

68424-8

68424-8

No. 68424-8-1

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

In re the Marriage of

NEHA CHANDOLA NKA NEHA VYAS
Respondent

and

MANUL VARN CHANDOLA
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

PATRICIA NOVOTNY
Attorney for Respondent
3418 NE 65th Street, Suite A
Seattle, WA 98115
(206) 525-0711

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KING COUNTY
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I. INTRODUCTION

Manjul Varn Chandola appeals from a parenting plan entered following a five-day trial, which largely comports with the recommendations of Varn's own parenting expert, as well as with the court-appointed parenting evaluator. This plan provides Varn with more residential time than recommended by the parenting evaluator, on the recommendation of Varn's expert, and also provides for gradual increases in residential time as Varn is able to demonstrate he has acquired the ability to care for the parties' child, who turns four years old in November 2012. The trial court limited Varn's residential time in this manner, and imposed two other restrictions on him, based on substantial evidence that Varn was unable to place the child's needs above his own and that his conduct had an adverse impact on the child. By protecting against this adverse impact, the court did not abuse its discretion, but, rather, acted in the best interests of the child, as required by law.

II. RESTATEMENT OF ISSUES

1. Does the trial court have broad discretion in fashioning a parenting plan that serves the best interests of the child?

2. Is it the trial court's job to weigh the evidence and assess the credibility of the witnesses and will the trial court's factual findings be treated as verities on appeal if supported by substantial evidence?

3. Did substantial evidence support the court's finding that Varn's conduct was adverse to the child's best interests, authorizing restrictions under RCW 26.09.191(3)(g)?

4. Did the trial court abuse its discretion by limiting residential time based on the finding of conduct adverse to the child's best interests?

5. Did the trial court abuse its discretion by limiting the amount of time the paternal grandparents spend with the child while in Varn's care, given the need for Varn to demonstrate an independent ability to care for the child and given the historical conduct of the grandparents in terms of denigrating the mother and marginalizing her role in the child's life?

6. Did the trial court abuse its discretion by requiring that the child sleep in her own bedroom during Varn's residential time given his harmful interference with the child's sleep and independence?

7. Should the trial court deny Varn his request for attorney fees, given he is fully capable of paying his own litigation expense and Neha lacks the resources to pay for them?

III. STATEMENT OF THE CASE

A. VARN'S PARENTING WAS HARMFUL TO THE CHILD.

Neha and Varn have one child, P.R.C. Their marriage ended in disputes regarding the well-being of that child. Varn resisted all of Neha's efforts to structure the child's life in a manner suited to her needs, with harmful consequences to the child's health and development. Instead, consistently, as was apparent to friends and family, Varn placed a priority on his own needs and his own emotional states, at the expense of P.R.C. The court expressly found this conduct "adverse to the best interests of the child" and restricted Varn's residential time. CP 92.

In particular, as the trial court found, Varn, though loving, "nevertheless lacked, in concerning degree, objectivity with respect to [the child's] healthy development." CP 92. He was "unwilling or unable to establish boundaries, routines, schedules, and structure. He discouraged exploration and independence." *Id.* Not only was Varn an ineffective parent, he "actively undermined the mother's efforts to provide these essential parenting components, resulting in

an imbalance that appears to have had adverse consequences for the child.” CP 92. Significantly, the harmful effects of Varn’s parenting largely remediated during the year between separation and trial, when the child resided almost entirely with Neha. CP 92-93. P.R.C. was a “changed child,” who went from being timid and withdrawn, fussy and clingy, to happy, outgoing, social, and curious. Id. The trial court’s parenting plan sought to preserve these improvements, and the child’s health and happiness, while reintegrating Varn into the child’s life as he demonstrated whether or not he could improve his parenting.

B. TWO PARENTING EXPERTS CONCURRED WITH THE CONCLUSION THAT VARN’S PROBLEMATIC CONDUCT WAS HARMFUL TO THE CHILD.

The court appointed a parenting evaluator, Jennifer Wheeler, Ph.D., who produced a lengthy report after psychological testing, investigation, interviews, evaluation, and observations of the child with the parents. Exhibit 1, at 1-3. Though both parents manifested some mental health adjustment problems, as do many people in the midst of high-conflict divorce, the only problem affecting the ability to parent was with Varn. II RP 235, 330-331.

The evaluator identified traits in Varn’s personality, which, while not rising to the level of a diagnosable disorder, nonetheless

“were problematic and ... did seem to impair parenting.” II RP 183-184. These personality traits included obsessive-compulsiveness, rigid fixation of structure, perfectionistic orientation, inflexibility, hypomania, depression, and narcissism. II RP 184-188. Though the evaluator was unable to determine whether these problematic traits were transient or fixed aspects of Varn’s personality, it was clear they were, at least, longstanding and chronic. II RP 187-188. Regardless of this diagnostic uncertainty, these traits impaired Varn’s relationship with Neha, his parenting, and, possibly, his ability to function professionally (noting Varn’s lack of professional stability and success). II RP 186.

These traits manifested themselves in different ways. For example, Varn seemed unable to focus on P.R.C.’s needs as an autonomous human being. He held her excessively, interfered with her social interactions, her physical independence, and her sleep. Exhibit 1, at 27; I RP 53-57, 82, 95, 130; II RP 189-190, 193, 222-223; III RP 377-378, 411-412, 492-493, 528; IV RP 618, 637-638, 666, 687-688, 690, 693; V RP 726, 857, 874. He was overprotective, rigid and obsessive in respect of certain aspects of caring for P.R.C., such as, for example, never allowing the child to be in a room alone, even when asleep. IV RP 642-645, 674

(rejecting suggestions from peers and Neha that he use a baby monitor). He insisted an adult always ride in the back seat of a car with P.R.C., even though she was in her car seat. III RP 413. He limited her freedom of movement and social interaction, for example, by not allowing her to go to the Children's Museum or to day care or to have a non-family babysitter, for fear something might happen to her. II RP 189-190; III RP 413-414; IV RP 645-646, 674, 695-697; V RP 888-889.

At the same time as he was rigidly overprotective, Varn was also completely indulgent of the child, in ways that soothed or satisfied him, regardless of the impact on P.R.C. For example, he could not refuse P.R.C. milk in a bottle, even long after the pediatrician repeatedly warned of risks to her from continued nighttime bottle-feeding. II RP 190-192; III RP 411-412; IV RP 543, 548-549, 551-552; V RP 930-932. Likewise, Varn would not or could not make P.R.C. eat on a regular schedule or in a regular manner, i.e., at a table or in a high chair. V RP 727. Rather, at all hours, through every room in the house, he would chase after her attempting to get her to eat. III RP 379-380, 411; V RP 885-886. He would not agree to a bedtime routine, but, rather, insisted on using YouTube and other media to put the child to sleep, meaning

the child had no regular bedtime and no regular sleep. II RP 356-357; III RP 408, 411-412; IV RP 638-640, 669.

While unable to provide the child with the routine and structure she needed, Varn also undermined efforts by Neha to do so. II RP 356-357; III RP 408, 412-413; V RP 786-787. Worse, he undermined Neha's relationship with the child, in conjunction with his parents, who lived with the couple for long periods of time. For example, the grandparents and Varn would encourage the child to choose her father over her mother and praise her when she did so. I RP 129, 131-132; II RP 203-204; III RP 377, 385-386. He would also demean Neha in the presence of P.R.C. III RP 414. Not only did Varn and his parents thus generate a rift between P.R.C. and her mother, Varn and his parents signaled how little they valued the mother and signaled to the child that she was not free to love both parents equally. II RP 200, 203-204. Varn even seemed determined to place P.R.C. in the middle of a contentious adult issue (relating to P.R.C.'s "private parts") by threatening to tell the child about it, which Dr. Dr. Hedrick predicted would be "just devastating" and raised concerns about Varn's ability to empathize and to put aside his own agenda. V RP 728-729.

