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STATE OF WASHINGTON

NO. 63162-4-I
COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

In re the Marriage of:
KAHLIN JEFFERSON (MISH),
Respondent/Cross Appellant,

v.

PETER B. JEFFERSON,
Appellant.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
(The Honorable Monica J. Benton)

BRIEF OF APPELLANT

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I. INTRODUCTION

For over five years, Luke Jefferson has been permitted to see his father, Peter Jefferson, only three to six hours every other week, and then only in the presence of a female visitation supervisor. Supervised visitation started when Luke was three, after more than two years of no contact with Peter. Now eight, Luke still cannot have a private, in-person conversation with his father or spend the night in his bedroom at his father's house. Luke and Peter cannot go camping, take a trip together (even to visit family), or do many of the other things a father and an eight-year-old boy might do together. They do nothing apart from the watchful eyes of the supervisor, who documents each visit sparing no detail.

Luke's mother (Peter's former wife), Kahlin Jefferson (n/k/a Kahlin Mish), the victim of a serious incident of domestic violence by Peter when Luke was an infant, who understandably suffers the continuing effects of that incident, continues to resist normalized relations between Peter and Luke. But the Parenting Act, chapter 26.09 RCW, recognizes "the fundamental importance of the parent-child relationship to the welfare of the child" and states that "the relationship between the child and *each* parent should be fostered unless inconsistent with the child's best interests." RCW 26.09.002 (emphasis added). And restrictions on

the parent-child relationship must be “reasonably calculated to protect the child.” RCW 26.09.191(2)(m)(i).

Consistent with the Parenting Act, the restrictions imposed upon the father-son relationship in the Parenting Plan for Luke were never meant to be permanent. A review was built into the Parenting Plan, and supervised visitation was permitted following Peter’s successful completion of domestic violence treatment. Later, the parties stipulated to an order, entered by the trial court in March 2007 (“Review Order,” App. A), that amended the Parenting Plan (App. B) to provide for a review of Peter’s visitation privileges if the case manager so recommended, waiving the strict requirements for modification in RCW 26.09.260 and the threshold showing of adequate cause under RCW 26.09.270.

Peter filed a Petition (App. C) seeking review based on the testimony of the case manager and others (including his adult daughters and first wife) that phasing out supervision was long overdue. But, contrary to the Review Order, the trial court applied the requirements for modification under RCW 26.09.260—including a substantial change in circumstances and a detrimental present environment—and dismissed the Petition at the close of Peter’s case-in-chief. (App. D.) Compounding the error, after dismissing the Petition, the trial court modified the Parenting

Plan and the Review Order *sua sponte*, which it lacked authority to do in the absence of a live petition.

This Court's decisions, including *In re Marriage of Possinger*¹ and *In re Marriage of Adler*,² recognize that a parenting plan or order may provide, as it did here, for a review in which the statutory requirements for modification are waived. The trial court erred in applying the requirements of a substantial change in circumstances and detrimental present environment in RCW 26.09.260(1) and (2). The parties necessarily waived those requirements in agreeing to provide for a review upon the case manager's recommendation and to waive the threshold requirement of adequate cause as provided in the Review Order. Under the Review Order, as it would be applied under *Possinger* and *Adler*, the Petition should have been governed by the standards for initial parenting plans in RCW 26.09.187, including whether supervision was "reasonably calculated to protect the child" under RCW 26.09.191(2)(m)(i), and recognizing that "the relationship between the parent and the child and each parent should be fostered unless inconsistent with the child's best interests" as stated in RCW 26.09.002. The order of dismissal should be

¹ 105 Wn. App. 326, 336-37, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001).

² 131 Wn. App. 717, 725, 129 P.3d 293 (2006), *review denied*, 158 Wn.2d 1026 (2007).

vacated in its entirety so that Peter may file a new petition pursuant to the Review Order and the case manager's recommendation, to be considered under the appropriate standards without further delay.³

In addition, even if dismissal was proper, the trial court lacked authority under *In re Marriage of Shryock*⁴ and *In re Marriage of Watson*⁵ to modify the Parenting Plan *sua sponte*. The portion of the trial court's order that modifies the Parenting Plan and Review Order should be vacated, again so that Peter may file a new petition pursuant to the Review Order and the case manager's recommendation.

II. ASSIGNMENTS OF ERROR & ISSUES ON APPEAL

A. Assignments of Error.

1. The trial court erred in dismissing the Petition.
2. The trial court erred in modifying the Parenting Plan and the Review Order after dismissing the Petition.
3. The trial court erred in denying reconsideration.

³ A motion to accelerate review is being filed contemporaneously with this brief.

⁴ 76 Wn. App. 848, 851-52, 888 P.2d 750 (1995).

⁵ 132 Wn. App. 222, 238-39, 130 P.3d 915 (2006).

B. Issues on Appeal.

1. Did the trial court err applying the strict standards for modification of parenting plans under RCW 26.09.260, under which it dismissed the Petition, including a substantial change in circumstances and detrimental present environment, where the March 2007 Review Order provided for a review upon the case manager's recommendation and for waiver of the adequate cause threshold, and where *Possinger* and *Adler* hold that such a review is governed by the standards for initial parenting plans in RCW 26.09.187? (Assignment of error no. 1.)

2. Did the trial court err in modifying the Parenting Plan and the Review Order after dismissing the Petition where *Shryock* and *Watson* hold that the trial court lacks authority to modify a parenting plan after dismissing a petition for modification? (Assignment of error no. 2.)

3. Did the trial court err in denying reconsideration of its decision committing the above errors? (Assignment of error no. 3.)

III. STATEMENT OF THE CASE

A. Background and Original Parenting Plan.

Luke Jefferson is now eight years old. He likes to play with Legos, watch movies, and play at the lake with his dad, Peter Jefferson. *See* Exh. 15 (Indaba Center Visitation Reports, 2004-2008). Luke would

like to spend a lot more time with Peter. (*See, e.g.*, Exh. 15, July 2007 visitation report at 3-4.)

Peter⁶ is a father of three, a grandfather, and a senior master captain for the Washington State Ferries, his employer for more than 29 years. Peter married his first wife, Peggy, in 1982. RP II 7. They divorced in 1987 when their daughters, Chelsea and Larkin, were three and four years old. *Id.* Peter and Peggy remained friends. RP I 58. According to Peggy, there was no physical abuse in the relationship. RP I 11, 163.

Peter was involved in Chelsea's and Larkin's childhoods without restrictions or supervision. RP I 58. He saw them "frequently"—about two days during the week plus hiking trips and other activities on weekends. RP II 8, 163. Peggy testified that Peter had "a wonderful relationship" with his daughters:

I think Peter was a very good dad. ... [Chelsea and Larkin] were able to experience a lot of things because he was their dad and he was very interested in showing them new things, different cultures, people, the great outdoors, those types of things. So I think it was a wonderful relationship.

⁶ The parties' first names are used throughout this brief for clarity.

RP II 1-8. Peter, Chelsea, and Larkin took two trips overseas while the children were minors, spending three weeks in Great Britain and three weeks in France and Italy. RP I 59, RP II 8. They also took shorter trips to Maine to visit Peter's family and to Mexico. RP I 59, RP II 8. Chelsea describes Peter as a "positive influence" and a "very interested parent" who "liked to show us new things and [was] very excited about being involved in our learning experience." Exh. 1 at 23. She stated:

I appreciated that I had a parent who was so active. ... I use things Dad taught me every single day. I try to be healthy and active, [and] I'm interested in different cultures. He was an awesome influence in my life.

Id. Larkin similarly describes Peter as "adventurous," "physically active," and "fun." RP I 163. Peter sees his one-year-old grandson, Larkin's son Xavier, at least once or twice a week and babysits him occasionally. RP I 62-63, RP II 11-12. Larkin has no reservations about Peter caring for Xavier without any restrictions or supervision. RP I 166.

Peter married his second wife, Kahlin, in 2000. They had one child, Luke, in November 2000. Peter and Kahlin separated following a serious domestic violence incident in August 2001 in which Peter caused traumatic injury to Kahlin's hand and eye. Kahlin subsequently filed for divorce. Luke was nine months old. A no-contact order cut off contact

with Kahlin and Luke. Exh. 108. Peter pleaded guilty to third-degree assault and unlawful imprisonment, Exh. 107, and served 60 days in jail. Exh. 107. Peter was ordered to complete a state-certified domestic violence treatment program with Dr. Roland Maiuro. *Id.* According to Dr. Frederick Wise, a psychiatrist and professor who evaluated Peter before sentencing, Peter had “no history of similar behavior” and exhibited anger-based violence only with Kahlin in the context of a marriage described as “very dysfunctional.” Exh. 20.⁷

Dr. Teri Hastings, a licensed clinical psychologist focusing on domestic violence issues, completed a parenting evaluation in June 2003. Exh. 102. Her recommendations included (1) that a guardian ad litem be appointed for Luke, (2) that Peter complete Dr. Maiuro’s program, (3) that Peter continue to have no contact with Luke until the guardian ad litem, with significant input from Dr. Maiuro, determined that supervised visitation was appropriate, (4) that the guardian ad litem be given decision-making authority regarding Peter’s access to Luke, including

⁷ *See also* CP 163:

“While Mr. Jefferson does have a long-standing pattern of conflict avoidance, passivity and episodic anger outbursts, his history of frank physical violence appears to have occurred within his relationship and marriage to Ms. Mish. To my knowledge, Mr. Jefferson has never physically assaulted any other person including his first wife, daughters or other women he has dated.”

supervision and visitation issues, and (5) that the guardian ad litem should make recommendations regarding additional therapy for Peter after completion of Dr. Maiuro's program. *Id.* at 14-15.

