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No. 714961

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

In re Marriage of:

Jennifer Lauren Brunson,

Respondent,

And

Neil Francis Brunson,

Appellant.

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STATE OF WASHINGTON
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Neil Francis Brunson's
Opening Brief

Neil Francis Brunson
PO Box 1673
Richland, WA 99352
Pro Se

Table of Contents

| | |
|---|-----------|
| Table of Authorities | ii |
| I. Introduction | 1 |
| II. Assignments of Error | 6 |
| III. Issues Pertaining to Assignments of Error | 10 |
| IV. Statement of the Case | 13 |
| VI. Argument | 19 |
| 1. Parenting Plan | 19 |
| 2. Proposed Parenting Plan | 22 |
| 3. Temporary Parenting Plan | 22 |
| 4. Final Parenting Plan | 24 |
| 5. Child Support | 33 |
| 6. Property Division | 36 |
| 7. Property Valuation | 37 |
| 8. Determination of Separate and Community Property | 38 |
| 9. Separate Property Acquisition | 40 |
| 10. Home Based Businesses | 41 |
| 11. Results of the Abuse of Discretion in the Division of Property | 42 |
| 12. Attorney's Fees | 44 |

| | |
|------------------------------|-----------|
| VII. Conclusion | 47 |
|------------------------------|-----------|

Table of Authorities

Table of Cases

| | |
|---|--------|
| <i>In re Marriage of Wicklund</i> , 84 Wn | 19 |
| <i>Meyer v. Nebraska</i> , 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446 (1923) | 20 |
| <i>Skinner v. Oklahoma</i> , 316 U.S. 535, 541, 86 L. Ed. 2 nd 1655, 62 S. Ct. 1110 (1942) | 21 |
| <i>Prince v. Massachusetts</i> , 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438 (1944) | 21 |
| <i>Stanley v. Illinois</i> , 405 U.S. 645 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972) | 21 |
| <i>In re Hudson</i> , 13 Wn,2d 673, 678, 685, 126 P.2d | 21 |
| <i>In re Gibson</i> 4 Wn. App. 372,379,483 P.2d 131 (1971.) | 21, 22 |
| <i>In re Sego</i> , 82 Wn.2d 736, 513 P.2d | 23 |
| <i>In Lybbert</i> , 75 Wn.2d 671, 453 P.2d 650 (1969) | 23 |
| <i>In re Ross</i> , 45 Wn.2d 645, 277 P.2d 335 (1954) | 23 |
| <i>In re Petrie</i> 40 Wn.2d 809, 246 P.2 465 (1952) | 23 |
| <i>In re Martin</i> , 3 Wn. App. 405, 476 P.2d 134 (1970) | 23 |
| <i>In re Luscier: Note, Child Neglect: Due Process for the Parent</i> , 70 Colum. L. Rev. 476 (1970) | 32 |
| <i>McCausland v. McCausland</i> , 159 Wn.2d 607, 152 P.3d 1013 (2007) | 36 |
| <i>In re Marriage of Booth</i> , 114 Wn.2d 772, 791 P.2d 519 (1990) . . | 36 |
| <i>In re Marriage of Konzen</i> , 103 Wn.2d 470,478,693 P.2d 97 (1985), cert. denied, 473 U.S. 906 (1985) | 36 |
| <i>In Baker v Baker</i> , 80 Wn.2d 795,854 P.2d 315 (1972) | 36 |
| <i>Thorndike v. Hesperian Orchards, Inc.</i> , 54 Wn.2d 570, 343 P.2d 183 (1959) | 36 |
| <i>In re Estate of Borghi</i> , 167 Wn.2d 480, 483, 219P.3d 932 (2009) | 42 |
| <i>In re Marriage of Skarbek</i> , 100 Wn. App. 444, 448, 997 P.2d 447 (2000) | 42 |
| <i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 26, 482 P.2d 775 (1971) | 43 |

| | |
|---|----|
| <i>Barfield v. City of Seattle</i> , 100Wn.2d 878, 676 P.2d 438 (1984) . | 43 |
| <i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) | 44 |
| <i>State v. Rundquist</i> , 79 Wn. App. 786, 793, 905 P.2d 922 (1995) | 44 |
| <i>Fed. R. Civ. P. 11</i> advisory committee not, 97 F.R.D. at 199 | 47 |
| <i>In re Marriage of Farmer</i> , 172 Wn. 2d (2011) | 49 |

Constitutional Provisions

| | |
|---|------------|
| <i>AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA</i> | |
| <i>AMENDMENT I</i> | 10 |
| <i>AMENDMENT IV</i> | 10 |
| <i>AMENDMENT V</i> | 10, 11, 31 |
| <i>AMENDMENT XIV</i> | 10, 20 |
| <i>WASHINGTON STATE CONSTITUTION ARTICLE 1</i> | |
| <i>DECLARATION OF RIGHTS</i> | |
| <i>SECTION 3 PERSONNEL RIGHTS</i> | 40 |

Statutes

| | |
|--------------------------------|--|
| <i>RCW 26.09.191</i> | 1, 6, 10, 22, 25, 26, 27, 46, 47, 48, 49 |
| <i>RCW 26.12.060</i> | 7, 23 |
| <i>RCW 26.12.175</i> | 7, 24 |
| <i>RCW 26.19.071</i> | 7, 11, 34 |
| <i>RCW 26.09.080</i> | 7, 11, 36, 43 |
| <i>RCW 2.08.240</i> | 19 |
| <i>RCW 28A.255</i> | 24 |
| <i>RCW 13.04.021</i> | 24 |
| <i>RCW 26.50.010</i> | 26 |
| <i>RCW 26.09.002</i> | 27 |
| <i>RCW 13.50.100</i> | 29 |
| <i>RCW 26.44.040</i> | 30 |
| <i>RCW 26.12.170</i> | 30 |
| <i>RCW 26.44.053</i> | 31 |
| <i>RCW 13.24</i> | 31 |
| <i>RCW 26.16.010</i> | 42 |
| <i>RCW 26.09.140</i> | 44, 45 |

RCW 26.44.015 49
WAC 388-60-0255 5, 25

Rules

SCLSPR 94.04 9, 12, 44
CR 59 9, 18, 19
ER 904 16, 25, 28, 30
CR 11 18, 46
CR 26 28, 46

RAP 18.1 44

I. Introduction

This case exemplifies the argument; many have made, for providing counsel to pro se litigants in dissolution cases. This case arises from dissolution proceedings filed, on October 26, 2012, by Ms. Jennifer Brunson, now the Respondent on Appeal, through her counsel of record, Ms. Laurie Robertson. The proposed parenting plan included *RCW 26.09.191* restrictions be placed upon Mr. Neil Brunson, the Appellant, acting pro se.

On October 2, 2012, under different cause number, Jennifer Brunson filed a temporary restraining order precluding Mr. Brunson from contacting, Jennifer Brunson, his minor children; LTB then, age 2 and ACB, then age 5 and restraining him from the family residence pending the standard language "subject to orders in a dissolution or paternity action."

Mr. Brunson promptly replies to the dissolution and properly serves his response upon Jennifer Brunson, her counsel and court. In the response, Mr. Brunson addresses two critical issues: First, Mr. Brunson makes it known that he does not have access to all the financial records to make a recommendation on the division of assets due to the restraining order. Second, he requests the court appoint the two minor children a guardian ad litem (GAL) to assess

the best interests of the children. Less critically, he seeks court permission for legal expenses; return of his tools of the trade, and his business truck necessary to transport the tools.