In general terms, Varn consistently had trouble prioritizing P.R.C.'s needs over his own, both because he seemed unable to empathize with her or to respond rationally to her needs. II RP 189, 221-231. These impairments could not be attributed to the normal learning curve new parents experience, since Varn did not seem to learn as he went along. He resisted Neha's involvement, even with respect to whether she should take a particular herb to help with lactation. I RP 42-43. He rejected advice from friends, for example, that he use a baby monitor for when P.R.C. was sleeping and that he carry P.R.C. less. I RP 53; IV RP 643-644, 674. He refused to end night-time bottle feeding of milk despite repeated recommendations from two pediatricians about the risks to the child. II RP 190-192; III RP 411-412; IV RP 543, 548-549, 551-552; V RP 930-932. Simply, Varn would insist on doing things his way, no matter what, including no matter what was good for the child. CP 93 (court finding Varn had "difficulties with integrating data inconsistent with his view of reality") (did not appreciate the "down side of his approach" or "the risks and hazards of his parenting choices").

Varn produced his own parenting expert, Dr. Marsha Hedrick, to critique the job done by Dr. Wheeler. III RP 458-529.

Instead, Dr. Hedrick opined that Dr. Wheeler produced “a very tight report.” III RP 488. Though she had some minor quarrels (e.g., preferring two psychological tests to one and structuring the observation periods differently), overall she did not criticize the procedure employed by Dr. Wheeler. III RP 506-510.

Dr. Hedrick also concurred in Dr. Wheeler’s concerns about Varn. In particular, she noted “his difficulties understanding normal child development, what children need at different levels.” III RP 492-493. For example, by carrying P.R.C. around everywhere and hovering over her, in an almost proprietary fashion, he encroached on the child’s need for independence. III RP 492-493, 528. She faulted Varn’s “ability to understand the child’s needs and prioritize those needs ahead of his own.” III RP 528. His conduct simply was not consistent with what the child needs or with being a good parent. III RP 528-529. Dr. Hedrick was also concerned by the over-involvement of Varn’s parents and Varn’s failure to address that problem. *Id.*

Dr. Hedrick agreed with Dr. Wheeler that there was a likelihood for ongoing problems, so agreed with the use of a case manager. III RP 494. She agreed there were no significant concerns with Neha’s parenting. III RP 520-521. Still, Dr. Hedrick

did part ways with Dr. Wheeler in terms of the specifics of the residential schedule, suggesting the need for some additional overnights for Varn. III RP 498-500. In other words, Dr. Hedrick did not see reasons to limit the father's time to less than one night a week, as Dr. Wheeler had. III RP 502-503; II RP 237. However, she agreed with Dr. Wheeler that there were instances where time limitations were appropriate, even without the usual "191" bases for restrictions (e.g., domestic violence, abusive use of conflict). III RP 502-503. In this case, she agreed there was cause to limit the father's residential time to one night a week, but not less. That is, she did not see any basis "that necessitated a greater limitation than one night a week." *Id.*¹

The court incorporated Dr. Hedrick's criticism into its decision, increasing the father's residential time to one night a week and one five-hour weekly visit. CP 81. In two years, assuming Varn can demonstrate amelioration of his problematic parenting, his residential time will double, and will increase substantially again two years later (to a roughly 65/35 plan). CP 81-84. In this respect, the court acted to "assure the mother's parenting is not diluted by the

¹ Varn implies Dr. Hedrick disagreed there was any basis to limit his residential time. Br. Appellant, at 31-32. Her testimony belies that assertion.

father,” but also increased the opportunity for Varn to implement increased awareness and better judgment in his parenting. CP 93.

C. VARN'S HARMFUL CONDUCT WAS CORROBORATED BY MULTIPLE OTHER WITNESSES.

Some of the Varn's problematic traits were apparent in his own testimony, as, for example, when he insisted that he had been the child's primary caretaker, a view inconsistent with reality. See, e.g., II RP 192; V RP 722-723 (Dr. Hedrick noting the data did not support Varn's claim); V RP 908. For example, Neha testified she taught Varn to diaper P.R.C. when she was 10 months old, when, for the first time, there were no grandparents in the home. III RP 455-456. She had to teach him again seven months later when they were using a different kind of diaper and the grandparents were again temporarily gone. I RP 45-46, 93-94; 5 RP 754-756, 803-805, 830. A neighbor, trained in child development and a frequent visitor, reported that Varn typically did not engage in any of the usual tasks of parenting, the “grunt” work. I RP 125-126, 134. Neha's mother reported similarly. See, e.g., III RP 374-375. Other friends likewise attributed most of the parental work to Neha. See, e.g., IV RP 641 (Varn did the fun stuff, while Neha did the work), 650-651. Indeed, Varn was frequently out of the house, and when he did interact with P.R.C. it was mainly in an entertainment mode.

I RP 126, 138, 140, 142, 167; II RP 216; IV RP 666, 686-689, 710.

Even one of his own witnesses specifically could recall only that Varn sometimes took P.R.C. on outings, for example, to the library. IV RP 685; V RP 828.

Varn's problem was not simply absenting himself from parenting tasks, but that, despite his limitations, he dictated how P.R.C.'s life would be structured. He actively opposed setting limits or creating boundaries for the child in a manner that was healthy or conducive to her well-being, as described above.

As a consequence, by age two, P.R.C. was a wreck, cranky and stressed, and the household was as tense as would be any household if run by a two-year-old. I RP 146; II RP 200-201; III RP 376-378, 409; IV RP 648. Her parents were in conflict, both stressed in their different ways and both contemplating divorce. II RP 180, 199; IV RP 782-783; V RP 780, 890-896, 942. Not surprisingly, some of P.R.C.'s conduct during this period attracted particular attention, as when she complained about vaginal pain while playing doctor and while being diapered. IV RP 603, 678; V RP 801, 957-959. When these incidents were reported to Neha, and other incidents occurred (e.g., P.R.C. grabbing at Neha's intimate body parts and tantruming during diaper changes), Neha

did not know what to think and sought professional guidance. IV RP 549-551, 897; V RP 800-803. Varn reacted dramatically to the inquiry, feeling he had been accused of abuse. V RP 947-949.

The couple separated. P.R.C. was ordered into her mother's primary care, with supervised visitation with her father, until a psychologist concluded there was no cause for alarm related to P.R.C.'s "private parts." II RP 270-271; III RP 416-417. By trial, Varn's time was no longer supervised and P.R.C. was vastly improved.

After a five-day trial, the court concluded "both these parents have some issues and both have demonstrated [the] ability to address those issues and change." CP 94. The court attributed the sexual abuse issue to Neha perhaps needing to precipitate a crisis to end the marriage and discounted Varn's dramatic reaction to the issue (e.g., as in wanting a full-scale Harborview sexual assault evaluation and wanting to tell P.R.C. about the conflict). CP 94; see, also, II RP 196-199; III RP 522-523; V RP 909-911.