The Parenting Plan, entered in October 2003, incorporated each of Dr. Hastings' recommendations and appointed her as the initial guardian ad litem. CP 4-5.

B. Peter Completes Treatment, Begins Therapy and Supervised Visitation with Luke.

Peter "successfully completed all aspects" of Dr. Maiuro's program, Exh. 23, and supervised visitation was approved shortly thereafter. *See* Exh. 15 (Indaba Center Visitation Reports, 2004-2008). Karen Ballantyne was the initial visitation supervisor, then Cathy Eisen beginning in December 2004. *Id.* Visitation generally was on alternate Saturdays, plus certain holidays. Exh. 11. Peter had to reduce visitation after 2005 due to the expense. RP I 73. Peter must pay the supervisor about \$40 per hour and had spent more than \$36,000 on supervisor fees alone by February 2009. RP I 85, RP II 26-27. Peter and Luke had approximately 166 supervised visits by then. RP I 12.

After Peter completed his treatment with Dr. Maiuro, Dr. Hastings, the guardian ad litem, recommended that Peter begin individual therapy

with Dr. Timothy Cahn, a psychologist specializing in domestic violence issues, CP 161. Peter had more than 50 sessions with Dr. Cahn starting in October 2004 and continues to see him. *Id.*; RP II 145.

Dr. Hastings resigned for personal reasons in October 2005. Exh. 24 (October 31, 2005, e-mails from Dr. Hastings). She had wanted to move toward unsupervised visitation before her resignation but held off doing so due to resistance from Kahlin. *See* CP 164.

C. Peter Seeks Review of the Parenting Plan in 2005 After It Is Recommended that Supervised Visitation Be Phased Out.

The 2003 Parenting Plan provided for a review to be governed by RCW 26.09.187: “Anytime after six months from the entry of this Order, either party may seek a review of the Parenting Plan pursuant to RCW 26.09.187.” App. B, CP 9. Peter sought review of the Parenting Plan in November 2005. CP 153-59.

In December 2005, Dr. Cahn submitted a declaration stating that phasing out supervision was “long overdue.” CP 165. He stated that Peter was “neither an imminent or likely risk of physical violence towards himself, his son, or anyone else.” CP 163. He recommended that supervision be phased out starting “immediately” over the course of four to six weeks and that further normalization of the father-son relationship

“should be instituted in a timely manner.” CP 161, 165-66. Dr. Cahn believed that supervision had continued as a result of Kahlin’s resistance, probably due to post-traumatic stress disorder. CP 164-65; *see also* RP II 134 (“Dr. Hastings told me that she believed [Kahlin] had the worst case of PTSD she had ever seen.”). Dr. Cahn opined that Peter was a “very low risk for physical violence.” CP 164.

D. The Parties Agree to a Stipulated Review Order Providing for Further Review of the Parenting Plan, Waiving the Statutory Requirements for Modification.

In August 2006, after the replacement guardian ad litem, Rosie Anderson, issued a report finding that there had “not been a substantial change in circumstances” and recommending that the original Parenting Plan remain in effect, CP 194-96, the parties entered into a settlement agreement pursuant to CR 2A resolving the November 2005 Petition. CP 220-30. The parties agreed that visits would remain supervised for the time being but that, after October 1, 2007, either party could petition the court for a review of Peter’s visitation privileges if either the case manager or the guardian ad litem recommended a review. CP 223. The parties agreed to waive the threshold showing of adequate cause for modification under RCW 26.09.270. CP 223. They further agreed to amend the

Parenting Plan to take away the guardian ad litem's decision-making authority and to appoint Don Layton as a case manager. CP 225.

A dispute arose regarding the terms of the proposed order pursuant to the CR 2A agreement. It was resolved by arbitration pursuant to the agreement. *See* CP 197-98, 199-210. The trial court found that the dispute was caused by Kahlin's attorney and that the basis was "disingenuous." CP 22-25. The court imposed \$3,250 in sanctions against Kahlin's attorney. *Id.* Kahlin had two subsequent attorneys in the trial court.

On March 1, 2007, the Review Order (titled "Order re Review/Adjustment of Custody Decree/Parenting Plan/Residential Schedule") finally was entered pursuant to the CR 2A agreement. App. A, CP 11-16. The Review Order recognized that "the parenting plan provided for a review" and that no substantial change in circumstances was necessary to modify the Parenting Plan. App. A, CP 13. The Review Order implemented the CR 2A agreement's provision for further review:

After October 1, 2007 either party shall have the right to petition the Court to modify the father's visitation schedule, if either the Case Manager or the Guardian ad Litem so recommends. In this event, the parties agree to waive a finding of adequate cause and a new parenting evaluator will be appointed by the Court at that time.

App. A, CP 14.

E. Peter Files a Petition Seeking Review of the Parenting Plan pursuant to the Review Order and the Case Manager's Recommendation that Supervision Be Phased Out.

In September 2007, Mr. Layton, the case manager, recommended a review pursuant to the Review Order. CP 269-73. Layton described visitation with Peter as "essential" to Luke. Exh. 124. He recommended "phasing out professional supervision, then all supervision, over the next six to eight months," and stated, "I do not believe it is realistic for Kahlin to expect the courts to indefinitely support boundaries between Peter and herself that cost Luke the opportunity to have a normal relationship with his father[.]" CP 272, 297. He testified that Kahlin has "every right to take" a protective "victim stance," but that stance "significantly affects Luke's ability to have a normalized relationship with his father." RP I 122-23.

In October 2007, based on Mr. Layton's recommendation, Peter filed a Petition for a review pursuant to the Review Order. CP/App. C 30-

33. Peter sought to phase out supervision, increase visitation, and add residential time and overnights with Luke. App. C, CP 38-41. Although the Petition was styled as one for modification under RCW 26.09.260 due to the required standard form pleadings in family law cases, the pleading stated plainly that the Review Order and Mr. Layton's recommendation provided sufficient grounds for review:

The requested modification or adjustment of the custody decree/parenting plan/residential schedule is based upon the following substantial change in circumstance [sic]:

The Order Re Adjustment of Parenting Plan entered on March 1, 2007 permits the father to file a petition for modification of the parenting plan under certain circumstances, and for a waiver of adequate cause, and thus the pre-conditions for this have been met.

App. C, CP 32-33. In November 2007, a commissioner found that the statutory threshold requirement of adequate cause had been waived per the Review Order. CP 282-85. The trial court appointed a licensed mental health counselor, Kelly Shanks, M.Ed., as a parenting evaluator to investigate and make recommendations. CP 284, 286-87.

F. The Parenting Evaluator Recommends a "Last Chance" Plan to Phase Out Supervision, Subject to Pre-Conditions Exceeding Statutory Standards.

Ms. Shanks completed her report a long eleven months later, in December 2008. Exh. 1. She attributed some of the delay to Kahlin's

being “not always quick to return phone calls.” *Id.* at 32. She noted that Kahlin had engaged in some “questionable actions” in attempting to obstruct Peter’s efforts.⁸

As for Peter, Ms. Shanks noted that he had not been involved in further incidents of violence, that he had positive relationships with his daughters and ex-wife, that others noticed positive changes following his treatment, that his employment continued to be stable with his supervisor reporting no concerns, that his relationship with Luke was “largely successful in the supervised setting,” and that Dr. Cahn advocated for unsupervised contact. Exh. 1 at 28-29. She stated: “[T]he majority of Peter’s interaction with Luke is positive.” Exh. 1 at 29. She observed that “supervised contact creates an artificial environment that impinges on a normal parenting relationship.” Exh. 1 at 33.

Nevertheless, despite the positive findings regarding Peter’s current status, Ms. Shanks focused on Peter’s past actions in his relationship with Kahlin in concluding that “Peter’s prior acts continue to

⁸ The “questionable actions” included an attempt to discredit Dr. Cahn by presenting evidence of past licensing complaints against him, all of which had been determined to be unfounded. Exh. 1 at 31-32. Ms. Shanks described Kahlin’s actions as “at best ill informed and at worst malicious.” *Id.* at 32. Shanks also noted that Kahlin “appears to exaggerate small past incidents and jumps to conclusions” and that Kahlin may even have lied about her work schedule to prevent Peter and Luke from having visitation on July 4, 2008. *Id.*

present some degree of risk to Luke” (a conclusion unsupported by any present factual basis). Exh. 1 at 28. Ms. Shanks recommended a plan to phase out supervision, but only if Peter met several “behavioral goals” within six to nine months:

- Peter needs to be able to articulate an empathetic understanding of the effects of his assault on Kahlin and Luke.^[9]
- Peter needs to be able to describe and discuss the domestic violence without blaming, justifying or minimizing his behavior or effects of that behavior.
- Peter needs to demonstrate that he is capable of greater self-reflection and insight regarding another person’s perspective. (An example would be respecting Luke’s perspective on kisses from Peter, which Peter would demonstrate by not kissing Luke or questioning Luke about whether it was okay to kiss him).
- Peter needs to consistently demonstrate respect for the Luke’s [sic] boundaries.
- Peter needs to demonstrate an effective way to manage Luke’s occasional misbehavior without physical force or intervention.
- Peter needs to be able to demonstrate that his anxiety and depression do not interfere with his ability to respond appropriately to Luke during a visit.