Under guidance from the court facilitator and several different commissioners, Mr. Brunson tries to obtain a restraining order prohibiting contact from Jennifer Brunson while seeking visitation with his children and appointment of a GAL for the minor children.

Unfamiliar with court procedure, Mr. Brunson files several ex-parte actions under the dissolution trying to see his children and restrain Jennifer Brunson from, among other things, sending him disturbing emails, texts, and books. Mr. Brunson becomes aware that Jennifer Brunson is violating the judge's temporary orders (TMROs). Counsel for Jennifer Brunson vacates the restraining orders Mr. Brunson places on Jennifer Brunson, yet fails to merge her restraining order into the divorce causing confusion in the court.

On February 7, 2013, Mr. Brunson files another motion to restrain Jennifer Brunson from harassing him, appoint a guardian for the minor children, and petition the court for legal fees. Finally, Mr. Brunson is successful in setting a hearing for his motion on February 25, 2013. It had now been five months since he had any contact with his children.

Mr. Brunson's, February, 25, 2013, ex parte restraining order and temporary orders were only partially heard. Instead, the commissioner heard Jennifer Brunson's motion in entirety as presented by her counsel. Upon completion of Jennifer Brunson's motion the court tells Mr. Brunson it is going to sign the order as presented by Ms. Robertson.

The February, 25, 2013 Temporary Order sets forth the following; each party is restrained from going to home the or workplace of other; Mr. Brunson owes Jennifer Brunson attorney fees of \$3,000.00; adopts a temporary parenting plan and support schedule; and PROHIBITS Mr. Brunson from filing any motions until the attorney fees are paid to Jennifer Brunson. The temporary parenting plan prohibits all contact with his minor children until Mr. Brunson undergoes a psychological evaluation, re-enrolls in a domestic violence perpetrator treatment program, and pays attorney fees to Jennifer Brunson.

Despite the commissioner's order to set for immediate trial, Ms. Robertson, waits until March 19, 2013 to file a note for trial along with a statement of non-arbitration. March 19, 2013 was the same day Mr. Brunson was charged for spanking LTB, more than six and one half months after the incident. Sadly, March 19th is

also LTB's birthday. The case is set for assignment of a trial date on July 9, 2013.

Unable to gain discovery through Ms. Robertson, and despite the court order banning Mr. Brunson from filing any motions, Mr. Brunson motions the court on June 28, 2013 for relief from the temporary orders, a discovery conference, or a pretrial hearing. The motion is denied for failing to pay the \$3,000 in attorney fees to Jennifer Brunson.

On July 9, 2013, Mr. Brunson reports to the court for trial assignment. Mr. Brunson was asked by the assigning judge if he was ready for trial; Mr. Brunson stated he was not ready for trial. The assigning judge asked Mr. Brunson why he did not file a motion for a continuance; he told the judge he was not allowed to file any motions until he paid Jennifer Brunson \$3,000 for attorney fees. Despite this exchange, the judge assigned the case for trial to Judge Appel. (For ease of reading will now be referred to as the trial court). The trial began that same day.

Unable to file any motions or gain discovery through Jennifer Brunson's attorney, Mr. Brunson felt he had no other choice but to proceed with trial. By now it had been over nine months since Mr. Brunson had last seen his children. He had been convicted of

Assault IV; DV for the spanking of LTB, been displaced from the family home which was also his place of business, and been denied any and all contact with his minor children. Mr. Brunson went to trial under duress, seeing no other pathway for reunification with his children.

Mr. Brunson only sought a reunification plan and supervised visitation as a result of the allegations made by Jennifer Brunson. Due to the submission of an improper, non-court ordered Certified Domestic Violence Assessment (per *WAC 388-60-0255*) by Jennifer Brunson, and the beliefs of Mr. Brunson; he refuses to enroll in domestic violence perpetrator treatment.

The improprieties and results that occurred preceding the trial only continued throughout the dissolution trial, reconsideration and extended into post-trial proceedings that included renewal of the temporary domestic violence protection order with the minor children. The trial court denied reunification therapy in the oral judgment, after a ten month separation. Then, again the court denies Mr. Brunson's reunification therapy in his Motion for Reconsideration, after sixteen months of separation.

II. Assignments of Error

1. The trial court erred in failing to have both parents evaluated as required by *RCW 26.09.191(4)*, and erred by drawing presumptions from the provisions in the temporary parenting plan in conflict with *RCW 26.09.191(5)*. (*RP page 4, Mr. Brunson, Colloquy July 9, 2013*)
2. The trial court erred when it entered the Final Parenting Plan that excluded reunification therapy and continued to prohibit all contact with the minor children until Mr. Brunson enrolled in domestic violence perpetrator treatment. (*CP Sub# 118, page 197-206*)
3. It was an error for the trial court to allow a CPS investigator to testify in a dissolution case in absence of representation for the minor children and in violation of protected information laws. (*RP page 93-131, Janell Berger, July 10, 2013*)
4. The court erred in barring Mr. Brunson from filing any motions to the court, until he paid \$3,000 in attorney's fees to Jennifer Brunson. (*Temporary Order, Trial Exhibit 36*)
5. The court erred when it entered a Temporary Parenting Plan eliminating all contact between the father and his children until he enrolled in Domestic Violence Treatment and obtain a

psychological evaluation. Once these two conditions were met; along with completing Assignment of Error #4, Mr. Brunson could then motion the court for supervised visits. (*Temporary Parenting Plan, Trial Exhibit 37*)

6. The court erred in not ruling on Mr. Brunson's motion for a GAL in the Temporary Orders Hearing. Per *RCW 26.12.060* the court commissioner had the duty to appoint the children a guardian ad litem pursuant to *RCW 26.12.175*. (*Trial Exhibit 36*)
7. The court erred in failing to hear/deny Mr. Brunson's motion to Modify Temporary Order because he had not paid the \$3,000 in attorney's fees to Jennifer Brunson. (*CP Sub# 93, page 293; CP Sub# 92, page 294; CP Sub# 76, page 295-303*)
8. Mr. Brunson was subjected to double jeopardy when the trial court erred by imposing a harsher penalty in the dissolution proceeding than in the criminal proceeding for the spanking of LTB. (*CP Sub# 118, page 197-206*)
9. The trial court erred in determining child support, failing to follow *RCW 26.19.071*. (*CP Sub# 119, page 182-196*)
10. The trial court erred in the division of assets per *RCW 26.09.080*:

- i. In determining the value of the family residence. (*CP Sub# 120, page 177, section 2.8 3.*)
- ii. In assigning \$12,000 of cash to Mr. Brunson. (*CP Sub# 120, page 177, section 2.8 4.*)
- iii. In not determining the Bank of America was separate property and not under the control of Mr. Brunson. (*CP Sub# 120, page 177, section 2.8, 4.*)
- iv. In not valuing the truck as separate property. (*CP Sub# 120, page 177, section 2.8 2.*)
- v. In not allowing Mr. Brunson back into his home to inventory, and requiring him to pay a professional moving company to retrieve his property from the marital home. (*CP Sub# 121, page 175, exhibit H*)
- vi. In not awarding Mr. Brunson's his L&I award, for personal injury, of \$7,000 as separate property. (*RP page 646-647, Court's Oral Decision July 31, 2013*) (*Medical Marijuana Cooperative, Trial Exhibit 56*)
- vii. In not considering the valuation of the home based business in the determination of the division of assets. (*Medical Marijuana Cooperative, Trial Exhibit 56*)

viii. In valuing the accounting services and work performed in the home based business of Bridgid Brunson as a gift to the community. (*CP Sub# 120, page 178, 2.10 2.; 2.11 5.*)