Based on the court's finding that some of Varn's conduct was adverse to P.R.C.'s best interests, the court adopted a restricted residential schedule, but one more expansive than proposed by the mother, consistent with Dr. Hedrick's opinion. CP

93.² The court also required that Varn have P.R.C. sleep in her own room when in his care. Finally, the court required that Varn limit his parents' presence to 20% of P.R.C.'s residential time with him, to maximize "Varn's opportunities to parent and to learn from the opportunities," which the former "team" approach had not done. CP 93-94. This restriction does not preclude the grandparents spending other time with the child, for example, time spent apart from Varn, when the grandparents and P.R.C. could develop a relationship separate from Varn. CP 94.

Varn appealed. CP 103-128.

IV. ARGUMENT IN RESPONSE TO APPEAL.

A. THE COURT'S DECISION ON PARENTING ISSUES IS REVIEWED FOR AN ABUSE OF DISCRETION.

In this case, the trial court relied on two psychologists and substantial other evidence to devise a parenting plan that would protect the continued growth and healthy development of this child, while allowing the father opportunities to improve his parenting, so that his conduct no longer harms the child. As his parenting improves, so does his residential time with his daughter. In other words, the court struck a careful balance between the best interests

² The parties agreed to most of the other provisions of the parenting plan. CP 1, 44.

of the child and the right of the father to the companionship of his daughter.

In challenging the court's decision, Varn bears a heavy burden, since this Court reviews a parenting plan for whether an abuse of discretion occurred, meaning the trial court's decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Katare*, 2012 Wash. LEXIS 575 (August 16, 2012), at ¶ 21, citing *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997).

Moreover, Varn must carry this burden without retrial of the factual issues, since the trial court's findings of fact will be accepted as verities on appeal as long as they are supported by substantial evidence in the record. *Katare*, at ¶ 21. After all, it is the trial court's role to resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of witnesses. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); accord *Thompson v. Hanson*, 142 Wn. App. 53, 60, 174 P.3d 120 (2007), *aff'd*, 167 Wn.2d 414, 219 P.3d 659 (2009) (appellate court defers to the trier of fact on issues involving conflicting testimony, the credibility of the witnesses, and the persuasiveness of the evidence). "Substantial evidence is a

quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true.” *Id.*, citing *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). For these reasons, decisions in dissolution proceedings will seldom be changed on appeal. *In re Marriage of Landry*, 103 Wn.2d 807, 809-810, 699 P.2d 214 (1985) (“The emotional and financial interests affected by [dissolution] decisions are best served by finality.”). Simply, Varn must show that “no reasonable judge would have reached the same conclusion” as did the judge here. *Id.*, at 809-810. All of these principles apply in this case to require the trial court’s decision be affirmed.

B. THE TRIAL COURT HAS BROAD DISCRETION TO FASHION A PARENTING PLAN.

In cases involving children, the court’s duty and discretion are especially extensive. “A trial court wields broad discretion when fashioning a permanent parenting plan.” *In re Marriage of Katare*, 2012 Wash. LEXIS 575 (August 16, 2012), at ¶ 22, citing *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). The court exercises that discretion guided by the best interests of the child and upon consideration of the factors listed in RCW

26.09.184(5), RCW 26.09.187(3).³ See, also, RCW 26.09.002 (best interests is standard for court's parenting decisions).

The court may also impose restrictions based on RCW 26.09.191(3)(g) where it finds a parent's conduct to be "adverse to the best interests of the child." *Katare*, ¶ 22, citing RCW 26.09.191(3)(g). The trial court expressly made that finding here with respect to Varn's conduct. CP 92. Based on this finding, the court is authorized by statute to limit "any provisions of the parenting plan." RCW 26.09.191(3)(g).

At the outset, it is necessary to acknowledge the breadth of the court's discretion under this provision, which arguably merely restates the general authority – and duty – of the trial court to act in the best interests of children when structuring a parenting plan. *Littlefield*, 133 Wn.2d at 51-52; see, also *Katare*, at ¶ 36 (risk the father might abduct the children justifies travel limitations under RCW 26.09.191(3)(g)).

Varn acknowledges the breadth of this authority. Br. Appellant, at 27. However, he warns against a trial court's usurpation of a parent's constitutionally protected interest in making child-rearing decisions based on mere "personal preference." *Id.*

³ The relevant statutes are included as an appendix.

As a general principle, he is right, but as to the particulars of this case, he is completely off-base. Varn conflates a straightforward “best interests” standard, where there might be some risk of judicial subjectivity, with the requirement that harm be shown to justify restrictions. *Id.* In the latter case, a discrete burden of proof is required, i.e., the burden to prove harm to the child from the parent’s conduct. Here, for example, the trial court did not indulge a personal preference for one parent, or parenting style, over another. Rather, the trial court intervened to protect the child against harmful parental conduct, an intervention both lawful and necessary.

Thus, Varn is left with a challenge to the sufficiency of the evidence supporting the trial court’s finding that his conduct was harmful to P.R.C. He fails this difficult test. Both psychologists, numerous friends, the mother and her mother all testified to the harm done to the child because Varn could not attend to the child’s needs over his own. See, e.g., I RP 110-111 (P.R.C. clingy, fearful, prone to tantrums); I RP 246 (P.R.C. cranky, somber, tired, “a stressed little girl”); II RP 354-355 (P.R.C. “a tired little girl”); III RP 410 (P.R.C. cranky); IV RP 567-568 (cranky); IV RP 651 (P.R.C.

"really closed in"; really fussy and cranky; never got any sleep; seemed fearful, held apart from other children, suspicious).

No one, not even Varn, claimed his conduct was merely a matter of style, with a neutral impact on the child. For example, it is not that the child's bedtime/daytime schedule was merely different from most; rather, it is that the child's schedule did not permit her to get the sleep or nutrition she needed to be happy and healthy. See, e.g., I RP 128; II RP 345; III RP 381, 399-400, 408. Likewise, Varn did not feed P.R.C. milk by bottle at night because of his adherence to an "attachment parenting" philosophy (see Br. Appellant, at 28); rather, he exposed P.R.C. to the risks of dental problems and nutritional deficiencies because he was not able to say "no" to the child. II RP 190-191; III RP 412; V RP 930. This is not a parenting style; quite the contrary. Varn's erratic parenting reflects his inability to manage his own emotions in a way that served his child's welfare. For example, he would not defend as a parenting style indulging a refusal by P.R.C. to use a car seat (or, actually, the "best best" car seat, II RP 188-189), so how can he defend these harmful practices? Infants do not get to decide whether to ride in the car seat or whether to bottle-feed when it is no longer good for them. That is the parent's job.

The same is true of Varn's excessive holding of P.R.C., which, of course, no one criticized for its nurturing quality, but, rather, for its *lack* of nurturing quality. That is, P.R.C. had an important need for independence, for exercise, for socialization, all of which were impeded by Varn's inability to deny himself the comfort of her close presence. In short, the evidence substantially and directly supported that additional residential time with Varn would be harmful to P.R.C., contrary to Varn's assertion on appeal. Br. Appellant, at 31.

Varn's problem on appeal is the same as with parenting. He mistakes that this case is about him, when, actually, it is about P.R.C., about what she needs and about the trial court's effort to make sure she gets what she needs to be happy and healthy. See, e.g., III RP 426-428. Most saliently, the change in the child during the year or so she spent free of the gravitational pull of her father and paternal grandparents directly refutes Varn's challenge to the court's finding that his lack of parenting skills, or inability to implement the necessary skills, harmed this child.