Exh. 1 at 35. Ms. Shanks recommended that, to achieve these goals, Peter should engage in six to nine months of therapy regarding “parent

⁹ Luke was not a target of the domestic violence incident nor was he physically injured.

coaching” and should continue therapy with Dr. Cahn or another psychologist. *Id.* She recommended that the guardian ad litem be given authority to “very gradually remove the supervision restriction” if the behavioral goals were met. *Id.* She further recommended that, if the goals were not met within six to nine months, supervision should remain in place indefinitely with no provision for review. *Id.* at 34.

Although Kahlin did not file a cross-petition, she proposed a new Parenting Plan that largely incorporated Ms. Shanks’ recommendations, including that the guardian ad litem have authority to phase out supervision if the goals identified by Ms. Shanks were met within six to nine months. Exh. 133 (Proposed Parenting Plan at 5-6).

G. The Testimony at Trial Uniformly Supports a Plan for Phasing Out Supervision.

In addition to Peter, Peggy, and Larkin Jefferson, the witnesses at trial included Mr. Layton, Dr. Cahn, and Dr. Hastings, each of whom testified in support of a plan to phase out supervision and increase visitation.

Mr. Layton, the case manager, testified that, in cases where supervision is necessary, it should only be used for a short time as necessary and there should be a provision for “concrete steps” toward

normalization. RP I 131. He testified that an order providing for permanent supervision would be “a terrible disservice” to Luke—“not just extreme but also insensitive to Luke.” RP I 125, 134. He further testified: “I think that Luke deserves to entertain the hope that he is going to have a normal relationship with his father at some point, and I think it’s wrong to make that hope not possible.” RP I 160.

Dr. Cahn, Peter’s therapist, testified that supervision had been required in this case for an “extraordinarily long time” and stated, “I don’t believe [Peter] is a danger to himself or anybody else.” RP II 102, 103. Dr. Cahn opined that the “behavioral goals” recommended by Ms. Shanks would be “good global goals” but were “almost idealistic” and not appropriate preconditions for unsupervised visitation between Peter and Luke, mainly because failure to meet the goals would not indicate a risk to Luke. RP II 106-09, 113-120, and it is the risk to Luke that is the statutory standard the court must keep in mind. For instance, Dr. Cahn observed that difficulty with empathy, a tendency for denial, and less-than-perfect parenting skills, and the other issues raised by Ms. Shanks were not “risk factors” for violence against Luke. *Id.* Dr. Cahn recommended “normalization of the ... father/son relationship given that there is no danger to the son or to the ex-wife through that.” RP II 125.

Dr. Hastings, the former guardian ad litem, testified, “[Peter] has never really posed a strong risk to the child.” RP III 16. She stated that, in 2005, she believed “at that point there were no solid high-risk factors that would warrant continuing with supervised visitation,” and she “had hoped that [supervision] would have stopped by now.” RP III 14. She stated, “I still believe that it’s time to move toward unsupervised visitation, ... I’ve seen so many cases that are far worse than this [where supervision] would have been dropped some time ago.” RP III 15; *see also* RP III 61 (“I think he has made enough progress to where he is—should be able to phase into unsupervised visits with his child.”). Dr. Hastings disagreed with establishing the goals identified by Ms. Shanks as preconditions and could see no benefit in continued supervision:

My concern is—with these recommendations is that the Court has been in this family’s life since 2001. So we’re going on eight years. For a case that is—as far as child abuse and child issues is very low risk, especially compared to the numerous cases that I’ve seen over the years, that typically within two to three years there is some kind of reunification and they—the focus is on getting the court out of people’s life [sic] and moving on. To have—so to have more of the same, I can’t see what the benefit would be.

RP III 22. In response to some of the specific criticisms of Ms. Shanks and Ms. Eisen regarding Peter’s parenting style during supervised visitation with Luke, Dr. Hastings observed,

[I]t's not optimal parenting but, again, it's not—that alone does not mean that he should be supervised around him.

...

[S]ome ineffective parenting practices ... are within normal limits. Parents do that.

RP III 27.

H. The Trial Court Dismisses the Petition for Failing to Meet the Statutory Requirements for a Major Modification (Contrary to the Review Order), yet Proceeds to Modify the Parenting Plan.

After opening statements, during which Kahlin's attorney argued that the requirements of RCW 26.09.260(1) and (2) must be met, the trial court heard argument from both sides regarding that issue, then decided "to listen to the testimony in the context of the 260 subsections 1 and 2 and the previous modification order." RP III 108-09.

After Peter rested his case, Kahlin moved to dismiss on the ground that the requirements for a major modification under RCW 26.09.260(1) and (2) were not met. Peter's attorney argued that those requirements were inapplicable due to the Review Order and Mr. Layton's recommendation pursuant to that Order. RP III 100-101; *see also* RP I 43 ("We stipulated around that requirement that we would even have to comply with 26.09.260.").

The trial court granted Kahlin's motion, stating orally, "I'm really not satisfied that there has been a showing that the present environment is detrimental or that ... unsupervised visitation is advantageous to the child." RP III 108-09. In its written order, the court stated that dismissal was granted because "[t]he requirements of RCW 26.09.260 (1) and/or (2) were not met to sustain a major modification." App. D, CP 292.

Despite having dismissed the Petition, the trial court decided to "sua sponte" make adjustments to the Parenting Plan. RP III 111. The court did not provide for phasing out supervision but ordered that Peter must continue therapy with Dr. Cahn and "follow all recommendations with the following goals for possible reunification." App. D, CP 292. Despite the reference to "the following goals," no goals were specified. *See id.* The court ordered that Don Layton be removed as case manager "in favor of a long-term GAL," who was to provide bi-annual reports to the court. App. D, CP 292. Rather than provide for further review of the Parenting Plan, the court reinstated the adequate cause requirement and retained jurisdiction over any future petition: "No other modifications shall be brought without first a hearing on 'adequate cause' as defined in the statute [sic] RCW 26.09.270 and case law to be scheduled before the undersigned judge." App. D, CP 292.

Peter filed a motion for reconsideration, which was denied. In its order denying reconsideration, the Court stated that the Petition had been dismissed for “failing to meet the adequate cause threshold.” CP 292-93. Peter then filed a Notice of Appeal. CP 299-308. Kahlin’s request for trial court attorney’s fees and advance attorney’s fees on appeal was denied. CP 309-10. Kahlin then filed a Notice of Cross-Appeal. CP 311-15.

IV. ARGUMENT

A. Summary of Argument.

Luke Jefferson, at this critical time in his childhood, deserves an opportunity to develop a normal relationship with his father in which he can view Peter as the trustworthy role model he is. Although supervision and restriction of residential time were reasonable precautions initially following the 2001 domestic violence incident involving Kahlin, it was never contemplated that those parenting restrictions would be permanent.

A major purpose of the Review Order was to provide for a review for the purpose of revisiting the harsh restrictions placed upon Peter and Luke *without* having to satisfy the strict requirements for modification under RCW 26.09.260. Consistent with *Possinger* and *Adler*, review was to be governed by the standards for initial parenting plans in RCW

26.09.187, which refers to the standard in RCW 26.09.191(2)(m)(i) for imposing conditions such as supervised contact or completion of counseling or treatment: the limitations must be “*reasonably calculated to protect the child.*” The trial court thus erred in dismissing Peter’s Petition for failing to meet the requirements of RCW 26.09.260. Even if the dismissal was proper, the trial court lacked authority under *Shryock* and *Watson* to modify the Parenting Plan once it dismissed the Petition. Because Kahlin did not cross-petition for modification, there was no basis for the trial court’s action, and the court’s modifications of the Parenting Plan and the Review Order should be vacated. In any event, Peter should be permitted to file a new petition pursuant to the Review Order and Don Layton’s recommendation, to be governed by the standards in RCW 26.09.187 and .191.

B. Standard of Review.

Although the abuse of discretion standard applies to many of the issues often raised in family law cases, all the issues raised in this appeal are reviewable under the de novo standard. First, the trial court’s interpretation of a custody decree or parenting plan and interpretation of a statute are reviewed de novo. *In re Parentage of Smith-Bartlett*, 95 Wn. App. 633, 636, 976 P.2d 173 (1999). Second, whether the trial court acted

without a legal basis or authority to act is a question of law reviewed de novo. *Id.* (holding that the trial court exceeded its statutory authority in ordering binding arbitration). Third, whether the trial court applied the correct legal standard is a question of law reviewed de novo. *Rasmussen v. Bendotti*, 107 Wn. App. 947, 954, 29 P.3d 56 (2001).

Even if the abuse of discretion standard were applicable to the issues raised in this appeal, it is an abuse of discretion to apply an incorrect legal standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).¹⁰

C. The Trial Court Erred in Applying the Requirements of RCW 26.09.260 Where the Review Order Provided for a Review upon the Case Manager’s Recommendation and for Waiver of Adequate Cause.

1. The Requirements for Major Modification in RCW 26.09.260(1) and (2) Are Inapplicable.

The Parenting Act, chapter 26.09 RCW, establishes as a policy that the state “recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the

¹⁰ “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.”

child's best interests." RCW 26.09.002. The Act sets forth standards for parenting plans consistent with the best interests of the child standard in RCW 26.09.187.

