

No. 66157-4-I

STATE OF WASHINGTON COURT OF APPEALS

DIVISION ONE

Muralidhara Varma Chiluvuri

Appellant,

v.

Padmaja Krishnaveni Chiluvuri

Respondent

BRIEF OF RESPONDENT

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I. Introduction

The Appellant, herewith referred as the Father, challenges the trial court's Final Parenting Plan and the Child Support Orders entered on September 29, 2010. There is no context or clarity as to what relief the Appellant is seeking through this review process.

The Father misstates the facts and his allegations are baseless. The Father posits no law that would justify overturning the trial court's sound exercise of its discretion in the Final Parenting Plan and the Child Support Orders.

The trial court's decision should be affirmed.

II. Counter-Statement of the Case

I, the Respondent would like to provide a brief overview of the Background of this Case since 2005, as follows.

Procedural Background: The Father filed a Notice of Intent to Relocate to India. I filed an objection to the relocation. An order was entered May 19, 2010 allowing the Father to relocate to India with our son. Based on recommendations from my attorney I decided not to contest the relocation during the trial.

Historical Background: I, the mother have been the primary caregiver for our son (Hrushik) now 8 year old, the majority of his life. Father and I got married in 1998 and our son was born in 2003. I stayed home for the majority of our marriage, including after our son was born. For the first 11 months of his life we resided in the United States. The Father worked and was essentially uninvolved when he was at home. When our son was about 25 days old he fell very sick and was hospitalized for about 2 weeks, during which I stayed in the hospital with our son taking care of him, while the Father was working. I was the person responsible for all of our son's care, including providing for his day to day needs such as bathing and feeding as well as playing with him, going to the park, and engaging in other educational activities.

We traveled as a family to India in August of 2004 and father and I had separated there. Father left India and traveled to the United States with our passports. He took our passports without my knowledge and consent and I was unable to leave the country with our son. I stayed behind with our son and was fully and solely responsible for his care. I was finally able to obtain duplicate documents for myself and traveled back to the United States around

January of 2005, and filed for divorce. Our son stayed behind because he could not travel, and he was cared for by my parents. I finally obtained father's permission to apply for a passport for our son and traveled back in April 2005 to bring our son back to the United States.

Unfortunately our son's visa had expired and I had to go through immigration to get a substitute visa. The process took three months, and during the entire time I lived with my son and took care of him and was responsible for his day to day needs.

The Father manipulated these events during our dissolution and actually claimed that I was intending to keep our son in India and not planning to return back to the US. That was not true.

When I finally was able to return to the United States I stayed home with our son until February 2006. The court entered a temporary parenting plan, which was in effect from August 2005 to February 2006. According to that plan my son was primarily with me. Father saw our son every other weekend and for two mid-week visits. During this time I was not working and my son stayed home with me. I was responsible for meeting all his day to day needs, as well as engaging him in educational activities like reading

to him, taking him to the library, playing with him and things of that nature. I have only worked for few months throughout our marriage and I struggled to obtain a job. I couldn't afford to confine myself to Seattle area to obtain a job because of my lack of work experience. During the dissolution, I got a couple of job offers from other states, and father and I entered into an agreed parenting plan where our son would reside three months with each of us. We entered into this agreed parenting plan in February of 2006.

This was the plan in effect until May 2008. Our son resided with me for three month blocks of time and with his father for three months. My first job was in Columbus, Ohio, where my brother and his family also resided and my son became very close to my family. When my son resided with me he would be watched by my sister-in-law during the day while I worked. When I was not at work my focus was entirely on my son. My son resided with me for the following time blocks, before he started school.

When my son resided with his father, I had concerns. Father would have his parents reside with him, and they in essence took care of our son, not the father. They and Father also tried to alienate my son from me by telling him

lies about me. My son would come back and ask me questions about these things and when I asked who told him that he identified his grandparents and his father.

When our son approached school age, the father filed for a modification. He initiated the modification in March of 2008. Prior to filing for divorce, I had been a homemaker for 6 years taking care of the family and my son. With one and a half years of work experience by Jan 2008, I couldn't find a job in Seattle area and was only able to find a temporary position in the Bay area. The father had a stable job with Microsoft where he had been employed for about 10 years. Since our son was about to start school in 2008, we had decided with mutual agreement that it would be best if our son went to school in Seattle area and lived with the father until I am able to find employment in Seattle area. The idea was that we would go back to a shared parenting once I find a job in Seattle area and was able to move here. It was an extremely difficult decision for me to live this far away from my son, but I simply had, to be able to provide for him.