Varn more or less acknowledges these problems, but argues with the court's solution. See, e.g., Br. Appellant, at 29. As he did at trial, he proposes that training of him is alone sufficient. The

problem with this argument, apart from the standard of review, is that the record proves the intractability of Varn's impairments. It is not that he lacked advice or training during P.R.C.'s early childhood; rather, it is that he rejected such counsel, whether from his wife or his friends and neighbors or the child's pediatrician. What concerned the parenting evaluator, and Dr. Hedrick, was the persistence of the personality traits responsible for Varn's conduct. Despite that both experts expressed similar concerns, and Dr. Wheeler recommended he seek treatment, by trial, Varn had stopped psychotherapy. II RP 221-235; V RP 921, 961-962. What time will tell, within the framework of the carefully constructed parenting plan, is whether Varn can reverse his current priorities, and place P.R.C.'s welfare above his own needs, including his need to be right.

C. THE COURT'S NONRESIDENTIAL RESTRICTIONS WERE BASED ON SUBSTANTIAL EVIDENCE OF HARM TO THE CHILD FROM THE GRANDPARENTS AND HARM FROM THE FATHER'S "HOVERING" BEHAVIOR.

Varn's appeal is based entirely on a challenge to the court's findings of fact and its discretionary structuring of the parenting plan. The facts also led the court to restrict the amount of time Varn takes care of P.R.C. while his parents are also present and requires that P.R.C. sleep in her own room. These restrictions fall

well within the court's discretion and do not trench on Varn's constitutional right.

A consistent concern throughout the trial was the extent to which Varn even knew how to care for P.R.C. in most of the essential, practical aspects, such as diapering, sleep-training, feeding, etc. His claim to have been the primary caregiver was supported by little evidence. Rather, it appeared that Varn spent his time with P.R.C. either holding her, often when he should not have, or entertaining her, again, often when she needed either to sleep or eat or socialize. During most of P.R.C.'s life, either her mother attended to her basic needs or one of her grandmothers' did. When, near the end of the marriage, all three of these caregivers were either absent or otherwise occupied, Varn struggled. See, e.g., III RP 409-411. That is, during the relatively short period of time when Varn should have been able to provide the primary care, he fumbled and stumbled. Indeed, the separation occurred immediately after this failed effort. Thus, one aspect of the court's restriction regarding the presence of Varn's parents has to do with making certain it is Varn, and not a substitute caregiver, who actually takes care of P.R.C. There is no other way to determine if Varn can successfully meet this requirement.

A second, crucial aspect of the grandparental restriction is protecting against the corrosive undermining by Varn and the grandparents of the relationship between P.R.C. and Neha. Dr. Wheeler spoke at length about the dangers to P.R.C. from this behavior. Dr. Hedrick echoed these concerns. Yet Varn simply ignores this evidence of the harm done by the Chandolas' "team approach" and argues the judge was merely indulging a preference. Br. Appellant, at 32. In fact, the court accomplished two important purposes with this restriction: to limit the risk of harm from the grandparents' denigrating of the mother and to increase the opportunity to confirm whether or not Varn was capable of parenting P.R.C. without harming her.

This restriction does not trench on Varn's constitutional rights. Br. Appellant, at 33-34. First, the fact that the court devised this restriction, without Neha requesting it, means nothing except that the court was fulfilling its independent duty to serve the child's best interests. RCW 26.09.002; RCW 26.09.187; RCW 26.09.191.

Similarly, with respect to the sleeping restriction, the court did not take sides in the broader co-sleeping debate, but, rather, addressed a problem specific to Varn's parenting. The evidence makes clear Varn had little understanding of the child's need for

sleep and for routine sleep. Likewise, the evidence makes clear that Varn had considerable difficulty separating out his own needs from the child's, including the need for physical contact versus the need for physical autonomy. See, e.g., V RP 873-874 (child sleeping on floor so Varn could sleep with her). Particularly, Varn demonstrated an irrational need to have an adult always present in the room with the sleeping child, refusing even to use a baby monitor. Again, though Varn claims there is no factual basis for this restriction (Br. Appellant, at 34, 35), the record proves otherwise. The trial court acted to protect the child from Varn's hovering, so that she might enjoy a peaceful night and get the sleep essential to her healthy development. Neha worked hard to transition the child to sleeping in a bed, progress the court's restriction on Varn seeks to protect. Ill RP 386-388, 426-428. In short, the court acted to provide Varn with the "sleep-training" he obviously needs.

D. THE COURT'S VIEW OF VARN'S PARENTING WAS BASED ON THE FACTS ESTABLISHED AT TRIAL, WHICH INCLUDED PLACING IN PERSPECTIVE THE CONCERNS ABOUT INAPPROPRIATE TOUCHING.

It is a real stretch for Varn to argue that Neha impaired his parenting by referring for investigation concerns about some of P.R.C.'s conduct and expressions. Br. Appellant, at 35. In the first place, Neha did not raise these concerns until separation, meaning

there was no effect on Varn's access to P.R.C. for the majority of her life. II RP 385; V RP 780-781. Moreover, the fact that Neha raised these concerns did not alarm any of the experts, but, rather, seemed reasonable in context, particularly as there were other adults who also alerted to some of P.R.C.'s conduct, including the paternal grandparents. II RP 335. No one questioned the veracity of the various reports made of what P.R.C. said or did. See, e.g., II RP 723; III RP 513-514. Nor did anyone fault Neha for seeking professional help to discern what to make of P.R.C.'s conduct and expression. See, e.g., III RP 524; V RP 723-724. Further, the trial court expressly rejected any implication of inappropriate touching by Varn and, rather, viewed the concerns through the lens of Neha's heightened, pre-separation anxiety. CP 94. Most importantly, there were plenty of other reasons to restrict Varn's residential time with P.R.C. post-separation, and, of course, those restrictions allowed P.R.C. to improve dramatically in terms of her overall emotional and physical health. CP 92-93; I RP 65-66 (P.R.C. a "totally different kid"); II RP 200-201 (child "very well-adjusted" now); IV RP 653 (difference in P.R.C. is like "night and day"; she is open, energetic, playful, happy, fun); V RP 889 (happy).

Varn tries to attribute this improvement solely to normal development, meaning P.R.C. would have changed from cranky, clingy, sullen, and timid to happy, outgoing, interactive, and independent simply by turning three. Br. Appellant, at 36. No one else at trial agreed with this assessment. Rather, the evidence was clear that P.R.C. had benefitted significantly from the structure provided by Neha: better sleep, better nutrition, more independence, more socializing opportunities, etc. This is not surprising, but sensible.

For these reasons, this case bears no resemblance to *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006), where there were no problems with the father's parenting, except for the lack of an opportunity to parent because the mother had made false accusations of sexual abuse. Most obviously, *Watson* is distinguished by the fact that the mother there made false accusations, and stuck to them, where, here, Neha moved cautiously and without accusation to investigate conduct she found concerning. Tellingly, and unlike the mother in *Watson*, Neha received the conclusion of that investigation (i.e., that there was no basis for concern) with relief.

Also, unlike in *Watson*, the court here acknowledged what all the witnesses agreed: that Varn and P.R.C. share a strong emotional bond, unlike the father and child in *Watson*. But the court also acknowledged, and acted on, the substantial evidence that, despite his love for the child, Varn harmed the child during the period of time *before* separation.

Finally, Varn argues the court should have ignored that P.R.C. prospered while under the primary care of Neha post-separation. Br. Appellant, at 37-38. In fact, the court had to consider all evidence relevant to the child's best interests. See, *Bay v. Jensen*, 147 Wn. App. 641, 657, 196 P.3d 753 (2008) (court cannot withhold inquiry into best interests of children as a sanction for a party's failure to comply with a court order); see, also, *In re Marriage of Coy*, 160 Wn. App. 797, 805, 248 P.3d 1101 (2011) (modification of parenting plan requires an independent inquiry by the trial court). Ultimately, the court must determine whether the parenting plan serves the child's best interests. RCW 26.09.002; RCW 26.09.187; RCW 26.09.191. That evidence included the fact that Varn was unable to care for P.R.C. It is simply false to claim that the court had to maintain "the existing [pre-separation] pattern"

of parent and child interaction (Br. Appellant, at 38) when the evidence showed that pattern to be harmful.

