression was episodic and temporary and had resolved to a great extent shortly after the 2005 incident were noted in the GAL reports. The letters included: Glen Merriwether, MA, LMHC, CDP of Pacific NW Treatment Services LLC (alcohol/drug eval. 12/21/05 (Ex 6, p. 21-22), 10/10/2006 (Ex12 p.4, 2-14), 1/20/2007 Id.); Carolyn D. Logsdon, Ph.D., LICSW, Pacific Medical Centers (eval. children 12/15/05 (Ex 6, p. 22-24); Whitney McClincy, M.D. Everett Clinic (mental health 11/29/05)(Ex12 p.4, 2-14), Kathy Stratmeyer LMFT Fountaingate Psychological and Family Services (psych. eval. 10/10/2006 (Ex12 p.4, 2-14)). The letter from the child

psychologist states that there was no reason that would restrict Bev from resuming custody of the children once her crisis was resolved.¹⁷

Testimony from a seasoned professionals to the effect that Bev seemed to have regained stability and good judgment, see *supra*, were overlooked entirely by the court's focus on the detrimental environment of 2005. The objection to testimony serving as grounds for bringing in the use of collaterals during counseling, as ordered, was sustained by the court on the basis that technically, the recent visit and offer of collaterals in as evidence had not been disclosed by the pro se appellant to the attorney for Manuel prior to trial.¹⁸ Manuel's attorney attempted throughout the proceedings to prejudice the judge by reiterating his conclusions that Bev had not complied with court orders and implying she was hiding severe alcohol problems were, again, not founded in evidence. Manuel's attorney had no personal knowledge. ER602; *Ferree, supra*.

It is a matter of record that all parents and step-parents involved in this matter admit to drinking alcohol on a regular basis. In fact, Manuel

¹⁷ "Based on these interviews, it is my professional opinion that these children need to remain with their father . . . until such time as their mother can demonstrate sufficient emotional stability and good judgment to care for them adequately."

¹⁸ RP 95, l. 22 to RP 96, l. 12.

admitted to the GAL that he and his wife drink 2-3 beers each and every night. Ex 6:7-1.24 to p.8-1.1. Significantly, none of these adults have criminal records. RP 17 L12,13. Thus, their consumption of alcohol, a beverage which is legal, is socially acceptable. See, Thompson v. Thompson, 56 Wash.2d 683, 355 P.2d 1 (1960).¹⁹ The court's finding of detrimental environment was based almost solely on the conditions that prevailed in November 2005²⁰ and that finding is, therefore, not reasonable and based on untenable grounds. See, Marriage of Ambrose, 67 Wash.App. 103, 834 P.2d 101 (Div. 2 1992), also cited in the opening brief.

RCW 26.19.075(3). RCW 26.19.075(3) requires the court to make findings when deviations from standard child support calculations are requested and articulate its reasoning. Id., Brandli v. Talley, 98

¹⁹ The Washington Supreme Court in case involving custody of two children ages 12 and 13, stated: "We think there was no abuse of discretion in view of the son's age; his specific request to live with his father; and the respondent's ample financial ability to support and educate him. The respondent's major defect, according to the appellant, is that he is a drunkard. The respondent admits that he drinks beer, but nothing in the record indicates that he has ever been intoxicated in public or that his drinking habit renders him incompetent in any way. The appellant also asserts that the respondent does not bathe as often as he should. While these traits are not commendable, we do not think that they so conclusively incapacitate the respondent to take proper care of the boy as to make it an abuse of discretion for the trial court to find that he was a fit and proper person to have his custody. 56 Wash.2d 683, 685, 355 P.2d 1, 3.

²⁰ RP 170 et seq.

Wn.App.at 524-25. The court made no such finding. Manuel concedes that Bev requested a deviation. Manuel was to blame for the lack of discussion due to his failure to amend the petition to include child support, tacking it on at the end of proceedings. Ex1. While evidence existed for a "totality of the circumstances" analysis, the court was ill prepared and uninformed about the circumstances of the parties.²¹ RP 175:23 to 176:1-3. After the court ordered Manuel's counsel to calculate and prepare the child support order, Bev asked the court to take into consideration that she supported two other children during the time period when back support was ordered. RP175:23 to 176:10. The court ordered Manuel's counsel to take the extra children into account, RP 176:5-7, saying that the court did not have any worksheets to guide it. The court directed further argument, but that failed to take place at the presentation which was not recorded, unfortunately. RP176:6-7.

To calculate the parents' basic support obligations, RCW 26.19.071(1) provides that . . . a court should consider all the income and resources of each parent's household before deciding what each parent's actual child support obligation will be. In other

²¹ Evidence supporting deviation included other children in the household (one or two depending on the time frame) that Bev was supporting as well as a residential credit for significant time spent with the children and the income of Manuel's wife. See, RCW 26.19.075.

words, the court must consider the income and resources of the parents, as well as their spouses, before deciding whether to deviate from the basic support obligations. Brandli v. Talley, 98 Wn. App. 521 (Div 1 1999)

Since Manuel testified that his second wife worked, the totality of circumstances requirement for consideration of deviations would require Manuel to disclose his wife's salary and any other resources of the couple. Id. The court should have considered the blended family as well as residential credit in its consideration of whether to grant a deviation for both back support and current support. RCW 26.19.075(e). Instead, Manuel's attorney used the blended family formula only for calculating back child support for January '07 through April '08, failed to use the presumptive amount, failed to consider residential credit and failed to apply any of these factors to calculating present support which was calculated at the advisory level rather than presumptive which is appropriate when a deviation is requested. See App.Ex. 7. This oversight was not corrected at presentation of the order which was perfunctory. The court failed to make findings on both the granting of a partial deviation for back support and the use of the advisory support calculation, as well as the

denial of a deviation for present and future support in violation of RCW 26.19.075(3).