11. The trial court erred in not ruling on the TMRO violation per *SCLSPR 94.04 (b) (2) (A)*, when Jennifer Brunson took a loan against the community property; Northwest Hospital 401k. (*RP page 253-254, Jennifer Brunson-Cross Examination July 10, 2013*)
12. The trial court erred in ordering Mr. Brunson sign a quit claim deed at the time of presentation. (*RP page 669, Court's Oral Decision July 31, 2013*)
13. The trial court erred in offering legal advice to file a *CR 59* motion, and then denied the motion in its entirety. (*RP page 669-671, Court's Oral Decision July 31, 2013*) (*CP Sub# 144, page 1-4*)
14. The trial court erred when the judge did not recuse himself from the case after admitting he was a prosecutor in the domestic violence unit during the arrest of Mr. Brunson for Assault II DV in 2008. (*RP page 76-78, Jennifer Brunson-Direct Examination July 9, 2013*)

III. Issues Pertaining to Assignments of Error

- A. Can a trial court enter 191 restrictions without having both parents evaluated as required by *RCW 26.09.191*, and restate the 191 statute? (Assignment of Error 1 and 2)
- B. Whether a court can strip parents' rights without due process and disallow all decision making, including religion, which is in direct violation of *Amendments I, IV, V, and XIV of the Constitution*? (Assignment of Error 2, 5, and 6)
- C. Can a court, without counsel for the children, terminate a parent child relationship unless the father enrolls in a domestic violence perpetrator treatment program? (Assignment of Error 2, 5, and 6)
- D. Whether a CPS investigator can testify in a dissolution hearing without counsel or GAL for the children? (Assignment of Error 3 and 6)
- E. Can a court deprive a party of due process, in direct violation of *Amendment V, and XIV of the Constitution*, by requiring one pay \$3,000 before they can file any motions? (Assignment of Error 4 and 7)

- F. Did the court violate the children's due process and liberty rights by failing to appoint a GAL or counsel for the children? (Assignment of Error 2, 3, 5 and 6)
- G. Whether a civil trial court can retry and impose a harsher penalty than a criminal court for the same action in direct violation of *Amendment V of the Constitution*? (Assignment of Error 8)
- H. Whether the trial court abused its discretion failing to follow *RCW 26.19.071* in determining child support? (Assignment of Error 9)
- I. Whether the trial court abused its discretion in failing to allocate the visitation and transportation costs per *RCW 26.19.080*? (Assignment of Error 9)
- J. Whether a trial court must follow *RCW 26.09.080* in the disposition of the property and the liabilities of the parties? (Assignment of Error 10, i-viii)
- K. Whether a trial court abused its discretion by not determining the nature and extent of the community property and separate property? (Assignment of Error 10, iii and iv)

- L. Whether a trial court abused its discretion by not evaluating the economic circumstances of each party involved at the time of the division of property? (Assignment of Error 10, i-viii)
- M. Whether the trial court abused its discretion by not valuing an asset correctly? (Assignment of Error 10, i)
- N. Whether the trial court abused its discretion by not having substantial evidence to conclude the value of the marital home or the existence of cash? (Assignment of Error 10, i and ii)
- O. Whether a trial court can ignore a TMRO violation per *SCLSPR 94.04 (b) (2) (A)*? (Assignment of Error 11)
- P. Does a court abuse its discretion when it orders the non-moving party to sign a quitclaim deed at the time of presentation when the asset value is in dispute and the party has been restrained? (Assignment of Error 12)
- Q. Whether a court should or can offer legal advice?
(Assignment of Error 13)
- R. Should the trial court have excused himself when he was a prosecutor in the DV unit at the time of Mr. Brunson's arrest?
(Assignment of Error 14)

IV. Statement of the Case

The parties met while attending Washington State University. The couple was married July 29, 2005. Mr. Brunson graduated from WSU with a degree in accounting December 2005. Jennifer Brunson graduated December 2006 with a degree in nursing. In March of 2007, the young couple had their first child, ACB. The Brunson's purchased the marital home in October of 2007.

It is undisputed by Mr. Brunson that there was an incident of domestic violence in 2008. Mr. Brunson was arrested but not charged in the incident. He later sought counseling but eventually stopping going.

In March of 2010 LTB was born. Jennifer Brunson took maternity leave then returned to work in her chosen field as a nurse. By this time, Mr. Brunson was not working in his degreed field but had been employed in construction, since April 2006, working for various employers. In June 2010, Mr. Brunson establishes a sole-proprietorship; Excellent Underlayment, LLC in the State of Washington. (*RP page 443, Bridgid Brunson – Cross Examination – July 11th 2013*) In September 2010, Mr. Brunson suffers a back injury while employed as a union cement mason. In June 2012, Mr. Brunson receives and uses his adjudicated L & I

claim proceeds of approximately \$7,000 to establish a new home based business. *(See Exhibit #56) (RP page 646, Court Oral Decision – July 23, 2013)* During the same time, he suspends Excellent Underlayment, LLC in an effort to save costs until the construction industry improves.

In 2011, both parties agree that Mr. Brunson will return to school when LTB goes to kindergarten. Until then, Mr. Brunson will work the home based businesses as the economy dictates. *(RP page 253, Jennifer Brunson –Cross Examination July 10, 2013)*

On September 30, 2012, Mr. Brunson spans LTB while Jennifer Brunson is at work. Jennifer Brunson returns home to find Mr. Brunson cleaning up the carpet and LTB in the bathtub. A disagreement ensued and Jennifer Brunson leaves the home with the children taking the business truck. On October 2, 2012, Ms. Brunson takes a protection order out that includes the minor children. On October 4, 2012, Jennifer Brunson and the children return to the marital home. *(RP page 66-70, Jennifer Brunson— Direct Examination July 9, 2013)*

Due to the accusation of child abuse, Child Protective Services (CPS) investigates as well as the Snohomish County Sherriff's Office. Since Mr. Brunson was out of the state on a

previously planned trip he was unaware of the investigation. Upon returning from his trip he was served with protection order followed by the dissolution and proposed final parenting plan shortly after. *(RP 93-131, Janell Berger – July 10, 2013)* The Proposed Parenting Plan entered by Jennifer Brunson excludes all contact between the minor children and father, Neil Brunson for a period greater than a year. *(CP Sub #5, 341-349)*

After nearly five months of no contact with his minor children, Mr. Brunson is successful in setting a hearing for Temporary Orders. On February 25, 2013 the temporary orders are heard and entered. Mr. Brunson's motion was not heard in its entirety, the most important being a request for a GAL for the minor children. *(See RP page 1-23, February 25, 2013)* The temporary order entered by the commissioner stripped Mr. Brunson of due process, and liberty rights as a parent. Mr. Brunson was required to pay \$3,000 in attorneys before he was allowed to file another motion. *(Temporary Order, Exhibit 36)* The Temporary Order reads "Until said some is paid Respondent may not present any motion to court." He was required to "re-enroll in DV and obtain a psychological evaluation before he could file a motion seeking supervised visits." *(Temporary Parenting Plan, Exhibit 37)* The

temporary parenting plan states, "Once Respondent has completed requirements 1 and 2 above, he may file a motion with the court seeking supervised time with the children. (See also RP, page 31-32 February 25, 2013)