Modification of a final parenting plan generally is governed by RCW 26.09.260, which authorizes modification only if the evidence establishes, among other things, a substantial change in circumstances, even if the modification is minor. *See In re Marriage of Holmes*, 128 Wn. App. 727, 734, 117 P.3d 370 (2005). A threshold showing of adequate cause for a petition for modification, determined at a preliminary hearing, is ordinarily required under RCW 26.09.270. Notwithstanding the statutory requirements, a trial court has authority under its broad power to protect the best interests of the child to specify the terms under which a parenting plan may be modified and to waive the statutory requirements. *See In re Marriage of Adler*, 131 Wn. App. 717, 725, 129 P.3d 293 (2006), *review denied*, 158 Wn.2d 1026 (2007); *In re Marriage of Possinger*, 105 Wn. App. 326, 336-37, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001). *Accord In re Marriage of Little*, 96 Wn.2d 183, 194, 634 P.2d 498 (1981). For instance, the trial court may provide for a review under the criteria for initial parenting plans in RCW 26.09.187, rather than the requirements for modification under RCW 26.09.260. *See*

Possinger, 105 Wn. App. at 337. Furthermore, parties may stipulate to waive the threshold requirement of adequate cause, which necessarily means that the requirements of RCW 26.09.260(1) and (2) applied here—substantial change in circumstances and detrimental present environment—are also waived because they underlie a determination of adequate cause. *See Adler*, 131 Wn. App. at 727.

In *Possinger*, the parties' only child, Anna, was five years old and in preschool at the time of dissolution. 105 Wn. App. at 328. The mother cared for Anna during the day while the father, a full-time law student, cared for Anna in the evenings during the mother's working hours. *Id.* at 328-29. For the future, however, the mother wanted to switch to a day shift, and the father's plans depended on whether he succeeded in law school. *Id.* Recognizing that the parents' lives were in flux, the trial court entered a parenting plan ("permanent" according to the standard forms) that designated the father as the primary residential parent but provided for a review to determine the final residential schedule upon Anna's entry to elementary school. *Id.* at 329-30. The following year, on review pursuant to the parenting plan and the criteria of RCW 26.09.187, the trial court designated the mother as the primary residential parent. *Id.* at 331. The father appealed, and this Court affirmed.

Judge Kennedy observed that the common law standard of best interests of the child continues to be the standard by which parenting responsibilities are determined under the Parenting Act and is built into the statute. *Possinger*, 105 Wn. App. at 334. Recognizing that the parties' circumstances are not always sufficiently certain at the time of dissolution that a permanent parenting plan in the child's best interests can be devised, this Court held that the Parenting Act does not preclude deferral of permanent decision making regarding parenting issues where deferral is in the child's best interests. *Id.* at 335-37. The Court held that, in a review under a parenting plan, the trial court properly considers the criteria for initial parenting plans in RCW 26.09.187 rather than the stricter standards for modification in RCW 26.09.260. *Id.* at 337.

In *Adler*, this Court applied the principles adopted in *Possinger*. The trial court had entered a parenting plan that provided for equal time with each parent but provided that, "[a]t the request of either party by 12-31-01, as recommended by Dr. Stuart Greenberg, the residential schedule and decision[-]making provisions herein shall be subject to review without the statutorily required showing of a change in circumstances." *Adler*, 131 Wn. App. at 721. The father petitioned for a review pursuant to the parenting plan, and the parties stipulated to adequate cause. *Id.* at 720.

The trial court found that the parenting plan could be modified “because the parties had provided for a review of the residential provisions and the modification was in the best interests of the children.” *Id.* at 721. The court modified the plan to provide for less residential time with the mother, among other things. *Id.* The mother appealed, and this Court affirmed.

This Court recognized that parties are free to stipulate to waiver of the threshold requirement of adequate cause to seek modification or review. *Adler*, 131 Wn. App. a 724. And, citing *Possinger*, the Court held that the trial court “has the authority to build in a review of the terms of the parenting plan” and that “in such a review the court may properly apply the criteria in RCW 26.09.187 rather than treating the review as a modification.” *Id.* at 725. The Court ruled that the trial court was not required to find that the current plan was detrimental to the children because the parties had stipulated to adequate cause. *Id.* at 727. The court recognized that “a reservation of review is different from a modification, is not based on changed circumstances, and need not be subjected to a threshold determination.” *Id.* at 726.

Here, as in *Possinger* and *Adler*, the provision for a review and waiver of an adequate cause determination established that a showing of a

substantial change in circumstances and detrimental present environment under RCW 26.09.260(1) and (2) was not required. That conclusion is even more strongly supported here, where review was to be premised upon the case manager's recommendation. Mr. Layton's recommendation itself could never be a substantial change in circumstances, much less support a showing that the environment provided by Kahlin had become detrimental to Luke. Yet the parties agreed to (and the trial court ordered) a provision for review upon that recommendation and waived a showing of adequate cause.

Instead of RCW 26.09.260, review was to be governed by the standards for initial parenting plans in RCW 26.09.187. The latter section references RCW 26.09.191,¹¹ which provides for limitation of residential time in certain circumstances, including where there is "a history of acts of domestic violence." RCW 26.09.191(2)(a). The statute sets forth the following standard for imposing restrictions including "[s]upervised contact between the child and the parent or completion of relevant counseling or treatment":

The limitations imposed by the court under (a) or (b) of this subsection shall be *reasonably calculated to protect the child* from the physical, sexual, or emotional abuse or harm

¹¹ See RCW 26.09.187(3)(a).

that could result if the child has contact with the parent requesting residential time.

RCW 26.09.191(2)(m)(i) (emphasis added). Permitting only restrictions reasonably calculated to protect the child is consistent with the recognition of the “fundamental importance of the parent-child relationship to the welfare of the child” in RCW 26.09.002.

In providing for a review, the Parenting Plan and the Review Order recognized, consistent with the statutes, that supervision could continue only so long as it was reasonably calculated to protect Luke. *Cf. In re Marriage of Luckey*, 73 Wn. App. 201, 204-05, 208, 868 P.2d 189 (1994) (affirming the trial court’s refusal to order supervision, despite evidence that the father had sexually abused a stepdaughter and committed acts of domestic violence against his wife, where the trial court found that the child was not in any present danger). In dismissing the Petition, the trial court did not find that supervision is reasonably calculated to protect Luke. Rather than apply that standard, the trial court erroneously applied the requirements of RCW 26.09.260, contrary to the provision for a review in the Review Order and this Court’s recognition of similar provisions in *Possinger and Adler*.

The order of dismissal should be vacated, resulting in the original Parenting Plan as modified by the Review Order being reinstated. Given the passage of time, Peter should have the opportunity to file a new petition pursuant to the Review Order and Don Layton's recommendation, to be considered under the standards in RCW 26.09.187 and .191. A new petition is needed so that Peter may seek appropriate relief given the passage of time from the 2007 Petition and Luke's changing needs as he grows older and so that the petition will be considered in light of current circumstances.

2. The Minor Modification Standards in RCW 26.09.260(5)(c) and (7) Are Inapplicable and Were Analyzed Incorrectly.

In the alternative to RCW 26.09.260(1) and (2), the trial court considered the Petition under the standards for "minor" modification set forth in RCW 26.09.260(5)(c) and (7). Under those subsections, to modify a parenting plan to expand residential time for a parent whose residential time is limited due to a history of acts of domestic violence or other issues, the evidence must establish a substantial change in circumstances specifically related to the basis for the limitation and that modification is in the best interests of the child. But RCW 26.09.260(5)(c) and (7) do not apply where the requested modification

would change the child's residence more than 90 overnights in a calendar year, as Peter's would have. *See* CP 39-41. Furthermore, the trial court's analysis under those subsections was flawed.

First, the trial court ruled that Peter "demonstrated no substantial change ... in relation to the limitations set because of the history of domestic violence." CP 290. But, as discussed above, no substantial change in circumstances is required under the Review Order, which provided for a review based upon the case manager's recommendation and for waiver of adequate cause.

Second, the trial court stated there was "ambiguity in the testimony" about whether Peter had "satisfactorily complied with the conditions set forth in the original parenting plan, sections [sic] 3.10." CP 290. But it was error to consider whether Peter complied with conditions in section 3.10 of the original Parenting Plan because the Review Order deleted those conditions pursuant to the parties' agreement, CP 14-15, and thus the trial court applied obsolete conditions.

Third, the trial court concluded that the evidence "does not give any clear indication that the best interests of the child are served by unsupervised visits." CP 290. But that conclusion turns the statutory policy and framework on its head. The Parenting Act provides that "the

relationship between the child and each parent should be fostered *unless inconsistent* with the child's best interests." RCW 26.09.002 (emphasis added). Even assuming supervision helped Peter parent more effectively or provided some other benefit to Luke, that is not the standard for imposing or continuing restrictions on Peter's rights as a parent or for depriving Luke of the opportunity to develop a normal relationship with his father. The court erred in considering whether Luke's best interests were served by unsupervised visits rather than whether supervision is "reasonably calculated to protect the child" under RCW 26.09.191(2)(m)(i).

Furthermore, a motion to dismiss at the conclusion of the plaintiff's case admits the truth of the nonmoving party's evidence and all reasonable inferences drawn therefrom, *DGHI Enters. v. Pac. Cities, Inc.*, 137 Wn.2d 933, 952 n.1, 977 P.2d 1231 (1999), and the evidence was essentially uncontradicted that continued supervision is *not* in Luke's best interests. Dr. Hastings and Mr. Layton in particular saw no benefit to continued supervision and recognized that normalizing the father-son relationship is essential to Luke. Supervision results in less time together for Peter and Luke due the expense of the visitation supervisor and because overnights are prohibited. Luke deserves to have the opportunity

to develop a meaningful relationship with his father, including unsupervised visitation and residential time, even if his mother continues to resist it for her own reasons.

The trial court applied an incorrect legal standard in requiring that RCW 26.09.260(1) and (2) be met and also erred in considering the standards for minor modification under subsections (5)(c) and (7). Therefore, the order of dismissal should be vacated so that Peter may file a new petition pursuant to the Review Order and Don Layton's recommendation, to be considered under the standards in RCW 26.09.187 and .191.