Given the substantial amount of the double whammy transfer payment Bev was obligated to make for both current and back child support, the court should have taken evidence and made a finding as to whether Bev could afford that level of support and still be able to afford to provide for the maintenance of the children. State ex rel. J.V.G. v. Van Guilder, 137 Wash.App. 417, 154 P.3d 243 (Div 1 2007), as amended, amended on reconsideration.²² See, also, RCW 26.19.075(1)(e). Bev indicated that she was having trouble affording such necessities as health insurance, a fact that should have indicated to the court her potential need for such a finding to the court.²³ "I actually recently dropped all of the insurance because I could not afford it any longer" was Bev's response to the court's inquiry if the other children were on Bev's insurance.

When child support is set at a percentage of the obligor parent's income, the amount must be related to both the noncustodial parent's ability to pay and the child's needs. Edwards v. Edwards, 99 Wn.2d 913, 918, 665 P.2d 883 (1983). Because the obligation

²² Trial court abused its discretion in child support proceedings by requiring father, as noncustodial parent, to pay for child's private school without making a finding that he could afford to do so.

²³ RP 176:23-25.

to pay a percentage of one's income does not necessarily relate to the child's support needs, the Edwards court held that in such cases, "the trial judge should determine a maximum amount of child support that would be reasonable and needed in the future and set that amount as a ceiling above which the support payments cannot rise." Edwards, 99 Wn.2d at 919.²⁴

In violation of RCW 26.19.075(3) the court made no finding regarding its denial of the deviation or Bev's ability to pay.

Date this 20th day of May, 2009

A handwritten signature in cursive script, appearing to read "Beverly Ybarra", written over a horizontal line.

Beverly Ybarra pro se

²⁴ Marriage of Kelly, 85 Wash.App. 785, 792, 934 P.2d 1218 (1997)

Appendix

Exhibit 1

The Everett Clinic

3901 Hoyt Avenue • Everett, WA 98201-4988
(425) 259-0888

November 29, 2005

To Whom It May Concern:

Re: Beverly Ybarra

Please be advised that I am, as of November 28, 2005, Beverly Ybarra's primary care physician. Mrs. Ybarra has requested that I write this letter to serve as a statement of her current medical condition and has formally authorized me to share this information with her attorney.

I saw Mrs. Ybarra for an initial visit yesterday and spent approximately thirty minutes with her reviewing her past and current medical history. We discussed a recent visit to Valley General Hospital Emergency Department on November 22, 2005. As a result of this visit, she was placed on an anti-depressant and anti-anxiety medications. During our visit, I found her to be quite pleasant with no evidence of active suicidal or homicidal ideation. She was very insightful about the events leading up to her ER visit and is feeling much more in control of herself. She had already initiated and scheduled counseling visits for herself and her spouse and was in agreement with my recommendation to continue the anti-depressant for the time being. Though the ER records were not, and still are not, available for review, my understanding is that she was never a threat to her children or anyone else around her during the hours leading up to the visit. Again, there was no indication that she is suicidal or homicidal.

Please feel free to contact me if you have any further questions.

Sincerely,



Whitney P. McClincy, M.D.

Exhibit 2

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Superior Court Case Summary

Court: Snohomish Superior
Case Number: 95-3-00558-8

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	02-27-1995	\$FFR	Filing Fee Received	120.00
1	02-27-1995	PTDSS PSP0001	Petition For Dissolution Ybarra, Beverly	
-	02-27-1995	APPS	Appearance Pro Se	
2	02-27-1995	JN	Joinder	
3	02-27-1995	NTC ACTION	Note For Calendar Dissolution	05-31- 1995DP
4	05-31-1995	MTHRG	Motion Hearing Testimony Taken & Preserved;final Docs May Enter Ex Parte Upon Completion Of Parent Seminar	
		COM0001	Commissioner Arden J. Bede	
5	06-12-1995	COPC	Confirmation Of Parenting Class Petr	
6	06-12-1995	COPC	Confirmation Of Parenting/resp	
7	06-12-1995	FNDCLR	Financial Declaration	
8	06-12-1995	PP COM0001	Parenting Plan (final Order) Commissioner Arden J. Bede	
-	06-12-1995	EXWACT	Ex-parte Action With Order	
9	06-12-1995	ORS	Order For Support	
-	06-12-1995	JD COM0001	Judgment Commissioner Arden J. Bede	
-	06-12-1995	EXWACT	Ex-parte Action With Order	
10	06-12-1995	FNFCL COM0001	Findings Of Fact&conclusions Of Law Commissioner Arden J. Bede	
-	06-12-1995	EXWACT	Ex-parte Action With Order	
11	06-12-1995	DCD	Decree Of Dissolution	
-	06-12-1995	JD	Judgment	

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Contact Information

Snohomish Superior
3000 Rockefeller Ave, MS 502
Everett, WA 98201-4046
Map & Directions
425-388-3421[Phone]
425-388-3498[Fax]
Visit Website
425-388-3700[TDD]

Disclaimer

This information is provided for use as reference material and is not the official court record. The official court record is maintained by the **court of record**. Copies of case file documents are not available at this website and will need to be ordered from the **court of record**.

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1) Do not warrant that the information is accurate or complete;

2) Do not guarantee that information is in its most current form;

3) Make no representations regarding the identity of any person whose name appears on these pages; and

4) Do not assume any liability resulting from the release or use of the information.