Jennifer Brunson through counsel did not make a single discovery request, or send a single interrogatory. Instead of discovery, she substituted an ER 904 to the court. (RP Page 5-21, Motions in Limine July 9, 2013) Mr. Brunson prior to trial filed a motion to modify the temporary order requesting discovery or a pre-trial conference. The motion was heard, and denied, on June 28, 2013 for failure to pay the \$3,000 judgment to Jennifer Brunson for attorney's fees imposed in the February 25, 2013 temporary orders. (CP sub# 76, page 295-303) (CP sub# 92, page 294), (CP sub# 93 page 293)

Mr. Brunson appeared for assignment on July 9, 2013, at 9:00am in front of the presiding judge. When asked by the presiding judge if Mr. Brunson was ready for trial he replied, "No." When asked why he had not filed a motion for a continuance, he stated, "I am not allowed to file any motions until I pay \$3,000 in attorney's fees." He shook his head and assigned both parties to Judge Appel in department 1. (A verbatim report would have been

provided but the assignment of a judge is not recorded in Snohomish County Superior Court.) With no other option or possibility of seeing his children, and the inability to file a single motion, Mr. Brunson proceeded to trial.

After a five day, highly contested dissolution custody trial, on July 31, 2013, the court delivers its oral ruling with Mr. Brunson attending telephonically. *(RP page 636-697, Court's Oral Decision – July 31st 2013)*

The court stated, "So I am imposing supervised visitation unless and until a domestic violence therapist or counselor has said that Mr. Brunson has made such progress that supervised visitation can be lifted and he can have some other form of visitation, possibly monitored, or possible neither supervised nor monitored." *(RP page 639, Court's Oral Decision – July 31st 2013)*

During the oral judgment the trial judge stated, "Okay. All right. Stay on the line. I want to retrieve some things that I've left in my office, and I'm hoping can offer the clarity that both sides can reasonably expect." *(RP page 657, Court's Oral Decision – July 31st 2013)*

The court takes a recess at 9:48am and resumes at 10:20am. *(CP sub 96, page 281)*. After the thirty-two minute absence, the court returns with an additional restriction that requires Mr. Brunson to enroll in domestic violence perpetrator treatment prior to supervised visits, a clear and obvious indication of a side-bar between Ms. Robertson and the court.

Ms. Robertson: Yes. Strictly with regards to the parenting plan, with regards to the supervised visitation, does that start immediately, or does that require enrollment in the DV program prior to starting?

The Court: They both need to be in place. He needs to enroll and have a supervisor for the purposes of visitation. But I'm not requiring that he show significant progress prior to having supervised visitation. (*RP page 665, Court's Oral Decision – July 31st 2013*)

During the court's oral decision the trial court recommended Mr.

Brunson file a *CR 59* motion.

The court stated, "Well Mr. Brunson, I heard this trial, I heard what I heard, and I decided what I decided. Now, I'm entertaining question by way of clarification. But if you wish to make a *CR 59* motion, although you have that right, this isn't really the time for it." (*RP page 669-670, Court's Oral Decision – July 31st 2013*)

The court also states in its oral decision, "It didn't work that way. He shot himself in the foot. He shot himself in the foot. He didn't help himself. It's the sort of thing that looks like ignorance for the sake of ignorance. It doesn't look like it was even a mildly successful effort to hide something in order to gain an advantage," (*RP page 50, Court's Oral Decision – July 31st 2013*) and "So he's got some expenses out there if he wants to be able to complete this process and have a normal and healthy relationship with his children. As I've said, I hope he does, but that's up to him. But if he does, that's expensive." (*RP page 651, Court's Oral Decision – July 31st 2013*)

After hearing "he shot himself in the foot," and "make a *CR 59* motion," Mr. Brunson retains counsel, and moves for reconsideration under *CR 59*. In response to the *CR 59* motion, Ms. Robertson motions to strike and impose *CR 11* sanctions on Mr. Brunson and his counsel. (*CP sub# 136, page 48-75*) Oral

argument for the Motion on Reconsideration was heard January 23, 2014. At the onset of the proceedings, the court denies all of Mr. Brunson's *CR 59* motion, with the exception of "possibly the value of the house." Despite Mr. Brunson attaching a copy of the appeal notice with his *CR 59* motion, the court was surprised by the appeal during oral argument. The court denies the entire *CR 59*; including Mr. Brunson's request for a reunification plan and GAL for his minor children after no contact for a period of sixteen months. On January 30, 2014 the court issued the written order denying Respondent's Motion for Reconsideration, well in excess of the time requirement of ninety days per RCW 2.08.240. (*RP page 1-50, Motion for Reconsideration – January 23, 2014*) (*CP Sub #144, pages 1-4*)

V. Argument

Parenting Plan

The court abuses their discretion when "its decision is based on untenable grounds or reasons, or is manifestly unreasonable." *In re Marriage of Wicklund, 84 Wn.* A court's decision is based on untenable grounds or reason "if its factual findings are unsupported by the record... [or] if it has used an incorrect standard, or the facts do not meet the requirements of the correct standard..." *Id.*

Moreover, a court “acts unreasonably if its decision is outside the range of acceptable choices given the facts and the legal standard.” *Id.* In the case of Brunson, the court failed to act within the legal standard and acted outside the acceptable choices in tailoring the parenting plan without assessing the parents or children in determining the “best interest of the children.”

A parenting plan which restricts all access to a parties minor children is unconstitutional on its face. The United States Supreme court has long upheld that it is a parent’s right to have a relationship with their child. The safeguarding of familial bonds is an innate concomitant of the protected status accorded the family as a societal institution. The fundamental nature of parental rights as a “liberty” protected by the due process clause of the *Fourteenth Amendment* was given expression in *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625, 29 A.L.R. 1446 (1923), where in the court stated: “While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to

acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The essential right to procreate and raise children was acknowledged in *Skinner v. Oklahoma*, 316 U.S. 535, 541, 86 L. Ed. 2nd 1655, 62 S. Ct. 1110 (1942), to be among “the basic civil rights of man.” “It is cardinal with us that the custody, care, and nurture of the child resides first in the parents...” *Prince v. Massachusetts*, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438 (1944). And *Stanley v. Illinois*, 405 U.S. 645 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972), recognized the fundamental right of a father to custody of his children.

The courts of Washington have been no less zealous in their protection of familial relationships. Long ago, the court *In re Hudson*, 13 Wn,2d 673, 678, 685, 126 P.2d defined the parent-child relationship a “sacred” right and recognized at common law. The Court of Appeals has characterized the right of a parent to their child as, “more precious to many people than the right of life itself,” *In re Gibson* 4 Wn. App. 372,379,483 P.2d 131 (1971.)

Proposed Parenting Plan

In the Brunson case, the court failed to order the proper evaluations required by *RCW 26.09.191*. The parenting plan filed with the dissolution on October 26, 2012 *included RCW 26.09.191(1),(2),(3)* restrictions yet no evaluations were ordered. The court violated *RCW 26.09.191(4)* in failing to order assessments prior to restricting the father from the minor children and removing his decision making authority. *RCW 26.09.191 (4)* states: *In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.*

Temporary Parenting Plan

The temporary parenting plan issued by Commissioner Bedle on February 25, 2013 had the chilling effect of a deprivation hearing in that it restricted all contact with the minor children without the due process. *In re Gibson, 4 Wn. App 372, 379, 483 P.2d 131 (1971)*. Child deprivation hearings, in particular, have been the subject of close scrutiny and this court, on many occasions, has carefully scrutinized deprivation hearings to assure

that the interested parties have been accorded the procedural fairness required by due process of law. See, e.g., *In re Sego*, 82 Wn.2d 736, 513 P.2d; *In Lybbert*, 75 Wn.2d 671, 453 P.2d 650 (1969); *In re Ross*, 45 Wn.2d 645, 277 P.2d 335 (1954); *In re Petrie* 40 Wn.2d 809, 246 P.2 465 (1952); *In re Martin*, 3 Wn. App. 405, 476 P.2d 134 (1970). There can be no doubt that the full panoply of due process safeguards applies to deprivation hearings, and the temporary orders had the same impact.