Since the time our son started school in Seattle area I flew to Seattle every month to exercise my visitation

with our son, except for the school breaks during which our son flew to the Bay area to visit me.

Before entering into this plan we have gone through arbitration as we could not agree upon some things. The result of the arbitration was that both the parents have to share the expenses for my monthly visitations and also for our son's visits with me during school breaks and summer. Father did not agree to share the expenses and was going to appeal to the court. Then I had agreed to pay all the expenses for my monthly visits from my pocket. But my attorney was not in favor of that but I have decided to do that rather than spending thousands of dollars in legal expenses fighting for that. The father was still supposed to share the expenses for our son's visits with me for school breaks and summer, but he never did. I had paid every single penny from my pocket for all these travel expenses.

The father always made it extremely difficult for me to exercise my visitations with his manipulations. He used every opportunity to harass me by not letting me spend time with our son. Since that parenting plan was entered which placed our son primarily with him, father has done everything he can to alienate my son from me.

Brief history of the father's abuse and manipulations:

Father has been emotionally abusive throughout our relationship belittling me and calling me names. He was controlling in other ways as well. Occasionally the abuse would become physical and I have had several instances when father has choked me. When I would go out without his permission, he would lock me out and not allow me to return into the home. On one occasion I had to stay with my neighbor as a result. He followed this same pattern when I separated from him in India and he took off with our travel documents and essentially left us stranded there.

The worst thing he has done was send our son out of the country without my knowledge, in violation of the parenting plan. In April of 2009, the father had obtained a visa from the Indian consulate without my knowledge and sent our son out of the country. On April 28th, 2009 the father had sent me an email saying that our son was put on a flight to India for a religious and cultural trip, and the return date was unknown. I had no idea how the father was able to obtain an Indian VISA for our minor son, without my consent or my signature on the VISA application. I was terrified because at that point father had been unemployed for a significant period of time (Father got

laid off from Microsoft in January 2009) and I was concerned that the father was moving to India and simply not coming back with the child. India is not a signatory to the Hague Convention and I had no hope of being able to get my son back from India. I initiated a contempt action and father was found in contempt.

The father was not only trying to deprive me of my parenting time with our son but also pulled our son out of school to send him to India. He brought the child back only after he was forced to do so with the contempt motion I initiated. The court found him in contempt and also ordered that the father submit the documents that he used to obtain the Indian VISA for the child without the mother's consent. The father signed numerous documents in front of a notary stating that he is the lawful sole custodian of our son. This is not true because both of us have joint decision making authority. He used these false documents to fraudulently obtain the Indian VISA for our son without my consent. He represented to the Indian Consulate that my signature was not required.

The father's irresponsible and manipulative actions in sending our son to India with an intention to leave him with his grandparents for an extended period of time would

have put our son in the danger of a serious health risk, considering the poor hygiene and the elderly grandparents' inability to take care of a five year old. Our son had already gotten very ill in the brief time he was there. It was fortunate that our son came back.

Even after he was found in contempt in 2009 Father's behavior did not improve. He said our son was travelling to India again in the summer of 2009, and he sent me only a partial itinerary and he wouldn't even tell me who the child is travelling to India with. While our son was travelling from Seattle to Hyderabad (India) via San Francisco, the father did not send me the flight information between Seattle and San Francisco. My summer time with our son would start immediately after the father's time with our son. We do not have set dates as per the parenting plan in effect at that time. Based on my calculation, our son's summer time with me started on July 24th and my son was returning to San Francisco on the July 23rd. I was confused not knowing if I will had to make travel arrangements for my son to fly from Seattle or just pick him up while he was in the Bay area. Our son's uncle (the father's brother) also lives in the Bay area and I wondered if our son would be staying in Bay area with his