While Varn argues the court should have reinstated the pre-separation status quo, regardless of harm to the child, he also seems to argue the court improperly applied a presumption in favor of the status quo obtained under temporary orders post-separation. Br. Appellant, at 37-38, citing *In re Marriage of Combs*, 105 Wn. App. 168, 177, 19 P.3d 469 (2001). That simply is not what happened here. The court viewed all the evidence relevant to the child's best interests and acted to serve those interests, without indulging a presumption of any kind. See *In re Marriage of Kovacs*, 121 Wn.2d 795, 808-809, 854 P.2d 629 (1993) (no primary caregiver presumption in Washington or presumption favoring continuation of temporary residential placement). The court complied with Washington law and the court acted well within its discretion.

E. THE COURT DID NOT TRENCH ON ANY CONSTITUTIONAL RIGHTS WHEN IT LIMITED THE HARMFUL IMPACT OF THE GRANDPARENTS' OVERINVOLVEMENT AND REQUIRED THAT VARN ALLOW THE CHILD TO SLEEP IN HER OWN ROOM.

Because his challenge must fail under the proper standards of review, Varn attempts to evade them by characterizing the trial

court's decision as being based on cultural/ethnic bias or national origin discrimination. Br. Appellant, at 39-41. This effort simply does not work, any more than it worked in *Marriage of Katare*, *supra*, at ¶¶ 19 & 20.

In the first place, both parents in this case share the same culture, Indian, and both include their extended family in P.R.C.'s life, with the trial court's support. CP 94.⁴ The problem with Varn and his parents is not cultural, but personal. Varn's obsessiveness and overprotectiveness are not Indian, but symptomatic of chronic maladaptations. In any case, Varn does not argue that he should be permitted to engage in a particular cultural practice even if that practice harms the child, and Washington law would not favor such an argument. Rather, in Washington, residential time "must be determined with reference to the needs of the child" *In re Marriage of Cabalquinto*, 100 Wn.2d 325, 329, 669 P.2d 886 (1983). Parents will not be denied time with their children for qualities or conduct irrelevant to the child's best interests. See,

⁴ In support of the proposition that extended family is important, Varn cites an Oregon relocation case. Br. Appellant, at 41, citing *Maurer & Maurer*, 245 Ore. App. 614, 636, 262 P.3d 1175 (Or. Ct. App. 2011). The proposition is not in dispute here. In any case, the decision in *Maurer* allowing the mother to relocate was based on numerous factors other than access to her extended family, including better job for mother and better standard of living for children, father's parenting deficits (not "child-centered" or "nurturant") and his demanding work schedule (meaning he spent little time with children). In short, *Maurer* is not much help to Varn.

e.g., Id. (sexual orientation). But where there exists a nexus between parental conduct and the child's needs, the court has the authority to restrict the parent. *In re Marriage of Pennamen*, 135 Wn. App. 790, 806, 146 P.3d 466 (2006) (in relocation context, trial court properly considered parent's historical drug abuse). Even where the restrictions impinge on fundamental constitutional rights, such as the free exercise of religion, the court may restrict a parent if necessary to prevent harm to the child. *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 491-92, 899 P.2d 803 (1995). Here, it is Varn's conduct, and his parents' conduct, and the harm to P.R.C. caused by them, that motivated the restriction. It is not that he is Indian, or that Indians co-sleep with their children or enjoy holding their children or involve their extended family in a child's upbringing. Indeed, as the witnesses made clear, in their criticisms of Varn's conduct, Indian culture is not monolithic. See, e.g., IV RP 636 (witness Ganti noting as atypical in Indian culture Varn allowing P.R.C. to call him by his first name); V RP 888. In any case, Varn's constitutional argument merely masks that his real dispute is with the court's factual findings.

F. THE COURT SHOULD DENY VARN HIS ATTORNEY FEES.

Varn asks for attorney fees based on the parties' relative resources. Br. Appellant, at 41-42. Varn is a lawyer, as is Neha. I RP 28; V RP 97. He has the capacity for full time employment, and declared at trial his intent to pursue full time employment. V RP 854. Neha earns a relatively modest salary, for a professional, with which she provides the primary support for herself and her child, and with which she has had to fund litigation. CP 45. She has no ability to fund Varn's litigation expense.

V. CONCLUSION

For the reasons above, Neha Vyas respectfully asks this Court to affirm the trial court's parenting plan.

Dated this 7th day of September 2012.

RESPECTFULLY SUBMITTED,


PATRICIA NOVOTNY #14950
WSBA #13604
Attorney for Respondent

behavior repertoire increased dramatically; Hedrick deposition at p47; Wheeler, EX 1 p. 26. As more than one lay witness observed since separation "Prasha is a changed child, more outgoing, interactive"; (Gupta testimony for example.)

While it is cause for optimism that Varn has agreed to parenting plan provisions that recognize the importance of "Prasha's set schedule for meal times, bed times, wake up times *etc.*", his testimony failed to persuade this court that he appreciated the down side of his approach before separation or the risks and hazards of his parenting choices going forward. This assessment of his testimony is consistent with Dr. Wheeler's concerns about his difficulties with integrating data inconsistent with his view of reality. It is therefore necessary to impose such restrictions as may best be anticipated assure the mother's parenting is not diluted by the father. Certainly a "fifty/fifty" parenting plan would not accomplish this.

However the mother's proposal and Dr. Wheeler's residential recommendation are too restrictive to accomplish the purposes of the parenting statute. The court agrees with Dr. Hedrick's opinion that the pre-kindergarten schedule "*....doesn't allow for enough extended periods of parenting. And this child is very likely to see this parent as marginalized.*" Hedrick Deposition at p53. Are Varn's issues so problematic that he *should* be marginalized? The court finds not. Dr. Wheeler says "*...until Manjul develops increased awareness of these traits and their potentially harmful impact on Prasha, I have concerns that his judgment and reasoning with regard to parenting-related decisions may remain impaired*". EX 1, p 28. The issue before the court is the residential time for the father but that issue should be addressed in view of the other (agreed) provisions of the parenting plan which the court finds are in the child's best interests. The agreed provisions in Section VI are well designed to address increased awareness for Varn, but increased awareness without the opportunity to parent regularly in a time frame the child relates to is pointless. From another view it won't be known whether his judgment and reasoning with regard to parenting decisions is improving if there is insufficient opportunity to parent.

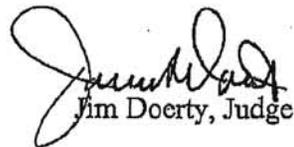
Varn's opportunities to parent and to learn from the opportunities must in large part be without the presence of his parents. The court recognizes that there are several cultural aspects to the history of the marriage and these may or may not include the paternal grandparents approach and influence. Or it may be due to Varn being an only child, or likely a combination of both. Whatever the antecedents of the extended family dynamic the so called "team" approach at this

time needs to stop. Therefore Varn's residential time must exclude his parents with occasional exceptions which may include Prasha visiting her grandparents in Tucson consistent with the other provisions of the plan. It might actually be better if Prasha developed a relationship with her grandparents *separate* from Varn especially now in the early years of the plan since it is likely as his parents become more elderly they and Varn may wish to reside together again.