The record shows, there has never been an evaluation of either parent nor has there been a GAL or counsel appointed for the children despite the numerous attempts made by Mr. Brunson. The record clearly indicates the best interests of the children were never evaluated prior to entering the temporary parenting plan. The court clearly failed to follow statute when they neglected to appoint a GAL or counsel when the temporary parenting plan referenced a protection order that included children under the age of sixteen. The appointment would have been consistent with *RCW 26.12.060* Court commissioners-Duties. *The court commissioners shall (1) Make appropriate referrals to county family court services program if the county has a family court services program or appoint a guardian ad litem pursuant to RCW*

26.12.175; (2) order investigation and reporting of the facts upon which to base warrants, subpoenas, orders or directions in actions or proceedings under this chapter; (3) exercise all the powers and perform all the duties of court commissioners; (4) make written reports of all proceedings which shall become a part of the record of the family court; (5) provide supervision over the exercise of its jurisdiction as the judge of the family court may order; (6) cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court; (7) cause other reports to be made and records kept as well indicate the value and extent of reconciliation, mediation, investigation, and treatment services; and (8) conduct hearings under Title 13 and chapter 28A.255 RCW, as provided in RCW 13.04.021. In the Brunson matter, the court disregards the statutes in issuing the temporary order and proceeds to complicate the case by fashioning the final parenting plan without complying with statutes.

Final Parenting Plan

In lieu of following the domestic relations statute, the court relies solely on the live testimony of Mr. Stan Woody, domestic violence counselor in crafting the parenting plan which

included 191 restrictions that were clearly misstated to replace the true language of the RCW. (*RP page 638, Courts Oral Decision July 31st 2013*) Regardless of the inappropriate admission as an expert witness, Mr. Woody's was not in the position to opine the "best interests of the children."

Mr. Woody's assessment and testimony was objected to by Mr. Brunson, and over-ruled by the judge, within the *ER 904* requests by Ms. Robertson at the onset of the trial. (*RP page 5-12, Motions in Limine July 9, 2013*) Ms. Robertson offered Mr. Woody as a domestic violence expert, not as a parenting expert. The record clearly indicates that Mr. Woody's assessment, treatment, and reporting was not in compliance with *WAC 388-60*. His evaluation of Mr. Brunson was not prepared in preparation for dissolution proceedings, custody issues or conviction of Mr. Brunson for domestic violence against his wife and one child as found in the Final Parenting Plan. Therefore, Mr. Woody's input in crafting a parenting plan was completely inappropriate and violated the children's and Mr. Brunson's liberty and privacy interests.

The final parenting plan allows for no residential time based on 2.1 Parental Conduct *RCW 191.09.191((1),(2))* The court replaces the language of the RCW from (2)(a) [t]he parent's

residential time with the child shall be limited if it is found... to “[t]he parents residential time with the children shall be limited or restrained completely, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in the conduct...” The language of *RCW 191((1),(2))* does not allow for “restrained completely.” 2.1 continues on to state “...which follows: A history or acts of domestic violence as defined in *RCW 26.50.010(1)* or an assault or sexual assault which causes grievous bodily harm or the fear of such harm. The court found there is ample evidence of domestic violence perpetrated against Petitioner and against one child. (*CP sub# 118, page 198 sec 2.1*)

Review III. Residential Schedule of the final parenting plan clearly shows Mr. Brunson is not afforded a single day with the children. In fact, 3.9 Priorities Under the Residential Schedule reads: “Does not apply because one parent has no visitation or restricted visitation.” 3.10 Restrictions point to limiting factors in 2.1 and 2.2; but 2.2 reads “Does not apply.” The three restrictions listed are all contingent on enrolling in a one year domestic violence program with supervised visitation continuing until the

domestic violence counselor determines that Mr. Brunson has made sufficient progress.

Despite Mr. Brunson's objections to the parenting plan pre-trial, during trial, and post-trial reconsideration, the court entered it without regards to the best interest of the children as required by *RCW 26.09.002*. The restrictions go so far as to prevent any contact with the children, even by mail. Per 3.13; Other 1. After reenrolling in a State Certified Domestic Violent Treatment Program, the Respondent may send cards, notes, letters, and gifts to the children through the mail. The mother shall inspect said items to determine if they are appropriate. (*CP sub# 118, page 201*)

In violation of the United States Constitution and the Washington State Constitution, Mr. Brunson is striped of any and all decision making rights in regard to the children through a final parenting plan. Again, the court misstates the law in the parenting plan: "A limitation on the other parent's decision making authority is mandated by *RCW 26.09.191*. Restrictions to decision making are not mandated by 191 and imposed in relation to the "best interest of the children" which was never evaluated.

Evidentiary and procedural errors abound in the matter of Brunson. As they relate to the misapplication of *CR 26* in allowing the testimony of Mr. Woody as well as Ms. Janell Berger, CPS investigator. Both the CPS investigator and the domestic violence counselor were brought to the stand in direct violation of *CR 26 (i) Motions; Conference of Counsel Required*. *The court will not entertain any motion or objection with respect to rules 25 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that the counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions as provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsel's certification that the conference requirements of this rule have been met.* In the Brunson case, the record clearly indicated the pre-trial matters were not heard until the first day of trial. In fact, the *ER 904* was not submitted to the court until the day of the trial and then was heard as a “discovery

conference” within the motions in limine. (*RP page 5-42, Motions in Limine July 9, 2013*)

The investigation by CPS should not have been made available to the court absent an order as CPS investigations are protected. In an effort to circumvent the rights of Mr. Brunson and his children, Ms. Robertson issues an attorney subpoena for the CPS investigator to appear as an expert witness in a dissolution/custody case. A CPS investigator is prohibited from testifying in a custody trial as the investigation was prepared in relation to child abuse and neglect per *RCW 13.50.100*.

By Ms. Robertson:

Q. In September or early October of 2012, did you come to be assigned to a case involving [LTB], the Brunson family?

A. DSHS’s records are confidential, and I am happy to testify with regard to my investigation if the Court orders me to do so.

Q You are here under – you have received a subpoena to be here today?

A. Yes, I have.

Ms. Robertson: We would request that the Court, based on the subpoena that was issued in this case, allow the witness to testify regarding the CPS records. We are not looking for her to violate confidentiality regarding third parties, which, as the Court knows, is protected under the Administrative Code; but we are asking her to identify her investigation with regard to the parties and the minor children in this action.

The Court: It sounds a little bit like a motion. So far, I’ve extracted from the witness an oath to tell the truth, the whole truth, and nothing but the truth as questions are put to her; so I think that we’re already there.

If anybody, whether that is a party or the witness, has an objection to anything, then I will hear it as it comes up. But right now, it's already her obligation, pursuant to her oath, to answer questions.

Proceed.