Please consult official case records from the **court of record** to verify all provided information.

		COM0001	Commissioner Arden J. Bedle	
-	06-12-1995	EXWACT	Ex-parte Action With Order	
-	06-14-1995	RRL	Registry Referral Letter Pp,ors W/csw,fnfcl,dcd	
12	02-28-1997	MTAF	Motion And Affidavit For Adjustment Of Support	
13	02-28-1997	FNDCLR	Financial Declaration	
14	04-24-2001	STFJG	Satisfaction Of Judgment	
15	11-23-2005	MTSC	Motion For Order To Show Cause	
16	11-23-2005	TPROTSC ACTION	Temp Rest Ord & Ord To Sho Caus Show Cause #15	12-06-2005D3
		COM0003	Other Commissioner	
-	11-23-2005	EXWACT	Ex-parte Action With Order	
17	11-23-2005	MTHRG COM0003	Motion Hearing Other Commissioner	
-	11-23-2005	HCNTU ACTION	Hearing Continued: Unspecified Modification Of Parenting Plan #17	12-06-2005D3
		ACTION	Confirmed/m Ybarra Pro Se	
18	11-28-2005	INFO	Information /cif	
-	11-29-2005	\$FFR	Filing Fee Received	56.00
19	11-29-2005	SMPM PSD0001	Summons & Petition For Modification Ybarra, Manuel	
20	11-29-2005	AFRSP	Affidavit Of Respondent	
21	11-29-2005	AFRSP	Affidavit Of Respondent W/attached Notes	
22	11-29-2005	PPP	Proposed Parenting Plan	
23	11-29-2005	AFS	Affidavit In Support	
24	11-29-2005	RTS	Return Of Service	
25	12-02-2005	RT	Return On Entry	
26	12-06-2005	NTAPR ATP0001	Notice Of Appearance Kennedy, David Robert	
27	12-06-2005	AGOR	Agreed Order	
-	12-06-2005	ORVS	Order Re Visit - Supervised	
-	12-06-2005	OREXT	Order Extending Restraining Ord	
-	12-06-2005	ORCNT ACTION	Order Of Continuance Confirmed/m Ybarra Pro Se	12-20-2005D3
		ACTION	Modification Of Parenting Plan #17	
		COM0007	Commissioner Tracy G. Waggoner	
-	12-06-2005	EXWACT	Ex-parte Action With	

Case No.	Date	Case Type	Description	Other Info
			Order	
28	12-13-2005	AFPT	Affidavit Of Petitioner	
29	12-13-2005	DCLR	Declaration Of Christina Hutchins	
30	12-13-2005	DCLR	Declaration Of Kathleen Steensgaard	
31	12-13-2005	DCLR	Declaration Of Betty Lou Kistler	
32	12-15-2005	RTS	Return Of Service	
33	12-15-2005	AFRSP	Affidavit Of Respondent	
34	12-20-2005	MTHRG COM0007	Motion Hearing Commissioner Tracy G. Waggoner	
-	12-20-2005	HCNTU ACTION	Hearing Continued: Unspecified Confirmed/court	02-21- 2006D4
		ACTION	Cont 2-28-06 Per Kennedy	
		ACTION	Review Hearing #35	
35	12-20-2005	ORAPE	Order Appointing Expert For Exam Family Court Investigations	
36	12-20-2005	ORCNT	Order Of Continuance	
-	12-20-2005	OR	Ord Temporarily Suspending Child Support	
-	12-20-2005	ORVS	Order Re Visit - Supervised	
37	12-20-2005	NT	Notice Of Filing	
-	12-21-2005	RRL	Registry Referral Letter - Orcnt, Cif	
38	12-23-2005	RPT	Report Family Court Investigations	
39	12-23-2005	NT	Notice Of Appointment Of Gal	
40	01-06-2006	NT AGL0001	Notice Of Appearance Nakovski, Mirka E.	
41	02-09-2006	RTGAL	Report Of Guardian Ad Litem	
-	02-15-2006	CNA	Continuance Agreement Per E-mail (crystal/kennedy)	02-28- 2006D4
		ACTION	Review Hearing #35	
		ACTION	Confirmed/kennedy	
-	02-21-2006	HCNTPA	Continued: Plaintiff/pros Requested 02-28-2006	
42	02-23-2006	RPY	Reply Of Ptnr To Gal Rpt	
43	02-23-2006	DCLR	Declaration Of Sonya Grier	
44	02-23-2006	DCLR	Declaration Of Teresa Linder	
45	02-23-2006	DCLR	Declaration Of Anna	