In the interests of fairness it must be recognized that *both* these parents have some issues and both have demonstrated ability to address those issues and change. The court finds that the Petitioner's arguments about Varn's reaction to the sexual abuse issue at the time are not of great concern to the court at the present. Further it would be unfair in this court's judgment to hold those reactions against Varn without some recognition that Neha's documented over-reactive tendencies played a part. With the benefit of hindsight and a thorough trial it appears to the court that Neha may have needed to precipitate a crisis in order to escape the marriage and extended family dynamic. The parents are cautioned that law school sharpens our minds by narrowing them to a find point, and they are urged to avoid approaching co-parenting and the issues that will arise in the future with their lawyer mind set.

Based on these summary findings and the record in the case the court enters the parenting plan signed this date

DONE this 16th of February, 2012


Jim Doerty, Judge

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III. RESIDENTIAL SCHEDULE

3.1 SCHEDULE FOR CHILD UNDER SCHOOL AGE.

See 3.2, below.

3.2 SCHOOL SCHEDULE.

Stage 1: Commencing immediately, Prasha shall reside with her mother, except for the following days and times when she shall be with her father:

Every Tuesday from 2:00 pm (pick up at day care, or as soon after 2:00 pm as the father can arrive from work) until 7:00 pm. The father shall provide dinner for the child and recognize that the evening activities should be suitable for a "wind down" towards bedtime.

Every other Thursday (when the father does not have the immediately coming weekend) from 2:00pm (pick up at day care or as soon after 2:00pm as the father can arrive from work, or if no daycare from the 104th Street Walgreen's in Kent) until return to daycare Friday morning or if no daycare exchange at 9:00 am at the Walgreen's.

Every other weekend when the father did not have the prior Thursday from Saturday at 10 am – Sunday at 6 pm (pick up and drop off at the Walgreens on 104th Street, Kent, WA), provided, however that if the father is unemployed, his every other weekend shall instead be from Friday 10 am – Saturday 6 pm.

The parties shall only progress to the next stage if the father has routinely abided by the mother's bedtime routine and time (unless otherwise recommended by the case manager); the child sleeps in her own room at the father's house (unless otherwise recommended by the case manager); the father has remained compliant with counseling requirements; the father has successfully completed parent training; the father has abstained from discussing the case or any disputed facts/claims in the case with the child; the father has complied with the restrictions regarding paternal grandparent contact in Section 3.10; and the father has complied with any and all recommendations by the child's therapist, the parent trainer, and the case manager. If the parties disagree about the father's compliance with these conditions to progress to the next phase of residential time, the father may (within two months of the dates for potential progress to the next phase) bring a motion on the family law motions calendar with at least 14 days notice to the mother to resolve the disagreement.

Stage 2: Commencing on August 1, 2014, and only if the father has documented his successful compliance with the requirements above, then Prasha shall reside with her mother, except for the following days and times when she shall be with her father:

One overnight each week from school release (or 2 pm if there is no school) until return to school the next morning (or 9 am if there is no school). The

1 overnight shall either be Tuesday or Thursday, and shall be decided by the
2 agreement of the parties to occur no later than the June 1st, 2014 (or in the
3 absence of agreement, shall be decided by a motion on the family law motions
4 calendar with at least 14 days notice to the other party to resolve the
5 disagreement), and
6 Every other weekend from Friday after school (or 2 pm if there is no school)
7 until Sunday at 6 pm.

8 Any transfers not occurring at school or daycare shall occur at the Walgreen's
9 on 104th Street, Kent, WA.

10 Stage 3: Commencing on the first day of the month prior to Prasha beginning Third
11 Grade, and only if the father has documented his successful compliance with
12 the requirements above*, then Prasha shall reside with her mother, except for
13 the following days and times when she shall be with her father:

14 Every Thursday after school (or 2 pm if there is no school) until Friday return
15 to school (or 9 am if there is no school), and
16 Every other weekend from Friday after school (or 2 pm if there is no school)
17 until Monday return to school (or 9 am if there is no school)

18 On the father's overnights, he shall follow the child's set schedule for bedtime, wake
19 up time, and meals.

20 3.3 SCHEDULE FOR WINTER VACATION.

21 Same as 3.2

22 3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

23 Mid-Winter Break: To the Father in even years, to the Mother in odd years.
24 Spring Break: To the Mother in even years, to the Father in odd years.

25 Break shall be defined as 9 am on the first day that school is cancelled (often a
26 Monday) until 2 pm on the last day that school is cancelled (often a Friday).

3.5 SUMMER SCHEDULE.

Same as 3.2

3.6 VACATION WITH PARENTS.

Same as 3.2, provided however, that before Prasha begins Kindergarten, the mother shall have one seven-day uninterrupted block of vacation time with Prasha each year, for which she shall provide makeup time to the father for any missed visits to occur within one month of that vacation and after Prasha begins Kindergarten, the mother and father shall each have two seven-day uninterrupted blocks of vacation time with Prasha each year. These blocks may be taken in two seven-day blocks or (starting when Prasha begins Second Grade) in one fourteen-day block. The parents must select their vacation dates by April 15 of the relevant year. In the event of conflict, the mother's choice will have priority in even years and the father's choice will have priority in odd years.

1 3.7 SCHEDULE FOR HOLIDAYS.

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

	With Petitioner Mother	With Respondent Father
New Year's Day (10 am 12/31 – 5 pm 1/1)	Odd	Even
Martin Luther King Day	To the parent with the adjacent weekend*	
Presidents Day	To the parent with the adjacent weekend*	
Memorial Day	To the parent with the adjacent weekend*	
Labor Day	To the parent with the adjacent weekend*	
Thanksgiving Day (Thursday 10 am – Friday 5 pm)	Even	Odd
Christmas Eve (5 pm 12/23 – 10 am 12/25)	Every	
Christmas Day (10 am 12/25 – 5 pm 12/26)		Every
Other: Halloween (4 pm – 10 am next day)	Odd	Even

16 *If the father has the adjacent weekend, his residential time shall end at 6:00 pm on the
 17 Monday holiday until Stage 3, at which point, it shall end at return to school on
 18 Tuesday (or 9 am if there is no school).

18 3.8 SCHEDULE FOR SPECIAL OCCASIONS.

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

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
Mother's Day (10 am – 6 pm)	Every	
Father's Day (10 am – 6 pm)		Every
Mother's Birthday (4/3) (10 am – 6 pm)	Every	
Father's Birthday (1/24) (10 am – 6 pm)		Every
Prasha's Birthday (11/2) (10	Odd	Even

1 am - 6 pm)

2 3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

3 Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

4 Rank the order of priority, with 1 being given the highest priority:

5 3 winter vacation (3.3) 2 holidays (3.7)
6 4 school breaks (3.4) 1 special occasions (3.8)
7 6 summer schedule (3.5) 5 vacation with parents (3.6)

7 3.10 RESTRICTIONS.

8 The respondent/father's residential time with the child shall be limited because
9 there are limiting factors in paragraph 2.2. The following restrictions shall
10 apply when the child spends time with this parent:

11 For Stage 1 and 2 the father shall not facilitate or allow either paternal
12 grandparent to be present during the father's residential time except as follows:
13 either or both paternal grandparents may be present up to 20% total of the
14 father's time in any given calendar year. However the grandparents should not
15 be present for any parenting observations, training or coaching sessions.
16 During the 20% time the father may leave the child with the grandparents i.e.
17 he need not be present. This provision shall not be construed to create a right
18 or entitlement for grandparent visitation but is intended to maintain the child's
19 connection with her paternal grandparents while promoting direct parenting by
20 the father without the presence of the grandparents. The father shall notify the
21 mother and case manager in advance of any time his parents will visit.