(RP page 96-97, Janell Berger – Direct Examination July 10, 2013)

Examination of the record clearly indicates, Mr. Brunson objected to Ms. Berger's testimony and CPS documents in the Petitioner's *ER 904* as well as the hearing, which took place moments before the trial started. *(RP page 31-35, Motions in Limine July 9, 2013)* The CPS documents are protected, therefore, it was inappropriate for the court to allow them into evidence. Likewise, the court erred in permitting the CPS investigator to testify in the Brunson's custody case since she was only authorized to investigate alleged child abuse and neglect under *RCW 26.44.040*. Further, *RCW 26.12.170* states: *...[t]he findings shall be restricted to the issue of abuse and neglect and shall not be considered custody investigations.* CPS had closed the case well before trial. *(RP page 107, Janell Berger – Direct Examination July 10, 2013)*

The effect of the CPS investigator appearing in the case brought the full resources of the government to bear on Mr. Brunson and the minor children without affording him or the

children equal protection under the law as required. Per *RCW 26.44.053* guardian ad litem, appointment – Examination of person having legal custody – Hearing – Procedure: (1) *In any judicial proceeding under this chapter or chapter 13.24 RCW. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel in the proceedings.*

The entire testimony of Ms. Berger should be reviewed by the Court of Appeals as her testimony likely violates many statutes affecting Mr. Brunson and his minor children as none are represented by counsel. The above referenced testimony is meant to be merely an example.

Likewise, Mr. Brunson's criminal charges and Snohomish County Prosecutor's Office's involvement warrants review by the appellate court. Mr. Brunson's *Fifth Amendment* rights were violated by the prosecutor presenting himself in the dissolution trial while charges were pending. (*RP page 389, Jennifer Brunson – Redirect Examination July 11, 2013*) The trial court superseded Mr. Brunson's rights and displayed extreme prejudice in requiring Mr. Brunson answer questions relating to his criminal case stating:

Mr. Brunson: At the advice of my criminal defense attorney, he said if it has anything to do with that case; and currently, for terms

of probation, it requires a new DV assessment, so he told me not to answer that question.

The Court: My black robe trumps your lawyer's suit. You have to answer the question. (*RP page 547, Neil Brunson – Cross Examination July 22, 2013*)

Case law cannot be found that patterns the Brunson case, as none exists. It is unreasonable that a father who had been denied contact with his minor children for sixteen months would be denied a reconsideration request for reconciliation with his children. If the father does not have the right to decide how best to reunite with his children then he has no parental rights. In re the marriage of Brunson, the court terminated Mr. Brunson's parental rights without due process and representation for the minor children. Now, Mr. Brunson is forced to press on without benefit of counsel in order to meet required deadlines and in an effort to preserve any limited rights he may have left.

The Washington Supreme Court noted *In re Luscier: Note, Child Neglect: Due Process for the Parent, 70 Colum. L. Rev. 476 (1970)*.

Thus, it is readily apparent that the lack of counsel, in itself, may lead improperly and unnecessarily to deprivation of one's children. The absence of counsel in the perhaps sophisticated realm of appellate practice will only compound the probabilities that the rights of the parents are not effectually presented and protected by the law and the

courts.

The punitive final parenting plan can best be viewed in light of the judge's oral ruling:

"So he's got some expenses out there if he wants to be able to complete this process and have a normal and healthy relationship with his children. As I've said, I hope he does, but that's up to him. But if he does, that's expensive." (*RP page 651, Court's Oral Decision – July 31st 2013*).

Child Support

It was an abuse of discretion for the trial court to rule Mr. Brunson was voluntarily unemployed and impute income based upon his age. Mr. Brunson was on unemployment insurance prior to and at the time of trial. All testimony and exhibits support Mr. Brunson was receiving unemployment income and was not voluntarily unemployed. (*See Exhibit 54 and Exhibit 66*) The evidence at trial showed he received L&I income based upon a work-related injury and was no longer able to work in the same capacity due to the injury. Further, Jennifer Brunson had an agreement with Mr. Brunson that he was to go back to school when LTB reached kindergarten.

Q. Was it ever agreed upon between you and respondent that the respondent was going to stay home and manage the MMJ garden until LTB was old enough to go to kindergarten, and then he was going to get off his hands and knees and go back to work?

A. We had an agreement that when LTB got to kindergarten, you were going to go back to school. I don't think that agreement included that you wouldn't work at all.

Q. So it's safe to say that the respondent was going to go back to school to further his education?

A. Yes.

Q. In order to get out of construction?

A. Yes.

(RP page 253, Jennifer Brunson – Cross Examination July 10, 2013)

Given that Mr. Brunson's unemployment insurance had ended, the trial court should have imputed income to him at the time of reconsideration based upon minimum wage (\$9.19 per hour) according to *RCW 26.19.071(6)(d)* since he was recently coming off of public assistance and had a work related disability. The trial court should have deviated any support obligation down to the statutory minimum of \$50.00 per month in light of the court ordered services that were imposed in the parenting plan and assigned to Mr. Brunson. Under the trial court's decision, Mr. Brunson is paying the maximum possible child support while being required to undergo expensive treatment and pay for professional supervision – when Mr. Brunson does not have income.

Furthermore, Mr. Brunson cannot afford the services the trial court has required. All of the evidence at trial was that he was not employed and was on unemployment. *(See Exhibit 54 and Exhibit*

66) Mr. Brunson cannot afford the professional supervision. An 8 hour supervised visit would cost him in excess of \$300 per week. Mr. Brunson's current court ordered support and visitation costs would total close to \$2,000 per month. Mr. Brunson clearly stated in trial that he would not participate in domestic violence treatment due to the length of time he has not seen the children, and instead requested a reunification therapist. The trial court refused. It is impossible for him to be successful in reunification and it would only be punitive for him to be ordered to enroll in expensive domestic violence treatment. The fact that Mr. Brunson cannot see his children, even in a professionally supervised setting, until he enrolls in what amounts to a cottage industry for state certified therapists does not seem best designed to ensure that the children are able to re-establish the bond with their father. The only nexus that Mr. Brunson sees between the requirement to start domestic violence treatment and beginning professional supervision is to make sure that he is punished. The trial court manifestly abused its discretion when it failed to provide the requested reunification therapy with the minor children ensuring Mr. Brunson's relationship with the children would fail. The failure to deviate based on court ordered treatment and the requirement that Mr. Brunson pay for

supervised visitation is untenable and manifestly unreasonable. *McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007); *In re Marriage of Booth*, 114 Wn.2d 772, 791 P.2d 519 (1990)

Property Division

The statutory authority for the disposition of property is RCW 26.09.080. There are four factors in determining the disposition of property and the Supreme Court has stated no single statutory factor has more weight than another, see *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985), cert. denied, 473 U.S. 906 (1985). *In Baker v Baker*, 80 Wn.2d 795, 854 P.2d 315 (1972), the standard of review for the trial courts distribution of property is abuse of discretion.

Mr. Brunson disputes multiple findings of fact in community property, separate property, and community liabilities, and separate liabilities. The review of the findings of fact under the substantial evidence standard of review is only in limited instances in which a finding is unsupported by any credible evidence. If the findings of fact are supported by substantial evidence, they will not be disturbed on appeal. *Thorndike v. Hesperian Orchards, Inc.*, 54

Wn.2d 570, 343 P.2d 183 (1959). In this case the court erred and made findings of fact without substantial evidence.