D. Even Assuming the Petition Was Properly Dismissed, the Trial Court Exceeded Its Authority in Modifying the Parenting Plan and Review Order After Dismissing the Petition.

The trial court is without authority to modify a parenting plan after denying a petition for modification. *In re Marriage of Watson*, 132 Wn. App. 222, 238-39, 130 P.3d 915 (2006); *In re Marriage of Shryock*, 76 Wn. App. 848, 851-52, 888 P.2d 750 (1995).

In *Shryock*, the father petitioned for modification of the parenting plan, alleging that the child had been integrated into his family, with the mother's consent, in substantial deviation from the parenting plan. 76 Wn.

App. at 849. The mother denied that the child had been integrated into the father's family. *Id.* Although the mother (like Kahlin) did not file a cross-petition for modification, she proposed a modified parenting plan imposing restrictions upon the child's residential time with the father based on pre-dissolution instances of domestic violence, neglect of parenting functions, and other grounds. *Id.* at 849-50. The trial court dismissed the father's petition for failure to establish a substantial change in circumstances under RCW 26.09.260(1). *Id.* Nevertheless, the trial court modified the parenting plan, adopting, with few changes, the parenting plan proposed by the mother. *Id.* The father appealed, and the court of appealed reversed, holding that the trial court "lacked authority to make those changes." *Id.* at 852.

In *Watson*, the mother petitioned for modification based on the child's statement to her therapist, later retracted, that her father had sexually abused her during visitation. 132 Wn. App. at 226-27. Pending a full hearing, the trial court entered a temporary parenting plan imposing restrictions including supervision. *Id.* at 226. The trial court subsequently found that the alleged sexual abuse was unproven and denied the mother's petition. *Id.* at 227. Nevertheless, rather than reinstate the original parenting plan, the court amended the temporary parenting plan, ordering

additional restrictions. *Id.* at 227-28. The father appealed, and the Court of Appeals reversed. Citing *Shryock*, the court ruled that the trial court lacked authority to modify the parenting plan after denying the petition for modification, stating, “Once it denied the underlying modification petition, the trial court lacked statutory authority ... to modify the parenting plan on its own motion[.]” *Id.* at 233, 238-39.

Here, as in *Shryock* and *Watson*, the trial court modified the parenting plan after dismissing the petition. The modifications included removing the case manager, reinstating the adequate cause requirement, and ordering Peter to “continue” treatments not previously required and to employ a parenting coach. App. D., CP 292-93. *Shryock* and *Watson* dictate that the portion of the trial court’s order that modifies the Parenting Plan and the Review Order be vacated. Peter will then be entitled to file a new petition pursuant to the Review Order.

E. Peter Should Be Awarded His Attorney’s Fees on Appeal.

Peter requests that he be awarded his attorney’s fees on appeal based on the merits of his appeal and the parties’ relative financial circumstances. RAP 18.1; RCW 26.09.140. *See also In re Marriage of Davison*, 112 Wn. App. 251, 259-60, 48 P.3d 358 (2002).

V. CONCLUSION

It was error to dismiss the Petition. The trial court's application of the strict standards of RCW 26.09.260 is inconsistent with the provision in the Review Order for a review upon the case manager's recommendation and for waiver of a determination of adequate cause. Review was to be governed by RCW 26.09.187 and .191. The order of dismissal should be vacated in its entirety. Even if dismissal of the Petition was proper, the trial court exceeded its authority in modifying the Parenting Plan and Review Order following dismissal, and the portion of the trial court's order that modifies the Parenting Plan and Review Order should be vacated.

The Court should recognize in its opinion that vacating the dismissal will reinstate the original Parenting Plan as modified by the 2007 Review Order, including its provisions (1) that Don Layton is the case manager (assuming he is available) and (2) that Peter may file a petition pursuant to the Review Order and the case manager's recommendation. Given the passage of time from the October 2007 Petition, it is appropriate that Peter have the opportunity to file a new petition in light of changed circumstances, which the trial court and

parenting evaluator should consider on an expedited basis under the standards in RCW 26.09.187 and .191.

DATED this 14~~th~~ day of August, 2009.

CARNEY BADLEY SPELLMAN, P.S.

By 

Jason W. Anderson, WSBA No. 30512

Dorice A. Eaton, WSBA No. 38897

Gregory M. Miller, WSBA No. 14459

Attorneys for Appellant Peter Jefferson

APPENDIX A

FILED
KING COUNTY, WASHINGTON
MAR - 1 2007
SUPERIOR COURT CLERK
KATHLEEN GARNERSON
DEPUTY

Superior Court of Washington
County of KING

In re the Marriage of:

KAHLIN MISH

No. 01-3-06314-0 KNT

Petitioner,

Order Re Review/Adjustment
Of Custody Decree/Parenting
Plan/Residential Schedule
(ORMDD/ORDYMT)

and

PETER JEFFERSON

Respondent.

I. Basis

This order is based on an agreement of the parties.

II. Findings

The Court Finds::

2.1 Jurisdiction

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

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

This state is the home state of the child because the child lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

Ord re Mod/Adj of Parenting Pln (ORMDD) - Page 1 of 5
WPF DRPSCU 07.0400 (6/2006) - RCW 26.09.260; .270; 26.10.200

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ORIGINAL

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

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

The parenting plan provided for a review and the parties agree to the changes.

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

The parenting plan provided for a review and the parties have agreed on the revisions to the 2003 parenting plan.

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

Does not apply.

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

Does not apply.

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

Does not apply.

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

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

The residential time of Peter Jefferson is subject to limitations in Paragraphs 2.1 and 2.2 of the Parenting Plan of 2003. No substantial change in circumstances is necessary for this review pursuant to the Parenting Plan entered October 3, 2003.

The visits shall remain supervised by a professional supervisor and a plan developed by the appointed case manager herein.

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

Peter Jefferson is required by the existing parenting plan/residential schedule to complete evaluations, treatment, parenting or other classes. He has complied with the requirements thus far.

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

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

2.6 Adjustments to Nonresidential Provisions Under RCW 26.09.260(10)

Does not apply.

2.7 Substantial Change in Circumstances

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

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

The parenting plan provided for a review and the parties have agreed on the revisions to the 2003 parenting plan.

2.8 Protection Order

The criminal no-contact order should be extended through October 11, 2012.

III. ORDER

It Is Ordered:

1. The petition to modify or adjust the custody decree or parenting plan/residential schedule is granted. The parenting plan entered on 10/3/2003 shall remain in effect except as altered, modified or changed by the provisions stated below.
2. Don Layton shall be appointed as case manager per separate order, which is entered contemporaneously herewith, who shall develop a ~~parenting~~ ^{visitation} plan for the parties and execute such other duties as assigned in the Order Appointing the Case Manager, including resolution of minor disputes the parties are unable to resolve.
3. The parties have agreed to supervised visits initially on alternate Saturdays, up to six (6) hours per visit, as established by the Case Manager and the Visitation Supervisor, or alternate. The development of a visitation plan and schedule shall be the responsibility of the Case Manager. Further, he shall assist the parties in establishing a supervisor and alternate so long as supervised visits are necessary. The choosing of the supervisor shall include the specifications of qualifications of professional supervisors and guidelines to be followed by the supervisor.

Ord re Mod/Adj of Parenting Pln (ORMDD) - Page 3 of 5
WPF DRPSCU 07.0400 (6/2006) - RCW 26.09.260; 270; 26.10.200

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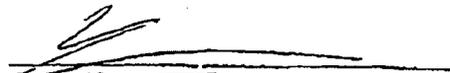
- 4. There shall be a one-half hour (1/2 hour) waiting period prior to the cancellation of any visit due to the distance between the parties residences. Each party shall provide the Case Manager with his or her phone number in order to advise either party in event of a cancellation. The Case Manager shall not give out the phone number of either party but shall keep same as confidential.
- 5. In the event of illness of the child, the visitations may be cancelled up to three (3) times annually without the necessity of verification. For any additional cancellations for illness, a doctor's statement of illness shall be necessary to verify any such illness.
- 6. Rosie Anderson, shall remain as Guardian ad Litem, but shall have no decision-making authority.
- 7. After October 1, 2007 either party shall have the right to petition the Court to modify the father's visitation schedule, if either the Case Manager or the Guardian ad Litem so recommends. In this event, the parties agree to waive a finding of adequate cause and a new parenting evaluator appointed by the Court at that time. In the event the petition is found to be frivolous, the Court shall award reasonable, actual attorney's fees and costs to the non-moving party.
- 8. The mother is permitted to relocate to Bellingham, Washington.
- 9. The Guardian ad Litem shall address the issue of continuing the no contact order entered on October 11, 2002 under King County Cause Number 01-1-07311-3 KNT, between the father and the mother, once it expires in October of 2012.
- 10. The following provisions found in the parenting plan of 2003, section 3.10 shall be deleted:
 - a. Dr. Teri Hastings is appointed Guardian ad Litem per separate order.
 - b. The husband shall continue in his domestic violence treatment with Dr. Maiuro until Dr. Maiuro is satisfied that the husband has sufficiently addressed his anger problems.
 - c. The no contact order between the father and the child shall remain in effect until the Guardian ad Litem, with significant input from Dr. Maiuro, decides that supervised visitation is appropriate. Supervision shall be with a professional supervisor.
 - d. The Guardian ad Litem shall retain decision-making authority regarding the father's access to the child, including supervision and visitation issues.
 - e. The Guardian ad Litem shall make further recommendations about additional therapy for the husband once he completes his domestic violence treatment with Dr. Maiuro.