22 The limiting factors in paragraph 2.2 are addressed through the residential
23 schedule, the requirement for the father to participate in counseling and
24 individual parent training, the involvement of a counselor for the child and a
25 case manager, the conditional staging of residential time, and the provision of
26 sole decision-making to the mother except on those items specifically called
out for joint decision-making in provision 4.2.

20 3.11. TRANSPORTATION ARRANGEMENTS.

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

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

24 Pick ups and drop offs shall occur at an agreed upon public or third-party location. In
25 the absence of agreement to the contrary, they shall occur at the child's
26 daycare/preschool/school or if non-school transfer then at the Walgreens on 104th
Street, Kent, WA.

26 3.12 DESIGNATION OF CUSTODIAN.

1 The child named in this parenting plan is scheduled to reside the majority of the time
2 with the mother. This parent is designated the custodian of the child solely for
3 purposes of all other state and federal statutes which require a designation or
determination of custody. This designation shall not affect either parent's rights and
responsibilities under this parenting plan.

4 3.13 OTHER:

- 5 a. Notification: Each parent shall notify the other parent at least forty-eight (48)
6 hours in advance if he or she is unable to exercise residential time set forth in
this plan except in the event of an emergency involving significant illness.
- 7 b. Participation in Child Events: Each parent shall be responsible for keeping
8 himself or herself advised of school, athletic, and social events in which the
9 child participates. Both parents may participate in school activities, such as
10 open house, attendance at an athletic event, etc. and other events for the child.
11 The parents shall not approach each other at these events, and shall attempt to
12 stand at a distance from the other parent. Neither parent shall be disruptive.
Neither parent shall interfere with the child greeting the other parent, or the
13 other parent greeting the child. If violations of this provision occur, they may
14 be referred to the case manager, who may set rules for participation in child
15 events or suspend either parent's participation in such events.
- 16 c. Neither Parent to Request Decisions by Child: Neither parent shall ask the
17 child to make decisions or requests involving the residential schedule. Neither
18 parent shall discuss the residential schedule with the child except for plans that
19 have already been agreed to by both parents in advance.
- 20 d. No Communications as to Status of Support: Neither parent shall advise the
21 child of the status of child support payments or other legal matters regarding
22 the parents' relationship.
- 23 e. Avoiding Derogatory Comments: Neither parent shall make derogatory
24 comments about the other parent or allow anyone else to do the same in the
25 child's presence. Neither parent shall allow or encourage the child to make
26 derogatory comments about the other parent. Neither parent shall share the
sealed or collateral parenting evaluation reports or any portions thereof with
the child nor with any third party (other than a therapist, the case manager, an
attorney, the court, or any other person approved by the case manager).
Neither parent shall make affirmative statements to the child about the contents
of the evaluation report or allegations described therein.
- f. Alternate Care: It is the responsibility of the parent scheduled to have the child
to arrange and pay for suitable alternate care if the alternate care is for
recreational purposes. (Alternate care for employment or school shall remain a
shared expense.)

- 1 g. Emergency Telephone Number: Each parent shall give the other parent an
2 emergency telephone number if the parent will not be available at his or her
3 regular telephone number for more than forty-eight hours.
- 4 h. Address and Telephone Number: Each parent has a continuing obligation to
5 supply the other parent with a current home address and telephone number.
- 6 i. Passports: The mother may apply for passports for the child. The father shall
7 cooperate in the process and promptly sign any documents required for such
8 application. The passports shall remain in the mother's possession. The
9 mother shall provide the passports to the father in exchange for an itinerary of
10 international travel consistent with the parenting plan. The father shall return
11 the passports to the mother within seven days of his and the child's return to
12 the U.S.

13 Neither parent shall travel internationally without the written, notarized
14 consent of the other parent, which shall not be unreasonably withheld. Travel
15 to Canada is authorized without further consent, but notice should be given of
16 the itinerary at least 48 hours in advance. Each parent shall provide the other
17 with itineraries for international travel,

18 3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A
19 CHILD.

20 This is a summary only. For the full text, please see RCW 26.09.430 through
21 26.09.480.

22 If the person with whom the child resides a majority of the time plans to move, that
23 person shall give notice to every person entitled to court ordered time with the child.

24 If the move is outside the child's school district, the relocating person must give notice
25 by personal service or by mail requiring a return receipt. This notice must be at least
26 60 days before the intended move. If the relocating person could not have known
about the move in time to give 60 days' notice, that person must give notice within 5
days after learning of the move. The notice must contain the information required in
RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of
A Child).

If the move is within the same school district, the relocating person must provide
actual notice by any reasonable means. A person entitled to time with the child may
not object to the move but may ask for modification under RCW 26.09.260.

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

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

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

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

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

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

7 An objection may be filed by using the mandatory pattern form WPF DRPSCU
8 07.0700, (Objection to Relocation/Petition for Modification of Custody
9 Decree/Parenting Plan/Residential Schedule). The objection must be served on all
10 persons entitled to time with the child.

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

13 If the objecting person schedules a hearing for a date within 15 days of timely service
14 of the objection, the relocating person shall not move the child before the hearing
15 unless there is a clear, immediate and unreasonable risk to the health or safety of a
16 person or a child.

13 IV. DECISION MAKING

14 4.1 DAY-TO-DAY DECISIONS.

15 Each parent shall make decisions regarding the day-to-day care and control of the
16 child while the child is residing with that parent. Regardless of the allocation of
17 decision making in this parenting plan, either parent may make emergency decisions
18 affecting the health or safety of the child.

17 4.2 MAJOR DECISIONS.

18 Daycare/Educational decisions: Mother -- The mother is authorized to continue the
19 child's enrollment in Little Eagles for daycare and preschool and any other care. She
20 may select the days and times for participation. However, she shall engage in round
21 robin before changing the facility.

22 Non-emergency healthcare decisions: Mother, provided however, that if the mother
23 wishes to change the child's primary pediatrician group or wishes to authorize elective
24 surgery, she shall initiate round robin on that decision alone.

25 Religious upbringing: Each parent may involve the child in religious activities
26 occurring on his or her residential time.

Round Robin: For all other decisions that impact the other parent's residential time
(e.g. extra-curricular activities, vacation but not requests to swap residential
time(which shall occur only if affirmatively agreed to by both parties)), either parent
shall notify the other party via email of the pending decision, as soon as is reasonably
possible, about the issue and their proposed decision/solution. The other parent has

1 72 hours to respond. No response indicates agreement with the referring parent's
2 proposed decision. If the parties do not agree, they may refer the matter to
arbitration.

3 Either parent shall have the authority to make other day-to-day decisions regarding the
4 child provided these decisions do not impact the residential time of the other parent.

5 4.3 RESTRICTIONS IN DECISION MAKING.

6 The decision making provision in 4.2 is agreed by both parties.

7
8 V. DISPUTE RESOLUTION

9 *The purpose of this disputed resolution process is to resolved disagreements about carrying*
10 *out this parenting plan. This dispute resolution process may, and under some local court*
11 *rules or the provisions of this plan must, be used before filing a petition to modify the plan or*
12 *a motion for contempt for failing to follow the plan.*

13 Disputes between the parties, other than child support disputes, shall be submitted to
14 arbitration by Larry Besk or, if unavailable, by the first available arbitrator among
15 Howard Bartlett, Lynn Pollock, or Michael Bugni. The arbitrator's ruling shall be
16 binding unless and until affected by contrary court order.