			Sweat	
46	02-28-2006	NTHG ACTION	Notice Of Hearing Adequate Cause Determination #46	03-14- 2006D4
47	02-28-2006	RVWHRG COM0006	Review Hearing Commissioner Jacalyn D. Brudvik	
-	02-28-2006	HCNTDA ACTION	Hearing Continued: def/resp Request Confirmed/court/kennedy	03-14- 2006D4
		ACTION	Review Hearing #35	
48	02-28-2006	ORCNT	Order Of Continuance	
-	02-28-2006	ORCMP	Order To Compel Production	
-	02-28-2006	OREXT	Order Extending 12-20- 05 Ords	
49	02-28-2006	RTS	Return Of Service	
50	03-03-2006	LTR	Letter To Gal From Della Moore Re Authorization Of Additional Hrs	
51	03-09-2006	AFRSP	Affidavit Of Respondent	
52	03-09-2006	DCLR	Declaration Of Karen Graham	
53	03-09-2006	RTS	Return Of Service	
54	03-13-2006	NTIWD WTP0001	Notice Of Intent To Withdraw Kennedy, David Robert	
55	03-14-2006	RVWHRG COM0006	Review Hearing Commissioner Jacalyn D. Brudvik	
56	03-14-2006	ORRACG	Order Re Adequate Cause - Granted	
-	03-14-2006	ORVS	Order Re Visit	
-	03-14-2006	ORES	Order For Expert Services	
57	07-18-2006	NTACA AGL0001	Notice Of Atty Change Of Address Nakovski, Mirka E.	
58	02-23-2007	NTAB	Notice Of Absence/unavailability	
59	03-09-2007	AFRSP	Affidavit Of Respondent Re Notice Of Dispute Resolution	
60	08-02-2007	NTTNSA ACTION	Nt For Trial & Stmtnt Of Nonarbitra Set For Non Jury	08-15- 2007TA
-	08-15-2007	ASTD	Assignment Of Trial Date	11-29- 2007NT
61	08-17-2007	NTTD	Notice Of Trial Date	
62	08-28-2007	MAIL	Mail Return - Unclaimed	
63	08-28-2007	NTTD	Notice Of Trial Date	
64	10-30-2007	NTER	Notice Re: Evidentiary Rule	

65	10-30-2007	BR	Brief Re Children's Hearsay	
66	10-30-2007	DCLR	Declaration Of Richard Steensguard	
67	10-30-2007	DCLRM	Declaration Of Mailing	
68	10-31-2007	NTAB	Notice Of Absence/unavailability	
-	11-29-2007	TSTKU	Trial Cancelled: Unknown Party	
69	11-29-2007	CSCRIM	Cover Sheet For Criminal History	
70	11-30-2007	PPP	Proposed Parenting Plan	
71	12-13-2007	NTTSNA ACTION	Nt For Trial & Stmt Of Nonarbitra Set For Non Jury	12-27-2007TA
-	12-27-2007	ASTD	Assignment Of Trial Date	05-01-2008NT
72	01-07-2008	NTTD	Notice Of Trial Date	
73	01-18-2008	CSCRIM	Cover Sheet For Criminal History	
74	01-31-2008	MAIL	Mail Return - Unclaimed	
75	01-31-2008	MAIL	Mail Return - Unclaimed	
76	01-31-2008	NTTD	Notice Of Trial Date	
77	02-14-2008	NTAPR WSD0001	Notice Of Appearance Ybarra, Manuel	
		ATR0001	Bechold, William	
78	02-27-2008	MTCTD	Motion To Change Trial Date	
79	02-27-2008	DCLR	Declaration Of Shilo Arford-lockett	
80	02-27-2008	DCLR	Declaration Of Christina Ybarra	
81	02-27-2008	NTC ACTION ACTION	Note For Calendar Confirmed/bechold Mtn For Trial Continuance #78	03-21-2008CT
82	02-28-2008	AFSRML	Affidavit Of Service By Mail	
83	03-04-2008	AFSRML	Affidavit Of Service By Mail	
84	03-12-2008	OB	Objection & Response Of Ptnr	
85	03-12-2008	NT	Notice Of Change Of Address	
86	03-12-2008	DCLR	Declaration Of Fax	
87	03-13-2008	DCLR	Declaration Of Fax	
88	03-18-2008	AFRSP	Affidavit Of Respondent /reply	
89	03-19-2008	RSP	Response Of Ptnr	
90	03-19-2008	DCLR	Declaration Of Fax	
91	03-21-2008	MTHRG JDG0001	Motion Hearing Judge Ronald L Castleberry	
92	03-21-2008	ORDYMT	Order Denying Motion To	

Case No.	Date	Case Type	Description	Case No.
			Continue Trial	
93	03-26-2008	SBDT	Subpoena Duces Tecum	
94	03-31-2008	NTER	Notice Re: Evidentiary Rule	
95	03-31-2008	WL	Witness & Exhibit List	
96	03-31-2008	NTER	Notice Re: Evidentiary Rule	
97	04-04-2008	ORAU JDG0006	Order Authorizing Addl Gal Fees Judge Larry E Mckeeman	
-	04-04-2008	EXWACT	Ex-parte Action With Order	
98	04-09-2008	OB	Rspt's Objection To Ptnr's Er 904	
99	04-11-2008	OB	Objection Of Ptnr	
100	04-14-2008	FNDCLRP	Financial Declaration Of Pet	
101	04-14-2008	PRTAF	Pretrial Affidavit/statement	
102	04-14-2008	NTER	Notice Re: Evidentiary Rule	
103	04-14-2008	SEALFN	Sealed Financial Document(s)	
104	04-28-2008	RTGAL	Report Of Guardian Ad Litem Supplemental	
105	04-28-2008	SEALRPT	Sealed Confidential Rpts Cvr Sheet	
-	05-01-2008	AST JDG0016	Assigned To Department 11 Judge Linda C. Krese	
107	05-01-2008	NJTRIAL JDG0016	Non-jury Trial Presentation At 9:00 Am Dept 11 Judge Linda C. Krese	05-28-2008JC
106	05-02-2008	EXLST	Exhibit List Non Jury Trial	
-	05-02-2008	TTIME	Trial Duration 1 1/2 Days	
108	05-02-2008	CSCRIM	Cover Sheet For Criminal History	
-	05-05-2008	EXR	Exhibits Received Ttl-11 Jb	
109	05-28-2008	MTHRG JDG0016	Motion Hearing Judge Linda C. Krese	
110	05-28-2008	ORMDD	Order On Modification	
111	05-28-2008	PP	Parenting Plan (final Order)	
112	05-28-2008	ORS	Order For Support	
-	05-28-2008	JD	Judgment	
-	05-29-2008	RRL	Registry Referral Letter - Ormdd,pp,orsw/csw	
113	06-19-2008	ORSGT COM0009	Order Shortening Time To 6/19/08 Commissioner Susan C. Gaer	