Property Valuation

The trial court concluded, “The court finds the marital home is community property. The court has insufficient evidence to determine a value for the real property and, therefore reasonably concludes that the home is worth the mortgage debt. (*CP Sub# 120, page 177, 2.8 3.*) The trial court admits it cannot determine the value of the home and arbitrarily assigns a \$0 value to the property. The trial court required Mr. Brunson to sign a quit-claim deed at presentation, prior to the appraisal required by the court ordered refinance. (*RP, page 669, Court’s Oral Decision- July 31st, 2013*) The refinance appraised value is \$358,000. \$48,000 above the arbitrary value the court assigned and \$130,000 above Jennifer Brunson’s estimate.

At trial Mr. Brunson testified, “Respondent believes that the house should have an appraisal on it to determine whether there is negative equity or positive equity. Respondent believes that with the home improvement projects, that that property is over – the current value owed on the house is \$309,000 and believes that petitioner and counsel have failed to acquire an appraisal and wanted to state it as negative equity in their division of assets and liabilities.

The Court: “I need to stop you, because I’m not sure I heard you correctly. Did you say you believe it is worth in excess of \$309,000?”

Mr. Brunson: "Yes. I believe the house will appraise for between \$320- and \$340,000." (*RP page 520, Neil Brunson – Testimony in the Narrative July 22, 2013*)

The value of \$340,000 by Mr. Brunson was given at trial and the court assigned an arbitrary value abused its discretion.

The trial court further abused its discretion by not considering the appraised value of the house in reconsideration. The court admitted insufficient evidence to value the house. If the court thought the division of property was fair and equitable with an assigned value of net zero to the house, when it was made aware of the true value it was an abuse of discretion to deny Mr. Brunson's motion for reconsideration.

The trial court abused its discretion and assigned Mr. Brunson \$12,000 cash. The trial court showed extreme prejudice attributing \$12,000 to Mr. Brunson absent any evidence other than Jennifer Brunson's testimony. It would only be reasonable, to any reasonably minded person that the trial court abused its discretion in awarding significant amount of cash based on a mere accusation without any evidence.

Determination of Separate and Community Property

In the findings of fact, the trial court abused its discretion in awarding \$7,000 of separate property from Bank of America to Mr.

Brunson. The account opened in 2001 and was held in the names of Neil F. and Bridgid O. Brunson. Evidence clearly showed the \$7,000 withdrawn by Mrs. Bridgid Brunson prior to Jennifer Brunson filing for dissolution. The bank statement clearly shows the accounts were closed by Bridgid Brunson. (*Exhibit 14*)

The live testimony of Mr. Brunson states,

“Then with regards to the remaining Bank of America account, my mother took those funds, because they were her funds; she withdrew them. Respondent does not know where they are at this time.” (*RP page 479, Neil Brunson – Testimony in the Narrative July 11, 2013*).

The truck was clearly shown to be separate property of Mr.

Brunson. Mr. Brunson submitted exhibit 71, referred to by the trial court as a “document that indicated that the truck was a gift.

Perhaps it was, although the document didn’t say much more than the word “gift.” At any rate, it didn’t say to whom the gift was, if it was indeed a gift.” (*RP page 641, Court’s Oral Decision July 31, 2013*). The “document” is the title of the truck clearly illustrating the truck was given as a gift and the use tax waived. The legal owner of the vehicle is shown as Brunson, Neil Francis. In Mr. Brunson’s live testimony he states, “The Respondent had a separate truck, which was a business truck for Excellent Underlayment, as well. That truck was gifted to him by his brother. Respondent would like

to move Exhibit 71, which is the vehicle certificate of title. The comments on it are, Use Tax Waived, as a gift. (*RP page 521, Neil Brunson – Testimony in the Narrative July 22, 2013*). Any reasonable person would conclude the evidence proved the truck was the separate property of Mr. Brunson; therefore, the trial court abused its discretion and did not rely on the evidence presented by Mr. Brunson.

Separate Property Acquisition

It has been long withstanding in our rights as not only a citizen of the United States but of this state that one has a right to their property. *Per Washington State Constitution Article 1 Declaration of Rights. Section 3 Personnel Rights* Mr. Brunson had a constitutional right to not only retrieve his property in the divorce but also to inventory the property prior to trial. Trial court's action was punitive in ordering Mr. Brunson pay professional movers to acquire not only his personal property but also his business assets. See (*CP Sub# 121, page 175, Exhibit H*). To violate ones constitutional rights is an error in law, therefore, an abuse of discretion.

Home Based Businesses

Jennifer Brunson was awarded her separate L&I award as separate property.

The court during its oral decision states, "Now I'm aware that Mr. Brunson's \$7,000 L&I claim was put into community property, and he would either like it back or I assume he would like Mrs. Brunson's L&I claim money treated the same way because that would be fair and equitable, goes the argument. Two things to observe. In the first place, there wasn't really any tracing done here or any effort to show that what went into community property, when it was the \$7,000 awarded by Labor & Industries to Mr. Brunson, was intended to be kept his separate property. It could have been, because it would have been presumptively separate property: but it was deposited into a community property account, it was commingled with community property assets, and there was never any effort to set it aside or separate it out, and so it does look for all the world like a gift of separate property to the community. (RP page 646-647, Court's Oral Decision July 31, 2013.)

The money was separated out and not hopelessly comingled.

Exhibit #56 shows the investment by Mr. Brunson in the home based business and clearly sets out the L&I award entered the community bank account through the \$26,000 of investment in the home based business. On June 25, 2012, a \$9,604 deposit was made that included the \$7,000 L&I award to Mr. Brunson. The trial court abused its discretion by ignoring a \$26,000 investment in a home based business that included his award of \$7,000. Property acquired prior to marriage or afterward by gift, bequest, devise, decent, or inheritance is presumed to be separate. *RCW*

26.16.010; *In re Estate of Borghi*, 167 Wn.2d 480, 483, 219P.3d 932 (2009). The separate property presumption can only be rebutted by clear and convincing evidence of conversion to community property. *Id.* At 490. “[O]nly when money in a joint account is hopelessly commingled and cannot be separated is it rendered entirely community property.” *In re Marriage of Skarbek*, 100 Wn. App. 444, 448, 997 P.2d 447 (2000). “If the sources of the deposits can be traced and identified, the separate identity of the funds is preserved.” *Id.*

The trial court abused its discretion by including all income of the business to Mr. Brunson without consideration of debt. Jennifer Brunson failed to conduct discovery. Jennifer Brunson failed to provide interrogatories to Mr. Brunson about said business. Mr. Brunson’s mother Bridgid Brunson had an interest in both businesses and Ms. Robertson was properly notified in Mr. Brunson’s Response to Petitioner’s Dissolution. She was the accountant for Excellent Underlayment, and had an interest in the home based business.

Results of the Abuse of Discretion in the Division of Property

Mr. Brunson’s reconsideration included a spreadsheet of the asset division according to the court’s oral decision. A copy was

included in the declaration for reconsideration and in the designation of clerk's papers. (*CP Sub# 123, page 107*) The wife received an additional \$31,000 more than the husband when the appraised value of the house is used.