uncle after his return to SFO on July 23rd. I tried to speak by email with the father to see if I could pick up our son in San Francisco, but father never replied to me. Because father never replied I did not purchase the ticket for my son to fly from Seattle to Bay area. I was hoping to simply pick him up in San Francisco. Not only did father not inform me when he was in San Francisco, he went on to Seattle. On the date father calculated was the start date for my summer time with our son, he emailed me at midnight and told me that if I did not pick up my son by 9 am the following morning, I would "forfeit" my visitation. I emailed the father as soon as I saw the email the following morning and told him I could be there by that evening but father refused to let me pick up our son that night and he refused to discuss the matter further. I had to consult with my attorney and we began working on another contempt motion when out of the blue father emailed me three days later to tell me our son was waiting for me and emphasized the importance of our son spending time with both of us, as if nothing had previously happened. It was later that I realized that father actually wanted my cooperation on an ongoing property issue and that is why he changed his mind.

This is one example of a pattern with the father. He always makes it as hard for me as possible to spend time with my son. I have spent thousands of dollars in last minute plane tickets and cancellation fees as a result of his manipulations.

The father is very smart and he sends emails from time to time and emails for my Birthdays and greetings for festivals, but he does this only to use as evidences for legal matters as opposed to any genuine concern on his part. He always claims that it is his genuine interest for our son to spend time with me (the mother), in contrary to all his actions. If he were so genuine, he wouldn't have signed before a notary claiming himself to be the sole custodian of our son, to obtain a VISA without my knowledge.

The father wouldn't answer my phone calls during my designated calling time, as per the parenting plan. Several times he did not answer the phone for 2 to 3 weeks. During that time, when I called him out of my designated phone time, to make sure that our son is fine, the father threatened that he would charge me for harassment and trespassing. He would send an email saying that our son is not interested in talking to me. I do understand that kids

are not normally motivated to talk on the phone and I never force my son to talk when he is not interested. I have told my son several times that he should answer the phone when I call him and tell me that he doesn't want to talk, if he is not interested to talk at that time. My son told me on several occasions that he did not know that I called. Being far away I have no other means of communicating with our son. Instead of encouraging our son to talk to me on the phone, the father finds innovative ways to avoid our son from doing so.

My relationship with our son: I have a very healthy and an extremely close relationship with our son. We spoke on the phone and I was visiting him on weekends once a month in Seattle. In addition to my monthly visits to Seattle our son visited me for summer holidays and school breaks. I have always accumulated my vacation time to spend quality time with our son. We always have a great time together. We went to theme parks (Disneyland, Lego Land, SeaWorld, Great America Park etc). We exercise together, play lot of board games and mathematical games, we go to the library and read books, we go to park and play frisbee, soccer etc. We also cook together. Our son is funny and very smart. He asks lot of questions. We

sometimes go on the internet and search answers for some of his scientific questions. Our son is very happy when he is with me and is extremely sad when he has to go back and he would start crying stating that it's not fair that he gets to spend very little time with me. He has asked me several times that he would like to spend equal time with me and his father. He calls me from Seattle crying, that he is sad because he misses me and that the father yells at him because of it. Our son calls me crying and very upset relaying this information. This has happened on numerous occasions. The father was not sensitive to the fact that our son was just a 6 year old and he also needed his mother and misses his mother. Instead of helping our son to forget his sadness, he would shout at him and say things like "You can go and stay wherever you want". This has happened several times in my presence when I went to drop my son at his father's place during my monthly visitations. Our son was very upset when he was told that he will be moving to India with his dad. He asked me if I can visit him every month just like I used to visit him in Seattle. Even though I am geographically farther, I am closer to our son emotionally.

The father's Relocation notice: In January 2010, during one of my visitation in Seattle, father approached me stating he was unhappy with the quality of the education our son is receiving in the United States, even though our son is in the full time Quest program and does very well in school. He proposed the idea of relocating to India and I was open to discussing it. I studied possible alternatives such as relocating to India myself and I offered to look at schools while I was in India a few months ago, and I did so. Public education in India is very bad, so for our son to have a good education he would have to attend a private school. I visited a few private schools while I was in India and also spoke to good friends of mine who have recently relocated from US to India with their two kids. I have identified only two private schools in the area which provide good education and maintain a reasonably friendly atmosphere for the kids. But the academic year in India starts in mid June and the enrollment for the next academic year (June 2010) is closed. I have communicated the same to the father in an email correspondence. Later I have continued correspondence with these schools to find out their procedures in accepting new students after the enrollment process is done. I was told that the schools are very strict about the student headcount in each class and

that they would accept new students only if there were to be vacancies in future.