-	06-19-2008	EXWACT	Ex-parte Action With Order	
114	06-19-2008	OR COM0009	Order Re Summer Schedule Commissioner Susan C. Gaer	
-	06-19-2008	EXWACT	Ex-parte Action With Order	
-	06-26-2008	\$AFF	Appellate Filing Fee	250.00
115	06-26-2008	NACA	Notice Of Appeal To Court Of Appeal	
116	06-27-2008	AFSR	Affidavit/dclr/cert Of Service	
117	06-27-2008	TRLC	Transmittal Letter - Copy Filed	
118	07-09-2008	PNCA	Perfection Notice From Ct Of Appls	
119	07-23-2008	SEALFN	Sealed Financial Document(s)	
120	07-23-2008	MTAF	Motion And Affidavit/declaration	
121	07-23-2008	FNDCLRP	Financial Declaration Of Pet	
122	07-23-2008	CSWP	Child Support Worksheet/proposed	
123	07-23-2008	CSWP	Child Support Worksheet/proposed	
124	07-23-2008	NTMDLF	Note For Motion Docket-late Filing	
-	07-23-2008	NTC ACTION	Note For Calendar Dissolution	08-05-2008DC
125	07-28-2008	DCLR	Declaration Of William Bechold	
126	07-29-2008	AFSR	Affidavit/dclr/cert Of Service	
127	07-30-2008	RPY	Reply Of Ptnr	
128	08-05-2008	MTHRG COM0003	Motion Hearing Other Commissioner	
129	08-05-2008	ORDSM	Order Of Dismissal Of Ptnr's Motion	
130	08-25-2008	MTRC	Motion For Reconsideration	
131	10-08-2008	NT	Notice Of Change Of Address	
132	11-03-2008	NT	Notice Of Filing	
-	11-04-2008	VRPRC	Verbatim Report Of Proceedings (1 Vol Bench Trial 5/1-2/2008)	
133	11-21-2008	DSGCKP	Designation Of Clerk's Papers Amended	
134	11-21-2008	TRLC	Transmittal Letter - Copy Filed	
-	12-01-2008	CLP	Petitioner's Clerk's Papers-vol I	

			& Confidential Sealed Vol II
135	12-17-2008	TRLC	Transmittal Letter - Copy Filed
136	12-31-2008	TRLC	Transmittal Letter - Copy Filed
137	02-09-2009	DSGCKP	Designation Of Clerk's Papers Supplemental
-	02-10-2009	CLP	Petnr's Suppl Clerk's Pprs Vol Iii
138	02-23-2009	TRLC	Transmittal Letter - Copy Filed
139	03-03-2009	TRLC	Transmittal Letter - Copy Filed
140	03-24-2009	DSGCKP	Designation Of Clerk's Papers Supplemental
-	03-26-2009	CLP	Respondent's Clerk's Pprs Vol Iv & Confidential Sealed Vol V
141	04-16-2009	TRLC	Transmittal Letter - Copy Filed
142	04-17-2009	TRLC	Transmittal Letter - Copy Filed
143	04-23-2009	TRLC	Transmittal Letter - Copy Filed

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Exhibit 3

3374
240
3624

WHOLE FAMILY METHOD - 3 CHILDREN

Washington State Child Support Schedule Worksheets

Proposed by Mother Father State of WA Other _____
(CSWP)

Or, Signed by the Judicial/Reviewing Officer. (CSW)

Mother Beverly Ybarra Father Manuel Ybarra

County Snohomish Superior Court/OAH Case No. 95-3-00558-8

Child Support Order Summary Report

- A. The order does does not replace a prior court or administrative order.
- B. The STANDARD CALCULATION listed on line 15e of the Worksheet for the paying parent is:
\$ _____.
- C. The TRANSFER AMOUNT ordered by the Court from the Order of Child Support is: \$ 584.60 to be paid by mother father.
- D. The Court deviated (changed) from the STANDARD CALCULATION for the following reasons:
 - Does not apply
 - Nonrecurring income Sources of income and tax planning
 - Split custody Residential schedule (including shared custody)
 - Children from other relationships for whom the parent owes support
 - High debt not voluntarily incurred and high expenses for the child(ren)
 - Other (please describe): The mother is supporting 1 other child from another relationship.
- E. Income for the Father is imputed actual income.
Income for the Mother is imputed actual income.
- F. If applicable: All health care, day care and special child rearing expenses are included in the worksheets in Part II.

Worksheets

Children and Ages: <u>Malena Ybarra 15; Connor Ybarra 14</u>		
Part I: Basic Child Support Obligation (See Instructions, Page 1)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries	\$ 5,480.00	\$ 3,333.00
b. Interest and Dividend Income	\$ -	\$ -
c. Business Income	\$ -	\$ -
d. Spousal Maintenance Received	\$ -	\$ -
e. Other Income	\$ -	\$ -