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f. In addition, the second paragraph of section "VI" of the October 3, 2003 Parenting Plan is deleted.

Dated: 3-1-07



Judge/Commissioner

LAURA GENE MIDDAUGH

Presented by:

Approved by:



Michael Ditchik, WSBA #24891
Attorney for Respondent



Nancy Sorensen, WSBA #5825
Attorney for Petitioner
Amanda Du Bois 10759
Kahlin Mich 3-1-07

Kahlin Mich
Petitioner

Peter Jefferson
Respondent

Date

Kahlin Mich
Petitioner

Date

Rosie Anderson

Guardian Ad Litem

APPENDIX B

FILED
KING COUNTY, WASHINGTON
OCT 08 2003
SUPERIOR COURT CLERK
BY JOSEPHINE MITCHELL
DEPUTY

FILED
03 OCT -3 AM 10:31
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

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

In re the Marriage of:)
KAHLIN JEFFERSON,) NO. 01-3-06314-0 KNT
Petitioner,) PARENTING PLAN
and) FINAL ORDER (PP)
PETER JEFFERSON,)
Respondent.)

This Parenting Plan is the final Parenting Plan signed by the Court pursuant to a Decree of Dissolution entered on this date.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This Parenting Plan applies to the following child:

<u>Name</u>	<u>Age</u>
LUKE CASPIAN JEFFERSON	2

PARENTING PLAN (PPP, PPT, PP) Page 1
WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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II. BASIS FOR RESTRICTIONS

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

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

The father's residential time with the child shall be limited or restrained completely, and mutual decision-making and designation of a dispute resolution process other than Court action shall not be required, because father has engaged in the conduct which follows:

A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

2.2 OTHER FACTORS (RCW 26.09.191(3)).

The father's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:

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

III. RESIDENTIAL SCHEDULE

The residential schedule must set forth where the child shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

PARENTING PLAN (PPP, PPT, PP) Page 2
WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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1
2 3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

3 Prior to enrollment in school, the child shall reside with
4 the mother except for the following days and times when the
5 child will reside with or be with the other parent:

6 See Paragraph 3.10.

7 3.2 SCHOOL SCHEDULE.

8 Upon enrollment in school, the child shall reside with the
9 mother, except for the following days and times when the
10 child will reside with or be with the other parent.

11 See Paragraph 3.10.

12 3.3 SCHEDULE FOR WINTER VACATION.

13 The child shall reside with the mother during winter
14 vacation, except for the following days and times when the
15 child will reside with or be with the other parent.

16 See Paragraph 3.10.

17 3.4 SCHEDULE FOR MID WINTER AND SPRING VACATION.

18 The child shall reside with the mother during spring and
19 mid winter vacation, except for the following days and
20 times when the child will reside with or be with the other
21 parent:

22 See Paragraph 3.10.

23 3.5 SUMMER SCHEDULE.

24 Upon completion of the school year, the child shall reside
25 with the mother, except for the following days and times
when the child will reside with or be with the other
parent.

PARENTING PLAN (PPP, PPT, PP) Page 3
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See Paragraph 3.10.

3.6 VACATION WITH PARENTS.

The schedule for vacation with parents is as follows:

See Paragraph 3.10.

3.7 SCHEDULE FOR HOLIDAYS.

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

See Paragraph 3.10.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

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

See Paragraph 3.10.

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

N/A

3.10 RESTRICTIONS.

The father's residential time with the child shall be limited because there are limiting factors in Paragraphs 3.1 and 2.2. The following restrictions shall apply when the child spends time with this parent.

Dr. Teri Hastings is appointed Guardian ad Litem per separate order.

The husband shall continue in his domestic violence treatment with Dr. Maiuro until Dr. Maiuro is satisfied

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WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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that the husband has sufficiently addressed his anger problems.

The no contact order between the father and the child shall remain in effect until the Guardian ad Litem, with significant input from Dr. Maiuro, decides that supervised visitation is appropriate. Supervision shall be with a professional visitation supervisor.

The Guardian ad Litem shall retain decision-making authority regarding the father's access to the child, including supervision and visitation issue.

The Guardian ad Litem shall make further recommendations about additional therapy for the husband once he completes his domestic violence treatment with Dr. Maiuro.

The Guardian ad Litem shall address the issue of continuing the no contact order entered on October 11, 2002, under King County Cause No. 01-1-07311-3 KNT, between the father and the mother, once it expires in October of 2007.

3.11 TRANSPORTATION ARRANGEMENTS.

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

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

See Paragraph 3.10.

3.12 DESIGNATION OF CUSTODIAN.

The child named in this Parenting Plan is scheduled to reside the majority of the time with the mother. This parent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This

PARENTING PLAN (PPP, PPT, PP) Page 5
WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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1 designation shall not affect either parent's rights and
2 responsibilities under this Parenting Plan.

3 3.13 OTHER.

4 The parenting evaluation report by Dr. Hastings should be
5 distributed to any therapist or counselor working with
6 either parent, or to any mediator or arbitrator working
7 with the parties on parenting issues.

8 3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION
9 OF A CHILD.

10 At such time that the father shall have residential time
11 with the child, the following shall apply:

12 This is a summary only. For the full text, please see
13 RCW 26.09.430 through 26.09.480.

14 If the person with whom the children reside a majority
15 of the time plans to move, that person shall give notice
16 to every person entitled to court ordered time with the
17 children.

18 If the move is outside the children's school district,
19 the relocating person must give notice by personal
20 service or by mail requiring a return receipt. This
21 notice must be at least sixty (60) days before the
22 intended move. If the relocating person could not have
23 known about the move in time to give sixty (60) days'
24 notice, that person must give notice within five (5)
25 days after learning of the move. The notice must
contain the information require in Ch. 21 Laws 2000 § 6.
See also form DR 07.5000 (Notice of Intended Relocation
of a Child).

If the move is within the same school district, the
relocating person must provide actual notice by any
reasonable means. A person entitled to time with the

PARENTING PLAN (PPP, PPT, PP) Page 6
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child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within thirty (30) days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DR 07.0700, (Objection to Relocation/Motion for Modification of Custody Decree/Parenting Plan/Residential Schedule (Relocation)). The objection must be served on all persons entitled to time with the children.

The relocating person shall not move the children during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

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1 If the objecting person schedules a hearing for a date
2 within fifteen (15) days of timely service of the objection,
3 the relocating person shall not move the child before the
4 hearing unless there is a clear, immediate and unreasonable
5 risk to the health or safety of a person or child.

6 IV. DECISION MAKING

7 4.1 DAY-TO-DAY DECISIONS.

8 Each parent shall make decisions regarding the day-to-day
9 care and control of each child while the child is residing
10 with that parent. Regardless of the allocation of decision
11 making in this Parenting Plan, either parent may make
12 emergency decisions affecting the health or safety of the
13 child.

14 4.2 MAJOR DECISIONS.

15 Major decisions regarding each child shall be made as
16 follows:

17 Education Decisions: Mother
18 Non-Emergency Health Care: Mother
19 Religious Upbringing: Mother

20 4.3 RESTRICTIONS IN DECISION MAKING.

21 Sole decision-making shall be ordered to the mother for the
22 following reasons:

23 A limitation on the other parent's decision-making
24 authority is mandated by RCW 26.09.191 (See paragraph
25 2.1).

V. DISPUTE RESOLUTION

26 *The purpose of this dispute resolution process is to resolve*
27 *disagreements about carrying out this Parenting Plan. This*
28 *dispute resolution process may, and under some local court rules*

29 PARENTING PLAN (PPP, PPT, PP) Page 8
30 WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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1 or the provisions of this plan must, be used before filing a
2 petition to modify the plan or a motion for contempt for failing
to follow the plan.

3 No dispute resolution process, except court action is
4 ordered.

5 **VI. OTHER PROVISIONS**

6 There are the following other provisions:

7 Acceptance or waiver of any deviations from the
8 provisions of this Parenting Plan shall not constitute
9 acceptance or waiver of subsequent deviations from
10 this Plan. The provisions of this Plan shall remain
in effect until modified by an appropriate written
order entered by a Court of competent jurisdiction.

11 Anytime after six months from the entry of this Order,
12 either party may seek a review of the Parenting Plan
pursuant to RCW 26.09.187.

13 **VII. DECLARATION FOR PROPOSED PARENTING PLAN.**

14 Does not apply.

15 **VIII. ORDER BY THE COURT**

16 It is ordered, adjudged and decreed that the Parenting Plan set
17 forth above is adopted and approved as an Order of this Court.

18 **WARNING:** Violation of residential provisions of this Order with
19 actual knowledge of its terms is punishable by contempt of court
and may be a criminal offense under RCW 9A.040.060(2) or
20 9A.40.070(2). Violation of this order may subject a violator to
arrest.

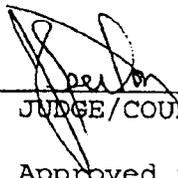
21 When mutual decision-making is designated but cannot be
22 achieved, the parties shall make a good faith effort to resolve
the issue through the dispute resolution process.

23 PARENTING PLAN (PPP, PPT, PP) Page 9
WPF DR 01.0400 (9/01) - RCW 26.09.181; .187; .194

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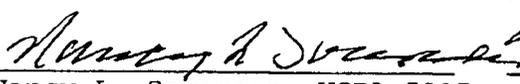
DATED: October 3, 2003



JUDGE/COURT COMMISSIONER

Presented by:

Approved for entry; Notice
of Presentation Waived:





Nancy L. Sorensen, WSBA 5825
of Driano & Sorensen,
Attorneys for Petitioner

Michael Ditchik, WSBA 24891
Attorney for Respondent

Approved for entry:

Approved for entry:



Kahlin Jefferson, Petitioner

Peter Jefferson, Respondent

PARENTING PLAN (PPP, PPT, PP) Page 10
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APPENDIX C

FILED
07 OCT 18 PM 1:47
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

Superior Court of Washington
County of King

In re the Marriage of:

KAHLIN JEFFERSON

No. 01-3-06314-0 KNT

Petitioner,

Petition for Modification/
Adjustment of Custody Decree/
Parenting Plan/Residential
Schedule
(PTMD)

and

PETER JEFFERSON

Respondent.