In March 2010, I received a relocation notice from the father that he intends to relocate to India with our son.

After Relocation: The Father's behavior is totally out of control after relocating to India with our son. I can call our son 3 times a week as per the current parenting plan. I am supposed to call our son on a US VOIP (internet) phone number. The Father would not let me talk to our son; he would have the calls on that number forwarded to his cell phone. Over the last 14 months I was able to talk to my son about 5 or 6 times total.

I had a scheduled visitation with my son for a month in India during December 2010. The Father would not let me have our son until he was forced to do so, after I filed a motion in an Indian court to have the US court orders enforced. I had lost 1 week of the month time I get to spend with our son during my visit to India, as a result and also ended up spending a large amount of money in legal expenses.

The current parenting plan also has a provision for me to spend some time with my son if I were to make an

unplanned visit to India, as my family lives in India. I had notified the Father as soon as I purchased the tickets for a trip I had to make to India in May 2011 to visit my mom, after she had gone through a major surgery. He did not let me see or even talk to our son during my 2 week trip in India in May 2011. The Father did not let me talk to our son on the phone for 3 months straight from February 2011 to May 2011, by then.

After I returned from my India trip in June 2011, I got an email from the Father that he has got admission for our son in a boarding school and that our son would be joining that school within 3 days from then. He never provided any details as to how I could even contact our son while he is in school. The father let me speak to our son the day he was joining the new school, back in June 2011. In these five months until now I had tried calling the school a few hundred times, with the contact information I got from the school's website. Nobody would pick up the phone. But I got information from another source with a great difficulty that the school has 2 weeks of holidays from October 24, 2011 and that the children would be going home. I have been trying to talk to our son, but the father would pick up the phone and threaten me not to call.

Conclusion: Since the parenting plan was entered in 2008 which placed our son primarily with him, father has done everything he can to alienate my son from me. The father always made it extremely difficult for me to exercise my visitations and he used every opportunity to harass me by not letting me spend time with our son. Things have gotten way out of hand after the father relocated to India with our son. I, the mother at this point have no means of communicating with our son or check on his well being. The father has absolutely no respect for any court order. The father would violate the court orders repeatedly and then blame the attorneys and the courts that they are being biased and unfair for finding him contempt. The father intends to totally eliminate me from our son's life.

I grew up in a very loving and affectionate family and I have a very good understanding of the importance of a mother and father's role in the life of a child. I strongly believe that both the father and mother need to play an active role in the child's life, for a healthy development of the child. In spite of all the father's manipulations, I have always done the best I can to participate in our son's life and be there for him.

III. Argument

1. The Father argues that he never received any final orders...

I did receive the final Parenting Plan and the Child Support Order from my attorney, after those were filed with the court. I am not sure what other final orders the Father is looking for.

2. The Father argues that the FINDINGS OF FACTS are absent...

There is no clarity as to what the Father is talking about.

3. The Father argues that the Parenting Plan is discrimination in terms of allowing my parents to accompany the child while travelling to USA, but not his parents...

According to the Parenting Plan the child can be accompanied by my father or my brother while travelling to USA. If neither of them is available the child can be accompanied by a third person agreed by both parents.

The Father had a past record of not cooperating and manipulating in the last moment during the transfer of the child (while in the USA), as a result of which I had

lost my quality time with the child and also ended up spending a lot of money buying tickets in the last moment. This had happened quite often. My argument during the trial was that if the Father's family members were to travel with the child, who I do not communicate with, the Father could come up with innovative reasons in the last moment for not making this travel happen, after I had made all the plans with the child for the summer and had bought all the expensive international plane tickets.

I do not believe this is discrimination in any way, I believe that this is a fair ruling by the judge for all practical purposes after hearing both the parties and going through the facts.

4. The Father argues that he has no access to documentation...

I do not believe this has anything to do with the trial court judgment about Relocation.

5. The Father argues about his request for legal assistance...

I do not believe this has anything to do with the trial court judgment about Relocation.