10. Combined Monthly Total Day Care and Special Expenses (add father's and mother's day care and special expenses from line 9e)	\$	
11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 8f plus line 10)	\$	
	Father	Mother
12. Each Parent's Obligation for Extraordinary Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 11)	\$	\$
Part III: Gross Child Support Obligation		
13. Gross Child Support Obligation (line 7 plus line 12)	\$ 995.40	\$ 584.60
Part IV: Child Support Credits (See Instructions, Page 3)		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	\$	\$
b. Day Care and Special Expenses Credit	\$	\$
c. Other Ordinary Expenses Credit (describe)	\$	\$
d. Total Support Credits (add lines 14a through 14c)	\$	\$
Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 4)		
15. Standard Calculation		
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	\$	\$
b. Line 13 minus line 14d, if line 4 is over \$600 (see below if appl.)	\$ 995.40	\$ 584.60
Limitation standards adjustments		
c. Amount on line 15b adjusted to meet 45% net income limitation	\$	\$
d. Amount on line 15b adjusted to meet need standard limitation	\$	\$
e. Enter the lowest amount of lines 15b, 15c or 15d	\$ 995.40	\$ 584.60
Part VI: Additional Factors for Consideration (See Instructions, Page 4)		
16. Household Assets (List the estimated present value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	\$	\$
b. Stocks and Bonds	\$	\$
c. Vehicles	\$	\$
d. Boats	\$	\$
e. Pensions/IRAs/Bank Accounts	\$	\$
f. Cash	\$	\$
g. Insurance Plans	\$	\$
h. Other (describe)	\$	\$
	\$	\$
	\$	\$

17. Household Debt (List liens against household assets, extraordinary debt.)		
	\$	\$
	\$	\$
	\$	\$
(Household Debt continued)	Father's Household	Mother's Household
	\$	\$
	\$	\$
	\$	\$
18. Other Household Income		
a. Income Of Current Spouse (if not the other parent of this action)	\$	\$
Name	\$	\$

Name		

b. Income Of Other Adults In Household		
Name	\$	\$
_____	\$	\$
Name		

c. Income Of Children (if considered extraordinary)		
Name	\$	\$
_____	\$	\$
Name		

d. Income From Child Support		
Name	\$	\$
_____	\$	\$
Name		

e. Income From Assistance Programs		
Program	\$	\$
_____	\$	\$
Program		

f. Other Income (describe)		
_____	\$	\$
_____	\$	\$

19. Non-Recurring Income (describe)	\$	\$
_____	\$	\$

20. Child Support Paid For Other Children		
Name/age:	\$	\$

Name/age:	\$	\$

Name/age:	\$	\$

21. Other Children Living In Each Household		
- (First names and ages)		
Jenna 8		

22. Other Factors For Consideration

From December 2007 - present Mother is supporting 3 children.

Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

Mother's Signature Beverly Ybarra

Father's Signature Manuel Ybarra

Date

City

Date

City

Judge/Reviewing Officer

Date

This worksheet has been certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.

WHOLE FAMILY METHOD - 4 CHILDREN

Washington State Child Support Schedule Worksheets

Proposed by Mother Father State of WA Other _____
(CSWP)

Or, Signed by the Judicial/Reviewing Officer. (CSW)

Mother Beverly Ybarra Father Manuel Ybarra

County Snohomish Superior Court/OAH Case No. 95-3-00558-8

Child Support Order Summary Report

A. The order does does not replace a prior court or administrative order.

B. The STANDARD CALCULATION listed on line 15e of the Worksheet for the paying parent is:
\$ _____

C. The TRANSFER AMOUNT ordered by the Court from the Order of Child Support is: \$ 494.32 to be paid by mother father.

D. The Court deviated (changed) from the STANDARD CALCULATION for the following reasons:
 Does not apply
 Nonrecurring income Sources of income and tax planning
 Split custody Residential schedule (including shared custody)
 Children from other relationships for whom the parent owes support
 High debt not voluntarily incurred and high expenses for the child(ren)
 Other (please describe): The mother is supporting 2 other children from another relationship.

E. Income for the Father is imputed actual income.
Income for the Mother is imputed actual income.

F. If applicable: All health care, day care and special child rearing expenses are included in the worksheets in Part II.

Worksheets

Children and Ages: Malena Ybarra 15; Connor Ybarra 14		
Part I: Basic Child Support Obligation (See Instructions, Page 1)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries	\$ 5,480.00	\$ 3,333.00
b. Interest and Dividend Income	\$ -	\$ -
c. Business Income	\$ -	\$ -
d. Spousal Maintenance Received	\$ -	\$ -
e. Other Income	\$ -	\$ -

f. Total Gross Monthly Income (add lines 1a through 1e)	\$ 5,480.00	\$ 3,333.00
2. Monthly Deductions from Gross Income	Father	Mother
a. Income Taxes (Federal and State)	\$ 425.22	\$ 357.97
b. FICA (Soc.Sec.+Medicare)/Self-Employment Taxes	\$ 419.22	\$ 254.97
c. State Industrial Insurance Deductions	\$	\$
d. Mandatory Union/Professional Dues	\$	\$
e. Pension Plan Payments	\$	\$
f. Spousal Maintenance Paid	\$	\$
g. Normal Business Expenses	\$	\$
h. Total Deductions from Gross Income (add lines 2a through 2g)	\$ 844.44	\$ 612.94
3. Monthly Net Income (line 1f minus 2h)	\$ 4,635.56	\$ 2,720.06
4. Combined Monthly Net Income (add father's and mother's monthly net incomes from line 3) (If combined monthly net income is less than \$600, skip to line 7.)		\$ 7,355.62
5. Basic Child Support Obligation (enter total amount in box →) Child #1 <u>Malena</u> \$668.00 Child Connor \$668.00 #3 _____		\$ 1,336.00
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	.630	.370
7. Each Parent's Basic Child Support Obligation (multiply each number on line 6 by line 5) (If combined net monthly income on line 4 is less than \$600, enter each parent's support obligation of \$25 per child. Number of children: <u>2</u> . Skip to line 15a and enter this amount.)	\$ 841.68	\$ 494.32
Part II: Health Care, Day Care, and Special Child Rearing Expenses (See Instructions, Page 3)		
8. Health Care Expenses		
a. Monthly Health Insurance Premiums Paid for Child(ren)	\$	\$
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	\$	\$
c. Total Monthly Health Care Expenses (line 8a plus line 8b)	\$	\$
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 8c)	\$	\$
e. Maximum Ordinary Monthly Health Care (multiply line 5 times .05)	\$ 79.00	\$
f. Extraordinary Monthly Health Care Expenses (line 8d minus line 8e., if "0" or negative, enter "0")	\$	\$
9. Day Care and Special Child Rearing Expenses		
a. Day Care Expenses	\$	\$
b. Education Expenses	\$	\$
c. Long Distance Transportation Expenses	\$	\$
d. Other Special Expenses (describe)	\$	\$
	\$	\$
e. Total Day Care and Special Expenses (add lines 9a through 9d)	\$	\$