A trial court will be found to have abused its discretion only where the decision is "manifestly unreasonable or exercised on untenable grounds or for untenable reason." *State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)* *Barfield v. City of Seattle, 100Wn.2d 878, 676 P.2d 438 (1984)*. It is a manifest abuse of discretion of the trial court when it fails to follow law. The property was not distributed in accordance with *RCW 26.09.080*. The only conclusion of the trial court was the duration of the marriage as "midrange." A midrange marriage has been concluded by the court to dissolve marriage leaving each party with equal resources. The nature and extent of the community property and separate property was incorrect and the economic circumstances of the spouses at the time of division of property was not taken into account. The court's oral decision states,

"But I do take these things into account. If you look at the two of them, the Petitioner has the responsibility, I suppose, of being a single mother; but, on the other hand, she's got a lot going for her right now, as this marriage winds up. The Respondent does not." (RP page 652, Courts Oral Decision, July 31, 2013)

Mr. Brunson was unemployed and was a stay at home father. The discretion of the trial court is not unlimited and requires the court to: determine the legally relevant factors upon which to make a discretionary decision, find facts relevant to the legally relevant factors, and then exercise discretion based upon its findings. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997); *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995). The court failed to find facts based upon the legally relevant factors and thus the trial court did not follow the required law.

Attorney's Fees

Rap 18.1 (a) allows fees to a party who has the right to fees under applicable law. *RCW 26.09.140* allows courts to award fees to a party in a marital dissolution proceeding, after considering both parties' resources, based on need and ability to pay when one party has superior resources. In this case Jennifer Brunson has significant resources and took a loan against her 401k loan in the amount of \$34,000, without notice to Mr. Brunson violating *SCLSPR 94.04*. See (*RP page 187, Jennifer Brunson – Direct Examination July 10, 2013*); (*RP page 254, Jennifer Brunson – Cross Examination July 10, 2013*). Jennifer Brunson has shown

she has the ability to reimburse Mr. Brunson for the necessary verbatim reports of pleadings he was required to obtain for appeal.

The trial court stated,

“I don’t think there’s a basis here for attorney’s fees, because I don’t believe I can find that anything that took place that was a result of intransigence, and so I’m not going to.” (*RP page 651, Court’s Oral Decision – July 31, 2013*).

The prior commissioner imposed a moratorium order banning Mr. Brunson from filing any motions until he paid Jennifer Brunson \$3,000 in attorney’s fees. The court abused its discretion in imposing a \$3,000 fine which obstructed Mr. Brunson’s due process in not allowing him to file any motions. The trial court further abused its discretion by failing to vacate the award of \$3,000 when there was no finding of intransigence. The additional \$285 that was awarded to Jennifer Brunson by the trial court for filing a motion shortening time was likewise inappropriate under *RCW 26.09.140*, because it did not consider the financial resources of the parties. All judgments for attorney’s fees against Mr. Brunson should be vacated.

The trial court abused its discretion by not hearing/denying Mr. Brunson’s motion for attorney fees based on intransigence. The trial court defined intransigence as

“Intransigence is a matter of conducting oneself during the pendency of a lawsuit such as this in a way that costs the other side money, time or trouble – or all three – by doing things which are not legitimate or justifiable for some other purpose.” (*RP page 649, Court’s Oral Decision – July 31, 2013*)

Here the opposing party caused all three. Failure to follow statutes, failure to have both parties screened per *RCW 26.09.191*, failure to conduct discovery and interrogatories per *CR 26*, failure to respond to Mr. Brunson’s discovery request, failure to have an appraisal of the house and conduct oneself to improperly value the house at a negative value when in fact the house had substantial value, and Motion to Strike Memorandum in Support of Motion and Reply and Dismiss Motion for New Trial.” Ms. Robertson’s, counsel for Jennifer Brunson, “Motion and Reply and Dismiss Motion for New Trial,” specifically asks, “The court should award fees and costs to Petitioner for having to respond to Respondent’s motion and at least some portion of those fees should be awarded as *CR 11* sanctions.” (*CP Sub# 136, page 48-75*). All of Mr. Brunson’s fees would have been avoided if it were not for the intransigence of the other party.

The court should not reward the conduct of Ms. Robertson. As the Ninth Circuit has observed that: “Were vigorous advocacy to be chilled by the excessive use of sanctions, wrongs would go

uncompensated. Attorneys, because of fear of sanctions, might turn down cases on behalf of individuals seeking to have the courts recognize new rights. They might also refuse to represent persons whose rights have been violated but whose claims are not likely to produce large damage awards. This is because attorneys would have to figure into their costs of doing business the risk of unjustified awards of sanctions.” (*Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. at 199*) In this case failure to follow statute resulted in Mr. Brunson expending funds in excess of \$14,000 during reconsideration rendering him indigent. The court should require Ms. Robertson to pay Mr. Brunson’s legal expenses.

VI. Conclusion

The only curable remedy for the violation of the children’s due process and the fundamental liberties of Mr. Brunson is a new trial. The trial court manifestly abused its discretion and demonstrated extreme prejudice and bias against Mr. Brunson. The trial court erred by not following *RCW 26.09.191* and having both parties screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and parties. Mr. Brunson’s fundamental belief that he is not a domestic violence perpetrator and is not a candidate for domestic

violence perpetrator treatment should not terminate his parental rights. The trial court did not have sufficiency of evidence to enter *RCW 26.09.191* restrictions because both parents had not been evaluated. The trial court relied upon “credibility,” rather than evidence to support the findings of re-stated 191 restrictions. The court manifestly abused its discretion by denying a reunification plan, terminating the parent child relationship, without due process, or the scrutiny of a Title 13 action.

The trial judge should have recused himself when he identified himself as having been a prosecutor for the domestic violence unit when Mr. Brunson was arrested for Assault II DV.

When asked by Mr. Brunson:

“May I ask you if you are prejudiced in any domestic violence, because you were – because you did hear those? The trial court replied. “No. I believe I can be fair and impartial: otherwise I wouldn’t have taken this job. But some connection between myself and this case that might make a reasonable person believe that I couldn’t be fair and impartial. And if I was convinced of that, I would recuse myself, even though I think I can be fair and impartial.” (RP page 80, Jennifer Brunson – Direct Examination July 9, 2013)

Instead the trial court was biased and prejudiced; electing to prosecute Mr. Brunson in a dissolution proceeding.

The court neglected to guard the constitutional rights of Mr. Brunson and his minor children by failing to rigorously follow the

procedural protections afforded by Washington state law and guaranteed by the United States and Washington State constitutions. The court erred in entering legally incorrect 191 restrictions without the legally required screening, despite the abusive use of conflict by Jennifer Brunson and her withholding Mr. Brunson's access to his minor children. The Final Parenting Plan effectively eliminated all Mr. Brunson's parental rights without due process and contrary to statute. "An error of law constitutes an untenable reason." *In re Marriage of Farmer*, 172 Wn.2d (2011). In violation of double jeopardy, the family law court imposed restrictions on Mr. Brunson greater than that of the criminal court. The coordination and timing of cases between Jennifer Brunson, her counsel and the Snohomish County Prosecutor's Office is marked. *RCW 26.44.015 (1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, or safety. (2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.* Yet, Mr. Brunson was charged, not with child abuse, but Assault IV, DV. (Pending before this court under # 71850-9-1) The trial court found in favor of Jennifer Brunson on every single

item in the parenting plan and child support schedule, with the exception of a psychological evaluation of Mr. Brunson with input from Jennifer Brunson. The trial court found in favor of her on every item in the division of property, right down to her incomplete property list; without sufficiency of evidence. Given the prejudice and bias of the trial court and the violation of due process in failing to follow law, the only legal remedy is vacating the orders of the trial court and remanding for a new trial.

July 28, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'NB', is written over a horizontal line that extends across the page.

Signature

Neil Brunson
Pro Se