6. The Father argues about inconsistencies and discrimination in the trial...

There is no clarity as to what the Father is talking about.

7. The Father argues about discrimination in awarding IRS tax exemptions...

The court ordered that I pay 85% of the child care expenses based on our combined net income. This is only based on income from my current job and the Respondent's offer letter for his new job in India. The Respondent did not even include the income from renting his house in Sammamish, WA, while he was collecting rent even at the time of the trial. Since 85% of the child care expenses were coming out of my pocket, it was only fair that I claim the child as a dependent in my taxes. If the Respondent were to change jobs in future and make more money or have any other source of income, I believe that would be a change in circumstances at that point and would enable him to file a modification. I do not understand how the court is supposed to make a ruling based on assumptions for the future, rather than considering the current situation.

8. The Father argues about Relocation procedures...

There is no clarity as to what the Father is talking about.

9. The Father argues about temporary orders issues on April 13 2005...

I do not believe this has anything to do with the trial court judgment about Relocation.

10. The Father argues that I, the Mother never served any papers...

There is no clarity as to what the Father is talking about.

11. The Father argues about delving into many other clauses...

There is no clarity as to what the Father is talking about.

12. The Father argues something about jurisdiction...

There is no clarity as to what the Father is talking about.

13. The Father argues about cost of living in India...

There is a significant difference in the salary ranges between the US and India, since the salaries in India is proportionate to cost of living in India, which is significantly lower than US. The father himself had mentioned about the cost of living in India being significantly lower than US, in his Relocation Notice. Converting the Father's Indian salary from Rs (Indian currency) to US \$s and comparing with my US salary is comparing apples to oranges. So I had asked the court to consider the cost of living between Sunnyvale (where I live) and Hyderabad (where the Father relocated) in determining the Child Support. The cost of living of Hyderabad (the city where the father relocated), India has been determined based on the information available from public internet websites. Considering all these facts the judge had lowered my Child Support payment amount to half of the standard calculation. The child's Educational expenses and the other expenses like the daycare have been kept separate from the child support calculation as those can keep changing.

14. The Father argues that the judge had modified the Parenting Plan and Child Support orders about things that were not discussed in the trial...

The Father and I, the Mother had submitted our versions of the proposed Parenting Plan and the Child Support orders. All the issues that were not agreed by the parties have been contested and argued during the trial. The judge later issued the final orders after reviewing all the facts. There is no clarity as to what specific issues from the Parenting Plan or the Child Support Orders the Father is arguing about.

15. The Father argues about the debate on Security procedures at school in India...

The school the child was joined in after the Relocation to India had some security procedure in picking up the children after school. The school did not give enough information about this procedure when contacted on the phone. Based on information I got from a friend of mine whose children were going to the same school, I believed that the school could issue a temporary pass for me to pick up the child from school during my visitation in India.

When I actually travelled to India for my visitation during last December, the school would not issue a temporary pass for me, but they asked me to temporarily borrow the pass from the Father, after a written

authorization from him. This is a misunderstanding caused as to lack of enough information from the school.

16. The Father talks about hiring the President of USA as his Representative...

There is no clarity as to what the Father is talking about.

17. The Father talks about involving a representative from PUBLIC INTERNATIONAL LAW and so on...

There is no context or clarity as to what the father is arguing about.

IV. Conclusion

The trial court's decision as per the Final Parenting Plan and the Child Support Order were a result of the careful review of all the facts and arguments from both parties in this case.

The trial court's decision should be affirmed.

Dated this 27 day of October, 2011

A handwritten signature in black ink, appearing to read "Padmaja", written over a horizontal line.

Padmaja Krishnaveni Chiluvuri
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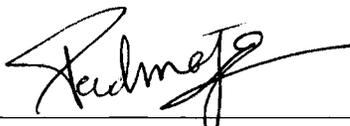
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CERTIFICATE

I certify that I mailed a copy of the foregoing **Respondent Brief** to Muralidhara Varma Chiluvuri, Appellant, at G-3 Abhiteja Platinum, Camelot Layout, Kondapur, Hyderabad, India 500084 and Richard D. Johnson, Court Administrator/ Clerk, at Division I, One Union Square, 600 University Street, Seattle, WA 98101, postage prepaid, on October 27, 2011.



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