10. Combined Monthly Total Day Care and Special Expenses (add father's and mother's day care and special expenses from line 9e)	\$	
11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 3f plus line 10)	\$	
	Father	Mother
12. Each Parent's Obligation for Extraordinary Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 11)	\$	\$
Part III: Gross Child Support Obligation		
13. Gross Child Support Obligation (line 7 plus line 12)	\$ 841.68	\$ 494.32
Part IV: Child Support Credits (See Instructions, Page 3)		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	\$	\$
b. Day Care and Special Expenses Credit	\$	\$
c. Other Ordinary Expenses Credit (describe)	\$	\$
d. Total Support Credits (add lines 14a through 14c)	\$	\$
Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 4)		
15. Standard Calculation		
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	\$	\$
b. Line 13 minus line 14d, if line 4 is over \$600 (see below if appl.)	\$ 841.68	\$ 494.32
Limitation standards adjustments		
c. Amount on line 15b adjusted to meet 45% net income limitation	\$	\$
d. Amount on line 15b adjusted to meet need standard limitation	\$	\$
e. Enter the lowest amount of lines 15b, 15c or 15d	\$ 841.68	\$ 494.32
Part VI: Additional Factors for Consideration (See Instructions, Page 4)		
16. Household Assets (List the estimated present value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	\$	\$
b. Stocks and Bonds	\$	\$
c. Vehicles	\$	\$
d. Boats	\$	\$
e. Pensions/IRAs/Bank Accounts	\$	\$
f. Cash	\$	\$
g. Insurance Plans	\$	\$
h. Other (describe)	\$	\$
	\$	\$
	\$	\$

17. Household Debt (List liens against household assets, extraordinary debt.)		
	\$	\$
	\$	\$
	\$	\$
(Household Debt continued)	Father's Household	Mother's Household
	\$	\$
	\$	\$
	\$	\$
18. Other Household Income		
a. Income Of Current Spouse (if not the other parent of this action)	\$	\$
Name	\$	\$

Name		

b. Income Of Other Adults In Household		
Name	\$	\$
_____	\$	\$
Name		

c. Income Of Children (if considered extraordinary)		
Name	\$	\$
_____	\$	\$
Name		

d. Income From Child Support		
Name	\$	\$
_____	\$	\$
Name		

e. Income From Assistance Programs		
Program	\$	\$
_____	\$	\$
Program		

f. Other Income (describe)		
_____	\$	\$
_____	\$	\$

19. Non-Recurring Income (describe)	\$	\$
_____	\$	\$

20. Child Support Paid For Other Children		
Name/age: _____	\$	\$
Name/age: _____	\$	\$
Name/age: _____	\$	\$
21. Other Children Living In Each Household		
- (First names and ages)		
Travis 14		
Jenna 8		

22. Other Factors For Consideration

From January 2007- November 2007 Mother was supporting
4 children.

Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

Mother's Signature Beverly Ybarra

Father's Signature Manuel Ybarra

Date City

Date City

Judge/Reviewing Officer

Date

This worksheet has been certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.

Exhibit 4

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH**

In re: **BEVERLY A. YBARRA**

NO. **953005588**

Petitioner,

and

MANUEL A. YBARRA

Respondent.

Attached:

Letter from Carolyn D Logsdon, Ph.D
Concerning Malena and Connor

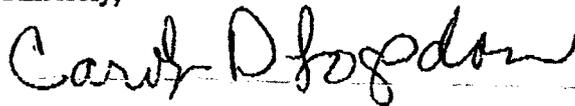


December 16, 2005

To Whom It May Concern:

I interviewed Malena Ybarra and her brother, Connor Ybarra, individually on December 15, 2005. I also met briefly with their father, Manuel Ybarra. Based on these interviews, it is my professional opinion that these children need to remain with their father, Mr. Ybarra, until such time as their mother, Beverly Ybarra Stemsgaard, can demonstrate sufficient emotional stability and good judgment to care for them adequately.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn D. Logsdon".

Carolyn D. Logsdon, Ph. D., LICSW

Pacific Northwest Treatment Services L.L.C.

**1050 140th Avenue NE, Suite G
Bellevue, Washington 98005
Phone: 425 641-1999, FAX: 425 641-4069
A State Certified Agency**

December 22, 2005

David Kennedy
Attorney at Law
3112 Rockefeller Avenue
Everett, Washington 98201

**RE: Ybarra, Beverly
DOB: August 13, 1963**

**DIAGNOSTIC EVALUATION AND TREATMENT RECOMMENDATIONS
EARLY INTERVENTION TO PREVENT SUBSTANCE ABUSE/DEPENDENCE
(NSP)**

Dear Mr. Kennedy,

Ms. Beverly Ybarra was assessed in a face to face oral testing format at Pacific Northwest on December 21, 2005. The purpose of this assessment was to evaluate her involvement with alcohol and other drugs and to determine treatment recommendations, if appropriate. Ms. Ybarra made the appointment after being accused of having a problem with alcohol by her husband during a custody dispute.