1.1 Identification of Moving Party/Parties

Name (first/last) Peter Jefferson, Birth date 3/28/53

Last known residence King County, WA.

1.2 Identification of Nonmoving Party/Parties

Name (first/last) Kahlin Jefferson, Birth date 7/22/59

Last known residence Whatcom County, WA.

1.3 Dependent Children

Name	Age
------	-----

Luke Caspian Jefferson	6
------------------------	---

Pet for Mod/Adj Parenting Pln (PTMD) - Page 1 of 5
WPF DRPCU 07.0100 Mandatory (7/2007) - CR 4.1; RCW 26.09.181;
.260; .270

Hanis Greaney Prothero, PLLC
6703 S. 234th Street - Ste. 300
Kent, WA 98032
phone: (253) 520-5000
fax: (253) 893-5007

1 **II. Basis**

2 **2.1 Petition for an Order Modifying Custody Decree/Parenting Plan/Residential**
3 **Schedule**

4 This is a petition for an order modifying the prior custody decree/parenting
5 plan/residential schedule in this matter and approving the proposed parenting
6 plan/residential schedule, which is filed with this petition.

7 **2.2 Adequate Cause**

8 There is adequate cause for hearing the petition for modification.

9 **2.3 Child Support**

10 An order establishing child support in conjunction with the proposed parenting plan
11 should be entered. A child support worksheet and financial declaration have been filed
12 with this action. (No separate petition for modification of child support needs to be filed.)

13 **2.4 Jurisdiction and Venue**

14 The court has proper jurisdiction and venue.

15 The moving party/parties reside(s) in King County, WA.

16 The child resides in Whatcom County, WA.

17 The other party/parties reside(s) in Whatcom County, WA.

18 **2.5 Jurisdiction Over Proceeding**

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

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

23 This state is the home state of the child because the child lived in Washington with a
24 parent or a person acting as a parent for at least six consecutive months immediately
25 preceding the commencement of this proceeding.

2.6 Uniform Child Custody Jurisdiction and Enforcement Act Information

<u>Name of Child</u>	<u>Mother's Name</u>	<u>Father's Name</u>
Luke Caspian Jefferson	Kahlin Jefferson	Peter Jefferson

Pet for Mod/Adj Parenting Pln (PTMD) - Page 2 of 5
WPF DRPSCU 07.0100 Mandatory (7/2007) - CR 4.1; RCW 26.09.181;
.260; .270

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1 During the last five years, the child has lived in no place other than the State of
2 Washington and with no person other than the moving party or the other party.

3 Claims to custody or visitation.

4 The moving party does not know of any person other than the other party who has
5 physical custody of, or claims to have custody or visitation rights to, the child.

6 Involvement in any other proceeding concerning the child:

7 The moving party has not been involved in any other proceeding regarding the child.

8 Other legal proceedings concerning the child.

9 The moving party does not know of any other legal proceedings concerning the child.

10 **2.7 Custody Decree or Parenting Plan/Residential Schedule**

11 The Custody Decree/Parenting Plan/Residential Schedule was entered on 10/3/03 in
12 King County, WA and the Order Re Review/Adjustment of Custody Decree/Parenting
13 Plan/Residential Schedules was entered on 3/1/07 in King County, WA. A certified copy
of the custody decree/parenting plan/residential schedule to be modified is filed with or
attached to this petition, if the decree or plan to be modified was entered in another
county or state.

14 **2.8 Modification Under RCW 26.09.260(1), (2)**

15 The custody decree/parenting plan/residential schedule should be modified because a
16 substantial change of circumstances has occurred in the circumstances of the child or
17 the other party and the modification is in the best interests of the child and is necessary
to serve the best interest(s) of the child. This request is based on the factors below.

18 The Order Re Review/Adjustment of Custody Decree/Parenting Plan/Residential
19 Schedule dated 3/1/07 provided for modification without the necessity of establishing
adequate cause provided certain conditions were met.

20 **2.9 Modification or Adjustment Under RCW 26.09.260(4) or (8)**

21 Does not apply.

22 **2.10 Adjustments to Residential Provisions Under RCW 26.09.260(5)(a) and (b).**

23 Does not apply.

24
25 Pet for Mod/Adj Parenting Pln (PTMD) - Page 3 of 5
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1 **2.11 Adjustments to Residential Provisions Under RCW 26.09.260(5)(c), (7), (9)**

2 Does not apply.

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

5 **2.11.1 Parent subject to limitations under RCW 26.09.191(2) or (3)**

6 N/A

7 **2.11.2 Parent Required to Complete Evaluations, Treatment, Parenting or Other**
8 **Classes**

9 Peter Jefferson is not required under the existing Parenting Plan/Residential Schedule to
10 complete evaluations, treatment, parenting or other classes.

11 **2.11.3 Adjustment to Residential Provision Under RCW 26.09.260(5)(c)**

12 Does not apply.

13 **2.12 Adjustments to Residential Provisions Under RCW 26.09.260(10)**

14 Does not apply.

15 **2.13 Substantial Change in Circumstance**

16 ***(You must complete this part if you request a modification or adjustment in***
17 ***paragraphs 2.8, 2.10, 2.11.1, 2.11.3 or 2.12.)***

18 The requested modification or adjustment of the custody decree/parenting
19 plan/residential schedule is based upon the following substantial change in
20 circumstance:

21 The Order Re Adjustment of Parenting Plan entered on March 1, 2007 permits the
22 father to file a petition for modification of the parenting plan under certain
23 circumstances, and for a waiver of adequate cause, and the pre-conditions for this have
24 been met.

25 **2.14 Protection Order**

Does not apply.

**If you need immediate protection, contact the clerk/court for RCW 26.50 Domestic
Violence forms.**

Pet for Mod/Adj Parenting Pln (PTMD) - Page 4 of 5
WPF DRPSCU 07.0100 Mandatory (7/2007) - CR 4.1; RCW 26.09.181;
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1 **2.15 Servicemembers Civil Relief Act Statement**

2 2.15.1 A. Service member status — Kahlin Mish:

3 is not a service member;

4 is not on active duty in the U.S. armed forces (excluding National Guard and
5 reserves);

6 is not on active duty and is a National Guard member or a Reservist residing in
7 Washington;

8 2.15.2 A. Dependent of a service member status — Kahlin Mish:

9 is not a dependent of a resident of Washington who is on active duty and is a
10 National Guard member or a Reservist;

11 **2.16 Other**

12 **III. Relief Requested**

13 The moving party *Requests* that the court find that there is adequate cause for hearing this
14 petition and enter an order modifying the custody decree/parenting plan/residential schedule in
15 this matter and approving the proposed parenting plan/residential schedule, which is filed with
16 this petition.

16 Date: 10/12/07  24891

17 Michael Ditchik

18 Signature of Moving Party or Lawyer/WSBA No.

19 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
20 is true and correct.

21 Signed at Peter Jefferson, [City] WA [State] on 10/12/07 [Date].

22 
23 Peter Jefferson
24 Signature of Moving Party

25 Pet for Mod/Adj Parenting Pln (PTMD) - Page 5 of 5
WPF DRPSCU 07.0100 Mandatory (7/2007) - CR 4.1; RCW 26.09.181;
.260; .270

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APPENDIX D

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

KAHLIN JEFFERSON)	
)	
)	Petitioner,
vs.)	NO. 01-3-06314-0 KNT
)	
)	ORDER DENYING MAJOR
)	MODIFICATION TO FINAL
PETER B. JEFFERSON)	PARENTING PLAN AND DISMISSAL
Respondent.)	
)	

I. BACKGROUND AND PROCEDUAL HISTORY

Respondent father, Peter Bigelow Jefferson filed a parenting plan modification on October 2007 seeking a revision of the original plan entered on October 2003. This final parenting plan (herein after referred to as "FPP") placed certain specific restrictions on the father's contact with the minor child and upon his right to make decisions for the child. (Section 2.1 and 2.2. FPP.) Additionally, other restrictions were imposed on the Respondent's residential time, continued domestic violence treatment, and no contact order provisions. The court also ordered the appointment of a case manager with responsibilities that retain decision-making authority to limit the Respondent's access to his child, supervision and visitation issues, make recommendations concerning the father's treatment and monitor adherence to the no-contact order provisions under the criminal case.

In this modification action, the Respondent submitted the December, 2008 report of the parenting evaluator, Ms. Kelly Shanks, M.Ed., LMHC, who increased treatment recommendations, as well as the removal of the current casemanager in favor of a long-term

1 Guardian *ad litem*. The issues for trial identified in the petition for modification are
2 Respondent's residential schedule and the continuing requirement of supervised visits. Petitioner
3 in her trial brief urged that the Court find that the statutory requirements under RCW
4 26.09.260(1) and (2) could not be met, and thus the modification must be dismissed. Further she
5 urged that an amendment of the initial pleading be circumscribed for failure to give adequate
6 notice. In response and before presenting testimony the Respondent asserted that only
7 subsections (1) and (2) were urged at trial, rather than section 5(c).