17 The cost of this process shall be allocated between the parties as follows:

18 50% petitioner 50% respondent, unless otherwise allocated by
19 the arbitrator. The arbitrator may award attorney fees if either
20 has misused arbitration.

21 The arbitration dispute resolution process shall be commenced by notifying the other
22 party by written request, including email.

23 In the dispute resolution process:

- 24 (a) Preference shall be given to carrying out this Parenting Plan.
25 (b) Unless an emergency exists, the parents shall use the designated process to
26 resolve disputes relating to implementation of the plan, except those related to
financial support.
(c) A written record shall be prepared of any agreement reached in counseling or
mediation and of each arbitration award and shall be provided to each party.
(d) If the court finds that a parent has used or frustrated the dispute resolution
process without good reason, the court shall award attorneys' fees and
financial sanctions to the other parent.
(e) The parties have the right of review from the dispute resolution process to the
superior court.

VI. OTHER PROVISIONS

1 There are the following other provisions:

2 A. Communication Between the Parties: The parties' communication shall be limited
3 to use of Our Family Wizard.com. When communication is time sensitive and
4 cannot be addressed through OFW.com, communication shall be by text only,
5 limited to the facts regarding the welfare of the child and scheduling and decision
6 making. The case manager shall have access to Our Family Wizard. The
7 grandparents shall not have access. The cost of Our Family Wizard, including the
8 case manager participation shall be divided equally between the parties. Either
9 party may include his or her attorney and/or his or her non-family member child
10 care provider in the program at that parent's sole expense. No other persons shall
11 have access to the site. Use of the site shall terminate only upon agreement of the
12 parties at which point communication shall be by email and text only.

13 B. Case Manager: A case manager shall be appointed to be involved with this family
14 at least until Prasha has completed Kindergarten. The case manager shall be
15 Jennifer Keilin or Karin Ballentyne and shall be paid 50% by each party. The case
16 manager will: provide a mechanism for therapists and other professionals to
17 communicate any concerns, assist the parties in both following Prasha's set
18 schedule for mealtime/bedtime/wake up time/etc. and in communicating about
19 issues such as weaning and potty training, review the emails of the parents as
20 needed to ensure compliance with the decision-making process and
21 communication rules, provide the parents with feedback about the effectiveness of
22 their communications and/or decision-making processes, resolve minor disputes
23 between the parties (consistent with the Parenting Plan), or refer disputes to
24 arbitration, assess each parent's progress with regard to their parenting skills and
25 minimizing Prasha's exposure to conflict, and determine if/when further
26 intervention/therapeutic services are indicated, minimize/limit/restrict Prasha's
exposure to conflict/divisiveness amongst extended family members, and make
reports to the court in connection with either parent's request for a change to the
parenting plan. After the case manager has reviewed the pleadings and the
evaluation report by Dr. Jennifer Wheeler and has consulted with both attorneys,
the case manager and attorneys shall together draft an order further defining the
role of the case manager. The order shall address with more specificity the
circumstances and timing for when the case manager will refer disputes to the
arbitrator. Disputes about the terms of that order shall be resolved by arbitration by
Larry Besk.

21 C. Prasha's Therapy: Prasha shall participate in therapy, for the frequency and
22 duration recommended by her therapist. Prasha's parents should be included in her
23 therapy as determined by her therapist. Unless otherwise agreed by the parties,
24 Prasha's therapist will be Inda Drake or Alison Leary, Ph.D. (206-374-0109). If
25 no listed therapist is available, Prasha's therapist will be another therapist at the
26 Child and Adolescent Clinic of Seattle to be selected by Alison Leary. Prasha's
therapy shall be paid 50% by each party. Her therapy may only be reduced or
eliminated if the change is either recommended by her therapist or agreed to by
both parties.

D. Manjul's Therapy and Individual Parent Training: Manjul shall, at his expense,
participate in therapy with Dr. John Haggeman for such duration and frequency as
Dr. Haggeman recommends after having read the public, sealed and collateral

1 portions of the Dr. Wheeler report. Such therapy shall continue until Dr.
2 Haggeman agrees in writing to Manjul (with a copy to the Case Manager) that it
3 can be reduced or terminated. Dr. Haggeman can recommend an alternate
4 therapist as necessary.

5 Manjul shall, at his expenses, participate in individual parent training with Alison
6 Leary, Ph.D. (or another clinician at the Child and Adolescent Clinic of Seattle
7 agreed to by both parties; or, in the absence of agreement, selected by Larry Besk),
8 for a frequency and duration recommended by the trainer after having read the
9 public, sealed and collateral portions of the Dr. Wheeler report to address the
10 issues raised on page 32 of the sealed report and throughout. The individual parent
11 training shall primarily be in-home training occurring in the father's home,
12 allowing the trainer to see extensive interaction between the father and the child.
13 Individual parent training shall occur on the dates and times selected by the parent
14 trainer after consultation with both parties and may be scheduled to occur on either
15 parent's residential time. When individual parent training for the father is
16 scheduled during the mother's residential time, she shall make the child available
17 for the training as requested by the parent trainer.

18 E. Neha's Therapy: Neha shall, at her expense, continue to participate in therapy with
19 Kelly Shanks, MA, for such duration and frequency as Ms. Shanks recommends
20 after having read the public, sealed, and collateral portions of the Dr. Wheeler
21 report. This therapy shall continue until Ms. Shanks agrees in writing to Neha
22 (with a copy to the Case Manager) that it can be reduced or terminated. Ms.
23 Shanks can recommend an alternate therapist as necessary.

24 F. Provision of Parenting Report to Experts: The case manager, therapists for the
25 child and each party, and parent trainer shall all receive a copy of the Parenting
26 Evaluation report by Dr. Jennifer Wheeler, including public, private, and collateral
portions.

G. Therapeutic Records: Each parent shall sign and keep current releases of
confidential information with their own therapists and with the child's therapist so
that these therapists may speak with the case manager about compliance with
recommended therapy, therapeutic progress, and any concerns presented in
therapy.

H. Illness of the child: If the child is sick the mother may cancel the father's
residential time during the period of the illness provided she offers equal make up
time to the father within one month of the child's recovery from the illness.

VII. DECLARATION FOR PROPOSED PARENTING PLAN

Does not apply.

VIII. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and
approved as an order of this court.

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WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

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

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

DONE IN OPEN COURT this *16th* day of *February*, 2012.



JUDGE/COURT COMMISSIONER
JAMES A. DOERTY

Presented by:

Approved as to Form; Notice
of Presentation Waived:

Rebecca N. Morrow
WSBA No. 34556
SKELLENGER BENDER
Attorneys for Neha Chandola

Misty Willits
WSBA No. 35410
HELSELL FETTERMAN
Attorneys for Manjul "Varn" Chandola

Agreed:

Agreed:

Neha Chandola

Manjul "Varn" Chandola

APPENDIX: RELEVANT STATUTES

RCW 26.09.002. Policy

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. 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 child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

RCW 26.09.140. Attorney Fees

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

RCW 26.09.184. Permanent parenting plan

(1) OBJECTIVES. The objectives of the permanent parenting plan

are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

- (a) Preference shall be given to carrying out the parenting plan;
- (b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related

to financial support, unless an emergency exists;

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

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

(6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child

support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section.

RCW 26.09.187. Criteria for establishing permanent parenting plan

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

RCW 26.09.191 (excerpted)

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

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

...

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

...

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

...

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.