This is a final assessment based on the information provided by the client and the documentation of her criminal history.

In this evaluation, Ms. Ybarra was given a number of alcohol screening tests including the MAST and the DAST. Test scores from these instruments indicate whether or not there is a problem and the significance of the problem. She also completed an alcohol/drug use history and underwent a diagnostic alcohol/drug interview, conducted by this examiner.

SOCIAL/ECONOMIC/EDUCATIONAL BACKGROUND:

Ms. Ybarra is a forty-two year old married female who lives with her husband and children in Sultan, Washington. She and her sister were raised in Monroe, Washington by her mother and she describes her relationship with her family as "close." She has earned her high school diploma and is currently employed full time with the Sultan School District as a bus driver.

**Pacific Northwest
December 22, 2005**

RE: Ybarra, Beverly

ALCOHOL/DRUG USE HISTORY:

Ms. Ybarra states that she first drank around age nineteen and that between the ages of twenty-three and thirty is when she feels she consumed the most alcohol. She further states that she has never used drugs. Currently she states that she is drinking "one to three times a week," consuming one to three glasses of wine on each occasion. At the time of this report, she stated that she could not recall her last use of alcohol.

ALCOHOL/ DRUG TREATMENT HISTORY:

Ms. Ybarra states that she has never attended formal education concerning her use of alcohol and/or drugs.

LEGAL HISTORY:

Alcohol/Drug-Related Charges:

- None

Ms. Ybarra provided this examiner with a driver's abstract for consideration.

CASE HISTORY:

Ms. Ybarra reports that she has no prior case history. Ms. Ybarra's criminal history was obtained from JIS-Link on December 22, 2005.

CLIENT'S STATEMENT REGARDING HER ALCOHOL/DRUG USE:

"I feel that I am an occasional drinker."

ASSESSMENT RESULTS:

Ms. Ybarra's test scores on the MAST and DAST, in conjunction with information obtained from her alcohol/drug use history and diagnostic interview, indicate that Ms. Ybarra is not an alcoholic nor is she abusing alcohol or drugs.

**Pacific Northwest
December 22, 2005**

RE: Ybarra, Beverly

CONCLUSION:

I feel that Ms. Ybarra is not in need of any education or treatment at this time. I feel that her casual drinking is not a problem and is not a danger or threat to her children at this time.

If you have any questions pertaining to the report, please call me at (425) 641-1999.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Merriwether". The signature is fluid and cursive, with the first name "Glen" and last name "Merriwether" clearly distinguishable.

Glen Merriwether, MA, LMHC, CDP

Pacific Northwest Treatment Services L.L.C.

1050 140th Avenue NE, Suite G

Bellevue, Washington 98005

Phone: 425 641-1999, FAX: 425 641-4069

A State Certified Agency

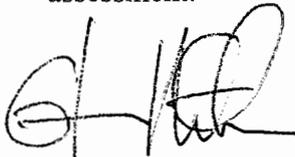
January 20th, 2007

To Whom It May Concern:

On 1/20/07 I did a mental health evaluation of Ms. Ybarra, and the results of that evaluation indicate that she is free of any problems related to abnormal depression or anxiety. In fact, Ms. Ybarra gave no evidence of suffering from any mental disorders or mental health problems what-so-ever.

Ms. Ybarra was very co-operative and forthcoming in the evaluation process. She completed the Beck Depression Inventory and shared extensive data regarding her history and acknowledged that she had been situation ally depressed on one occasion, and she wanted to voluntarily undergo this evaluation to further substantiate her normalcy.

The mental health report Ms. Ybarra underwent on 10/06 stated that Ms. Ybarra clearly has no significant mental health problems or disorders. My evaluation concurs with that assessment.



Glen Merriwether
State Licensed Mental Counselor

Fountaingate Psychological and Family Services
1106 Columbia Ave Ste 100
Marysville, WA 98270
360-653-0374

October 10, 2006

To Whom It May Concern:

This letter is intended to express my professional assessment of the mental health status of Beverly Ybarra, performed on 10-10-06. This assessment is based upon the self report of the client, with no collaborative material presented.

Beverly appeared well groomed and affect appeared normal. She was oriented as to time, date, and location. Beverly's sleep, appetite, mood, motivation, and fatigue levels have returned to within normal limits. Beverly denies the presence of any suicidal ideation. Beverly also states that she is no longer taking anti-depressant medication.

According to DSM IV classifications, Beverly no longer meets the criteria for a Major Depressive Disorder.

Sincerely,



Kathie Stratmeyer, LMFT

Pacific Northwest Treatment Services L.L.C.
1050 140th Avenue NE, Suite G
Bellevue, Washington 98005
Phone: 425 641-1999, FAX: 425 641-4069
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Pacific Northwest
December 22, 2005

RE: Ybarra, Beverly

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December 22, 2005**

RE: Ybarra, Beverly

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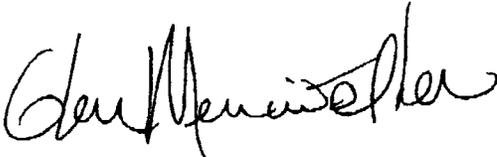
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