8 Trial on this matter before the undersigned judge occurred on February 2, 3, 4, 9, 2009.
9 Following the close of Respondent's case, Petitioner moved for dismissal on the grounds that
10 the Respondent failed to meet a statutory elements that there has been a substantial change of
11 circumstances as required under the statute RCW 26.09.260 (1) ad (2). Additionally, Petitioner
12 seeks attorneys fees.

13 II. DISCUSSION

14
15 The Court considered the testimony of Respondent, Peter B. Jefferson; Don Layton,
16 MSW, the case manager; Teri Hasting, Ph.D, the former GAL; Timothy Cahn, PhD., the treating
17 psychologist; Peggy Jefferson, the respondent's first wife; Larkin Jefferson, Respondent's first
18 child; and all agreed upon exhibits filed in the case (Ex.1-35 Respondent) and (Ex 101-135
19 Petitioner.)

20 After careful review of the testimony and exhibits, the court examined whether there was
21 a showing of substantial change as set forth in RCW 26.09.260 (1) and (2) which require
22 adherence to the residential schedule established by the final parenting plan "unless the child's
23 present environment is detrimental to the child's physical, mental or emotional health and the
24 harm likely to be caused by a change of environmental is outweighed by the advantage of a
25 change to the child." Subsection 5, paraphrased, permits adjustments to the residential aspects
26 upon a showing of a substantial change in the circumstances of each parent or of the child and
27 without a consideration of the factors set forth in subsection (2), if the proposed modification is
28 only a minor modification.

1 Testimony was taken from Respondent's witnesses who presented somewhat conflicting
2 opinions on whether the Respondent had been fully compliant with the treatment requirements
3 under the FPP. None of the testimony presented squarely addressed a showing that the Petitioner
4 who provides the primary residence for the child, Luke, was detrimental. All were unanimous in
5 accepting the parenting evaluator's position that the Petitioner had raised a thriving child and
6 presented no physical or emotional risks to him. The requirements of section (2) are in the
7 conjunctive, however. Respondent failed to show detrimental environment in the child's
8 placement in the Petitioner's home, thus failing to support his petition for a major modification.
9 Accordingly, it shall be dismissed.

10 Even if the Court in its discretion considers the evidence in light of RCW 26.09.260(7)
11 and (5)(c), where only a finding that (1) "a parent demonstrates a substantial change in
12 circumstances specifically related to the basis for the limitation, and (2) it is "in the best interest
13 of the child to increase residential time with the parent" is required, Respondent has not made
14 such a showing. The record inclusive of the reports from the appointed Visitation Supervisor,
15 the parent evaluator, the respondent's therapist, the case manager, or the former GAL, does not
16 give any clear indication that the best interests of the child are served by unsupervised visits.
17 Nor has the child, Luke at age 8, given voice to any such desire.

18 Moreover, there was ambiguity in the testimony from Respondent's witnesses about
19 whether the Respondent has satisfactorily complied with the conditions set forth in the original
20 parenting plan, sections 3.10. On the one hand, Teri Hasting, Ph.D., opined that completion of
21 Respondent's treatment with Dr. Maiuro was tantamount to satisfaction of the FPP. Don
22 Layton, took a similar view, but with a recognition that Dr. Maiuro's report contained
23 reservations about the Respondent's adequate understanding of the impacts of his aggression on
24 others. (Ex. #1 at 18-19.)

25 In contrast, the Court was persuaded by the 2008 parenting evaluator's report which
26 pointed out and recommended that Respondent continues to need ongoing resolution of domestic
27 violence issues demonstrated a no substantial change in the Respondent in relation to the
28 limitations set because of the history of domestic violence. Beginning with conversations with
29 Dr. Maiuro, Respondent's previous domestic violence provider, who after a year of court-
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1 ordered treatment referred Respondent to continue treatment with Timothy Cahn, who opined
2 that the Respondent was very much out of touch with the level of damage he had done in the
3 relationship. When asked how he would assess Peter's recent comments accepting responsibility
4 for his assaultive behavior which attributing blame to Kahlin, Dr. Maiuro said, "After this much
5 treatment... assuming responsibility for your own mistakes and problems and contribution is
6 minimal in terms of an expectation for progress and success."

7 Both Respondent's current therapist and Dr. Maiuro assess that Respondent's ability to
8 process emotional information and experience empathy "is" blunted, thus progress is limited and
9 slow. Dr. Cahn, the current psychologist, states, "Peter is completely out of touch with the
10 impact of his behavior on others... It's almost a form of Aspergers [disorder]." Favorably, he
11 adds, "Working with Peter in a behavioral context designed to support his positive behaviors and
12 provide reinforcement would be helpful." Finally, concerning future treatment, Dr. Maiuro
13 opined, "No amount of insight or talk therapy will allow for him to behave the way he needs to."
14 He suggested parent coaching as a compliment to on-going therapy. All of this supports the
15 conclusion the regime for domestic violence treatment is still underway or in need of
16 continuation, not that it is satisfied

17 All of this is contrasted to Petitioner, Kahlin, whose progress in therapy is reported
18 through her therapist, Jeff Larsen, and also documented in the parenting evaluator's report (Ex.
19 #1 at 20-21.) Notably, Petitioner's progress refutes the assessment of Don Layton who
20 pejoratively describes the Petitioner. Layton reports,

21 "the current visitation situation 'contrived.' It is based to an extent on Peter's prior
22 behaviors, but also on Kahlin's level of paranoia about Peter. This still exists because
23 she has not done her personal work." (Ex. #1 at 17).

24 In sum, Respondent's reliance upon case manager, Don Layton's assessment, discredited
25 here, does not support a finding that Respondent's has made a substantial change which
26 necessitates unsupervised visits. Finally, Teri Hastings, Ph.D., who testified that unsupervised
27 visitation was warranted more than three years ago--when she last provided ongoing supervision
28 in the case as GAL-- was also discredited by the occurrence of new events observed by the
29 Visitation Supervisor and her unfamiliarity with the entire five-year record.

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III. CONCLUSION AND ORDER

Following trial and the Court's review of the record of trial exhibits, the Court FINDS the following:

The requirements of RCW26.09.260 (1) and/or (2) were not met to sustain a major modification.

The Court ORDERS, as follows:

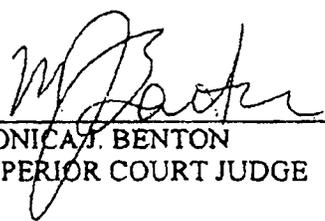
1. The current case manager, Don Layton, is removed in favor of a long-term GAL. The parties shall confer as to his replacement with the first preference for Eugene Oliver.
2. The new case manager shall Monitor the Respondent to ensure his compliance
 - a. with continued mental health treatment, beginning with a psychotherapy evaluation to rule out a diagnosis of Asperger's disorder or Autism.
 - b. that Respondent continue to follow the pharmacological treatment.
 - c. that Respondent continue with therapeutic treatment with Timothy Cahn, Ph.D., and follow all recommendations with the following goals for possible reunification.
 - d. that Cathy Eisen remains in place as visitation supervisor.
 - e. that the restriction on residential contact with Luke shall not occur within a one (1) mile radius of the mother's work, home, or Luke's school or after-school or daycare and that these locations be provided to the case manager, visitation supervisor, who shall keep them confidential.
3. Phone access is not currently ordered but is within the case manager's authority to permit it in the future.
4. The parties appear to have agreed to the employment of Lynn Tienken, a parenting coach is recommended to address concerns outlined by Dr. Chan and Dr. Maiuro. She is also authorized to advise both parents on how to explain the current visitation and safety issues with Luke in an age appropriate manner, to include other issues around nudity, undressing, if advisable given Luke's age, the prohibition of

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possession of pornography in magazines or over the internet and thus one Petitioner or Respondent's computers.

5. The new case manager shall inform the Court by letter not later than March 30, 2009, of his/her review of the records, with bi-annual reports to follow over the next twelve months. These reports shall discuss compliance with the Court's orders.
6. No other modifications shall be brought without first a hearing on "adequate cause" as defined in the statute RCW 26.09.270 and case law to be scheduled before the undersigned judge.
7. In addition, except as expressly modified by the terms of this order, all provisions set forth in the Parenting Plan entered on the 3rd day of October, 2003 and subsequent orders of the court, expressly including the Order of March 1, 2007, shall remain in full force and effect.

DATED this 12th day of February, 2009.



MONICA J. BENTON
SUPERIOR COURT JUDGE

NO. 63162-4-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

In re the Marriage of:

KAHLIN JEFFERSON (MISH)

Respondent/Cross Appellant,

v.

PETER B. JEFFERSON,

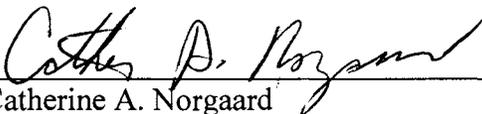
Appellant.

CERTIFICATE OF SERVICE

I declare under penalty of perjury that I caused true and correct copies of the *Brief of Appellant* and this *Certificate of Service* to be served upon counsel of record today as follows:

David Ordell, WSBA #5303 705 Second Ave., Ste. 1300 Seattle, WA 98104-1797 P: (206) 623-4270 F: (206) 623-4357 Email: davidordell@hotmail.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Other
Catherine A. Smith, WSBA #9542 Edwards, Sieh, Smith & Goodfriend, P.S. 1109 First Avenue, Ste. 500 Seattle, WA 98101-2988 P: (206) 624-0974 F: (206) 624-0809 Email: cate@washingtonaappeals.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Other

DATED this 14th day of August, 2009.


Catherine A. Norgaard